

**IN THE SUPREME COURT OF NEVADA**

JPMORGAN CHASE BANK, N.A.,  
SUCCESSOR BY MERGER TO  
CHASE HOME FINANCE LLC,

Appellant,

v.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

Supreme Court No. 71839

Electronically Filed  
Apr 24 2017 08:28 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable NANCY L. ALLF, District Judge  
District Court Case No. A-12-672963-C

**APPELLANT'S APPENDIX – VOLUME 1**

Abran E. Vigil, Nevada Bar No. 7548  
Lindsay Demaree, Nevada Bar No. 11949  
Matthew D. Lamb, Nevada Bar No. 12991

BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750

Las Vegas, Nevada 89106

(702) 471-7000

vigila@ballardspahr.com

demareel@ballardspahr.com

lambm@ballardspahr.com

*Attorneys for Appellant*

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Affidavit of Service – JP Morgan Chase Bank, N.A.	December 20, 2012	1 AA 013
Affidavit of Service – National Default Servicing Corporation	December 20, 2012	1 AA 014
Affidavit of Service – Republic Silver State Disposal, Inc.	December 20, 2012	1 AA 015
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**CERTIFICATE OF SERVICE**

I certify that on April 21, 2017, I filed **Appellant's Appendix – Volume 1**.  
Service will be made on the following through the Court's electronic filing  
system:

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

*Counsel for Respondent*

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



<b>I. Party Information</b>	
Plaintiff(s) (name/address/phone): SFR INVESTMENTS POOL1, LLC	Defendant(s) (name/address/phone):  VENTA REALTY GROUP, JP MORGAN CHASE BANK, N.A., successor by merger to CHASE HOME FINANCE LLC, NATIONAL DEFAULT SERVICING CORPORATION, CALIFORNIA RECONVEYANCE COMPANY, REPUBLIC SILVER STATE DISPOSAL, INC., PARADISE COURT HOMEOWNERS ASSOCIATION, and DELANIE L. HARNED
Attorney (name/address/phone): Howard C. Kim, Esq. and Diana S. Cline, Esq., Howard Kim and Associates, 400 North Stephanie St., Suite 160, Henderson , Nevada 89014; (702) 485-3300	Attorney (name/address/phone):

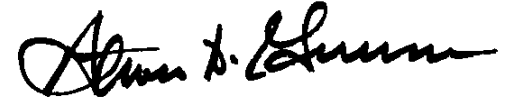
<b>II. Nature of Controversy</b> (Please check applicable bold category and applicable subcategory, if appropriate)	<input type="checkbox"/> <b>Arbitration Requested</b>
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Civil Cases		
Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant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

<b>III. Business Court Requested</b> (Please check applicable category; for Clark or Washoe Counties only.)		
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters

12/4/12	/s/ Diana S. Cline
Date	Signature of initiating party or representative





CLERK OF THE COURT

**COMP**

HOWARD C. KIM, ESQ.  
Nevada Bar No. 10386  
E-mail: howard@hkimlaw.com  
DIANA S. CLINE, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@hkimlaw.com  
HOWARD KIM & ASSOCIATES  
400 N. Stephanie St, Suite 160  
Henderson, Nevada 89014  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

VENTA REALTY GROUP, a Nevada  
corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No. **A- 12 - 672963 - C**

Dept. No. **XXVI I**

**COMPLAINT FOR QUIET TITLE AND  
INJUNCTIVE RELIEF**

**Arbitration Exemptions:**

1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of  
records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and  
request injunctive relief against the above named defendants as follows:

///

///

I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as 1076 Slate Crossing Lane #102, Henderson, Nevada 89002, Parcel No. 179-34-713-236, and legally described as Paradise Court, Plat Book 116, Page 33, Unit 2, Bldg 79 Clark County (the "Property").

2. Upon information and belief, Defendant VENTA REALTY GROUP ("Venta") is or was a Nevada corporation doing business as Venta Home Loans that recorded a deed of trust against the Property.

3. Upon information and belief, Defendant JP MORGAN CHASE BANK, N.A. ("JP Morgan Chase"), a national association, successor by merger to CHASE HOME FINANCE LLC, that may claim an interest in the Property through the deed of trust recorded by Defendant Venta.

4. Upon information and belief, CALIFORNIA RECONVEYANCE COMPANY ("California Reconveyance") is a California corporation that was substituted as trustee of the deed of trust recorded by Defendant Venta and recorded non-judicial foreclosure notices on the Property.

5. Upon information and belief, Defendant NATIONAL DEFAULT SERVICING CORPORATION ("NDSC") is an Arizona corporation that was substituted as trustee of the deed of trust recorded by Defendant Venta and recorded a non-judicial foreclosure notice on the Property.

6. Upon information and belief, PARADISE COURT HOMEOWNERS ASSOCIATION ("Paradise Court HOA") is a Nevada non-profit corporation that filed a lien on the Property pursuant to NRS 116.3116 *et. seq.* and the Paradise Court HOA governing documents ("CC&R's").

7. Upon information and belief, REPUBLIC SILVER STATE DISPOSAL, INC. ("Republic") is a Nevada corporation that filed several liens on the Property for waste collection services provided as contactor for the City of Henderson.

1 8. Upon information and belief, Defendant DELAINE L. HARNED ("Harned") is an  
2 individual residing in Nevada and the former title owner of the Property.

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

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

14 **II. GENERAL ALLEGATIONS**

15 **Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien**

16 11. Plaintiff acquired the Property on September 21, 2012 by successfully bidding on the  
17 Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.*  
18 ("HOA foreclosure sale"). Since the HOA foreclosure sale, Plaintiff has expended additional  
19 funds and resources to improve and/or maintain the Property.

20 12. The resulting foreclosure deed was recorded in the Official Records of the Clark County  
21 Recorder as Instrument Number 201209250001230 ("Foreclosure Deed").

22 13. The foreclosure sale was conducted by Nevada Association Services ("NAS"), agent for  
23 Paradise Court HOA, pursuant to the powers conferred by the Nevada Revised Statutes  
24 116.3116, 116.31162, 116.31163 and 116.31164, the Paradise Court HOA governing documents  
25 (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on February 5, 2010 in the  
26 Official Records of the Clark County Recorder as Instrument Number 0001923 Book 20100205  
27 ("HOA Lien").

28 14. As recited in the Foreclosure Deed, the HOA foreclosure sale complied with all

1 requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing  
2 of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting  
3 and publication of the Notice of Sale.

4 15. Pursuant to NRS 116.3116(2), the entire HOA Lien

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

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

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

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

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

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

23 17. Upon information and belief, no party still claiming an interest in the Property recorded a  
24 lien or encumbrance prior to the declaration creating Paradise Court HOA.

25 18. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount  
26 necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

27 19. Upon information and belief, Paradise Court HOA or its agent NAS distributed or should  
28 have distributed the excess funds to lien holders in order of priority pursuant to NRS  
116.3114(c).

20. Upon information and belief, the excess funds paid at the HOA foreclosure sale through  
its winning bid were used or should have been used to satisfy any liens for real estate taxes and  
other governmental assessments or charges against the Property.

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

1 Default.

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

6 23. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff “without equity  
7 or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former  
8 owner, his or her heirs and assigns, and **all other persons.**”

9 **Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien**

10 24. Upon information and belief, Defendant Harned obtained title to the Property in May of  
11 2008 through a Grant Bargain Sale Deed from US Bank National Association.

12 25. On or about May 14, 2008, Defendant Venta recorded a deed of trust against the Property  
13 in the Official Records of the Clark County Recorder as Instrument No. 200805140005041  
14 (“Venta Deed of Trust”).

15 26. On or about November 29, 2010, Colleen Irby, as Assistant Secretary for Mortgage  
16 Electronic Registration Systems, Inc. executed an assignment of the Venta Deed of Trust to  
17 Chase Home Finance, LLC, which was later recorded on December 6, 2010 in the Official  
18 Records of the Clark County Recorder as Instrument No. 201012060000315.

19 27. Also on or about November 29, 2010, Colleen Irby, as Vice President for Chase Home  
20 Finance LLC executed a document substituting Defendant California Reconveyance as trustee of  
21 the Venta Deed of Trust.

22 28. The substitution of trustee was later recorded on December 6, 2010 in the Official  
23 Records of the Clark County Recorder as Instrument No. 201012060000316.

24 29. Defendant California Reconveyance recorded several non-judicial foreclosure notices on  
25 the Property in 2010 and 2011.

26 30. On or about September 26, 2012, JP Morgan Chase Bank, National Association,  
27 successor by merger to Chase Home Finance LLC executed a document substituting Defendant  
28 NDSC as trustee of the Venta Deed of Trust.

31. On or about October 11, 2012, the substitution of trustee was recorded in the Official Records of the Clark County Recorder as Instrument No. 201210110001602.

32. On or about October 11, 2012, Defendant NDSC recorded in the Official Records of the Clark County Recorder as Instrument Number 201210110001603 a Notice of Trustee's Sale stating that the Property will be sold at a public auction pursuant to the terms of the Venta Deed of Trust on December 10, 2012 at 10:00 a.m.

33. On four separate occasions beginning on July 13, 2011, Defendant Republic recorded liens against the Property for waste collection services it provided as a contractor for the City of Henderson. The liens were recorded in the Official Records of the Clark County Recorder as Instrument Numbers 201107130002403, 201107140000902, 201112230005003, and 201210010005040 ("Waste Collection Liens").

34. Defendant Harned's ownership interest in the Property was extinguished by foreclosure of the HOA Lien.

35. Defendant Venta and Defendant JP Morgan Chase's interest in the Property, if any, via the Venta Deed of Trust was extinguished by the foreclosure of the super-priority portion of the HOA Lien.

36. Upon information and belief, Defendant Republic's interest in the Property via the Waste Collection Liens was or should have been satisfied by distribution of the proceeds Plaintiff paid at the HOA foreclosure sale or through payment by an interested party.

37. Defendant Paradise Court HOA's interest in the Property via the HOA Lien was extinguished by the foreclosure of the HOA Lien.

### III. FIRST CLAIM FOR RELIEF

**(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against Defendants Harned, Venta, JP Morgan Chase, Republic, and Paradise Court HOA)**

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

39. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in



1 the Property.

2 40. Plaintiff acquired the Property on September 21, 2012 by successfully bidding on the  
3 Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and  
4 the resulting Foreclosure Deed vesting title in Plaintiff was recorded on September 25, 2012.

5 41. Defendant Harned, as previous title owner of the Property may assert a claim adverse to  
6 Plaintiff.

7 42. Defendant Venta recorded the Venta Deed of Trust on the Property in 2008.

8 43. Upon information and belief, Defendant JP Morgan Chase may be claiming an interest in  
9 the Property through the Venta Deed of Trust.

10 44. Upon information and belief, Defendant Republic may still be claiming an interest in the  
11 Property via the Waste Collection Liens.

12 45. Upon information and belief, Defendant Paradise Court HOA may still be claiming an  
13 interest in the Property via a portion of the HOA Lien.

14 46. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like  
15 all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and  
16 encumbrances, including deeds of trust.

17 47. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority  
18 over the Venta Deed of Trust.

19 48. Upon information and belief, the Waste Collection Liens and HOA Lien have been or  
20 should have been extinguished or otherwise satisfied.

21 49. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect  
22 their interests in the Property, if any legitimately existed.

23 50. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is  
24 the title owner of the Property; (2) the Foreclosure Deed is valid and enforceable; (3) the HOA  
25 foreclosure sale extinguished Defendants' security interests in the Property; and (4) Plaintiff's  
26 rights and interest in the Property are superior to any adverse interest claimed by Defendants.

27 51. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

28 ///

**IV. SECOND CLAIM FOR RELIEF**

**(Preliminary and Permanent Injunction against Defendants Venta, JP Morgan Chase, California Reconveyance and NDSC)**

52. Plaintiff repeats and realleges the allegations of paragraphs 1- 51 as though fully set forth herein and incorporate the same by reference.

53. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on September 21, 2012.

54. Defendants Venta and/or JP Morgan Chase may claim an interest in the Property through the Venta Deed of Trust which was extinguished by the HOA foreclosure sale.

55. Further, it is unclear from the public records whether JP Morgan Chase, California Reconveyance or NDSC have authority to enforce the Venta Deed of Trust or the underlying promissory note through a trustee's sale.

56. Defendants NDSC, California Reconveyance, Venta, and/or JP Morgan Chase may improperly proceed with the non-judicial foreclosure of the Venta Deed of Trust and sell the Property at a trustee's sale.

57. Upon information and belief, Defendants did not comply with the statutory notice requirements for non-judicial foreclosure contained in NRS 107.080.

58. Any trustee's sale based on the Venta Deed of Trust would be invalid as Defendants lost their interest in the Property, if any.

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

60. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from initiating or continuing any foreclosure proceedings that would affect the title to the Property.

**V. PRAYER FOR RELIEF**

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

**HOWARD KIM & ASSOCIATES**

400 N. STEPHANIE ST, SUITE 160  
HENDERSON, NEVADA 89014  
(702) 485-3300 FAX (702) 485-3301

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2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing foreclosure proceedings on the Property;
3. For an award of attorney's fees and costs of suit; and
4. For any further relief that the Court may deem just and proper.

DATED December 4th, 2012.

**HOWARD KIM & ASSOCIATES**

/s/ Diana S. Cline  
Howard C. Kim, Esq.  
Nevada Bar No. 10386  
Diana S. Cline, Esq.  
Nevada Bar No. 10580  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Phone: (702) 485-3300  
Fax: (702) 485-330

*Attorneys for Plaintiff*

ORIGINAL

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12/20/2012 11:44:40 AM

AFFT  
Howard Kim & Associates, Attorneys at Law  
Diana S. Cline, Esq.  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014  
State Bar No.: 10580  
Attorney(s) for: Plaintiff(s)

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

SFR Investments Pool1, LLC a Nevada limited liability company  
vs  
Plaintiff(s)

Venta Realty Group, a Nevada corporation, et al.  
Defendant(s)

Case No.: A-12-672963-C

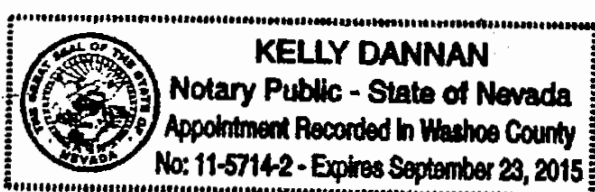
Dept. No.: XXVII

Date:

Time:

AFFIDAVIT OF SERVICE

I, Edward Croker III, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint For Quiet Title And Injunctive Relief; Civil Cover Sheet; Notice of Lis Pendens; Notice Of Posting And Acceptance Of Bond; Ex Parte Application For Temporary Restraining Order And Motion For Preliminary Injunction; Ex Parte Temporary Restraining Order; Order Enjoining Foreclosure And Order Setting Hearing On Motion For Preliminary Injunction on the 10th day of December, 2012 and served the same on the 11th day of December, 2012 at 9:05AM by serving the Defendant(s), California Reconveyance Company a California corporation by personally delivering and leaving a copy at Registered Agent: The Corporation Trust Company of Nevada, 311 South Division Street, Carson City, Nevada 89703 with Alena Duggan, Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.



State of Nevada, County of Washoe

SUBSCRIBED AND SWORN to before me on this

12th day of December 2012

  
Notary Public Kelly Dannan

Affiant Edward Croker III #: R-065145

Legal Process Service License # 604

WorkOrderNo 1209745

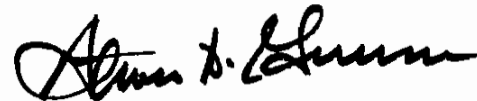
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12/20/2012 11:45:29 AM

1 **AFFT**  
2 Howard Kim & Associates, Attorneys at Law  
3 Diana S. Cline, Esq.  
4 400 N. Stephanie Street, Suite 160  
5 Henderson, NV 89014  
6 State Bar No.: 10580  
7 Attorney(s) for: Plaintiff(s)



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

8  
9  
10 **SFR Investments Pool1, LLC a Nevada limited liability company**  
11 **vs** **Plaintiff(s)**

12  
13 **Venta Realty Group, a Nevada corporation, et al.**  
14 **Defendant(s)**

Case No.: A-12-672963-C

Dept. No.: XXVII

Date:

Time:

**AFFIDAVIT OF SERVICE**

15 I, Edward Croker III, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the  
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and  
17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:  
18 Summons; Complaint For Quiet Title And Injunctive Relief; Civil Cover Sheet; Notice of Lis Pendens; Notice  
19 Of Posting And Acceptance Of Bond; Ex Parte Application For Temporary Restraining Order And Motion For  
20 Preliminary Injunction; Ex Parte Temporary Restraining Order; Order Enjoining Foreclosure And Order  
21 Setting Hearing On Motion For Preliminary Injunction on the 10th day of December, 2012 and served the same  
22 on the 11th day of December, 2012 at 9:05AM by serving the Defendant, JP Morgan Chase Bank N.A., a  
23 national association, successor by merger to Chase Home Financial LLC, a foreign limited liability  
24 corporation by personally delivering and leaving a copy at Registered Agent: The Corporation Trust Company  
25 of Nevada, 311 South Division Street, Carson City, Nevada 89703 with Alena Duggan, Administrative  
26 Assistant pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address  
27 is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of  
28 State.

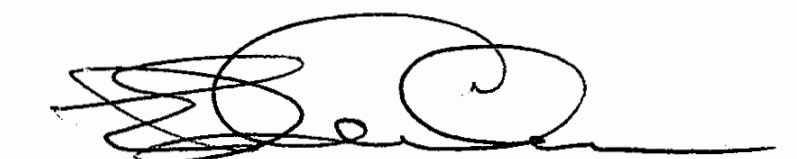


33 State of Nevada, County of Washoe

34 SUBSCRIBED AND SWORN to before me on this

35 12th day of December 2012

36   
Notary Public Kelly Dannan



Affiant Edward Croker III #: R-065145

Legal Process Service License # 604

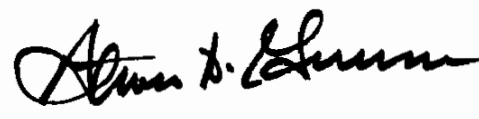
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REC'D DEC 20 2012

ORIGINAL

Electronically Filed  
12/20/2012 11:47:00 AM

AFFT  
Howard Kim & Associates, Attorneys at Law  
Diana S. Cline, Esq.  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014  
State Bar No.: 10580  
Attorney(s) for: Plaintiff(s)

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

SFR Investments Pool1, LLC a Nevada limited liability company  
vs  
Plaintiff(s)

Venta Realty Group, a Nevada corporation, et al.  
Defendant(s)

Case No.: A-12-672963-C  
Dept. No.: XXVII  
Date:  
Time:

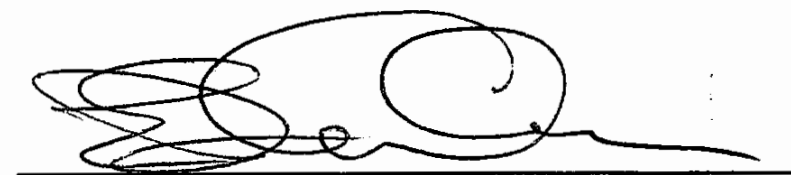
AFFIDAVIT OF SERVICE

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State of Nevada, County of Washoe  
SUBSCRIBED AND SWORN to before me on this  
12th day of December 2012

  
Notary Public Kelly Dannan

  
Affiant Edward Croker III #: R-065145  
Legal Process Service License # 604

REC'D DEC 20 2012  
Washoe County No 1209736

ORIGINAL

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12/20/2012 11:43:59 AM

1 **AFFT**  
2 Howard Kim & Associates, Attorneys at Law  
3 Diana S. Cline, Esq.  
4 400 N. Stephanie Street, Suite 160  
5 Henderson, NV 89014  
6 State Bar No.: 10580  
7 Attorney(s) for: Plaintiff(s)

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

8  
9  
10 **SFR Investments Pool1, LLC a Nevada limited liability company**  
11 **vs** **Plaintiff(s)**

12  
13 **Venta Realty Group, a Nevada corporation, et al.**  
14 **Defendant(s)**

Case No.: A-12-672963-C  
Dept. No.: XXVII  
Date:  
Time:

**AFFIDAVIT OF SERVICE**

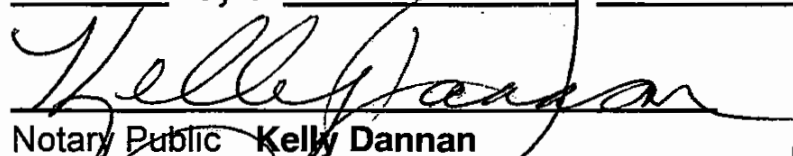
15 I, Edward Croker III, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the  
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and  
17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:  
18 Summons: Complaint For Quiet Title And Injunctive Relief; Civil Cover Sheet; Notice of Lis Pendens; Notice  
19 Of Posting And Acceptance Of Bond; Ex Parte Application For Temporary Restraining Order And Motion For  
20 Preliminary Injunction; Ex Parte Temporary Restraining Order; Order Enjoining Foreclosure And Order  
21 Setting Hearing On Motion For Preliminary Injunction on the 10th day of December, 2012 and served the same  
22 on the 11th day of December, 2012 at 9:05AM by serving the Defendant, Republic Silver State Disposal, Inc., a  
23 Nevada corporation by personally delivering and leaving a copy at Registered Agent: The Corporation Trust  
24 Company of Nevada, 311 South Division Street, Carson City, Nevada 89703 with Alena Duggan,  
25 Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and discretion at the above address,  
26 which address is the address of the registered agent as shown on the current certificate of designation filed with the  
27 Secretary of State.




31  
32  
33 State of Nevada, County of Washoe

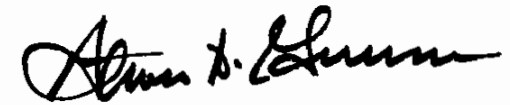
34 SUBSCRIBED AND SWORN to before me on this

35 12th day of December 2012

36   
Notary Public Kelly Dannan

  
Affiant **Edward Croker III** #: R-065145  
Legal Process Service License # 604

REC'D DEC 20 2012 Work Order No 1209743



CLERK OF THE COURT

ANS  
Kent F. Larsen, Esq.  
Nevada Bar No. 3463  
Chet A. Glover, Esq.  
Nevada Bar No. 10054  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: kfl@slwlaw.com  
cag@slwlaw.com  
Attorneys for Defendants  
JPMorgan Chase Bank, N.A.,  
as successor by merger to  
Chase Home Finance LLC, and  
California Reconveyance Company

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

SFR INVESTMENTS POOL1, LLC a Nevada  
Limited liability company,

Plaintiff,

VENTA REALTY GROUP, a Nevada  
Corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REBULIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

CASE NO. A-12-672963-C  
DEPT NO. 27

**ANSWER OF JPMORGAN CHASE  
BANK, N.A., AS SUCCESSOR BY  
MERGER TO CHASE HOME FINANCE  
LLC, AND CALIFORNIA  
RECONVEYANCE COMPANY**

JPMorgan Chase Bank, N.A., successor by merger with Chase Home Finance LLC,  
(incorrectly named in the Complaint as JP MORGAN CHASE BANK, N.A., a national  
association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability



1 corporation) ("Chase") and California Reconveyance Company ("CRC") (collectively referred to  
2 as "Defendants"), answer the Complaint of SFR Investments Pool1, LLC ("Plaintiff") as follows:

3 **I. PARTIES**

4 1. Answering paragraphs 1 and 2, Defendants are without knowledge or information  
5 sufficient to form a belief as to the allegations.

6 2. Answering paragraph 3, Defendants aver that Chase is a national association  
7 authorized to transact business in Nevada and deny any allegations inconsistent thereto.

8 3. Answering paragraph 4, Defendants admit that CRC is a California corporation.  
9 Defendants aver that the substitution of trustee and non-judicial foreclosure notices speak for  
10 themselves and deny any allegations inconsistent with those documents.

11 4. Answering paragraph 5, Defendants admit that National Default Servicing  
12 Corporation is an Arizona corporation. Defendants aver that the substitution of trustee and deed  
13 of trust speak for themselves and deny any allegations inconsistent with those documents.

14 5. Answering paragraphs 6, 7, 8, 9, and 10, Defendants are without knowledge or  
15 information sufficient to form a belief as to the allegations.

16 **II. GENERAL ALLEGATIONS**

17 6. Answering paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23  
18 Defendants are without knowledge or information sufficient to form a belief as to the allegations.  
19 Defendants further aver that the allegations state legal conclusions for which no response is  
20 required. To the extent a response is required, Defendants deny the allegations.

21 7. Answering paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, Defendants  
22 allege that the recorded documents speak for themselves and deny any allegations inconsistent  
23 with the recorded documents.

24 8. Answering paragraphs 34, 35, 36, and 37, Defendants aver that the allegations  
25 state legal conclusions for which no response is required. To the extent a response is required,  
26

1 Defendants deny the allegations.

2 **III. FIRST CLAIM FOR RELIEF**

3 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.***  
4 **against Defendants Harned, Venta, JP Morgan Chase, Republic and Paradise Court HOA)**

5 9. Answering paragraph 38, Defendants repeat and re-allege their answers to the  
6 foregoing paragraphs as though set forth fully herein.

7 10. Answering paragraph 39, 40, and 41, Defendants aver that the allegations state  
8 legal conclusions for which no response is required. To the extent a response is required,  
9 Defendants deny the allegations.

10 11. Answering paragraph 42, Defendants aver that the Venta Deed of Trust speaks for  
11 itself and deny any allegations inconsistent thereto.

12 12. Answering paragraph 43, Defendants admit.

13 13. Answering paragraphs 44 and 45, Defendants are without knowledge or  
14 information sufficient to form a belief as to the allegations.

15 14. Answering paragraphs 46, 47, 48, 49, and 50, Defendants aver that the allegations  
16 state legal conclusions for which no response is required. To the extent a response is required,  
17 Defendants deny the allegations.

18 15. Answering paragraph 51, Defendants admit that Plaintiff is seeking an order from  
19 the Court quieting title to the Property in favor of Plaintiff but deny that Plaintiff is entitled to  
20 such relief.

21 **IV. SECOND CLAIM FOR RELIEF**

22 **(Preliminary and Permanent Injunction against Defendants Venta, JP Morgan Chase,**  
23 **California Reconveyance and NDSC)**

24 16. Answering paragraph 52, Defendants repeat and re-allege their answers to the  
25 foregoing paragraphs as though set forth fully herein.

26 17. Answering paragraph 53, Defendants aver that the allegations state legal  
27 conclusions for which no response is required. To the extent a response is required, Defendants  
28

1 deny the allegations.

2 18. Answering paragraph 54, Defendants admit that Chase is claiming an interest in  
3 the Property through the Venta Deed of Trust. Defendants deny the remainder of the allegations.

4 19. Answering paragraphs 55, 56, 57, 58, 59, and 60 Defendants aver that the  
5 allegations state legal conclusions for which no response is required. To the extent a response is  
6 required, Defendants deny the allegations.

7 20. Defendants deny all liability herein and deny all allegations of the Complaint that  
8 are not specifically admitted herein.

9 21. Defendants have been required to retain the services of attorneys to defend against  
10 this action and have been damaged thereby. Defendants are entitled to recover from Plaintiff  
11 reasonable attorneys' fees and costs of suit incurred herein.

#### 12 AFFIRMATIVE DEFENSES

13 1. The Complaint fails to state a claim upon which relief can be granted.

14 2. The Complaint is barred or limited by the doctrines of estoppel, waiver, and/or  
15 release.

16 3. The Complaint is barred or limited by applicable provisions of the Uniform  
17 Commercial Code, including, without limitation, those governing negotiable instruments and  
18 holders in due course.

19 4. The claims are barred or limited by the doctrines of unclean hands, *in pari delicto*,  
20 and failure to do equity.

21 5. Plaintiff's Complaint is barred by the applicable statutory periods of limitation,  
22 laches, or otherwise by the passage of time.

23 6. The actions complained of, and the resulting damages, if any, are the result of  
24 third parties over whom Defendants have no control, and Defendants have no responsibility or  
25 liability for such parties' acts or omissions.

1           7.     Plaintiff is not the real party in interest.

2           8.     Defendants incorporate all the defenses enumerated in NRCP 8, which are  
3 incorporated for the purpose of not waiving any such defense.

4           9.     Plaintiff, Nevada Association Services, Inc., Paradise Court Homeowners  
5 Association (the "Association") and/or the agents of each of them, failed to provide Defendants  
6 with all necessary notices pursuant to NRS Chapter 116, NRS Chapter 107, and/or the  
7 Declaration of Covenants, Conditions and Restrictions and Reservation of Easements ("CCRs")  
8 for the Association, as applicable.  
9

10          10.    The sale of the subject property is void, because the Board of Directors for the  
11 Association failed to provide notice and hearing pursuant to the Association's CCRs.

12          11.    The sale of the subject property is void, because the Board of Directors for the  
13 Association failed to record the minutes of the meeting, if any, pursuant to NRS §§ 116.3108 and  
14 116.31085, wherein the Board of Directors for the Association determined to foreclose upon the  
15 subject property.  
16

17          12.    Plaintiff takes title, if any, to the subject property subordinate in time and right to  
18 Defendants' interests, rights, liens, and claims in the subject property.

19          13.    Plaintiff has failed to name each party necessary for full and adequate relief  
20 essential in this action.

21          14.    The process was insufficient in this matter.

22          15.    The service of process was insufficient in this matter.

23          16.    Plaintiff has failed to join all indispensable parties, pursuant to NRCP 19.  
24

25 WHEREFORE, Defendants pray for judgment as follows:

26          1.     That Plaintiff takes nothing by way of its Complaint and that the Complaint be  
27 dismissed with prejudice;

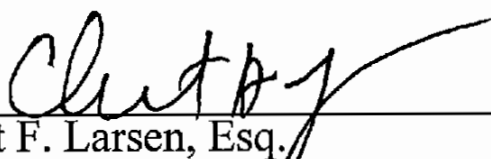
28          2.     That Defendants be awarded reasonable attorneys' fees and costs of suit incurred

1 therein in the defense of this action; and

2 3. For such other and further relief as the Court deems just and proper.

3 DATED this 25th day of January, 2013.

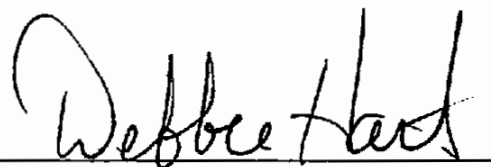
4 SMITH LARSEN & WIXOM

5   
6 Kent F. Larsen, Esq.  
7 Nevada Bar No. 3463  
8 Chet A. Glover, Esq.  
9 Nevada Bar No. 10054  
10 1935 Village Center Circle  
11 Las Vegas, Nevada 89134  
12 Attorneys for Defendants  
13 JPMorgan Chase Bank, N.A.,  
14 as successor by merger to  
15 Chase Home Finance LLC, and  
16 California Reconveyance Company

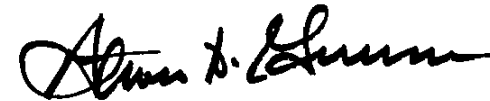
12 **CERTIFICATE OF SERVICE BY MAIL**

13 I HEREBY CERTIFY that on January 25, 2013 a true copy of the foregoing ANSWER  
14 OF JPMORGAN CHASE BANK, N.A., AS SUCCESSOR BY MERGER TO CHASE  
15 HOME FINANCE LLC, AND CALIFORNIA RECONVEYANCE COMPANY was mailed,  
16 postage prepaid, to the following as noted:  
17

18  
19 Howard C. Kim, Esq.  
20 Diana S. Cline, Esq.  
21 Jacqueline A. Gilbert, Esq.  
22 HOWARD KIM & ASSOCIATES  
23 400 N. Stephanie St., Suite 160  
24 Henderson, NV 89014  
25 Attorneys for Plaintiff

26   
27 an employee of Smith Larsen & Wixom  
28

AFFT  
Howard Kim & Associates, Attorneys at Law  
Diana S. Cline, Esq.  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014  
State Bar No.: 10580  
Attorney(s) for: Plaintiff(s)



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

SFR Investments Pool1, LLC a Nevada limited liability company  
vs  
Venta Realty Group, a Nevada corporation, et al.  
Plaintiff(s)  
Defendant(s)

Case No.: A-12-672963-C

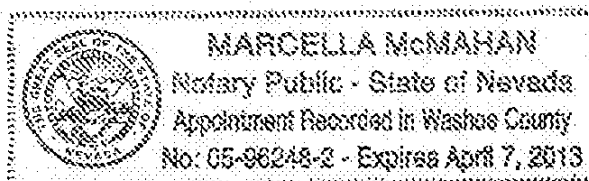
Dept. No.: XXVII

Date:

Time:

AFFIDAVIT OF SERVICE

I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint For Quiet Title And Injunctive Relief; Civil Cover Sheet; Notice of Lis Pendens; Notice Of Posting And Acceptance Of Bond; Ex Parte Application For Temporary Restraining Order And Motion For Preliminary Injunction; Ex Parte Temporary Restraining Order; Order Enjoining Foreclosure And Order Setting Hearing On Motion For Preliminary Injunction on the 10th day of December, 2012 and served the same on the 10th day of December, 2012 at 1:15 pm by serving the Defendant, Paradise Court Homeowners Association by personally delivering and leaving a copy at Registered Agent: Real Properties Management Group, Inc., 3283 E. Warm Springs, Ste. 300, 89120 with Laura Lockhart, Receptionist pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.




State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

10th day of December 2012

  
Notary Public Marcella McMahan

  
Affiant Joe Ricondo

# R-053662

Legal Process Service

License # 604

WorkOrderNo 1209744

AFFT  
Howard Kim & Associates, Attorneys at Law  
Diana S. Cline, Esq.  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014  
State Bar No.: 10580  
Attorney(s) for: Plaintiff(s)

*Alvin D. Quinn*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

SFR Investments Pool1, LLC a Nevada limited liability company  
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Plaintiff(s)  
Defendant(s)

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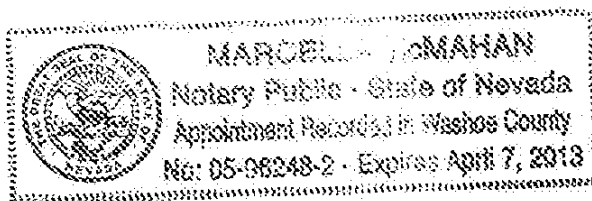
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State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

10th day of December 2012

Notary Public Marcella McMahon

*Joe Ricondo*

Affiant Joe Ricondo

# R-053662

Legal Process Service

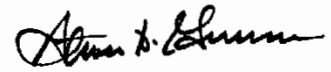
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## Affidavit of Publication

STATE OF NEVADA }  
COUNTY OF CLARK } SS


I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

May 24, 2013  
May 31, 2013

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 31, 2013

  
\_\_\_\_\_  
Rosalie Qualls

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No. A 672963 Dept. No. XXVII

SFR INVESTMENTS POOL1, LLC a Nevada limited liability company, Plaintiff,  
vs. VENTA REALTY GROUP, a Nevada corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by merger to CHASE HOME FINANCE LLC,  
a foreign limited liability corporation, NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation, CALIFORNIA RECONVEYANCE  
COMPANY a California corporation, REPUBLIC SILVER STATE DISPOSAL, INC.,  
a Nevada corporation, PARADISE COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE L. HARNED, an individual, DOES I  
through X; and ROE CORPORATIONS I through X, inclusive, Defendants.  
SUMMONS

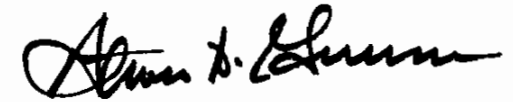
TO: DELANIE L. HARNED, an individual  
NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECODE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW. TO THE DEFENDANT: A CIVIL COMPLAINT  
has been filed by the Plaintiff against you for the relief set forth in the COMPLAINT.  
Object of Action: This is a Complaint for Quiet Title. 1. If you intend to defend this  
lawsuit, within 20 days after this Summons is served upon you, exclusive of the day  
of service, you must do the following: a. File with the Clerk of this Court, whose  
address is shown below, a formal written response to the Complaint in accordance  
with the rules of the Court, with the appropriate filing fee. b. Serve a copy of your  
response upon the attorney whose name and address is shown below. 2. Unless  
you respond, your default will be entered upon application of the Plaintiff and this  
Court may enter a judgment against you for the relief demanded in the Complaint,  
which could result in the taking of money or property or other relief requested in the  
Complaint. 3. If you intend to seek the advice of an attorney in this matter, you  
should do so promptly so that your response may be filed on time. 4. The State of  
Nevada its political subdivisions, agencies, officers, employees, board members,  
commission members and legislators, each have 45 days after service of this  
Summons within which to file an Answer or other responsive pleading to the  
Complaint. Steven D. Grierson, Clerk of Court, By: CHRYSTAL BASSETT, Deputy  
Clerk, Date DEC 05 2012, Regional Justice Center, 200 Lewis Avenue, Las Vegas,  
NV 89155, Submitted by: HOWARD KIM & ASSOCIATES, By: HOWARD C. KIM,  
ESQ., Nevada Bar No. 10386, E-mail: howard@hkimlaw.com, DIANA S. CLINE,  
ESQ., Nevada Bar No. 10580, E-mail: diana@hkimlaw.com, 400 N. Stephanie St.,  
Suite 160, Henderson, Nevada 89014, Telephone: (702) 485-3300, Facsimile: (702)  
485-3301, Attorneys for Plaintiff  
Published in Nevada Legal News  
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04104421 00351283 (702)485-3301

HOWARD KIM & ASSOCIATES  
400 N. STEPHANIE STREET, SUITE 160  
HENDERSON, NV 89014

AA 024





CLERK OF THE COURT

1 **AANS**  
Abran E. Vigil  
2 Nevada Bar No. 7548  
Lindsay Demaree  
3 Nevada Bar No. 11949  
Holly Ann Priest  
4 Nevada Bar No. 13226  
BALLARD SPAHR LLP  
5 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
6 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
7 E-Mail: vigila@ballardspahr.com  
E-Mail: demareel@ballardspahr.com  
8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Defendant and Counterclaimant*  
10 *JPMorgan Chase Bank, N.A., as successor by*  
*merger to Chase Home Finance LLC*

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

13 **SFR INVESTMENTS POOL1, LLC a**  
14 **Nevada Limited liability company,**

15 **Plaintiff,**

16 **VENTA REALTY GROUP, a Nevada**  
17 **Corporation, JP MORGAN CHASE**  
18 **BANK, N.A., a national association,**  
19 **successor by merger to CHASE HOME**  
20 **FINANCE LLC, a foreign limited**  
21 **liability corporation, NATIONAL**  
22 **DEFAULT SERVICING**  
23 **CORPORATION, an Arizona**  
24 **corporation, CALIFORNIA**  
25 **RECONVEYANCE COMPANY a**  
26 **California corporation, REBULIC**  
27 **SILVER STATE DISPOSAL, INC., a**  
28 **Nevada corporation, PARADISE**  
**COURT HOMEOWNERS**  
**ASSOCIATION, a Nevada non-profit**  
**corporation and DELANIE L.**  
**HARNED, an individual, DOES I**  
**through X; and ROE CORPORATIONS**  
**I through X, inclusive,**

**Defendants.**

**CASE NO. A-12-672963-C**  
**DEPT NO. 27**

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

1 JPMORGAN CHASE BANK, N.A., as  
2 successor by merger to Chase Home  
Finance LLC,

3 Counter-Claimant,

4 vs.

5 SFR INVESTMENTS POOL 1, LLC a  
6 Nevada Limited liability company

7 Counter-Defendant.  
8

9 **AMENDED ANSWER AND COUNTERCLAIM**

10 JPMorgan Chase Bank, N.A., successor by merger with Chase Home Finance  
11 LLC ("Chase") hereby submits its amended Answer and Counterclaim to Plaintiff  
12 SFR Investment Pool 1, LLC's ("SFR") as follows:

13 **I. PARTIES**

14 1. Chase denies that SFR is the current title owner of the property  
15 commonly known as 1076 Slate Crossing Lane #102, Henderson, Nevada 89002;  
16 Parcel No. 179-34-713-236. Chase is without sufficient information to admit or deny  
17 the remaining allegations of Paragraph 1 of the Complaint and therefore denies  
18 them.

19 2. Chase is without sufficient information to admit or deny the allegations  
20 in Paragraph 2 of the Complaint and therefore denies them.

21 3. Chase admits the allegations of Paragraph 3 of the Complaint.

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

24 5. Chase admits the allegations of Paragraph 5 of the Complaint.

25 6. Chase submits that the lien and HOA governing documents recorded on  
26 the Property are public records that speak for themselves. Chase denies any  
27 allegation inconsistent with these records and is without sufficient information to  
28 admit or deny the remaining allegations of Paragraph 6 of the Complaint and

1 therefore denies them.

2 7. Chase is without sufficient information to admit or deny the allegations  
3 in Paragraph 7 of the Complaint and therefore denies them.

4 8. Chase is without sufficient information to admit or deny the allegations  
5 in Paragraph 8 of the Complaint and therefore denies them.

6 9. Chase is without sufficient information to admit or deny the allegations  
7 in Paragraph 9 of the Complaint and therefore denies them.

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

10 **II. GENERAL ALLEGATIONS**

11 11. Chase denies the allegations of Paragraph 11 of the Complaint.

12 12. Chase submits that the foreclosure deed recorded on the Property as  
13 Instrument No. 201209250001230 is a public record that speaks for itself. Chase  
14 denies any allegation inconsistent with this record and is without sufficient  
15 information to admit or deny the remaining allegations of Paragraph 12 of the  
16 Complaint and therefore denies them.

17 13. Chase submits that NRS 116.3116, 116.31162, 116.31163 and 116.31164  
18 speak for themselves, and Chase denies the allegations of Paragraph 13 to the extent  
19 they misstate the statutes' terms or fail to read them in conjunction with other  
20 relevant laws, including the U.S. Constitution and the Nevada Constitution. Chase  
21 further submits that the CC&R's and Notice of Delinquent Assessment Lien recorded  
22 on the property are public records that speak for themselves. Chase denies any  
23 allegation inconsistent with these records and are without sufficient information to  
24 admit or deny the remaining allegations of Paragraph 13 of the Complaint and  
25 therefore denies them.

26 14. Chase denies the allegations of Paragraph 14 of the Complaint.

27 15. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies  
28 the allegations of Paragraph 15 to the extent they misstate the statute's terms or fail

1 to read them in conjunction with other relevant laws, including the U.S. Constitution  
2 and the Nevada Constitution.

3 16. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies  
4 the allegations of Paragraph 16 to the extent they misstate the statute's terms or fail  
5 to read them in conjunction with other relevant laws, including the U.S. Constitution  
6 and the Nevada Constitution.

7 17. Chase is without sufficient information to admit or deny the allegations  
8 in Paragraph 17 of the Complaint and therefore denies them.

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

11 19. Chase is without sufficient information to admit or deny the allegations  
12 in Paragraph 19 of the Complaint and therefore denies them.

13 20. Chase is without sufficient information to admit or deny the allegations  
14 in Paragraph 20 of the Complaint and therefore denies them.

15 21. Chase is without sufficient information to admit or deny the allegations  
16 in Paragraph 21 of the Complaint and therefore denies them.

17 22. Chase is without sufficient information to admit or deny the allegations  
18 in Paragraph 22 of the Complaint and therefore denies them.

19 23. Chase submits that NRS 116.31166 speaks for itself, and Chase denies  
20 the allegations of Paragraph 23 to the extent they misstate the statute's terms or fail  
21 to read them in conjunction with other relevant laws, including the U.S. Constitution  
22 and the Nevada Constitution.

23 24. Chase admits the allegations of Paragraph 24 of the Complaint.

24 25. Chase admits the allegations of Paragraph 25 of the Complaint.

25 26. Chase submits that the assignment recorded on the Property as  
26 Instrument No. 201012060000315 is a public record that speaks for itself. Chase  
27 denies any allegation inconsistent with this record and is without sufficient  
28 information to admit or deny the remaining allegations of Paragraph 26 of the

1 Complaint and therefore denies them.

2       27. Chase submits that the substitution recorded on the Property is a public  
3 record that speaks for itself. Chase denies any allegation inconsistent with this  
4 record and is without sufficient information to admit or deny the remaining  
5 allegations of Paragraph 27 of the Complaint and therefore deny them.

6       28. Chase submits that the substitution recorded on the Property as  
7 Instrument No. 201012060000316 is a public record that speaks for itself. Chase  
8 denies any allegation inconsistent with this record and is without sufficient  
9 information to admit or deny the remaining allegations of Paragraph 28 of the  
10 Complaint and therefore denies them.

11       29. Chase submits that the notices recorded on the Property are public  
12 records that speak for themselves. Chase denies any allegation inconsistent with  
13 these records and is without sufficient information to admit or deny the remaining  
14 allegations of Paragraph 29 of the Complaint and therefore denies them.

15       30. Chase submits that the substitution recorded on the Property is a public  
16 record that speaks for itself. Chase denies any allegation inconsistent with this  
17 record and is without sufficient information to admit or deny the remaining  
18 allegations of Paragraph 30 of the Complaint and therefore denies them.

19       31. Chase submits that the substitution recorded on the Property as  
20 Instrument No. 201210110001602 is a public record that speaks for itself. Chase  
21 denies any allegation inconsistent with this record and is without sufficient  
22 information to admit or deny the remaining allegations of Paragraph 31 of the  
23 Complaint and therefore denies them.

24       32. Chase submits that the Notice of Trustee's Sale recorded on the  
25 Property as Instrument No. 201210110001603 is a public record that speaks for  
26 itself. Chase denies any allegation inconsistent with this record and is without  
27 sufficient information to admit or deny the remaining allegations of Paragraph 32 of  
28 the Complaint and therefore denies them.

1           33. Chase submits that the liens recorded on the Property as Instrument  
2 Nos. 201107130002409, 201107140000902, 201112230005003 and 201210010005040  
3 are public records that speak for themselves. Chase denies any allegation  
4 inconsistent with these records and is without sufficient information to admit or deny  
5 the remaining allegations of Paragraph 33 of the Complaint and therefore denies  
6 them.

7           34. Chase is without sufficient information to admit or deny the allegations  
8 in Paragraph 34 of the Complaint and therefore denies them.

9           35. Chase denies the allegations of Paragraph 35 of the Complaint.

10          36. Chase is without sufficient information to admit or deny the allegations  
11 in Paragraph 36 of the Complaint and therefore denies them.

12          37. Chase without sufficient information to admit or deny the allegations in  
13 Paragraph 37 of the Complaint and therefore denies them.

14                                   **III. FIRST CLAIM FOR RELIEF**  
15 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.*, and 116.3116. *et.***  
16 ***seq.*, against Defendants Harned, Venta, JPMorgan Chase, Republic and Paradise**  
  **Court HOA)**

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

18          39. Chase submits that NRS 30.010, *et. seq.* and NRS 40.010 speak for  
19 themselves, and Chase denies the allegations of Paragraph 39 to the extent they  
20 misstate the statutes' terms or fail to read them in conjunction with other relevant  
21 laws, including the U.S. Constitution and the Nevada Constitution.

22          40. Chase submits that the foreclosure deed recorded on the Property is a  
23 public record that speaks for itself. Chase denies any allegation inconsistent with  
24 this record and denies the remaining allegations of Paragraph 40 of the Complaint.

25          41. Chase is without sufficient information to admit or deny the allegations  
26 in Paragraph 41 of the Complaint and therefore denies them.

27          42. Chase admits the allegations of Paragraph 42 of the Complaint.

28          43. Chase admits the allegations of Paragraph 43 of the Complaint.

1           44. Chase is without sufficient information to admit or deny the allegations  
2 in Paragraph 44 of the Complaint and therefore denies them.

3           45. Chase is without sufficient information to admit or deny the allegations  
4 in Paragraph 45 of the Complaint and therefore denies them.

5           46. Chase submits that NRS 116.31162, 116.31163 and 116.31164 speak for  
6 themselves, and Chase denies the allegations of Paragraph 46 to the extent they  
7 misstate the statutes' terms or fail to read them in conjunction with other relevant  
8 laws, including the U.S. Constitution and the Nevada Constitution.

9           47. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies  
10 the allegations of Paragraph 47 to the extent they misstate the statute's terms or fail  
11 to read them in conjunction with other relevant laws, including the U.S. Constitution  
12 and the Nevada Constitution.

13           48. Chase is without sufficient information to admit or deny the allegations  
14 in Paragraph 48 of the Complaint and therefore denies them.

15           49. Chase denies the allegations of Paragraph 49 of the Complaint.

16           50. Chase denies the allegations of Paragraph 50 of the Complaint.

17           51. Chase admits that SFR is seeking an order from the Court quieting title  
18 in its favor, but Chase denies that SFR is entitled to such an order.

19  
20                           **IV. SECOND CLAIM FOR RELIEF**  
21                           **(Preliminary and Permanent Injunction Against Defendants Venta, JPMorgan**  
                                 **Chase, California Reconveyance and NDSC)**

22           52. Chase repeats its answers contained in Paragraphs 1 through 51.

23           53. Chase denies the allegations of Paragraph 53 of the Complaint.

24           54. Chase admits it claims an interest in the Property through the  
25 Venta Deed of trust, but denies the remaining allegations of Paragraph 54 of the  
26 Complaint.

27           55. Chase denies the allegations of Paragraph 55 of the Complaint.

28           56. Chase denies the allegations of Paragraph 56 of the Complaint.



1 57. Chase denies the allegations of Paragraph 57 of the Complaint.

2 58. Chase denies the allegations of Paragraph 58 of the Complaint.

3 59. Chase denies the allegations of Paragraph 59 of the Complaint.

4 60. Chase denies the allegations of Paragraph 60 of the Complaint.

5 Unless expressly admitted in this Answer, Chase denies all other allegations  
6 in SFR's Complaint, including, without limitation, any allegations suggested by the  
7 Complaint's headings.

8 **AFFIRMATIVE DEFENSES:**

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

12 **First Affirmative Defense**

13 The Complaint fails to state a claim upon which relief can be granted.

14 **Second Affirmative Defense**

15 The acts alleged in the Complaint were the acts of third parties over whom  
16 Chase has no control or responsibility.

17 **Third Affirmative Defense**

18 The alleged homeowner's association foreclosure sale was not reasonable, and  
19 the circumstances of the sale of the property violated the Paradise Court  
20 Homeowners Association's ("Association") obligation of good faith under NRS  
21 116.1113 and duty to act in a reasonable manner.

22 **Fourth Affirmative Defense**

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

25 **Fifth Affirmative Defense**

26 To the extent Chase has continued to expend funds and resources to maintain  
27 and preserve the Property after the alleged Association foreclosure sale, its is entitled  
28 to recoup those amounts.



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**Sixth Affirmative Defense**

To the extent that SFR's interpretation of NRS § 116.3116 *et seq.* is accurate, the statute and Chapter 116 as a whole are void for vagueness.

**Seventh Affirmative Defense**

SFR's claims are barred by the Due Process clause of the Nevada Constitution and United States Constitution and the Takings Clause of the United State Constitution.

**Eighth Affirmative Defense**

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

**Ninth Affirmative Defense**

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

**Tenth Affirmative Defense**

To the extent that this defense may become applicable after further investigation and discovery, Chase asserts the Association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to provide proper notice of the sale in accordance with the requirements of NRS Chapter 116.

**Eleventh Affirmative Defense**

The Association foreclosure sale is a voidable fraudulent transfer under the Uniform Fraudulent Transfer Act (NRS 112.140 *et seq.*).

**Twelfth Affirmative Defense**

The Association foreclosure sale is void because the price paid at the sale was grossly inadequate and because the manner in which the sale was conducted.

1 **Thirteenth Affirmative Defense**

2 Chase asserts that the Supremacy Clause and Property Clause of the  
3 Constitution of the United States bar the relief requested due to the Federal Housing  
4 Authorities' interest in the loan and preempt any state law to the contrary.

5 **Fourteenth Affirmative Defense**

6 SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 1721  
7 (g)(3)(E)(iv), which precludes an Association foreclosure sale from extinguishing a  
8 deed of trust guaranteed by Government National Mortgage Association ("Ginnie  
9 Mae") and preempts any state law to the contrary.

10 **COUNTERCLAIM**

11 **GENERAL ALLEGATIONS**

12 1. On or about May 7, 2008, Delaine Harned obtained a loan from Venta  
13 Realty Group, dba Venta Home Loans in the amount of \$159,497, which was secured  
14 by a Deed of Trust (the "First Deed of Trust") recorded against real property  
15 commonly known as 1076 Slate Crossing Lane, #2, Henderson, NV 89002 (APN 179-  
16 34-713-236)(the "Property") on May 14, 2008, as Instrument No. 20080514005041, in  
17 the Office of the Clark County Recorder.

18 2. On December 6, 2010, an Assignment of the Deed of Trust was recorded  
19 on the Property as Instrument No. 201012060000315, in the Office of Clark County  
20 Recorder, assigning the First Deed of Trust to Chase.

21 3. On September 25, 2012, a Foreclosure Deed was recorded against the  
22 Property as Instrument No. 201209250001230, in the Office of the Clark County  
23 Recorder. The Foreclosure Deed purports to transfer title to the Property to SFR.

24 4. After September 25, 2012 Chase expended funds and resources to  
25 maintain and preserve the Property, including but not limited to funds for taxes and  
26 insurance.

27 5. Chase intended to benefit itself, not SFR, by expending funds and  
28 resources to maintain and preserve the Property.

1           6.     At the time Chase expended funds and resources to maintain and  
2 preserve the Property, Chase reasonably believed that its actions would benefit it,  
3 not SFR.

4                           **FIRST CLAIM FOR RELIEF**  
                                  **(Unjust Enrichment)**

5           7.     Chase repeats its allegations contained in Paragraphs 1 through 6.

6           8.     SFR has been unjustly enriched, in that Chase continued to expend  
7 funds and resources to maintain and preserve the Property to the benefit of SFR and  
8 to the detriment of Chase, and contrary to fundamental principles of fairness, justice,  
9 and fair dealing.

10          9.     SFR appreciated the benefit conferred upon it and the continued  
11 acceptance and retention of this benefit by Plaintiff is inequitable, without payment  
12 to Chase.

13          10.    Chase is entitled to recoup the reasonable amount of benefits obtained  
14 by plaintiff based on the theory of unjust enrichment.

15          11.    As a direct and proximate result of the foregoing, Chase has suffered  
16 damages in an amount to be ascertained at trial as a result of SFR's unjust  
17 enrichment.

18          12.    Chase has been required to retain the services of attorneys to prosecute  
19 this action, and has been damaged thereby, and is therefore entitled to recover from  
20 Plaintiff its reasonable attorneys' fees and costs of suit incurred herein.

21                           *[Remainder of page intentionally left blank.]*  
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28

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

**REQUEST FOR RELIEF**

WHEREFORE, Chase requests the following relief:

1. That the Court make a judicial determination Chase's interest in the Property was not extinguished by the Association foreclosure sale;
2. That the Court make a judicial determination that Chase's interest is superior to the interest of SFR ;
3. That the Court make a judicial determination that SFR took title subject to Chase's ownership interest and/or Deed of Trust;
4. If it is determined that Chase's Deed of Trust has been extinguished by the Association foreclosure sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Loan and Deed of Trust, at the time of the Association foreclosure sale, whichever is greater;
5. That SFR recover nothing on account of its claims made in the Complaint;
6. For reasonable attorney's fees and costs; and
7. For any other relief that the Court deems just and proper in the case.

DATED this 19 day of October, 2015.

BALLARD SPAHR LLP

By: 

Abran E. Vigil  
Nevada Bar No. 7548  
Lindsay Demaree  
Nevada Bar No. 11949  
Holly Ann Priest  
Nevada Bar No. 13226  
BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

*Attorneys for Defendant JPMorgan Chase  
Bank, N.A., as successor by merger to  
Chase Home Finance LLC*

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

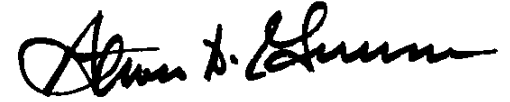
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 19 day of October 2015, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Answer to Counterclaim, was served to the parties following in the manner set forth below:

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

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

  
An employee of BALLARD SPAHR LLP



CLERK OF THE COURT

**CCAN**

DIANA CLINE EBRON ESQ.  
Nevada Bar No. 10580  
E-mail: diana@hkimlaw.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@hkimlaw.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@hkimlaw.com  
HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

VENTA REALTY GROUP, a Nevada  
corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No. A-12-672963-C

Dept. No. XXVII

**SFR INVESTMENTS POOL 1, LLC'S  
ANSWER TO COUNTERCLAIM**

SFR INVESTMENTS POOL 1, LLC ("SFR") hereby answers JP MORGAN CHASE BANK,  
N.A., as successor by merger to CHASE HOME FINANCE LLC ("Chase" or "Bank")  
Counterclaim as follows:

**GENERAL ALLEGATIONS**

1. The deed of trust referenced in paragraph 1 of the Counterclaim speaks for itself, and

1 SFR denies any allegations inconsistent with said document. SFR specifically denies any  
2 allegation that said deed of trust is currently a valid instrument which encumbers the Property.  
3 To the extent paragraph 1 alleges that Delaine Harned ("Harned") was the title owner of record  
4 of the property located at **1076 Slate Crossing Lane, #2, Henderson, NV 89002**; Parcel No.  
5 179-34-713-236 (the "Property") prior to the Association foreclosure sale, SFR, upon  
6 information and belief, admits the allegations in paragraph 1.

7 2. The document referenced in paragraph 2 of the Counterclaim speaks for itself, and SFR  
8 denies any allegations inconsistent with said document.

9 3. The Foreclosure Deed referenced in paragraph 3 of the Counterclaim speaks for itself,  
10 and SFR denies any allegations inconsistent with said document. SFR admits it purchased the  
11 Property for \$6,100.00 at a non-judicial HOA foreclosure sale on September 21, 2012 at which  
12 time SFR was the highest bidder.

13 4. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
14 factual allegations contained in paragraphs 4, 5, and 6 of the Counterclaim, and therefore denies  
15 said allegations.

16 **FIRST CLAIM OF RELIEF**  
17 **(Unjust Enrichment)**

18 5. SFR repeats and realleges its answers to paragraphs 1 through 6 of the Counterclaim as  
19 though fully set forth herein.

20 6. The allegations in paragraphs 8, 9, 10, and 11 of the Counterclaim call for a legal  
21 conclusion to which no response is required. To the extent a response is required, SFR denies  
22 the allegations of paragraphs 8, 9, 10, and 11 of the Counterclaim.

23 7. SFR denies the allegations contained in paragraph 12 of the Counterclaim.

24 **AFFIRMATIVE DEFENSES**

25 1. The Bank fails to state a claim upon which relief may be granted.

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

28 3. The occurrence referred to in the Counterclaim, and all injuries and damages, if any,

1 resulting therefrom, were caused by the acts or omissions of the Bank.

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

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

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

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

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

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

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

16 11. The Bank has no standing to enforce the statutes and regulations identified in the  
17 Counterclaim.

18 12. The Bank never owned any interest in the first deed of trust or underlying promissory  
19 note as described in the discharge of assignment recorded in the Official Records of the Clark  
20 County Recorder as Instrument No. 201504130001690.

21 13. Any purported assignment of the first deed of trust after the Association foreclosure sale  
22 is invalid and unenforceable.

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

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

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



**HOWARD KIM & ASSOCIATES**

1055 WHITNEY RANCH DR., SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

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

5 18. The Bank's Counterclaim and all claims for relief therein are barred for the Bank's  
6 failure to serve proper notice to the Attorney General of the State of Nevada pursuant to NRS  
7 30.130.

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

12 DATED November 5th, 2015.

**HOWARD KIM & ASSOCIATES**

/s/ Diana Cline Ebron

Diana Cline Ebron, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

Karen L. Hanks, Esq.

Nevada Bar No. 9578

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

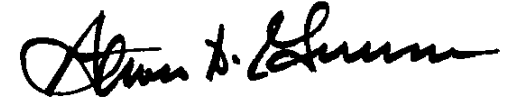
*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO COUNTERCLAIM** to the following parties:

<u>Select All</u> <u>Select None</u>		
<b>Ballard Spahr</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Abran Vigil	<a href="mailto:vigila@ballardspahr.com">vigila@ballardspahr.com</a>	<input checked="" type="checkbox"/>
Catherine	<a href="mailto:wranghamc@ballardspahr.com">wranghamc@ballardspahr.com</a>	<input checked="" type="checkbox"/>
Holly Priest	<a href="mailto:priesth@ballardspahr.com">priesth@ballardspahr.com</a>	<input checked="" type="checkbox"/>
Las Vegas Docketing	<a href="mailto:lvdocket@ballardspahr.com">lvdocket@ballardspahr.com</a>	<input checked="" type="checkbox"/>
Mary Kay Carlton	<a href="mailto:carltonm@ballardspahr.com">carltonm@ballardspahr.com</a>	<input checked="" type="checkbox"/>
<b>Ballard Spahr LLP</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Lindsay Demaree	<a href="mailto:demareel@ballardspahr.com">demareel@ballardspahr.com</a>	<input checked="" type="checkbox"/>

/s/ Alan G. Harvey  
An employee of Howard Kim & Associates



CLERK OF THE COURT

1 MTC  
Abran E. Vigil  
2 Nevada Bar No. 7548  
Lindsay Demaree  
3 Nevada Bar No. 11949  
BALLARD SPAHR LLP  
4 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
5 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
6 E-Mail: [vigila@ballardspahr.com](mailto:vigila@ballardspahr.com)  
E-Mail: [demareel@ballardspahr.com](mailto:demareel@ballardspahr.com)

7  
8 *Attorneys for Defendant and Counterclaimant*  
9 *JPMorgan Chase Bank, N.A., as successor by*  
10 *merger to Chase Home Finance LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

11  
12 SFR INVESTMENTS POOL 1, LLC a Nevada  
limited liability company,

13 Plaintiff,

14 v.

15 VENTA REALTY GROUP, a Nevada  
corporation, JPMORGAN CHASE BANK, NA,  
16 a National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
17 limited liability corporation, ET AL.,

18 Defendants.

19  
20 JPMORGAN CHASE BANK, N.A., as successor  
by merger to Chase Home Finance LLC,

21 Counter-Claimant,

22 vs.

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

24 Counter-Defendant.  
25

26 **JPMORGAN CHASE BANK, N.A.'S MOTION TO COMPEL**  
27 **SFR'S RULE 30(b)(6) DEPOSITION TESTIMONY**

28 Defendant/counter-claimant JPMorgan Chase Bank, N.A. ("Chase") moves this

CASE NO. A-12-672963-C

DEPT NO. 27

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

1 Court for an order compelling plaintiff/counter-defendant SFR Investments Pool 1,  
2 LLC ("SFR") to prepare and designate a Rule 30(b)(6) witness to testify about topic  
3 areas identified, in compliance with Rule 30, in the deposition notice issued to SFR  
4 by Chase. Chase further moves this Court for an order awarding Chase its attorneys'  
5 fees and costs incurred in filing this motion and continuing SFR's deposition.

6 This Motion is based on Nevada Rules of Civil Procedure 30 and 37, the  
7 following points and authorities, the certification of counsel pursuant to Rule 37, the  
8 attached exhibits, all pleadings, papers, and documents on file with the Court in this  
9 action, and any arguments of counsel that the Court may hear.

10 DATED this 8<sup>th</sup> day of July, 2016.

11 BALLARD SPAHR LLP

12 By: /s/Lindsay Demaree  
13 Abran E. Vigil (Nevada Bar No. 7548)  
14 Lindsay Demaree (Nevada Bar No. 11949)  
15 100 North City Parkway, Suite 1750  
16 Las Vegas, Nevada 89106-4617  
17 *Attorneys for Defendant and*  
*Counterclaimant JPMorgan Chase Bank,*  
*N.A., as successor by merger to Chase*  
*Home Finance LLC*

18 **NOTICE OF MOTION**

19 PLEASE TAKE NOTICE that the undersigned will bring the above Motion for  
20 hearing before the Discovery Commissioner for Department 27 on the 10 day of  
21 AUGUST, 2016 at the hour of 9:00A.m., in the above-entitled Court.

22 DATED this 8<sup>th</sup> day of July, 2016.

23 BALLARD SPAHR LLP

24 By: /s/ Lindsay Demaree  
25 Abran E. Vigil (Nevada Bar No. 7548)  
26 Lindsay Demaree (Nevada Bar No. 11949)  
27 100 North City Parkway, Suite 1750  
28 Las Vegas, Nevada 89106-4617  
*Attorneys for Defendant/Counterclaimant*  
*JPMorgan Chase Bank, N.A., as successor*  
*by merger to Chase Home Finance LLC*

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant/counter-claimant JPMorgan Chase Bank, N.A. (“Chase”) moves this Court for an order compelling plaintiff/counter-defendant SFR Investments Pool 1, LLC (“SFR”) to prepare and designate a Rule 30(b)(6) witness to testify about:

- (1) Topic areas 14, 15, 16, 17, 18, 19, 28 and 29. SFR’s counsel improperly instructed its witness not to testify about these topics because SFR objected, in a different case, to their relevance; and
- (2) Topic areas 13, 25, and 26. SFR’s witness was not adequately prepared and thus could not provide complete testimony on these topics.

See **Exhibit A**, Seventh Amended Deposition Notice at pp. 5-8.

*First*, SFR has refused to provide the requested deposition testimony based on its position, briefed in a different case, that various deposition topics are not relevant. SFR’s position stems from on an *unresolved* discovery commissioner report and recommendation (“DCRR”) related to a motion for a protective order filed by SFR *in a different case* that is pending *before a different department*. Nothing in the applicable procedural rules supports SFR’s approach, and for good reason. As Chase’s counsel explained during the parties’ meet and confer, this approach fails to provide a record of the issue as it applies in *this* case (which is necessary for appeal); it fails to provide Chase with the opportunity to voice its opposition *in this case*; and, it fails to provide *this District Court Judge* with the ability to decide the issue. SFR’s approach also ignores the decision by the Chief Judge to deny SFR’s prior attempt to obtain coordinated discovery orders and to require case-by-case decisions, instead.

SFR deliberately chose not to move for a protective order and to improperly shift the burden to Chase to file a motion to compel by circumventing the procedures required by the Rules of Civil Procedure. **This Court cannot provide SFR with such special treatment.** It should compel SFR to provide the requested deposition testimony. Despite SFR’s objection that the disputed topic areas are irrelevant, the topics seek critical information about the purported harm SFR may suffer if the

1 Court sets aside the homeowners association foreclosure sale, SFR's purported bona  
2 fide purchaser status, and Chase's contention that the *SFR v. U.S. Bank* decision  
3 should not apply retrospectively. As explained below, this information falls within  
4 the scope of discovery permitted under Rule 26(b) and must be allowed.

5 *Second*, SFR's witness was not adequately prepared to testify about the SFR's  
6 pre-sale preparations and decisions related to the subject property. Her lack of  
7 preparation leaves deficiencies in the record and prejudices Chase. The Court should  
8 order SFR to adequately prepare and produce its Rule 30(b)(6) witness to answer  
9 questions on those topics for which she was not prepared.

10 For these reasons, the Court should grant Chase's Motion and enter an order:  
11 (a) compelling SFR to produce an adequately prepared Rule 30(b)(6) witness to testify  
12 about topic areas 14, 15, 16, 17, 18, 19, 28 and 29 (the "Disputed Topics") and topic  
13 areas 13, 25, 26 (the "Unprepared Topics"); and (b) awarding Chase its fees and costs  
14 associated with bringing this motion and continuing SFR's deposition.

15 **I. BACKGROUND**

16 Following a homeowners association foreclosure sale, SFR filed this quiet title  
17 action to extinguish Chase's deed of trust on property located at 1076 Slate Crossing  
18 Lane #2, Henderson, Nevada (the "Property"). This case implicates, among other  
19 things, SFR's bona fide purchaser status, the purported harm SFR may suffer if the  
20 Court sets aside the homeowners association foreclosure sale, and Chase's contention  
21 that the *SFR v. U.S. Bank* decision should not apply retrospectively. As set forth  
22 below, Chase has attempted for months to obtain SFR's Rule 30(b)(6) deposition  
23 testimony related to these issues, without success.

24 **A. January 2016: The Parties Agree to Extend Discovery to Provide Time**  
25 **for SFR to Move for a Protective Order**

26 Chase noticed the Rule 30(b)(6) deposition of SFR to take place in January  
27 2016, before the discovery cutoff. SFR disputed several of the Rule 30(b)(6) topics  
28 identified in Chase's deposition notice that sought discovery on SFR's claimed bona

1 fide purchaser status and its business strategies that allowed it to profit even if the  
2 property interest SFR purchased remained subject to a deed of trust. Accordingly,  
3 the parties stipulated to extend discovery so they could resolve their dispute over the  
4 deposition topics *before* taking SFR's deposition. Moreover, the parties' stipulation  
5 explicitly contemplated that, in the event the parties could not reach an agreement,  
6 SFR would file the "necessary motion for protective order" regarding the disputed  
7 topics:

8 While Chase scheduled SFR's N.R.C.P. 30(b)(6) deposition in  
9 compliance with the discovery schedule, a dispute has arisen over the  
10 scope of the noticed deposition topics. **The parties must resolve this  
dispute or seek Court intervention before SFR's deposition can go  
forward.**

11 To that end, the parties have conducted an EDCR 2.34 conference  
12 on SFR's objection to the noticed topic areas for its N.R.C.P. 30(b)(6)  
13 deposition, and both parties need additional time to meaningfully  
14 consider their positions after discussions with opposing counsel, to  
15 review additional documents and information, and to continue their 2.34  
16 conference in an attempt to narrow—if not fully resolve—the disputed  
discovery issues. The parties are hopeful that their good faith  
discussions will obviate the need for motion practice, but, in the even  
that is not possible, **they will need sufficient time to brief any necessary  
motion for protective order.**

17 *See* Stipulation and Order to Extend Discovery Deadlines Dates (filed Feb. 9, 2016),  
18 at 3:12–22 (emphasis added).

19 After the parties executed this stipulation, the Nevada Supreme Court decided  
20 *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*,  
21 132 Nev. \_\_\_, 366 P.3d 1105 (2016) ("*Shadow Wood*"). *Shadow Wood* instructs,  
22 among other things, that when deciding a quiet title action in the association-lien  
23 context, a district court should consider a purchaser's "putative status as a bona fide  
24 purchaser and its bearing on the equitable relief requested" and "the potential harm  
25 to [the association sale purchaser]" if the sale is set aside. *Id.* at \_\_\_, 366 P.3d at  
26 1114, 1116; *see also id.* at 1114 ("When sitting in equity, however, courts must  
27 consider the *entirety of the circumstances* that bear upon the equities." (emphasis  
28 added)). Similarly, a recent federal court decision explains that courts must consider

1 “the inequity imposed by retroactive application” of NRS 116.3116 *et seq. Christiana*  
2 *Trust v. K & P Homes*, Case No. 2:15-cv-01534, 2015 WL 6962860, at \*4 (D. Nev.  
3 Nov. 9, 2015) (quoting *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106 (1971), *adopted by*  
4 *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P.2d 402, 405 (Nev. 1994)).

5 **B. March 2016: The Parties Agree to Extend Discovery a Second Time to**  
6 **Provide Time for SFR to Move for a Protective Order**

7 In light of these *Shadow Wood* and *Christina Trust*, Chase renoticed SFR’s  
8 deposition for February 29, 2016, identifying topics related to, *inter alia*, SFR’s  
9 claimed bona fide purchaser status, business strategies, and potential prejudice to  
10 SFR if the sale is set aside. SFR’s counsel asked Chase to stipulate to extend  
11 discovery again, to provide additional time to conduct a second EDCR 2.34 conference  
12 and file a motion for protective order. Chase agreed, and the parties submitted  
13 another stipulation. This stipulation explained, again, that in the event the parties  
14 could not reach an agreement, SFR would file a motion for a protective order: “The  
15 requested extension will provide sufficient time to meet and confer and, if necessary,  
16 *brief a motion for protective order* for the Court’s consideration and resolution prior  
17 to the deposition of SFR’s 30(b)(6) witness.” *See* Stipulation and Order to Extend  
18 Discovery Deadlines Dates (filed Mar. 22, 2016), at 3:26–4:1 (emphasis added).

19 **C. June 2016: At the Eleventh Hour, SFR Refuses to Move for a Protective**  
20 **Order and Instructed Its Witness Not to Testify About Noticed Topics**

21 The parties were not able to resolve their dispute regarding the disputed  
22 deposition topics; moreover, SFR also refused to respond to Chase’s written discovery  
23 requests on similar topics for the same reasons it objected to the deposition topics.  
24 Accordingly, in an effort to push discovery forward, Chase again noticed SFR’s Rule  
25 30(b)(6) deposition, including the disputed topics in the deposition notice. SFR did  
26 not move for a protective order.

27 Instead, on June 15, 2016, during the parties’ meet and confer regarding SFR’s  
28 written discovery responses, SFR’s counsel advised that SFR did not intend to file a  
motion for a protective order in this case. L. Demaree Decl., attached as **Exhibit B**,



¶ 6. Instead, SFR intended to rely on the discovery commissioner’s ruling in a *different* case, before a *different* district court judge (the “Different Case Ruling”). It sought to instruct its witness not to respond to any questions that, in SFR’s view, infringe on the Different Case Ruling. *Id.* Counsel for Chase explained that this approach was contrary to the Nevada Rules of Civil Procedure, which place the burden on SFR to move for a protective order in the instant case. *See id.* Moreover, the Different Case Ruling on which SFR intends to rely was an oral ruling made during a hearing, not a written order adopted by the district court. Finally, SFR’s failure to move would leave Chase without any record in this case of its objections to the Different Case Ruling. *See id.* Despite the issues raised by Chase, SFR declined to move for a protective order.

On June 24, 2016, Chase deposed SFR’s Rule 30(b)(6) representative, Paulina Kelso. SFR’s counsel instructed Ms. Kelso not to answer any questions about topic areas 14, 15, 16, 17, 18, 19, 28 and 29 (the “Disputed Topics”), *see Exhibit C*, Kelso Dep. 13:18–14:25:

- **Topic 14:** SFR’s disposition of properties acquired from homeowners associations, including, without limitation, its procedures to manage, lease and/or sell the properties.
- **Topic 15:** The portion of SFR’s business related to purchasing, managing, renting, and/or selling properties acquired from a homeowners association foreclosure sale.
- **Topic 16:** SFR’s formation and company purpose, including, without limitation, the facts and circumstances that led to SFR’s creation.
- **Topic 17:** SFR’s company structure, including, without limitation, the identity of its members, managers and/or officers and the identity of all parent companies and/or other parties with an interest in SFR at the time SFR attended any association foreclosure sale of the Property.
- **Topic 18:** The source(s) of funds used by SFR to purchase the Property.
- **Topic 19:** SFR’s knowledge of any prospectuses, private placement memoranda, or other documents that explain its business to investors, members, managers, potential investors, potential members, or any other parties who may have a current or prospective pecuniary interest in SFR.

- 1 • **Topic 28:** SFR's actions with respect to the Property since the HOA  
2 Sale, including, without limitation, any leases entered into by SFR, any  
3 attempts to lease and/or sell the Property, and any costs incurred or  
4 payments made to maintain the Property (e.g., taxes, insurance, and  
5 homeowners association assessments).
- 6 • **Topic 29:** SFR's communications with any tenant of the Property about  
7 this Litigation or about any mortgagee of the Property.

8 In addition to SFR's express refusal to provide deposition testimony on the  
9 Disputed Topics, SFR's witness could not provide complete testimony related to topic  
10 areas 13, 25, and 26 (the "Unprepared Topics"):

- 11 • **Topic 13:** SFR's practices, policies, and procedures related to purchasing  
12 properties at homeowners association foreclosure sales, including,  
13 without limitation, frequency of attending homeowners association  
14 foreclosure sale, geographic focus, internal risk assessments,  
15 determination of bid amounts, and knowledge of and communications  
16 with mortgagees, homeowners association foreclosure agents, and/or  
17 collection companies about a property prior to purchase. This request is  
18 limited in time from the date the HOA recorded its Notice of Delinquent  
19 Assessment Lien to the date of the HOA Sale.
- 20 • **Topic 25:** SFR's preparations for the HOA Sale, including, without  
21 limitation, evaluations of the Property's value, risk assessments related  
22 to bidding on the Property at the HOA Sale, bidding authority, and  
23 SFR's investment criteria as it relates to the Property.
- 24 • **Topic 26:** Facts relating to the HOA Sale, including, without limitation,  
25 SFR's knowledge of and attendance at any previously-scheduled sale(s)  
26 for the Property, statements made at the HOA Sale or any previously-  
27 scheduled sale(s) for the Property, the sale process, and participation in  
28 the sale by SFR and any other attendees.

Chase's counsel reserved Chase's right to obtain SFR's deposition testimony on the  
Disputed Topics by continuing this deposition. *See id.* at 145:12–22.

## 22 **II. CHASE IS ENTITLED TO SFR'S TESTIMONY ON THE DISPUTED TOPICS**

23 SFR had no valid basis under Rule 30 to refuse to testify about the Disputed  
24 Topics. Instead, it deliberately chose not to move for a protective order as required to  
25 enforce its relevance objections. Moreover, SFR's relevance objections are meritless.  
26 The Disputed Topics seek testimony relevant to several key issues in this case and  
27 thus fall well within the scope of Rule 26's broad "subject-matter" requirement for  
28 relevance. The Court should compel SFR to provide a Rule 30(b)(6) witness to testify

1 as noticed.

2 **A. SFR Improperly Refused to Testify About the Disputed Topics**

3 Rule 30 sets forth the only three circumstances that justify a party's refusal to  
4 respond to deposition questions: (1) when necessary to preserve a privilege; (2) to  
5 enforce a limitation directed by the court; or, (3) to file a motion to terminate a  
6 deposition conducted in bad faith. N.R.C.P. 30(d)(1). None of these circumstances is  
7 present in this case.

8 Moreover, the law is clear that a party cannot refuse to testify because it  
9 makes a relevance objection. *See, e.g., Olivarez v. Rebel Oil Company, et al.*,  
10 Discovery Commissioner Opinion #11 (April, 2003) (Stating that counsel "abused the  
11 deposition process by . . . directing a witness "not to answer" **without a concomitant**  
12 **assertion of a privilege...**") (emphasis added); *E.E.O.C. v. Thurston Motor Lines, Inc.*,  
13 124 F.R.D. 110, 114 (M.D.N.C. 1989) ("Cogdell and Brantley, managerial employees  
14 of Brown [Transp. Co.] who were advised at their depositions by Brown's counsel, did  
15 not have the right to refuse to answer deposition questions upon asserted grounds of  
16 irrelevance or vagueness."). "Except in the case of a question which calls for  
17 privileged information, the proper procedure to follow when an objection is raised to a  
18 question propounded in a deposition is for the attorney who raises the objection to  
19 note his objection *but allow the question to be answered.*" *National Microsales Corp.*  
20 *v. Chase Manhattan Bank, N.A.*, 761 F. Supp. 304 (S.D.N.Y. 1991) (emphasis added  
21 and internal quotation and alteration omitted) (interpreting the federal analog to  
22 N.R.C.P. 30, Fed. R. Civ. P. 30(c)).

23 Here, SFR refused to provide deposition testimony based on a mere relevance  
24 objection. SFR's counsel explicitly instructed the Rule 30(b)(6) witness not to answer  
25 specific questions without providing privilege or other basis under Nevada law for  
26 refusing testimony. **Exhibit C**, Kelso Dep. 81:19–25. This was improper. As Chase's  
27 counsel advised during the parties' meet and confer, SFR had the burden of moving  
28 for a protective order if it did not wish to comply with Chase's deposition notice:

1 What is not proper practice is to refuse to comply with the notice, put  
2 the burden on the party noticing the deposition to file a motion to  
3 compel, and then seek to justify non-compliance in opposition to the  
4 motion to compel. **Put simply and clearly, absent agreement, a party  
who for one reason or another does not wish to comply with a notice of  
deposition must seek a protective order.**

5 *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 242 F.R.D.  
6 164, 166 (D. Mass. 2007) (construing analogous federal rules) (emphasis added);  
7 accord *E.E.O.C. v. Thurston Motor Lines, Inc.*, 124 F.R.D. 110, 114 (M.D.N.C. 1989)  
8 (“Brown [Transportation Corp.] had absolutely no right under the rules to refuse to  
9 designate a witness. If it had an objection to discovery, its opportunity was to request  
10 a protective order under Rule 26(c).”).

11 Rather than abide by the procedural rules, however, SFR believes that this  
12 Court will provide it with special treatment and permit it to improperly shift its  
13 burden on to Chase. It would be an abuse of discretion for the Court to do so.  
14 Accordingly, the Court should grant Chase’s Motion.

15 **B. The Disputed Topics Are Relevant and Discoverable Under Rule 26(b)**

16 Not only does SFR lack a valid basis for its refusal to testify, but the Disputed  
17 Topics seek information that is highly relevant to Chase’s case. The Disputed Topics  
18 are highly relevant to the purported harm SFR may suffer if the Court sets aside the  
19 homeowners association foreclosure sale, SFR’s purported bona fide purchaser  
20 status, and Chase’s contention that the *SFR v. U.S. Bank* decision should not apply  
21 retrospectively given contrary interpretations of NRS 116.3116 *et seq.* at the time of  
22 the association foreclosure sale. The topics are thus well within the scope of  
23 information discoverable under Rule 26(b) “subject matter” standard for relevance.  
24 *See* N.R.C.P. 26(b)(1) (allowing parties to obtain discovery that “is relevant to the  
25 *subject matter* involved in the pending litigation”); *see also Hickman v. Taylor*, 329  
26 U.S. 495, 507 (1947) (“[The] discovery rules are to be accorded a broad and liberal  
27 treatment. No longer can the time-honored cry of ‘fishing expedition’ serve to  
28 preclude a party from inquiring into the facts underlying his opponent’s case.”).

1  
2 **1. SFR's Bona Fide Purchaser Status and Potential Harm Are at Issue**

3 *Shadow Wood Homeowners Association v. New York Community Bancorp*,  
4 confirms that whether a sale purchaser is “bona fide” is a central issue in quiet title  
5 actions like the one here. 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016). The  
6 *Shadow Wood* Court vacated summary judgment in the bank’s favor based on, among  
7 other things, the lack of evidence on the bona fide purchaser issue. *Id.* The *Shadow*  
8 *Wood* Court further instructed that district courts “must consider **the entirety of the**  
9 **circumstances** that bear upon the equities”—including the “potential harm” to  
10 purchasers if a sale is invalidated—to determine whether to uphold or set aside a  
11 foreclosure sale on equitable grounds. *Id.* at 1114-15 (emphasis added); *see also id.* at  
12 115 n. 7 (noting that potential harm to third parties “is especially pertinent”).  
13 Applying this standard, at least one court has rejected SFR’s bona fide purchaser  
14 claim based on evidence that SFR was on notice “of the legal possibility that the DOT  
15 might survive the [HOA] foreclosure sale.” *Nationstar Mortgage, LLC v. SFR*  
16 *Investments Pool 1, LLC*, 2:15-cv-583, 2016 WL 1718374, at \*5 (D. Nev. Apr. 29,  
17 2016) (refusing to “limit the remedies available in this case based on any supposed  
18 inequity to SFR of reversing the sale”).

19 SFR’s knowledge and belief about the effect of NRS 116.3116 on Chase’s deed  
20 of trust—as evidenced by its business model and investment strategy for the  
21 Property—is critical to determine whether SFR was a bona fide purchaser and what,  
22 if any, “potential harm” SFR would suffer if the sale is invalidated.

23 **2. Retroactive Application of SFR v. U.S. Bank Is At Issue**

24 Similarly, whether the holding in *SFR v. U.S. Bank* should apply retroactively  
25 is an open question that Chase is entitled to litigate. *See, e.g., Christina Trust v. K*  
26 *& P Homes*, Case No. 2:15-cv-01534, 2015 WL 6962860, at \*5 (D. Nev. Nov. 9, 2015)  
27 (finding that “*SFR Investments Pool 1* does not apply retroactively in this case under  
28 the *Huson* rule, as approved in *Breithaupt*”); *see also id.*, 2016 WL 923091, at \*2 (D.

1 Nev. Mar. 9, 2016) (certifying question about retroactive application of *SFR v. U.S.*  
2 *Bank* to the Nevada Supreme Court). To determine whether a court decision applies  
3 retroactively, courts evaluate a three-factor test that considers, among other things,  
4 whether the litigants relied on the overturned precedent (*see* factor 1) and whether  
5 retroactive application would “produce substantial inequitable results” (*see* factor 3).  
6 *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev. 31, 35, 867 P.2d 402, 405 (1994).

7 Chase must be permitted to conduct discovery regarding SFR’s understanding  
8 of NRS 116.3116’s effect on a first deed of trust and other factors that influence the  
9 equities, such as the prejudice that SFR would suffer if the Court unwinds the sale.  
10 These issues are directly relevant to Chase’s position that the *SFR v. U.S. Bank*  
11 cannot apply retroactively.

12 **3. The Disputed Topics Are Relevant, and Chase Will Face Severe**  
13 **Prejudice if It Cannot Obtain This Discovery**

14 Chase cannot be limited to only SFR’s self-serving testimony about its  
15 subjective knowledge. Instead, the Court must allow Chase to obtain further  
16 evidence to comprehend SFR’s knowledge at the time of the foreclosure and the  
17 circumstances of the sale. Despite SFR’s assertions to the contrary, documents  
18 obtained from other parties demonstrate that the Disputed Topics seek discoverable  
19 testimony.

20 For example, SFR lease agreements<sup>1</sup> (produced by an association) demonstrate  
21 that, before the *SFR v. U.S. Bank* decision and during the time SFR was purchasing  
22 numerous properties, SFR was advising tenants that a lender “***maintained its***  
23 ***security interest in the property after the homeowner’s association foreclosure sale***”  
24 and that, in the event a lender started to foreclose, the foreclosure period would last  
25 “at a minimum, three months plus 21 days” during which time SFR “will negotiate

26 <sup>1</sup> The deposition notice to SFR contained several topics related to the lease  
27 agreement, including, but not limited to, topics numbered 14, 15, 28, and 29. *See*  
28 Exhibit A.

1 termination of the Lease Agreement.” **Exhibit D**, Foreclosure Addendum to  
2 Residential Lease Agreement (dated Nov. 3, 2012) (emphasis added). These  
3 statements indicate SFR believed that property purchased from an association  
4 foreclosure remained subject to a first deed of trust and, further, that SFR’s tenant  
5 would have to vacate the property when the deed of trust beneficiary foreclosed.  
6 Such evidence is discoverable—it bears on SFR’s understanding of the property  
7 interest it purchased, SFR’s knowledge “that the DOT might survive the [HOA]  
8 foreclosure sale,” and the equities implicated if the Court unwinds the association  
9 foreclosure sale to provide SFR exactly what it originally thought it purchased—a  
10 property subject to a first deed of trust.

11 In addition to the lease agreement, a news article published before the *SFR v.*  
12 *U.S. Bank* decision suggests that investors (like SFR) purchased properties from  
13 association foreclosure sales with the belief that they were merely stepping into the  
14 shoes of the association—not purchasing the property free and clear of a mortgage.  
15 *See, e.g., Exhibit E*, H. Smith, *Shrewd Investors Snap Up HOA Liens, Rent Out*  
16 *Houses*, Review Journal (posted Mar. 18, 2013), *available at*  
17 [www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-](http://www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-houses)  
18 [houses](http://www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-houses). As part of this investment scheme, investors tried to make money by  
19 “rent[ing] [the property] out until the mortgage-holding bank gets around to  
20 foreclosing and trying to take possession. If the buyer gets the lien cheap enough and  
21 can rent the property long enough, their investment makes money.” *Id.* Even if a  
22 bank forecloses before an investor can rent the property, “[t]hat doesn’t necessarily  
23 mean the lien buyer loses everything, though. A conundrum in Nevada law helps  
24 investors hedge their bets. . . . HOA liens are ‘junior’ to the first deed on the  
25 mortgage, but they have to be paid off before the title can be transferred to a new  
26 owner, said Richard Lee, vice president of Ticor Title of Nevada.” *Id.* Thus, in  
27 addition to temporary rental income, investors anticipated recouping the amount of  
28 the association’s lien when the bank eventually foreclosed.

1 The facts adduced so far in this case suggest that SFR followed a similar  
2 business model premised on the belief that property purchased from an association  
3 foreclosure remained subject to a first deed of trust. Chase must be allowed to obtain  
4 discovery from SFR about SFR's investment scheme—including circumstantial  
5 evidence of the scheme such as: the profits SFR has realized, the people responsible  
6 for the scheme and their knowledge, valuations and rental forecasts SFR obtained for  
7 the property, SFR's communications with tenants about lienholders like Chase, and  
8 the other subjects set forth in the Disputed Topics. This information is highly  
9 relevant to whether SFR's knowledge about the sale precludes it from being a bona  
10 fide purchaser and what, if any, harm it may suffer in the event the Court unwinds  
11 the sale. *See Shadow Wood*, 366 P.3d at 1114-15. This information also tends to  
12 show that SFR understood that the property remained subject to the first deed of  
13 trust after the association foreclosure, a relevant consideration for the retroactivity  
14 argument. *See Breithaupt*, 110 Nev. at 35, 867 P.2d at 405.

15 It would be an abuse of discretion for the Court to prejudice Chase by  
16 restricting its ability to conduct discovery on the Disputed Topics, which are all  
17 relevant to this case. The discussion below explains in further detail the relevance of  
18 Disputed Topics:

19 **Topics 14<sup>2</sup>, 15<sup>3</sup>, 28<sup>4</sup>, and 29<sup>5</sup>:** These topics seek information about SFR's  
20 business to demonstrate SFR's plan to recoup a profit on the property by renting it  
21 until a bank foreclosure. This information, which would include testimony about the

---

22 <sup>2</sup> "SFR's disposition of properties acquired from homeowners associations, including, without  
23 limitation, its procedures to manage, lease, and/or sell the properties."

24 <sup>3</sup> "The portion of SFR's business related to purchasing, managing, renting, and/or selling  
properties acquired from a homeowners association foreclosure sale."

25 <sup>4</sup> "SFR's actions with respect to the Property since the HOA Sale, including, without  
26 limitation, any leases entered into by SFR, any attempts to lease and/or sell the Property,  
and any costs incurred or payments made to maintain the Property (e.g., taxes, insurance,  
and homeowners association assessments)."

27 <sup>5</sup> "SFR's communications with any tenant of the Property about this Litigation or about  
28 Chase, Washington Mutual Bank, or any other mortgagee of the Property."



1   aforementioned lease, is probative of SFR’s knowledge and belief that the property  
2   would remain subject to the first deed of trust. Further, this information  
3   demonstrates that SFR strategically sought to invest in the property with the intent  
4   to recoup profits from rental income *even though* the property remained subject to  
5   Chase’s deed of trust. This requested testimony is therefore discoverable in this case  
6   for the reasons set forth above. Such information is not merely relevant to the  
7   subject matter of this case—it is critical evidence of the equitable circumstances  
8   surrounding the subject transaction and the lack of prejudice that SFR will suffer if  
9   the Court unwinds the sale or otherwise holds that Chase’s deed of trust remains in  
10   effect. *See, e.g., Exhibit D* (SFR lease stating that a bank “maintained its security  
11   interest” after an association sale). Further, to the extent SFR’s communications  
12   (like lease provisions, as one example) changed after the *SFR v. U.S. Bank* decision,  
13   the information is probative of SFR’s reliance on past precedent, an element of the  
14   *Breithaupt* analysis.

15       **Topic 16<sup>6</sup>:** The circumstances surrounding SFR’s formation may demonstrate  
16   that SFR was formed to take advantage of the investment opportunities created by  
17   new legislation that delayed a bank’s ability to foreclose on a property and increasing  
18   association foreclosure sales. Since NRS 116.3116 *et seq.* was, at the time of SFR’s  
19   formation, generally understood to provide association liens only a payment priority,  
20   the delays in bank foreclosures caused by the legislation increased the likelihood that  
21   a company like SFR could rent a property for long enough to make a profit before the  
22   bank foreclosed. This information is probative of SFR’s belief and knowledge and  
23   thus relevant and discoverable in this case.

24       **Topics 18<sup>7</sup> and 20<sup>8</sup>:** These topics seek information about who was ultimately  
25   responsible for SFR’s scheme to profit from association foreclosure sales. Not only is

---

26   <sup>6</sup> “SFR’s formation and company purpose, including, without limitation, the facts and  
27   circumstances that led to SFR’s creation.”

28   <sup>7</sup> “The source(s) of funds used by SFR to purchase the Property.”

1 such information relevant to whether SFR may have colluded with the association or  
2 the association's foreclosure agent in this case, it is also relevant to SFR's knowledge  
3 and beliefs. If the people investing in and ultimately responsible for SFR at the time  
4 of the foreclosure sale understood that property purchased at an association  
5 foreclosure remained subject to a first deed of trust, then it is likely that SFR also  
6 operated on the basis that the properties it purchased remained subject to the first  
7 deed of trust. The requested information is relevant and discoverable.

8 **Topic 19<sup>9</sup>:** This request seeks information communicated about SFR's business  
9 model. As set forth above, the requested information will demonstrate that SFR  
10 purchased properties from association foreclosures with the understanding that they  
11 remained subject to deeds of trust. Moreover, this information will undermine any  
12 attempt by SFR to claim that its rental-based operations merely reflect its inability  
13 to obtain title insurance until litigation conclusively resolves any title issues. The  
14 requested information is relevant and discoverable.

15 **III. CHASE IS ENTITLED TO SFR'S COMPLETE TESTIMONY ON THE**  
16 **UNPREPARED TOPICS**

17 Although SFR purported to provide Paulina Kelso as its Rule 30(b)(6) designee  
18 to testify about topic areas 13<sup>10</sup>, 25<sup>11</sup>, and 26<sup>12</sup> the witness was unprepared to answer

19 

---

 (...continued)

20 <sup>8</sup> "SFR's relationship to other SFR entities."

21 <sup>9</sup> "SFR's knowledge of any prospectuses, private placement memoranda, or other documents  
22 that explain its business model to investors, members, managers, potential investors,  
potential members, or any other third parties who may have a current or prospective  
pecuniary interest in SFR."

23 <sup>10</sup> "SFR's practices, policies, and procedures related to purchasing properties at homeowners  
24 association foreclosure sales, including, without limitation, frequency of attending  
homeowners association foreclosure sales, geographic focus, internal risk assessments,  
25 determination of bid amounts, knowledge of and communications with mortgagees,  
homeowners association foreclosure agents, and/or collection companies about a property  
26 prior to purchase. This request is limited in time from the date the HOA recorded its Notice  
of Delinquent Assessment Lien to the date of the HOA Sale."

27 <sup>11</sup> "SFR's preparations for the HOA Sale, including, without limitation, evaluations of the  
28 Property's value, risk assessments related to bidding on the Property at the HOA Sale,  
bidding authority, and SFR's investment criteria as it relates to the Property."

1 questions about SFR's pre-sale preparations and investment criteria for the Property  
2 at issue.

3 "[A] corporation has 'a duty to make a conscientious good-faith effort to  
4 designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to  
5 fully and unequivocally answer questions about the designated subject matter.'" *Great*  
6 *Am. Ins. Co. of New York v. Vegas Constr. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev.  
7 2008) (citing *Starlight International, Inc. v. Herlihy*, 186 F.R.D. 626, 638 (D.Kan.  
8 1999)). Moreover, "[t]he fact that an organization no longer has a person with  
9 knowledge on the designated topics does not relieve the organization of the duty to  
10 prepare a Rule 30(b)(6) designee." *Id.* at 539-40 (ordering company to produce one or  
11 more "thoroughly educated, knowledge witness(es) able to answer questions").

12 Here, according to Ms. Kelso, Bob Diamond was the person responsible for  
13 purchasing the Property on SFR's behalf. **Exhibit C**, Kelso Dep. at 63:4-17. Despite  
14 his role in this case, however, Ms. Kelso did not speak with him about the Property.  
15 *Id.* at 65:23-66:4. Instead, she testified based on a conversation she had with Mr.  
16 Diamond over four months ago about Mr. Diamond's "process and what he did." *Id.*  
17 at 38:4-6, 64:18-25 (explaining that she "can't remember very specific" about her  
18 conversation with Mr. Diamond). Given this insufficient preparation, Ms. Kelso  
19 could not confirm even basic information about SFR's sale preparation for the  
20 Property, including, for example:

- 21 • Whether SFR prepared for the sale in advance (*id.* at 69:10-21);
- 22 • Whether SFR looked to see if there were CC&Rs recorded against the
- 23 Property prior to the sale (*id.* at 70:10-11);
- 24 • Why SFR avoided bidding if a bank was also foreclosing on the Property

25  
26 (...continued)

27 <sup>12</sup> "Facts relating to the HOA Sale, including, without limitation, SFR's knowledge of and  
28 attendance at any previously-scheduled sale(s) for the Property, statements made at the  
HOA Sale or any previously-scheduled sale(s) for the Property, the sale process, and  
participation in the sale by SFR and any other attendees."

- 1                   (*id.* at 71:2-8);
- 2                   • Whether Chase’s deed of trust affected SFR’s decision to bid on the
- 3                   Property (*id.* at 71:15-17);
- 4                   • Whether SFR investigated, prior to the sale, how much was owed on the
- 5                   association’s lien or whether the lien included delinquent assessments
- 6                   (*id.* at 72:6-12);
- 7                   • Why SFR drove by the Property to confirm its condition prior to the sale
- 8                   (*id.* at 73:3-7);
- 9                   • How much SFR was willing to bid on the Property at the time of the sale
- 10                  (*id.* at 77:11-13).

11                  Moreover, Ms. Kelso provided incomplete testimony about SFR’s pre-sale rent

12                  projections and consideration of the risk of litigation. Ms. Kelso stated that SFR

13                  considered the amount of rent it could recoup prior to bidding on the Property, but

14                  she was not prepared to testify about the rent projections that SFR used when

15                  deciding to bid on the Property at issue. *Id.* at 75:11-19. Similarly, she could not

16                  recall whether she spoke with Mr. Diamond about whether he considered the risk of

17                  litigation. *Id.* at 77:1-6. Ms. Kelso conceded that, except for a single conversation

18                  with Mr. Diamond that took place months ago, she did not seek additional

19                  information from him in connection with this case:

20                  Q.     And other than speaking with [Mr. Diamond] about four months ago,

21                          did you talk to him in preparation for your deposition today about these

22                          particular properties?

23                  A.     ***No, I did not.***

24                  *Id.* at 77:21-25.

25                  SFR has not satisfied its obligation “to fully and unevasively answer questions

26                  about” Topic Areas 13, 25, and 26. *See Vegas Constr. Co., Inc.*, 251 F.R.D. at 538.

27                  Accordingly, the Court should enter an order compelling SFR to provide a witness

28                  properly prepared to testify about these topics.

1 **IV. THE COURT SHOULD AWARD CHASE ITS FEES AND COSTS**

2 If a court grants a motion filed under Rule 37, the court shall require the party  
3 or deponent whose conduct necessitated the motion to pay the moving party  
4 reasonable expenses incurred in preparing, filing, and arguing the motion. N.R.C.P.  
5 37(4)(A). If the Court grants this Motion, it should award Chase its reasonable fees  
6 and costs.

7 **V. CONCLUSION**

8 For the foregoing reasons, Chase respectfully requests this Court grant this  
9 Motion to Compel and issue an order:

- 10 • Compelling SFR to provide a Rule 30(b)(6) witness to testify about the  
11 Disputed Topics (Topic Areas 14, 15, 16, 17, 18, 19, 28, 29);  
12 • Compelling SFR to adequately prepare and provide a Rule 30(b)(6)  
13 witness to testify about the Unprepared Topics (Topic Areas 13, 25, 26);  
14 and,  
15 • Awarding Chase its reasonable fees and costs incurred in bringing this  
16 Motion.

17 Dated: July 8, 2016

18 BALLARD SPAHR LLP

19 By: /s/ Lindsay Demaree

20 Abran E. Vigil  
21 Lindsay Demaree  
22 100 North City Parkway, Suite 1750  
23 Las Vegas, Nevada 89106-4617

24 *Attorneys for Defendant and*  
25 *Counterclaimant JPMorgan Chase*  
26 *Bank, N.A., as successor by merger to*  
27 *Chase Home Finance LLC*  
28

**Certificate of Moving Counsel Pursuant to N.R.C.P. 37(a)(2)(B)**

I, Lindsay C. Demaree, am counsel for the movant, Defendant and Counterclaimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC. I certify that I have in good faith conferred or attempted to confer with the counsel for Plaintiff regarding Plaintiff's refusal, without court action, to provide a Rule 30(b)(6) witness designated and prepared to testify about the topics described in the above motion.

DATED this 8th day of July, 2016.

BALLARD SPAHR LLP

By: /s/ Lindsay C. Demaree

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of July, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing MOTION TO COMPEL DEPOSITION TESTIMONY was served on the following counsel of record via the Court's electronic service system:

DIANA S. CLINE  
JACQUELINE A. GILBERT  
KIM GILBERT EBRON  
KAREN L. HANKS  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

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

/s/ Mary Kay Carlton  
An employee of BALLARD SPAHR LLP

# EXHIBIT A

# EXHIBIT A



1 Abran E. Vigil  
Nevada Bar No. 7548  
2 Lindsay Demaree  
Nevada Bar No. 11949  
3 BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
4 Las Vegas, Nevada 89106-4617  
Telephone: (702) 471-7000  
5 Facsimile: (702) 471-7070  
E-Mail: [vigila@ballardspahr.com](mailto:vigila@ballardspahr.com)  
6 E-Mail: [demareel@ballardspahr.com](mailto:demareel@ballardspahr.com)  
*Attorneys for Defendant and Counterclaimant*  
7 *JPMorgan Chase Bank, N.A., as successor by*  
*merger to Chase Home Finance LLC*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

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

CASE NO. A-12-672963-C  
DEPT NO. 27

12 Plaintiff,

13 v.

14 VENTA REALTY GROUP, a Nevada  
corporation, JP Morgan Chase Bank, NA, a  
15 National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
16 limited liability corporation, NATIONAL  
DEFAULT SERVICING CORPORATION, an  
17 Arizona corporation, CALIFORNIA  
CONVEYANCE COMPANY, a California  
18 corporation, REPUBLIC SILVER STATE  
DISPOSAL, INC., a Nevada Corporation,  
19 PARADISE COURT HOMEOWNERS  
ASSOCIATION, a Nevada non-profit  
20 corporation and DELANIE L. HARNED, an  
individual, DOES I through X, ROE  
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 JPMORGAN CHASE BANK, N.A., as successor  
by merger to Chase Home Finance LLC,

24 Counter-Claimant,

25 vs.

26 SFR INVESTMENTS POOL 1, LLC a Nevada  
27 Limited liability company

28 Counter-Defendant.

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

**SEVENTH AMENDED NOTICE OF 30(b)(6) DEPOSITION OF  
SFR INVESTMENTS POOL 1, LLC**

**TO:** ALL INTERESTED PARTIES; and

**TO:** THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT Defendant and Counterclaimant JPMorgan Chase Bank N.A., as successor by merger with Chase Home Finance LLC ("Chase") will take the deposition of the N.R.C.P. 30(b)(6) designee for SFR Investments Pool 1, LLC ("SFR") on the topics listed in Exhibit A, upon oral examination, pursuant to N.R.C.P. 26 and 30.

Place: Law Offices of Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106

Date: **June 24, 2016**

Time: **1:00 P.M.**

The deposition will take place before a notary public or some other officer authorized by law to administer oaths. The deposition will be recorded by videotape and/or stenographic means.

You are invited to attend and cross-examine.

DATED this 21 day of June, 2016.

BALLARD SPAHR LLP

By: /s/ Holly Ann Priest

Abran E. Vigil  
Lindsay Demaree  
Holly Ann Priest  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

*Attorneys for Defendant and  
Counterclaimant JPMorgan Chase Bank,  
N.A., as successor by merger to Chase  
Home Finance LLC*

## EXHIBIT A

### General Definitions

a. The term “communication,” and its plural or any synonym thereof, means any dissemination of information or transmission of a statement from one person to another, or in the presence of another, whether by written, oral, or electronic means or by action or conduct and shall include, but is not limited to, every discussion, conversation, conference, meeting, interview, memorandum, telephone call, and/or visit.

b. The term “document” includes, but is not limited to, any letter, book, drawing, note, record, e-mail, minutes of meetings, agreement, contract, memorandum, map, diagram, illustration, photograph, telegram, written analysis, report, recording of any type, transcription, and memoranda made of any telephone communication or face-to-face oral meeting or conversation, written communication (which includes, but is not limited to, any letter, interoffice communication and telegram), paper, or other writing of any sort. The term includes the original, any copy, and any draft versions thereof.

c. The term “person” means natural persons, corporations, partnerships, limited liability companies, joint ventures, and any other entity recognized by law of whatever type, whatever form, and however nominated.

d. The term “you,” “your,” or “SFR” means SFR Investments Pool 1, LLC, as well as its partners, officers, members, directors, managers, agents, employees, accountants, counsel, trustees, affiliated organizations, any successor or predecessor in interest, and any other persons or entities under its control or direction, or acting on its behalf, regardless of its affiliation or employment.

e. The term “Chase” means Defendant and Counterclaimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC .

- 1 f. The term “Act” means the Nevada Uniform Condominium Ownership  
2 Act, NRS Chapter 116.
- 3 g. The term “FHA” means the Federal Housing Administration.
- 4 h. The term “CC&Rs” means the Paradise Court's Declaration of  
5 Covenants, Conditions, and Restrictions, recorded on May 18, 2004.
- 6 i. The term “Property” means the real property located at 1076 Slate  
7 Crossing Lane, #102, Henderson, NV 89002.
- 8 j. The term “Lien” means the “Notice of Delinquent Assessment Lien,”  
9 recorded on February 5, 2010, as Instrument No. 201002050001923, in Clark County,  
10 Nevada.
- 11 k. The term “Notice of Default” means the “Notice of Default and Election  
12 to Sell Under Homeowners Association Lien,” recorded on March 7, 2012, as  
13 Instrument No. 201203070000441 in Clark County, Nevada.
- 14 l. The terms “Notice of Sale” means the “Notice of Foreclosure Sale,”  
15 recorded on August 30, 2012, as Instrument No. 201208300003067 in Clark County,  
16 Nevada.
- 17 m. The term “Litigation” means the above-captioned proceeding in Nevada  
18 District Court, Clark County, Case No. A-12-672963-C.
- 19 n. The term “Complaint” means the “Complaint” filed on December 4, 2012  
20 as part of the Litigation.
- 21 o. The term “NAS” means Nevada Association Services, Inc., as well as its  
22 members, officers, employees, agents, assigns, representatives, any successor or  
23 predecessor in interest, and any other person or entity acting or purporting to act on  
24 its behalf.
- 25 p. The term “HOA” means Paradise Court Homeowners Association, as  
26 well as its members, officers, employees, agents, assigns, representatives, any  
27 successor or predecessor in interest, and any other person or entity acting or  
28 purporting to act on its behalf.

1           q.     The term “HOA Sale” means the sale of the Property purportedly  
2 conducted under the Lien on or about September 21, 2012.

3           r.     The term “Foreclosure Deed” means the “Foreclosure Deed” recorded on  
4 September 25, 2012, as Instrument No. 201209250001230, in Clark County, Nevada.

5           s.     The term “Borrower” means Delaine L. Harned.

6           t.     Unless otherwise stated, names of documents shall have the meanings  
7 set forth in the Act.

8                               **Matters on Which Testimony Will be Taken**

9                               **(for witnesses designated pursuant to N.R.C.P. 30(b)(6))**

10          1.     The factual basis for SFR’s allegations in paragraphs 11, 14, 19, 43, 49  
11 and 55 of the Complaint.

12          2.     The factual basis for SFR’s affirmative defenses numbered 3, 4, 7, 10,  
13 and 16 in “SFR Investments Pool 1, LLC’s Answer to Counterclaim” filed in the  
14 Litigation.

15          3.     The factual basis for SFR’s responses to Request Nos. 1, 6, and 9 in  
16 “JPMorgan Chase Bank, N.A.’s First Set of Requests for Admission to SFR  
17 Investments Pool 1, LLC,” served in this Litigation.

18          4.     The authenticity and content of documents disclosed and/or produced by  
19 you in the Litigation.

20          5.     All communications between SFR and any other party to the Litigation  
21 that mention association assessments, the HOA’s lien, the Notice of Default, the  
22 Notice of Sale, the Foreclosure Deed and/or purported foreclosure as related to the  
23 Property.

24          6.     All communications between SFR and NAS pertaining to: the Property;  
25 the notices and association’s foreclosure related to the Property; NRS 116.3116 *et*  
26 *seq.*; the Borrower’s delinquency; the association’s lien interest in the Property; or,  
27 the association foreclosure process.

1           7. All communications between SFR and the HOA pertaining to: the  
2 Property; the notices and association's foreclosure related to the Property; NRS  
3 116.3116 *et seq.*; the Borrower's delinquency; the association's lien interest in the  
4 Property; or, the association foreclosure process.

5           8. All communications between SFR and the Borrower.

6           9. All communications between SFR and Chase related to the Property.

7           10. SFR's relationship with NAS, including, without limitation, SFR's  
8 participation in homeowners association foreclosure sales conducted by NAS.

9           11. SFR's relationship with the HOA, including, without limitation, SFR's  
10 bidding, purchase, and/or ownership of properties located within the HOA, SFR's  
11 involvement with the HOA's governance, and SFR's attendance at any HOA  
12 meetings.

13           12. SFR's relationship with the Borrower.

14           13. SFR's practices, policies, and procedures related to purchasing properties  
15 at homeowners association foreclosure sales, including, without limitation, frequency  
16 of attending homeowners association foreclosure sale, geographic focus, internal risk  
17 assessments, determination of bid amounts, and knowledge of and communications  
18 with mortgagees, homeowners association foreclosure agents, and/or collection  
19 companies about a property prior to purchase. This request is limited in time from  
20 the date the HOA recorded its Notice of Delinquent Assessment Lien to the date of  
21 the HOA Sale.

22           14. SFR's disposition of properties acquired from homeowners associations,  
23 including, without limitation, its procedures to manage, lease and/or sell the  
24 properties.

25           15. The portion of SFR's business related to purchasing, managing, renting,  
26 and/or selling properties acquired from a homeowners association foreclosure sale.

27           16. SFR's formation and company purpose, including, without limitation,  
28 the facts and circumstances that led to SFR's creation.

1           17.    SFR's company structure, including, without limitation, the identity of  
2 its members, managers and/or officers and the identity of all parent companies  
3 and/or other parties with an interest in SFR at the time SFR attended any  
4 association foreclosure sale of the Property.

5           18.    The source(s) of funds used by SFR to purchase the Property.

6           19.    SFR's knowledge of any prospectuses, private placement memoranda, or  
7 other documents that explain its business to investors, members, managers, potential  
8 investors, potential members, or any other parties who may have a current or  
9 prospective pecuniary interest in SFR.

10          20.    SFR's relationship to other SFR entities.

11          21.    SFR's knowledge and understanding of the effect and purpose of the  
12 CC&R's provisions related to mortgagees and lien foreclosure at the time SFR  
13 attended any association foreclosure sale of the Property.

14          22.    SFR's knowledge and understanding of FHA's and Chase's interests in  
15 the Property.

16          23.    Any communications between SFR and any prospective purchaser of the  
17 Property from the time SFR first learned the Property was subject to a homeowners  
18 association foreclosure to the present.

19          24.    Any communications between SFR and any title company relating to the  
20 marketability of title to the Property from the time SFR first learned the Property  
21 was subject to a homeowners association foreclosure to the present.

22          25.    SFR's preparations for the HOA Sale, including, without limitation,  
23 evaluations of the Property's value, risk assessments related to bidding on the  
24 Property at the HOA Sale, bidding authority, and SFR's investment criteria as it  
25 relates to the Property.

26          26.    Facts relating to the HOA Sale, including, without limitation, SFR's  
27 knowledge of and attendance at any previously-scheduled sale(s) for the Property,  
28 statements made at the HOA Sale or any previously-scheduled sale(s) for the

1 Property, the sale process, and participation in the sale by SFR and any other  
2 attendees.

3 27. The identity, real estate experience, and current contact information of  
4 the person(s) who decided to attend the HOA Sale on SFR's behalf and/or who bid on  
5 the Property on SFR's behalf.

6 28. SFR's actions with respect to the Property since the HOA Sale,  
7 including, without limitation, any leases entered into by SFR, any attempts to lease  
8 and/or sell the Property, and any costs incurred or payments made to maintain the  
9 Property (e.g., taxes, insurance, and homeowners association assessments).

10 29. SFR's communications with any tenant of the Property about this  
11 Litigation or about any mortgagee of the Property.

12 30. SFR's involvement in the drafting, preparation, or recording of the Lien,  
13 Notice of Default, Notice of Sale, and/or Foreclosure Deed.

14 31. SFR's understanding of the effect and purpose of the State of Nevada  
15 Declaration of Value included with the Foreclosure Deed.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of June, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing SEVENTH AMENDED NOTICE OF 30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC was served on the following counsel of record via the Court's electronic service system:

DIANA S. EBRON  
KAREN HANKS  
KIM GILBERT EBRON  
7265 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool, LLC

/s/ CM Rowe  
An employee of BALLARD SPAHR LLP

# EXHIBIT B

# EXHIBIT B

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

1 DECL  
Abran E. Vigil  
2 Nevada Bar No. 7548  
Lindsay Demaree  
3 Nevada Bar No. 11949  
BALLARD SPAHR LLP  
4 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
5 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
6 E-Mail: vigila@ballardspahr.com  
E-Mail: demareel@ballardspahr.com

7  
8 *Attorneys for Defendant and Counterclaimant*  
9 *JPMorgan Chase Bank, N.A., as successor by*  
10 *merger to Chase Home Finance LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 v.

15 VENTA REALTY GROUP, a Nevada  
corporation, JPMORGAN CHASE BANK, NA,  
16 a National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
17 limited liability corporation, ET AL.,

18 Defendants.

19 JPMORGAN CHASE BANK, N.A., as successor  
20 by merger to Chase Home Finance LLC,

21 Counter-Claimant,

22 vs.

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

25 Counter-Defendant.

CASE NO. A-12-672963-C

DEPT NO. 27

26 DECLARATION OF LINDSAY DEMAREE

– in support of –

27 JPMORGAN CHASE BANK, N.A.'S MOTION TO EXTEND  
28 DISPOSITIVE MOTION DEADLINE AND CONTINUE TRIAL

1 Lindsay Demaree declares as follows:

2 1. I am an attorney with the law firm of Ballard Spahr LLP ("Ballard  
3 Spahr") and am licensed to practice law in Nevada.

4 2. Ballard Spahr represents defendant/counterclaimant JPMorgan Chase  
5 Bank, N.A., successor by merger to Chase Home Finance LLC ("Chase") in the above-  
6 captioned matter.

7 3. I make this declaration in support of the Motion to Extend Dispositive  
8 Motion Deadline and Continue Trial (the "Motion").

9 4. Pursuant to EDCR 7.30, I certify that I provided Chase with a copy of  
10 the Motion.

11 5. Further, as it relates to the request to continue trial, I have conferred  
12 with counsel for SFR Investments Pool 1, LLC ("SFR") about this request for trial  
13 continuance on June 15, 2016.

14 6. During the June 15, 2016 telephone conference, SFR's counsel advised  
15 that SFR did not intend to move for a protective order; it sought to apply the  
16 discovery commissioner's ruling in case no. A672769 and have Chase move to compel  
17 to assert and preserve its objections, instead. In response, I explained that this  
18 approach was contrary to the applicable Rules of Civil Procedure and, further, that  
19 the pending dispositive motion deadline and trial setting would not provide sufficient  
20 time for Chase to obtain a ruling on such a motion. I asked SFR to stipulate to  
21 extend the dispositive motion deadline and trial setting. SFR's counsel stated that,  
22 while it would consider a request to extend the dispositive motion deadline, it would  
23 not agree to continue trial.

24 7. On June 17, 2016, SFR's counsel emailed me to advise that SFR would  
25 not be able to attend the deposition of its Rule 30(b)(6) witness, scheduled for later  
26 that day, because its designated witness was ill. I asked SFR to extend the  
27 dispositive motion deadline by 30 days. Due to the August 22, 2016 trial setting,  
28 SFR counsel was only willing to extend the deadline to July 15, 2016.

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

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8. I affirm that this request for continuance is not made for purposes of delay.

9. I declare the foregoing under the laws of the State of Nevada.

Executed on this 21st day of June, 2016.

  
LINDSAY C. DEMAREE, ESQ.

Submitted by:

BALLARD SPAHR LLP



Abran E. Vigil  
Nevada Bar No. 7548  
Lindsay C. Demaree  
Nevada Bar No. 11949  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

*Attorneys for Defendant and Counterclaimant  
JPMorgan Chase Bank, N.A., as successor by  
merger to Chase Home Finance LLC*

# EXHIBIT C

# EXHIBIT C

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CASE NO.  
A-12-672963-C

VENTA REALTY GROUP, a Nevada  
Corporation, JP MORGAN CHASE  
BANK, N.A., a national  
association, successor by  
merger to CHASE HOME FINANCE  
LLC, a foreign limited  
liability corporation, NATIONAL  
DEFAULT SERVICING CORPORATION,  
an Arizona corporation,  
///

/

DEPOSITION OF PAULINA KELSO  
30(b)(6) SFR INVESTMENTS POOL 1, LLC  
Taken at the offices of Ballard Spahr, LLP  
on Friday, June 24, 2016  
at 1:38 p.m.  
at 100 N. City Parkway, Suite 1750  
Las Vegas, Nevada

Reported by: Denise R. Kelly, CCR #252, RPR

1 CALIFORNIA RECONVEYANCE COMPANY,  
2 a California corporation, REPUBLIC  
3 SILVER STATE DISPOSAL, INC., a  
4 Nevada corporation, PARADISE COURT  
5 HOMEOWNERS ASSOCIATION, a Nevada  
6 non-profit corporation and  
7 DELANIE L. HARNED, an individual,  
8 DOES I through X; and ROE  
9 CORPORATIONS I through X, inclusive,  
10  
11 Defendants.

12  
13 \_\_\_\_\_/  
14 JPMorgan Chase Bank, N.A., as  
15 successor by merger to Chase Home  
16 Finance LLC,  
17 Counterclaimant,

18  
19 vs.

20  
21 SFR INVESTMENTS POOL 1, LLC, a  
22 Nevada limited liability Company,  
23 Counterdefendant.  
24  
25 \_\_\_\_\_/



## 1 APPEARANCES:

2 For Plaintiff/  
3 Counterdefendant:LINDSAY DEMAREE, ESQ.  
BALLARD SPAHR, LLP  
100 N. City Parkway  
Suite 1750  
Las Vegas, Nevada 891065 For Defendant  
6 Counterclaimant:KAREN HANKS, ESQ.  
KIM GILBERT EBRON  
7625 Dean Martin Drive  
Suite 110  
Las Vegas, Nevada 891399  
10  
11 \* \* \* \* \*12  
13  
14 INDEX

## WITNESS

## PAGE

15 PAULINA KELSO

Examination by Ms. Demaree

17

18  
19 INFORMATION TO BE SUPPLIEDNone  
20  
21  
22  
23  
24  
25

1 MS. DEMAREE: -- no preparation.

2 MS. HANKS: Correct. And that's my  
3 understanding what Bulla meant by that.

4 MS. DEMAREE: Okay.

5 For example, where the funds that were in  
6 the account came from.

7 MS. HANKS: Correct. My understanding she  
8 protected that. She thought it was okay to ask what  
9 was the source from the check that was actually  
10 provided at the sale, and we always are prepared to  
11 talk about that.

12 And other than that, I don't have any  
13 other objections to how the topics are stated.

14 MS. DEMAREE: And then turning to the  
15 deposition notices for which you did not move for a  
16 Protective Order.

17 MS. HANKS: Correct.

18 MS. DEMAREE: So if we start with  
19 Case 672963, which topics do you object to?

20 MS. HANKS: It would be again, I'm just  
21 objecting to anything that Commissioner Bulla already  
22 protected and so I believe she protected 14.

23 I don't think topic 15 was before her, so  
24 I'm okay abiding by Commissioner Beecroft's ruling on  
25 that one.

1 A. Yes.

2 Q. Like a legal pad?

3 A. Yes.

4 Q. And when did you meet with Mr. Diamond?

5 A. I believe I met with him around four  
6 months ago.

7 Q. And about how long did you guys meet?

8 A. We talked for about a half hour to 45  
9 minutes.

10 Q. What was the purpose of your meeting?

11 A. Well, I had been asked questions about  
12 Bob, because he was the person who for a time period  
13 attended the auctions. And other than the  
14 information, limited information that Chris had about  
15 when Bob was there, I just didn't have answers for my  
16 depositions. So then the attorneys set up a meeting  
17 for me so I could ask him, kind of go over his process  
18 and ask him questions.

19 Q. And who attended the meeting?

20 A. There was Bob and I, and then Karen and I  
21 believe Diana. And possibly at the end Jackie from  
22 the law firm.

23 Q. I'll ask you more questions about your  
24 conversations with Mr. Diamond.

25 A. Sure.

1 gone through, is there any other document that you  
2 reviewed in preparation for your deposition today?

3 A. I don't believe so.

4 Q. All right. Going back to your  
5 conversations with Bob Diamond. He was the bidder at  
6 the sale for Slate Crossing, correct?

7 A. Correct.

8 Q. And he was also the bidder for the  
9 property on Campanile Street?

10 A. Yes.

11 Q. Was he also the bidder for the  
12 Jupiter Creek property?

13 A. Yes.

14 Q. What was his role at SFR in the time of  
15 these sales?

16 A. It's my understanding he was the person  
17 that attended the auctions on behalf of SFR.

18 Q. Did he do anything else on behalf of SFR  
19 at that time?

20 MS. HANKS: Objection. Scope.

21 THE WITNESS: I do not recall. I believe  
22 that's what his main duty was.

23 BY MS. DEMAREE:

24 Q. Do you know how SFR hired Bob Diamond to  
25 perform that role?

1 MS. HANKS: Objection. Scope.

2 THE WITNESS: I don't have that  
3 information.

4 BY MS. DEMAREE:

5 Q. Do you know, why does Bob Diamond no  
6 longer perform that role?

7 MS. HANKS: Objection. Scope.

8 THE WITNESS: I don't have that  
9 information. I didn't see it as a topic area, so I  
10 didn't look into that.

11 BY MS. DEMAREE:

12 Q. Okay. So you mentioned when you spoke  
13 with Bob Diamond that -- well, let me back up.

14 What did you speak with Bob Diamond about?

15 A. He told me his approach at attending  
16 auctions.

17 Q. Anything else?

18 A. Well, we had, you know, a conversation, so  
19 he was telling me about his process and what he did.  
20 And then I asked him some questions I thought would be  
21 helpful, because I had been asked them before. And  
22 that was if he had any communications like with the  
23 HOAs.

24 If he had -- I can't remember very  
25 specific. He kind of gave me a little bit of his

1           A.       That would show the properties that are  
2 going up for auction.

3           Q.       Was it limited to a particular foreclosure  
4 agent like Nevada Association Services?

5           A.       I do not know.

6           Q.       And would it show properties going up for  
7 auction within a particular time period, for example,  
8 like within the next two weeks, within the next month?

9           A.       I don't know.

10          Q.       About how far in advance of a sale would  
11 Bob Diamond start preparations?

12          A.       How far in advance? I don't believe we  
13 had that conversation.

14          Q.       Just trying to figure out, for example, if  
15 he would have his eye on the property for a month or  
16 two weeks or just say, oh, there is a sale tomorrow,  
17 let's check this one out?

18          A.       It could be a number of those or all of  
19 them. I'm not sure. We didn't have a discussion  
20 about how far in advance he would prepare for the  
21 auctions.

22          Q.       You mentioned he also looked at the Clark  
23 County Recorder's website?

24          A.       Yes.

25          Q.       Why?

1           A.       He said he was looking at that time for  
2 the notices, the three notices for an HOA foreclosure  
3 sale. And that he was looking to -- he said that he  
4 was looking to make sure that a bank wasn't  
5 foreclosing on that property at that time.

6           Q.       Did he look at anything else on the Clark  
7 County recorder website?

8           A.       I believe those are the things that he  
9 mentioned to me.

10          Q.       Did he look for CC&Rs?

11          A.       I do not know.

12          Q.       You mentioned the three notices. What  
13 notices are you referring to?

14          A.       The Notice of Delinquent Assessments, the  
15 default of those, and then Intent to Sell and then the  
16 Notice of Sale.

17          Q.       Okay. And did he obtain copies of these  
18 notices?

19          A.       He stated that he didn't pull documents  
20 from the recorder's office. He said he just used the  
21 actual website and so all he could see was the  
22 recording.

23          Q.       Why didn't he pull the actual documents?

24          A.       I do not know.

25          Q.       You mentioned that he looked to see

1 whether a bank was foreclosing as well?

2 A. He did. He would look. He didn't want to  
3 bid on properties where a bank was foreclosing at that  
4 time on the same property.

5 Q. Why not?

6 A. He just stated that he -- I guess he just  
7 stated what he was looking for and that was one of the  
8 things he looked for, I don't know why specifically.

9 Q. Did he look to see if there was a  
10 Deed of Trust on the property?

11 A. I don't know if he was looking  
12 specifically for a Deed of Trust; but if it was  
13 recorded, then it's likely he would see it on the  
14 site.

15 Q. Did that affect his decision on whether to  
16 bid on a property?

17 A. I don't believe so.

18 Q. Did he ever obtain copies of the recorded  
19 Deeds of Trust?

20 A. I don't believe so.

21 Q. Did he obtain copies of any recorded  
22 instruments before attending a sale?

23 A. I don't believe so.

24 Q. Did he review the Clark County assessor's  
25 website at all?



1           A.       I don't believe he mentioned that one to  
2 me.

3           Q.       Did he --

4           A.       Prior to a sale, I don't believe he  
5 mentioned that.

6           Q.       Did he find out how much was owed on the  
7 HOA's lien before he attended a sale?

8           A.       I do not know.

9           Q.       Did he find out whether or not the  
10 association lien was for delinquent assessments before  
11 he attended a sale?

12          A.       I do not know.

13          Q.       You mentioned that he also visited  
14 properties before he attended a sale?

15          A.       Yes.

16          Q.       And would he get out of the vehicle and  
17 look at the property or was it just a drive-by, do you  
18 know?

19                   MS. HANKS:  Objection.  Form.

20                   THE WITNESS:  He did mention that he would  
21 look in the windows if he could.  So I believe he  
22 would get out of the vehicle and inspect what he could  
23 without entering the property.

24 BY MS. DEMAREE:

25          Q.       And why did he visit the properties?

1 A. Why did he visit them?

2 Q. Yes.

3 A. If I remember correctly, it was to see the  
4 condition of the property, what he could see.

5 Q. Why did that matter?

6 A. To him, I'm not sure why that mattered. I  
7 guess I'm not sure.

8 Q. I think when we had your deposition  
9 before, you mentioned that he also considered the  
10 rentability of a property?

11 A. Yes. He stated that was when he was going  
12 to bid on properties. The fact that SFR was going to  
13 rent them, that he wanted to, I guess, take that into  
14 consideration as to whether or not to purchase a  
15 property.

16 Q. What did he mean by rentability?

17 A. I don't know if he used the exact word  
18 rentability. But I believe that when he was talking,  
19 it was in the context of what he could rent the  
20 property for after it was purchased.

21 Q. Why did SFR consider that?

22 A. Why did they consider what they could rent  
23 the property for with him?

24 Q. Yes.

25 A. Because I believe that's what they were

1 of the three properties?

2 MS. HANKS: Objection. Scope.

3 THE WITNESS: What do you mean by rent  
4 projections?

5 BY MS. DEMAREE:

6 Q. So you mentioned that Bob Diamond  
7 considered whether or not SFR would be able to rent  
8 properties when he decided whether or not to attend a  
9 sale, correct?

10 A. Correct.

11 Q. Did he consider the amount of rent that he  
12 would be willing to recover?

13 A. Yes. He considered in his mind what he  
14 thought he would be able to rent the properties for.

15 Q. And so for the Slate Crossing property,  
16 what did Bob Diamond think that he could rent the  
17 property for?

18 A. We do not have a record of that so I do  
19 not know.

20 Q. So you don't have a record for any of the  
21 three properties?

22 A. No.

23 Q. You mentioned -- well, let me back up.

24 Other than what we discussed with the  
25 Clark County recorder website review, visiting the

1 his decision to pay a certain amount. Did the risk of  
2 litigation affect how much Bob Diamond would pay for a  
3 particular property?

4 A. Again, I don't recall if we talked about  
5 that, about the risk of litigation and how that played  
6 in. I don't know that we had that conversation.

7 Q. Okay. You mentioned that after Bob  
8 Diamond researched the property like we discussed, he  
9 determined the amount that he was willing to bid?

10 A. I remember him stating that, yes.

11 Q. And how much was he willing to bid for the  
12 Slate Crossing property?

13 A. I do not know.

14 Q. How much was he willing to bid for the  
15 Campanile Street property?

16 A. I do not know.

17 Q. How much was he willing to bid for the  
18 Jupiter Creek property?

19 A. I do not know. SFR doesn't have records  
20 of that.

21 Q. And other than speaking with him about  
22 four months ago, did you talk to him in preparation  
23 for your deposition today about these particular  
24 properties?

25 A. No, I did not.

1           A.       The other two which are Campanile and  
2     Slate Crossing, they didn't have -- I didn't have  
3     checks for them.

4           Q.       Do you know how SFR paid after it won the  
5     auction for those particular properties?

6           A.       For the two that Bob Diamond, the ones  
7     that we mentioned, Campanile and Slate Crossing, I do  
8     not. I don't even believe I have a receipt for those.  
9     Let me check real quick.

10                  So I don't have a check or a receipt for  
11     Slate Crossing and for Campanile. So I do not know.  
12     I believe he paid in checks in the same way, but I do  
13     not know for sure.

14           Q.       And that would be going to the bank,  
15     having a cashier's check issued from SFR to himself,  
16     and then signing the check over to the foreclosure  
17     agent?

18           A.       I believe so.

19                  MS. DEMAREE: Counsel, if I ask about the  
20     funds in the account or anything like that, it would  
21     be protected?

22                  MS. HANKS: Correct.

23                  MS. DEMAREE: You would instruct her not  
24     to answer?

25                  MS. HANKS: Correct.

1 BY MS. DEMAREE:

2 Q. Any relationship between SFR and NAS?

3 A. Other than bidding on properties or buying  
4 properties, no.

5 MS. DEMAREE: Off the record for a minute.

6 (Brief pause in the proceedings.)

7 MS. DEMAREE: Mark this Exhibit 5.

8 (Deposition Exhibit No. 5 marked.)

9 MS. DEMAREE: We've attached as Exhibit 5  
10 the documents that counsel has shared that the witness  
11 referenced throughout her deposition.

12 Also, as noted at the beginning of this  
13 deposition, my client, JPMorgan Chase, reserves its  
14 right for all of these cases to depose the witness on  
15 any topics that a court deems are relevant and  
16 allowable under Rule 26.

17 So in the event we have a court order  
18 saying that we can depose you again on any of the  
19 topics that either your counsel instructed you not to  
20 answer or that the Discovery Commissioner's Report and  
21 Recommendation limited, we would reserve our right to  
22 come back.

23 THE WITNESS: Okay.

24 MS. HANKS: All good.

25 COURT REPORTER: Miss Hanks, would you

## REPORTER'S DECLARATION

STATE OF NEVADA )  
 ) ss  
COUNTY OF CLARK )

I Denise R. Kelly, CCR #252, RPR, do hereby declare:

That I reported the taking of the deposition of the witness, PAULINA KELSO, commencing on Friday, June 24, 2016, at the hour of 1:38 p.m.

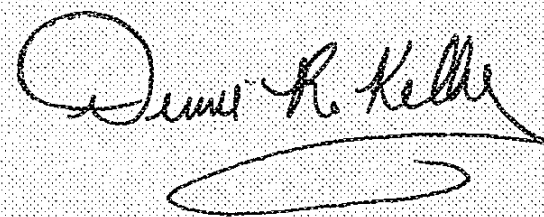
That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript. The original signature page is being forwarded to Karen Hanks, Esq. to obtain the deponent's signature. After 30 days the original transcript will be sent to Lindsay Demaree, Esq.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

Dated this 1st day of July, 2016.



Denise R. Kelly  
CCR #252, RPR

**EXHIBIT D**

**EXHIBIT D**



# FORECLOSURE ADDENDUM TO RESIDENTIAL LEASE AGREEMENT

For  
5540 DIMIO MARINA CT NORTH LAS VEGAS NV  
(Property Address)

In reference to the Residential Lease Agreement ("Lease Agreement") executed by John [Redacted]  
Ydsbanna [Redacted] as Tenant(s) ("Tenant") and SFR Investments Pool I, LLC ("SFR") as Owner/Landlord  
covering the real property at 5540 DIMIO MARINA CT NORTH LAS VEGAS  
("Leased Property") the parties hereby agree that the Agreement be amended as follows:

**1. SFR'S PURCHASE AT HOMEOWNER'S ASSOCIATION FORECLOSURE SALE.** Tenant(s) is notified that SFR Investments Pool I, LLC ("SFR" or "LANDLORD") purchased the Leased Property at a foreclosure auction conducted by a homeowner's association. SFR is the title owner of the Leased Property. If the previous owner of the Leased Property borrowed money from a lender and secured the loan with a deed of trust on the Leased Property, the lien holder/lender may have the right to foreclose on the Leased Property if the borrower does not pay on the loan. SFR is in the process of negotiating with any lien holder/lender that maintained its security interest in the property after the homeowner's association foreclosure sale.

**2. NOTICE OF DEFAULT/FORECLOSURE.** In accordance with federal and state law requirements and this agreement, SFR will notify Tenant if it receives any (a) Notice of Default; (b) Notice of Sale; (c) Deed in Lieu of Foreclosure or (d) short sale of the Leased Property. The filing of a Notice of Default by a lender or other lien holder commences a foreclosure period which lasts, at a minimum, three months plus 21 days. In such event, SFR will negotiate termination of the Lease Agreement.

By initialing this paragraph, I acknowledge that I understand SFR obtained the Leased Property at a foreclosure sale by a homeowner's association. I understand that SFR is not the borrower on any loan secured by a deed of trust on the Leased Property and that SFR is in the process of negotiating with any lien holder/lender that may have a security interest in the property. I understand that if the negotiations are not completed prior to the lien holder/lender initiating foreclosure proceedings, SFR will notify me in writing.

JS Tenant JS Tenant \_\_\_\_ Tenant \_\_\_\_ Tenant

**3. TERMS OF LEASE AGREEMENT.** During any foreclosure period, the Tenant(s) shall honor ALL CONDITIONS of the current Lease Agreement including, but not limited to, the timely payment of rent as stated in the Lease Agreement. Nevada law grants the title owner of a property a redemption period, and SFR remains as the legal owner of record until the actual time of the foreclosure sale.

**4. RETURN OF SECURITY DEPOSITS.** Once the Tenant(s) vacates the property, the SFR will release ALL security deposits back to the Tenant(s) with no further obligations from the Tenant(s). The 30-day period required by Nevada law for the return of the security deposits still applies. The property must be returned in the same general condition as the Tenant(s) occupied the property. Upon Tenant(s)'s request, SFR will attempt to find a new home to rent/lease/purchase for Tenant(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Lease Agreement.

**WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.**

Tenant  
[Signature]  
[Redacted]  
Tenant

11/3/12  
Date  
ABR  
Date

[Signature]  
Landlord/Owner  
By: Saul Lopez  
Property Manager for  
SFR Investments Pool I, LLC

11/3/12  
Date

Tenant

Date

Tenant

Date

GIA062

CHASE 0243

AA 097

# EXHIBIT E

# EXHIBIT E

## Shrewd investors snap up HOA liens, rent out houses

By HUBBLE SMITH LAS VEGAS REVIEW-JOURNAL

March 18, 2013 - 2:22am

Savvy investors in Las Vegas are buying up small homeowner's association liens at auction and making money by renting out homes they don't actually own until the mortgage-holder comes knocking, in some cases as long as two years later.

Community associations can collect up to nine months of unpaid HOA assessments through "superpriority" liens, plus up to \$1,900 in collection charges, according to Nevada law. While liens can amount to several thousand dollars when collection fees and other charges are applied, they're dwarfed by mortgages and in the past have received little notice.

But a 2010 change in state law aimed at preventing improper foreclosures has dramatically expanded the length of time between a mortgage default and the bank taking possession.

And investors have found that the combination of a small HOA debt and the delay in bank foreclosures can lead to a big payoff. That, in turn, is driving bids for liens through the roof.

Danny Garcia, an agent who goes to trustee auctions on behalf of a private client, said he's seen bids for HOA liens increase from about \$6,000 to upward of \$30,000 in the past two years. The highest he ever paid was \$20,000.

"They've gone up," he said. "People have started to figure out they can settle with the bank. They have some kind of strategy."

In the past, HOAs seldom went after members for unpaid dues, but cash-strapped associations faced with fewer dues-paying members are now much more likely to go after residents, using collection agencies to place liens on the property.

"If we were talking about this four years ago, it would be a totally different conversation," said David Stone, president of Nevada Association Services, a collection agency for HOAs.

The HOA writes a "dirty deed" on the home and its collection agency proceeds with foreclosure ahead of the mortgage-holding bank.

"That's a big problem in this town," said Zolt Szorenyi, president of Lenders Clearing House Las Vegas, a firm that buys and sells foreclosed homes. "These HOA collection agencies are selling debt to private investment companies and they're taking them down to the auction and foreclosing on them for nonpayment of HOA dues."

After the lien is auctioned, buyers get a "quiet title" that allows them to take control of the home and rent it out until the mortgage-holding bank gets around to foreclosing and trying to take possession. If the buyer gets the lien cheap enough and can rent the property long enough, their investment makes money.

Investors are buying HOA foreclosures because traditional trustee foreclosures have dried up, which in turn dried up their rental pool, Stone said.

"I'm having a dozen go every week," Stone said. "People are picking them up and renting them out. They have fee-simple ownership of the property."

But like nearly everything in Las Vegas, the lien scheme isn't a sure bet.

The risk in buying HOA liens is that the holder of the first deed of trust might come in and quickly foreclose, taking possession of the home before the investor can rent it out.

That doesn't necessarily mean the lien buyer loses everything, though. A conundrum in Nevada law helps investors hedge their bets.

Real estate attorney Zachary Ball said the state's HOA foreclosure law is "revolutionary" in many ways.

In one chapter of the law, the first deed of trust is never wiped out, he said. Statutes dealing with HOAs say an association's "superpriority" liens are ahead of the first deed and any other loans.

That means HOA liens are "junior" to the first deed on the mortgage, but they have to be paid off before the title can be transferred to a new owner, said Richard Lee, vice president of Ticor Title of Nevada.

The risk, Garcia said, comes in bidding too much at auction and paying more for the lien than a home is worth. When that happens, investors will try to cut their loss by working out a short sale with the lender for 50 cents to 60 cents on the dollar, he said.

When an investor pays more than the face amount of the lien and collection costs, any excess goes to pay off junior lienholders: property taxes, unpaid garbage bills and the like. Anything left after that is sent to the previous homeowner.

Scott Sibley, publisher of Nevada Legal News, said many HOA management firms are conducting lien sales at their offices. They're held at different times and in different locations, sometimes in packed conference rooms that restrict the number of bidders, he said.

How much longer the HOA lien scheme will work is unclear.

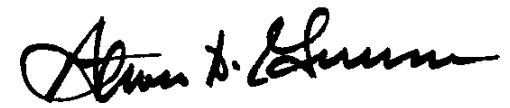
Lawmakers in Carson City are debating adjustments to AB284, the 2011 law that slowed the foreclosure process by making banks prove their right to take a home rather than processing "robo-signed" documents.

Banks have complained the procedures needlessly delay inevitable foreclosures, causing a logjam of houses in limbo that can be rented through the HOA lien scheme.

"It'll be interesting to see how it plays out going forward because the banks are close to reaching an agreement to amend AB284," Sibley said.

Contact reporter Hubble Smith at [hsmith@reviewjournal.com](mailto:hsmith@reviewjournal.com) or 702-383-0491.

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CLERK OF THE COURT

1 Abran E. Vigil  
Nevada Bar No. 7548  
2 Lindsay Demaree  
Nevada Bar No. 11949  
3 BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
4 Las Vegas, Nevada 89106-4617  
Telephone: (702) 471-7000  
5 Facsimile: (702) 471-7070  
E-Mail: vigila@ballardspahr.com  
6 E-Mail: demareel@ballardspahr.com

7 *Attorneys for Defendant and*  
*Counterclaimant JPMorgan Chase*  
8 *Bank, N.A., as successor by merger*  
*to Chase Home Finance LLC*  
9

DISTRICT COURT

CLARK COUNTY, NEVADA

11 SFR INVESTMENTS POOL1, LLC a Nevada  
12 Limited liability company,

13 Plaintiff,

14 vs.

15 VENTA REALTY GROUP, a Nevada  
Corporation, JP MORGAN CHASE BANK, NA,  
16 a national association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
17 limited liability corporation, ET AL.,

18 Defendants.

19 JPMORGAN CHASE BANK, N.A., as successor  
20 by merger to Chase Home Finance LLC,

21 Counter-Claimant,

22 vs.

23 SFR INVESTMENTS POOL 1, LLC a Nevada  
24 Limited liability company

25 Counter-Defendant.

CASE NO. A-12-672963-C

DEPT NO. 27

26 **JPMORGAN CHASE BANK, N.A.'S MOTION TO**  
27 **EXCLUDE TESTIMONY OF MICHAEL BRUNSON**

28 Defendant/counter-claimant JPMorgan Chase Bank, National Association

1 (“Chase”) moves to exclude the testimony of Michael L. Brunson, a rebuttal expert  
2 disclosed by plaintiff/counter-defendant SFR Investments Pool 1, LLC (“SFR”).

3 This Motion is based on EDCR 2.47, the following points and authorities, the  
4 attached exhibits, the EDCR 2.47 declaration of counsel (attached as Ex. F), all  
5 pleadings, papers, and documents on file with the Court in this action, and any  
6 argument of counsel that the Court may hear.

7 DATED this 8<sup>th</sup> day of July, 2016.

8 BALLARD SPAHR LLP

9 By: /s/ Lindsay Demaree  
10 Abran E. Vigil (Nevada Bar No. 7548)  
11 Lindsay Demaree (Nevada Bar No. 11949)  
12 100 North City Parkway, Suite 1750  
13 Las Vegas, Nevada 89106-4617  
14 *Attorneys for Defendant and*  
*Counterclaimant JPMorgan Chase Bank,*  
*N.A., as successor by merger to Chase*  
*Home Finance LLC*

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that the undersigned will bring the above Motion for  
17 hearing before Department 27 on the 10 day of Aug ., 2016 at the hour  
18 of 9 : 0 0 a .m., in the above-entitled Court.

19 DATED this 8<sup>th</sup> day of July, 2016.

20 BALLARD SPAHR LLP

21 By: /s/ Lindsay Demaree  
22 Abran E. Vigil (Nevada Bar No. 7548)  
23 Lindsay Demaree (Nevada Bar No. 11949)  
24 100 North City Parkway, Suite 1750  
25 Las Vegas, Nevada 89106-4617  
26 *Attorneys for Defendant/Counterclaimant*  
*JPMorgan Chase Bank, N.A., as successor*  
*by merger to Chase Home Finance LLC*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is a quiet title action arising from an HOA foreclosure under NRS Chapter 116. Chase is a mortgage lender which holds a first-position deed of trust against the subject property. Plaintiff/counter-defendant SFR Investments Pool 1, LLC (“SFR”) is the entity that placed the highest bid for the property at the sale. Chase argues the sale was invalid because, among other reasons, the sale price was only \$6,100. Chase has retained an appraiser, Scott Dugan, who has opined that the Property’s fair market value was \$82,000 at the time of the sale. Chase timely disclosed Dugan prior to the initial expert deadline. SFR then retained its own appraiser, Michael L. Brunson, and disclosed him as a purported rebuttal expert. Brunson has opined that the Property’s value at the time of the sale was \$6,100—the same exact amount that SFR paid for the Property. The Court should exclude Brunson from testifying for three separate reasons.

First, Brunson’s testimony is irrelevant under governing Nevada law. Nevada law requires the trier of fact in this case to evaluate the sufficiency of the price by comparing it to the property’s fair market value. Fair market value is the price which a willing buyer would pay a willing seller for the property under normal circumstances. However, Brunson’s report does not estimate the property’s fair market value. Instead, it estimates the property’s forced sale value—the amount which a typical buyer would pay for a similar property in the context of an HOA foreclosure sale. Since Brunson’s report does not speak to the governing legal standard imposed by Nevada law, the report is irrelevant.

Second, Brunson’s expert report exceeds the permissible scope of rebuttal expert testimony. Brunson does not simply respond to Dugan’s opinion; instead, he gives an “independent opinion of value” which had to be disclosed as initial expert testimony. The adequacy of the \$6,100 price paid at the HOA foreclosure sale is a central issue in this case and SFR was fully aware of the issue at the time expert

1 witnesses were disclosed, thus Brunson's independent opinion of value should be  
2 excluded under N.R.C.P. 16.1(e)(3)(B).

3 Finally, Brunson's appraisal does not meet the reliability requirements that  
4 Nevada law imposes for expert testimony. Brunson's approach to valuing HOA-  
5 foreclosed properties has not been published, has not been subjected to peer review,  
6 is not testable, is not generally accepted within the appraisal profession, and is  
7 largely based on conjecture and generalization. Brunson invented his technique for  
8 valuing such properties at the behest of purchasers like SFR who retained him for  
9 litigation purposes. Not surprisingly, he opines in almost every case that the  
10 relevant property's fair market value is whatever amount the property happened to  
11 sell for at the HOA foreclosure sale—which results from his unreliable, untested, and  
12 made-for-litigation approach to appraisals. For any one of these three reasons, the  
13 Court should exclude Brunson's testimony.

## 14 **II. FACTS AND PROCEDURAL BACKGROUND**

15 This case involves real property located at 1076 Slate Crossing Lane # 102,  
16 Henderson, Nevada 89002, APN 179-34-713-236 (the "Property"). In its complaint,  
17 SFR alleges that defendant Delaine L. Harned acquired title to the Property in May  
18 2008. Complaint ¶ 24. Harned financed her purchase of the property with a  
19 mortgage loan from defendant Venta Realty Group ("Venta"). Id. ¶ 25. The Loan is  
20 secured by a deed of trust encumbering the Property and recorded with the Clark  
21 County Recorder as Instrument 200805140005041 (the "Deed of Trust"). Id. On or  
22 about November 29, 2010, Mortgage Electronic Registration Systems, Inc., acting as  
23 nominee for Venta, assigned the Deed of Trust to Chase Home Finance LLC. Id. ¶  
24 26. Defendant/counter-claimant Chase is successor-in-interest to Chase Home  
25 Finance LLC. Id. ¶ 30. In 2010, due to Harned's alleged failure to pay HOA  
26 assessments, defendant Paradise Court Homeowners Association ("Paradise Court")  
27 commenced non-judicial foreclosure proceedings against the Property under NRS  
28 Chapter 116. Id. ¶ 13. On September 21, 2012, Nevada Association Services ("NAS")



1 conducted a sale of the Property on behalf of Paradise Court (the “HOA Sale”). *Id.* ¶  
2 11. At the HOA Sale, plaintiff/counter-defendant SFR submitted the high bid of  
3 \$6,100. Ex. A (Foreclosure Deed).

4 The Court’s original scheduling order filed April 8, 2013 set a deadline of  
5 November 19, 2013 for initial expert disclosures and a deadline of December 19, 2013  
6 for rebuttal expert disclosures. A stipulation and order filed April 21, 2015 extended  
7 the initial expert deadline to October 13, 2015 and extended the rebuttal expert  
8 deadline to November 12, 2015.

9 Chase retained an appraiser named Scott Dugan who appraised the Property’s  
10 fair market value as \$82,000 on the date of the HOA Sale. Chase disclosed Dugan as  
11 an initial expert witness in a report served October 13, 2015 (the “Dugan Report”).  
12 See Ex. B. SFR did not disclose any appraisers or other experts by the initial expert  
13 deadline of October 13. Instead, it served a report on November 12, 2015 in which it  
14 disclosed an appraiser named Michael Brunson as a purported rebuttal expert (the  
15 “Brunson Report”). See Ex. C. On June 2, 2016, SFR served a purported supplement  
16 to Brunson’s rebuttal expert disclosure. See Ex. D.

17 To the extent the Brunson Report responds to the Dugan Report, Brunson  
18 supplies three main arguments. First, he criticizes the Dugan Report for appraising  
19 the Property’s fair market value using prices for comparable properties sold at short  
20 sales and bank sales. See Ex. C at 17-21. Second, Brunson argues (against Nevada  
21 Supreme Court precedent) that it is inappropriate to conduct a fair market value  
22 appraisal of the Property because fair market value is the amount a willing buyer  
23 would pay a willing seller for the Property. See id. at 22-23. According to Brunson,  
24 fair market value cannot be used to judge the price obtained at an HOA foreclosure  
25 because the foreclosure was an involuntary sale. Third, and relatedly, Brunson  
26 supplies a legal conclusion that fair market value is not an appropriate measure of  
27 the Property’s value because the Las Vegas real estate market as a whole was  
28 distressed at the time of the HOA Sale. See id. at 24-26.

1        Aside from supplying these opinions, the Brunson Report goes on to provide an  
2        “Independent Opinion of Value,” to use Brunson’s term. Id. at 28. This section of  
3        Brunson’s report reiterates his argument that fair market value is an inappropriate  
4        method for determining the Property’s value. See id. at 28-29. Brunson then  
5        purports to appraise the Property’s “disposition value.” See id. at 29-30. He does so  
6        by examining the prices paid for allegedly similar properties sold at HOA foreclosure  
7        sales between February 2011 and September 2012. See id. at 34. According to  
8        Brunson, each of these properties sold for between 5.3% and 9.0% of its assessed tax  
9        value. See id. Brunson then notes that the \$6,100 price in this case was 7.9% of the  
10       Property’s tax value. See id. Brunson concludes that the subject Property’s value on  
11       the day of the HOA Sale was \$6,100—the same amount that SFR bid—since this  
12       amount was consistent with the price obtained for similar HOA-foreclosed properties.  
13       See id. at 35.

### 14       **III.    LEGAL STANDARD**

#### 15       **A.       Expert testimony must be relevant in order to be admitted.**

16       Expert testimony is relevant if it has “any tendency to make the existence of  
17       any fact that is of consequence to the determination of the action more or less  
18       probable than it would be without the evidence.” N.R.S. 48.015. “Evidence which is  
19       not relevant is not admissible.” N.R.S. 48.025(2). Therefore, expert testimony  
20       involving facts or issues that are not of consequence in deciding a case must be  
21       excluded. See Hallmark v. Eldridge, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008)  
22       (“An expert’s testimony will assist the trier of fact only when it is relevant...”); see  
23       also N.R.S. 50.275 (expert testimony can only be admitted if it “will assist the trier of  
24       fact to understand the evidence or to determine a fact in issue...”). Even if expert  
25       testimony is both relevant and helpful to the trier of fact, a court may still exclude  
26       the testimony if “its probative value is substantially outweighed by the danger of  
27       unfair prejudice, of confusion of the issues or of misleading the jury.” N.R.S.  
28       48.035(1).

**B. A rebuttal expert is limited to rebutting an initial expert's testimony.**

By rule, "initial" or "case-in-chief" experts generally must be disclosed at least 90 days before the close of discovery. N.R.C.P. 16.1(a)(2)(C)(i). Rebuttal experts generally must be disclosed within 30 days after initial experts. N.R.C.P. 16.1(a)(2)(C)(ii). Further, rebuttal testimony can only be used "to contradict or rebut evidence on the same subject matter identified by another party..." Id. "[R]ebuttal experts cannot put forth their own theories; they must restrict their testimony to attacking the theories offered by the adversary's experts." R&O Constr. Co. v. Rox Pro Int'l Grp., Ltd., No. 2:09-cv-01749-LRH-LRL, 2011 U.S. Dist. LEXIS 78032, at \*8 (D. Nev. July 18, 2011) (citation omitted). "The function of rebuttal testimony is to explain, repel, counteract or disprove evidence of the adverse party and is limited to new, unforeseen facts brought out in the other side's case." Id. at \*5. (citation omitted). "If the purpose of expert testimony is to contradict an expected and anticipated portion of the other party's case-in-chief, then the witness is not a rebuttal witness or anything analogous to one." Amos v. Makita U.S.A., Inc., No. 2:09-cv-01304-GMN-RJJ, 2011 U.S. Dist. LEXIS 158103, at \*4 (D. Nev. Jan. 6, 2011) (citation omitted).

"Where a party attempts to designate as a 'rebuttal' expert someone whose proposed testimony is beyond the scope of appropriate rebuttal, that witness may be viewed as an initial expert who was not timely designated..." Blake v. Securitas Sec. Servs., 292 F.R.D. 15, 18 (D.D.C. 2013); accord Calvert v. Ellis, No. 2:13-cv-00464-APG-NJK, 2014 U.S. Dist. LEXIS 110624, at \*9 (D. Nev. Aug. 8, 2014) (rebuttal witness was improper where his report did not "address any of the opinions offered by Plaintiff's experts" and did not limit itself to "facts which were unforeseen at the time of the deadline for initial expert disclosures"); In re City of New York, 23 Misc. 3d 1134(A), 1134A, 889 N.Y.S.2d 504, 504 (N.Y. Sup. Ct. 2009) (excluding appraiser's rebuttal report, which was based on facts previously known to disclosing party, and

1 which did “nothing more than offer a new theory upon which to value the property.”).  
2 If a party fails to reasonably comply with its obligation to disclose an expert witness,  
3 the court may prohibit the use of the witness. N.R.C.P. 16.1(e)(3)(B).

4 **C. Expert testimony must satisfy the reliability standards of Higgs and**  
5 **Hallmark.**

6 N.R.S. 50.275 provides that “[i]f scientific, technical or other specialized  
7 knowledge will assist the trier of fact to understand the evidence or to determine a  
8 fact in issue, a witness qualified as an expert by special knowledge, skill, experience,  
9 training or education may testify to matters within the scope of such knowledge.”  
10 NRS 50.275 “provides general guidance and allows the trial judge discretion in  
11 deciding what factors are to be considered on a case-by-case basis.” Higgs v. State,  
12 126 Nev. 1, 18, 222 P.3d 648, 659 (2010). Expert testimony is not admissible, and a  
13 court should prevent an expert from testifying, where the expert’s opinion is based on  
14 “assumption, speculation, and conjecture having no support in the record.” Gordon  
15 v. Hurtado, 91 Nev. 641, 643, 541 P.2d 533, 534 (1975).

16 In assessing the reliability of expert testimony, a district court should consider  
17 whether the proffered testimony is “(1) within a recognized field of expertise; (2)  
18 testable and has been tested; (3) published and subjected to peer review; (4) generally  
19 accepted in the scientific community (not always determinative); and (5) based more  
20 on particularized facts rather than assumption, conjecture, or generalization.” Higgs,  
21 126 Nev. at 19, 222 P.3d at 660 (quoting Hallmark v. Eldridge, 124 Nev. 492, 500-01,  
22 189 P.3d 646, 651-52 (2008)). “If the expert formed his or her opinion based upon the  
23 results of a technique, experiment, or calculation, then a district court should also  
24 consider whether (1) the technique, experiment, or calculation was controlled by  
25 known standards; (2) the testing conditions were similar to the conditions at the time  
26 of the incident; (3) the technique, experiment, or calculation had a known error rate;  
27 and (4) it was developed by the proffered expert for purposes of the present dispute.”  
28 Hallmark, 124 Nev. at 501-02, 189 P.3d at 652. “[T]hese factors are not exhaustive,

1 may be accorded varying weights, and may not apply equally in every case.” Id., 124  
2 Nev. at 502, 189 P.3d at 652.

3 **IV. ARGUMENT**

4 **A. Brunson’s opinion of the Property’s forced sale value is irrelevant under**  
5 **governing Nevada law.**

6 **1. SFR argues the trier of fact should evaluate the price using forced**  
7 **sale value, whereas the Nevada Supreme Court has established**  
8 **fair market value as the proper measure.**

9 The first issue before the Court is whether Brunson’s expert testimony is  
10 relevant to any issue that is of consequence in deciding the case. See N.R.S. 48.015.  
11 More specifically, the Court must decide whether Nevada law requires the finder of  
12 fact in this case to use fair market value (it does) or Brunson’s forced sale value to  
13 judge the price obtained at the HOA Sale. Nevada law requires the Court to employ  
14 fair market value for this analysis. Thus, Brunson’s opinion (which rejects fair  
15 market value and employs a different valuation method) is irrelevant and  
16 inadmissible.

17 When real property is sold at a foreclosure sale, the price obtained is usually  
18 less than the property’s fair market value. That is why the Restatement of Property  
19 (“Restatement”) has catalogued the legal principle that, to determine the sufficiency  
20 of the price garnered at the foreclosure sale, that value must be compared to another  
21 value—the market value, which is the amount a willing buyer would pay a willing  
22 seller under normal circumstances. As explained below, this is the approach taken by  
23 the Restatement and by the Nevada Supreme Court. To account for the fact that the  
24 property is being sold at foreclosure, the Restatement only requires that the sale  
25 price be no less than 20% of the property’s fair market value. Restatement § 8.3(a) &  
26 cmt b. However, if the price is less than 20% of fair market value, the price is  
27 considered “grossly inadequate” and a court may invalidate the sale. Chase will refer  
28 to this legal comparison as the “fair market value” approach. Id.

1 Contrary to controlling precedent, SFR would have this Court compare the  
2 price obtained at the foreclosure sale to the price obtained at similar HOA foreclosure  
3 sales of similar properties. To bolster its approach, SFR's rebuttal expert opines that  
4 if the price obtained at the HOA foreclosure sale is comparable to the price obtained  
5 at similar foreclosure sales of similar properties, then the price should be considered  
6 adequate. Chase will refer to this methodology as the "forced sale value" approach.

7 **2. The issue of whether to use fair market value or forced sale value**  
8 **is governed by substantive Nevada law, not expert opinions.**

9 As an initial matter, it is important to emphasize that substantive Nevada law  
10 governs the question of whether the finder of fact should employ forced sale value or  
11 fair market value. This predicate legal question is, in reality, answered by  
12 substantive Nevada law—not by Brunson's opinion. See Aguilar v. Int'l  
13 Longshoremen's Union Local No. 10, 966 F.2d 443, 447 (9th Cir. 1992) (opinions of  
14 "matters of law" generally inappropriate); United States v. Poschwatta, 829 F.2d  
15 1477, 1483 (9th Cir. 1987) ("The court acts as the jury's sole source of the law.");  
16 Weinstein's Federal Evidence § 704.04 (2015) ("An expert's statements may not  
17 invade the province of the court to determine the applicable law and to instruct the  
18 jury as to that law"). Brunson's opinion as to which metric the finder of fact should  
19 use to evaluate the price is simply an off topic legal argument.

20 **3. Nevada law requires the finder of fact to use the Property's fair**  
21 **market value, rather than its forced sale value, to determine if**  
22 **the price was adequate.**

23 The Nevada Supreme Court recently decided this issue in Shadow Wood  
24 Homeowners Ass'n v. New York Cmty. Bancorp, Inc., 132 Nev. Adv. Rep. 5, 366 P.3d  
25 1105 (2016). In Shadow Wood, a mortgage lender challenged the validity of an HOA  
26 foreclosure sale because, among other reasons, the property sold for only \$11,018.  
27 366 P.3d at 1112-13. The Nevada Supreme Court explicitly followed the fair market  
28 value approach when it evaluated the price. Rather than compare the sale price of  
\$11,018 to the prices obtained at similar HOA foreclosure sales, the Supreme Court

1 compared the price to the subject property's fair market value. It relied on two  
2 measurements of the property's fair market value: the price obtained at an earlier  
3 trustee's sale of the same property, id. at 1112, and an market-value appraisal of the  
4 property from the district court record, id. at 1113 n.3. Citing the Restatement, the  
5 Supreme Court held that the price was not "grossly inadequate as a matter of law"  
6 because it was greater than 20% of the price obtained at the prior trustee's sale and  
7 also greater than 20% of the fair market value listed in the appraisal. Id. at 1112 &  
8 1113 n.3. Therefore, under Shadow Wood, a court must utilize the subject property's  
9 fair market value when deciding if the price obtained at the HOA sale was adequate.

10 Indeed, the Restatement—which the Supreme Court followed in Shadow  
11 Wood—expressly requires a court to use fair market value:

12 The standard by which "gross inadequacy" is measured is  
13 the fair market value of the real estate. For this purpose  
14 the latter means, not the fair "forced sale" value of the real  
15 estate, but the price which would result from negotiation  
16 and mutual agreement, after ample time to find a  
purchaser, between a vendor who is willing, but not  
compelled to sell, and a purchaser who is willing to buy, but  
not compelled to take a particular piece of real estate.

17 Restatement § 8.3 cmt. b.

18 Even before Shadow Wood, Nevada courts used fair market value to judge the  
19 price obtained at a foreclosure sale. See Golden v. Tomiyasu, 79 Nev. 503, 505, 387  
20 P.2d 989, 990 (1963) (assessing price obtained at trustee's sale by comparing it to  
21 property's "market value" of \$200,000); see also Branch Banking & Tr. Co. v.  
22 Pahrump 194, No. 2:12-cv-1462-JCM-VCF, 2015 U.S. Dist. LEXIS 176239, at \*7 (D.  
23 Nev. Dec. 15, 2015) ("[T]he sale price is not necessarily an indication of a property's  
24 fair market value.") (citing Halfon v. Title Ins. & Trust Co., 97 Nev. 421, 634 P.2d  
25 660, 661 (1981)); Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247, 249 (1980) ("Fair  
26 market value is generally defined as the price which a purchaser, willing but not  
27 obliged to buy, would pay an owner willing but not obliged to sell, taking into  
28

1 consideration all the uses to which the property is adapted and might in reason be  
2 applied.”).

3 The fair market value approach is also overwhelmingly followed in other  
4 jurisdictions. See, e.g., Baskurt v. Beal, 101 P.3d 1041, 1044 (Alaska 2004) (“Courts  
5 determine adequacy of price by comparing the fair market value to the purchase  
6 price of the property at the foreclosure sale.”); Krohn v. Sweetheart Props, LTD (In re  
7 Krohn), 203 Ariz. 205, 212, 52 P.3d 774, 781 (2002) (adopting Restatement approach  
8 and comparing price to fair market value); Fairhaven Sav. Bank v. Callahan, 391  
9 Mass. 1011, 1012, 462 N.E.2d 112, 114 (1984) (“The standard applied in  
10 circumstances such as this is whether the purchase price at foreclosure as compared  
11 with the market value was so grossly inadequate as to invalidate the sale.”); Am. Jur.  
12 2d Mortgages § 541 (“Gross inadequacy of the price at a foreclosure sale is measured  
13 by reference to the fair market value of the property at the time of the sale”).  
14 Accordingly, the fact finder in this case must evaluate the \$6,100 price by comparing  
15 it to the Property’s fair market value, not the Property’s forced sale value.

16 **4. Since Nevada law utilizes fair market value, Brunson’s opinion of**  
17 **the Property’s forced sale value is irrelevant and likely to confuse**  
18 **the issues.**

19 Nevada law compares the price obtained at an HOA foreclosure sale with the  
20 property’s fair market value. SFR’s argument that the finder of fact should evaluate  
21 the price using forced sale value finds no support in Nevada law, the Restatement, or  
22 the law of other jurisdictions. Brunson’s report, which estimates the Property’s  
23 forced sale value, is therefore irrelevant. For the same reason, Brunson’s report is  
24 not helpful to the trier of fact, and if allowed into evidence, will likely confuse the  
25 issues of what is and is not a fair market value. Accordingly, Brunson must be  
26 excluded from testifying. See N.R.S. 48.025(2), 48.035(1), & 50.275.

27 **B. Brunson’s report exceeds the permissible scope of rebuttal expert**  
28 **testimony.**



1 Even if the Court believes that Brunson's testimony is relevant, it should still  
2 be excluded because it exceeds the permissible scope of rebuttal expert testimony.  
3 Rebuttal testimony may be used "solely to contradict or rebut evidence on the same  
4 subject matter identified by another party..." N.R.C.P. 16.1(a)(2)(C)(ii). Further, "[i]f  
5 the purpose of expert testimony is to contradict an expected and anticipated portion  
6 of the other party's case-in-chief, then the witness is not a rebuttal witness or  
7 anything analogous to one." Amos, 2011 U.S. Dist. LEXIS 158103 at \*4. "Where a  
8 party attempts to designate as a 'rebuttal' expert someone whose proposed testimony  
9 is beyond the scope of appropriate rebuttal, that witness may be viewed as an initial  
10 expert who was not timely designated and whose testimony may be struck by the  
11 Court...." Blake, 292 F.R.D. at 18.

12 In this case, SFR was well-aware of the price-related issues surrounding HOA  
13 foreclosure sales when it retained and disclosed Brunson. SFR has participated in  
14 hundreds of other lawsuits involving HOA foreclosure sales and is fully acquainted  
15 with the price-related issues surrounding such sales. Further, when SFR filed a  
16 quiet title complaint against Chase in which it argued that the HOA Sale  
17 extinguished Chase's deed of trust, SFR necessarily brought any defects related to  
18 the sale into issue. These defects included the grossly inadequate price which SFR  
19 paid for the Property. Since this was an expected and anticipated issue in the case,  
20 SFR was required to disclose any expert on the issue as an initial expert. See Amos,  
21 2011 U.S. Dist. LEXIS 158103 at \*4.

22 However, even if SFR had been completely unaware of the price issue, the  
23 Brunson Report would still be inappropriate. As noted above, rebuttal experts  
24 cannot offer their own theories or analysis; they must limit themselves to responding  
25 to an initial expert's opinion. Here, Brunson criticizes Dugan for appraising the  
26 Property's fair market value, rather than its forced sale value. However, he goes  
27 much further by providing his own "Independent Opinion of Value." This  
28 independent analysis is the domain of initial experts, not rebuttal experts. See R&O

1 Constr., 2011 U.S. Dist. LEXIS 78032 at \*8. SFR is not using the Brunson Report  
2 “solely to contradict or rebut evidence on the same subject matter identified by  
3 another party...” N.R.C.P. 16.1(a)(2)(C)(ii).

4 Accordingly, even if Brunson’s analysis were relevant to this case and were not  
5 confusing, it would still not be admissible. SFR was required by N.R.C.P. 16.1 to  
6 disclose any experts on the issue of price by the initial expert deadline, which it did  
7 not do. Further, N.R.C.P. 16.1 required Brunson to limit his opinions to rebuttals of  
8 the Dugan Report, which he did not do. Accordingly, Brunson’s testimony must be  
9 excluded.

10 **C. Brunson’s report does not meet the reliability standard of Higgs and**  
11 **Hallmark.**

12 Finally, Brunson’s testimony should also be excluded because it does not meet  
13 the reliability imposed by Nevada law. A court assessing the reliability of expert  
14 testimony should consider whether the testimony is “(1) within a recognized field of  
15 expertise; (2) testable and has been tested; (3) published and subjected to peer  
16 review; (4) generally accepted in the scientific community (not always determinative);  
17 and (5) based more on particularized facts rather than assumption, conjecture, or  
18 generalization.” Higgs, 126 Nev. at 19, 222 P.3d at 660.

19 Although Brunson prepared his report within his field of expertise, i.e., real  
20 estate appraisal, the other four Higgs factors weigh against admitting his testimony.  
21 As explained above, Brunson estimates the “value” of HOA-foreclosed properties  
22 using the prices obtained at HOA foreclosures of purportedly similar properties.  
23 Brunson offers no evidence that this method is testable, has been tested, has been  
24 published, has been subjected to peer review, or is generally accepted within the  
25 appraisal profession. Rather, it appears that Brunson invented his technique for  
26 valuing HOA-foreclosed properties at the behest of purchasers such as SFR who  
27 retained him for litigation purposes. See Hallmark, 124 Nev. at 502, 189 P.3d at 652  
28 (court should consider whether technique “was developed by the proffered expert for

1 purposes of the present dispute.”); see also Daubert v. Merrell Dow Pharms., 43 F.3d  
2 1311, 1317 (9th Cir. 1995) (“One very significant fact to be considered is whether the  
3 experts are proposing to testify about matters growing naturally and directly out of  
4 research they have conducted independent of the litigation, or whether they have  
5 developed their opinions expressly for purposes of testifying.”).

6 Further, Brunson’s technique is based on conjecture and generalization.  
7 Chase is aware of 16 other lawsuits in which Brunson has appraised the value of  
8 HOA-foreclosed properties, and in 15 of them, Brunson opined that the property’s  
9 value was the same amount for which the property sold. See Ex. E; see also Fed. R.  
10 Evid. 702, 2000 Adv. Cmte. Note (court should consider “whether the expert’s theory  
11 can be challenged in some objective sense, or whether it is instead simply a  
12 subjective, conclusory approach that cannot reasonably be assessed for reliability...”).  
13 In all of these cases, Brunson started with the premise that the HOA sale price was  
14 adequate, then worked backward to invent an appraisal methodology that would  
15 validate his premise. Accordingly, his testimony does not meet the reliability  
16 standards of Higgs and Hallmark and it must be excluded.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Chase respectfully requests that the Court exclude  
19 Michael Brunson’s report and testimony.

20 Dated: July 8, 2016.

21 BALLARD SPAHR LLP

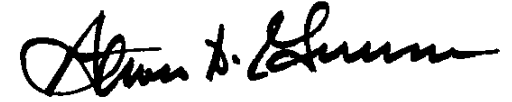
22 By: /s/ Lindsay Demaree  
23 Abran E. Vigil  
24 Nevada Bar No. 7548  
25 Lindsay Demaree  
26 Nevada Bar No. 11949  
27 BALLARD SPAHR LLP  
28 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
*Attorneys for Defendants JPMorgan Chase  
Bank, N.A., as successor by merger to  
Chase Home Finance LLC and California  
Reconveyance Company*

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5, I hereby certify that on the 8<sup>th</sup> day of July, 2016, an electronic copy of the MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON was served on the following counsel of record via the Court's electronic service system:

DIANA S. CLINE  
JACQUELINE A. GILBERT  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool, LLC*

/s/ Mary Kay Carlton  
An employee of BALLARD SPAHR LLP



CLERK OF THE COURT

1 APEN  
Abran E. Vigil  
2 Nevada Bar No. 7548  
Lindsay Demaree  
3 Nevada Bar No. 11949  
Holly Ann Priest  
4 Nevada Bar No. 13226  
BALLARD SPAHR LLP  
5 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
6 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
7 E-Mail: vigila@ballardspahr.com  
E-Mail: demareel@ballardspahr.com  
8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Defendant and Counterclaimant*  
10 *JPMorgan Chase Bank, N.A., as successor by*  
*merger to Chase Home Finance LLC*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

15 Plaintiff,

16 v.

17 VENTA REALTY GROUP, a Nevada  
corporation, JP Morgan Chase Bank, NA, a  
18 National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
19 limited liability corporation, NATIONAL  
DEFAULT SERVICING CORPORATION, an  
20 Arizona corporation, CALIFORNIA  
CONVEYANCE COMPANY, a California  
21 corporation, REPUBLIC SILVER STATE  
DISPOSAL, INC., a Nevada Corporation,  
22 PARADISE COURT HOMEOWNERS  
ASSOCIATION, a Nevada non-profit  
23 corporation and DELANIE L. HARNED, an  
individual, DOES I through X, ROE  
24 CORPORATIONS I through X, inclusive,

25 Defendants.

CASE NO. A-12-672963-C

DEPT NO. 27

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

JPMORGAN CHASE BANK, N.A., as successor  
by merger to Chase Home Finance LLC,  
  
Counter-Claimant,  
  
vs.  
  
SFR INVESTMENTS POOL 1, LLC a Nevada  
Limited liability company  
  
Counter-Defendant.

**APPENDIX OF EXHIBITS TO DEFENDANT JPMORGAN CHASE BANK'S  
MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON**

Tab	Document	Document No.
A	Foreclosure Deed, Clark County, Recorded as Instrument No. 201209250001230	001-004
B	Defendant's Designation of Initial Expert Witness served October 13, 2014	005-040
C	SFR's Rebuttal Expert Disclosure served November 12, 2015	041-087
D	SFR's Supplemental Rebuttal Expert Disclosure served June 2, 2016	088-092
E	Brunson Supplemental Reports	093-628
F	Declaration of Lindsay Demaree in support of JPMorgan Chase Bank, N.A.'s Motion to Exclude Testimony of Michael Brunson	629-632

DATED this 8<sup>th</sup> day of July, 2016.

BALLARD SPAHR LLP

By: /s/ Lindsay Demaree

Abran E. Vigil  
Lindsay Demaree  
Holly Ann Priest  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

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

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, I hereby certify that on the 1<sup>st</sup> day of July, 2016, an electronic copy of the APPENDIX OF EXHIBITS TO DEFENDANT JPMORGAN CHASE BANK'S MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON was served on the following counsel of record via the Court's electronic service system:

HOWARD C. KIM  
DIANA S. CLINE  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

/s/Mary Kay Carlton  
An employee of BALLARD SPAHR LLP

# EXHIBIT C

# EXHIBIT C



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

DIANA S. CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: [diana@hkimlaw.com](mailto:diana@hkimlaw.com)  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: [jackie@hkimlaw.com](mailto:jackie@hkimlaw.com)  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: [karen@hkimlaw.com](mailto:karen@hkimlaw.com)  
HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Case No. A-12-672963-C

Plaintiff,

Dept. No. 27

vs.

VENTA REALTY GROUP, a Nevada  
corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

**SFR INVESTMENTS POOL 1, LLC'S  
REBUTTAL EXPERT DISCLOSURE**

Defendants.

SFR Investments Pool 1, LLC ("SFR"), by and through its counsel of record, Howard Kim  
& Associates, hereby designates the following rebuttal expert witness in the above-entitled matter  
as follows:

1. Michael L. Brunson, MNAA  
Brunson Jiu, LLC  
10161 Park Run Drive, #150  
Las Vegas, Nevada 89145  
702-641-5657

Mr. Brunson is a Nevada certified residential appraiser and AQB certified USPAP Instructor. He is expected to provide testimony regarding rebuttal opinions to Scott Dugan's initial expert report.

A true and correct copy of the rebuttal expert report is attached hereto as **Exhibit 1**. The expert report contains Mr. Brunson's curriculum vitae, fee schedule, and index of cases and published materials. SFR reserves the right to supplement this disclosure as allowed by the Nevada Rules of Civil Procedure.

DATED this 12<sup>th</sup> day of November, 2015.

**HOWARD KIM & ASSOCIATES**

/s/ Karen L. Hanks

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

*Attorneys for SFR Investments Pool 1, LLC*

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of November, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing SFR INVESTMENTS POOL 1, LLC'S REBUTTAL EXPERT DISCLOSURE, to the following parties:

<b>Ballard Spahr LLP</b>		
	<b>Contact</b>	<b>Email</b>
	Abran E. Vigil	vigila@ballardspahr.com
	Holly Ann Priest	priesth@ballardspahr.com
	Lindsay Demaree	demareel@ballardspahr.com

/s/ Karen L. Hanks

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# EXHIBIT 1



November 12, 2015

SFR Investments Pool 1, LLC,  
Represented by attorneys Karen L. Hanks, Jacqueline A. Gilbert and Diana S. Cline  
Howard Kim & Associates  
1055 Whitney Ranch Dr., Suite 110  
Henderson, NV 89014

*RE: SFR Investments Pool 1, LLC v Venta Realty Group, et al (Case #A-12-672963-C)*

Dear Misses Hanks, Gilbert, and Cline:

Per your request, I have examined the expert appraisal report completed by Mr. R. Scott Dugan and Patrick K. Egger of R. Scott Dugan Appraisal Company, Inc. (Dugan/Egger report or Dugan/Egger appraisal). The Dugan/Egger report is a retrospective, market value appraisal of the fee simple interest of the subject as of September 21, 2012. Communication is via a general-purpose residential form with numerous narrative and graphic addenda. The Dugan/Egger report contains 30 pages in total; includes development of the sales comparison approach, utilizing six comparable sales; and a signing date of October 6, 2015.

Federal law and/or state law requires professional appraisers to comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect as of the signing date of their work. The USPAP require specific professional ethics, disclosure, and performance when an appraiser is engaged to perform a service requiring his or her appraisal expertise. The USPAP are promulgated by the Appraisal Foundation and are the recognized measure of professional due diligence for all licensed or certified appraisers.

This assignment falls under the category of Appraisal Review as defined by the USPAP. It complies with the current edition of that document. This is a desktop assignment. All opinions, conclusions, and analysis are developed and communicated without advocacy or bias. They are communicated in a manner that is meaningful and not misleading within the context of the intended use, intended users, and scope of work for this assignment.

*It is assumed under an Extraordinary Assumption that the factual data presented in the Dugan/Egger report is accurate. The independent opinion of value is based on the assumption that the subject was in average condition as of the retrospective effective date. **Use of these assumptions is reasonable but may have affected the assignment results.*** In the case of conflicting data, additional research will be conducted (if necessary) to determine which information is most reliable in order to allow my report to arrive at credible assignment results.

*Brunson-Jiu, LLC  
10161 Park Run Drive #150, Las Vegas, NV 89145  
702-641-5657 Phone 702-939-9080 Fax  
www.brunson-jiu.com*

The client for this assignment is SFR Investments Pool 1, LLC. The Intended Use is for litigation in the case noted above. Intended Users include the Client represented by Howard Kim & Associates. The Scope of Work for my assignment includes an appraisal review (as defined) of the Dugan/Egger report and an independent opinion of the retrospective disposition value. My review emphasizes compliance with the USPAP and generally accepted appraisal methodology. I have examined the techniques and methodology of the Dugan/Egger appraisal in order to determine the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work.

The accompanying appraisal review report complies with USPAP Standards Rules 3-4, 3-5 and 3-6. It contains statements and summary discussions of the data, reasoning, and analyses that used in the process of developing my opinions. Supporting documentation concerning the data, reasoning, and analyses is in my work file. The depth of discussion within this report is specific to the client and intended use stated below. Neither I, nor Brunson-Jiu, LLC is responsible for unauthorized use of this review.

#### **Conclusions – Dugan/Egger Expert Appraisal Report**

The appraisal completed by Dugan/Egger ignores central facts of the case. The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to demonstrate the use of generally recognized appraisal methodology. These errors of omission and commission cause the overall appraisal to lack credibility and the appraisal report to be misleading.

#### **Conclusions – Independent Opinion of Value**

HOA foreclosure properties have limitations on their bundle of rights. These limitations preclude the use of traditional owner-equity sales, and limit the use of traditional foreclosure sales in an analysis of value. Similar HOA foreclosure sales and consideration of “current” market conditions provide the best measure of value for this type of transaction.

As an HOA foreclosure property, affected by a Class II detrimental condition, the impaired, fee simple, disposition value as of September 21, 2012 was:

**\$6,000**

**Seven Thousand Dollars (rounded)**

Specific findings in support of these conclusions appear in the individual sections of the report that follows this letter. Readers of this report should refer to appropriate versions of the USPAP or relevant cited documents for proper understanding of this appraisal review report. I invite your attention to the accompanying report, from which the above opinions were derived.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Dugan/Egger report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Respectfully submitted,



Michael L. Brunson, SRA, MNAA  
AQB Certified USPAP Instructor  
Nevada Certified General Appraiser #A.0207222-CG  
November 12, 2015

**Assumptions and Limiting Conditions**

The submitted report is subject to underlying assumptions and limiting conditions qualifying the information it contains as follows:

1. Possession of this review or copy thereof does not carry with it the right of publication.
2. The purpose of the assignment is to review the appropriateness of the conclusions and the compliance with the USPAP determined within the submitted report.
3. This review is intended solely for the use of the identified Client and Intended User(s). Neither all nor any part of the contents of this review shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent of the reviewer.
4. Unless stated otherwise in the review, the analyses, opinions, and conclusions in this review are based solely on the data, analyses, and conclusions contained in the appraisal report, appraisal review report, and/or the workfile under review.
5. All analyses, opinions, and conclusions expressed by the reviewer are limited by the scope of the review process as defined herein.
6. The conclusions apply only to the property specifically identified and described herein and in the reviewed, appraisal review reports, appraisal reports, and/or associated workfiles.
7. The reviewer has made no legal survey, nor has he commissioned one to be prepared; therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
8. No responsibility is assumed for legal matters existing or pending outside of the existing case.
9. Disclosure of the contents of this review is governed by the Nevada Commission of Appraisers and the USPAP.
10. The compensation received for this assignment is in no manner contingent upon the conclusion of the review.
11. Reviewer Competency: Michael L. Brunson is an AQB Certified USPAP Instructor and is fully competent regarding the proper interpretation and application of the USPAP. He is also a Certified General Appraiser in Nevada and has the geographic competency to appraise the subject and similar properties within the Southern Nevada area.



**Appraiser Certification**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the properties that are the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no other services, as an appraiser or in any other capacity, regarding the properties that are the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the properties that are the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made no inspection of the subject of the work under review.
- No one provided significant professional appraisal review assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



Michael L. Brunson, SRA, MNAA  
AQB Certified USPAP Instructor  
NV Certified General Appraiser # A.0207222-CG  
November 12, 2015

**DEFINITIONS**

For the purpose of this report, the following definitions apply:

**Appraisal**<sup>1</sup>

(noun) The act or process of developing an opinion of value; an opinion of value.  
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

**Appraisal Review**<sup>2</sup>

The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

**Assumption**<sup>3</sup>

That which is taken to be true.

**Class II Detrimental Condition – Transactional Conditions**<sup>4</sup>

Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays more than necessary to acquire a property or a seller disposes of a property at a discount.

**Detrimental Condition**<sup>5</sup>

Any issue or condition that may cause a diminution in value to real estate.

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<sup>1</sup> USPAP 2014-2015 Edition, The Appraisal Foundation.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Randall Bell; with Orell C. Anderson, Michael V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions, 2nd ed. (Chicago: Appraisal Institute, 2008), p. 62

<sup>5</sup> Ibid, p. 374.

Disposition Value<sup>6</sup>

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Extraordinary Assumption<sup>7</sup>

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Fee Simple Estate<sup>8</sup>

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

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<sup>6</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

<sup>7</sup> USPAP 2014-2015 Edition, The Appraisal Foundation.

<sup>8</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Highest and Best Use<sup>9</sup>

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

Hypothetical Condition<sup>10</sup>

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value<sup>11</sup>

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

Liquidation Value<sup>12</sup>

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a short time period.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under extreme compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. A normal marketing effort is not possible due to the brief exposure time.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

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<sup>9</sup> Ibid.

<sup>10</sup> USPAP 2014-2015 Edition, The Appraisal Foundation.

<sup>11</sup> Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 378.

<sup>12</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Market Area<sup>13</sup>

The area associated with a subject property that contains its direct competition.

Market Value<sup>14</sup>

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Neighborhood<sup>15</sup>

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.

Sales Comparison Approach<sup>16</sup>

The process of deriving a value indication for the subject property by comparing market information for similar properties with the property being appraised, identifying appropriate units of comparison and making qualitative comparisons with or quantitative adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.

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<sup>13</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

<sup>14</sup> Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), [Pub. L. No. 101-73 103 Stat. 183 (1989)], 12 U.S.C. 3310, 3331-3351, and Section 5 (b) of the Bank Holding Company Act, 12 U.S.C. 1844 (b); Part 225, Subpart G: Appraisals; Paragraph 225.62(f).

<sup>15</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

<sup>16</sup> Ibid.

Unimpaired Value<sup>17</sup>

The value as if no detrimental condition exists.

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<sup>17</sup> Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 385

## **Appraisal Review**

### **INTRODUCTION**

**File No.:** 1511.2355

**Client:**

SFR Investment Pool 1, LLC. Engaged by Howard Kim & Associates.

**Review Appraiser:**

Michael L. Brunson, SRA, MNAA  
AQB Certified USPAP Instructor  
Nevada Certified General Appraiser #A.0207222-CG  
*Brunson-Jiu, LLC*

**Intended User(s):**

Client only. Use of this report by others is not intended. Parties to this litigation other than the Client might be granted access to the report and related workfile. However, as noted in Statement 9 of the USPAP,

*Parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser's client do not become intended users of the report unless they were specifically identified by the appraiser at the time of the assignment.*

**Intended Use:**

Litigation in the matter of SFR Investments Pool 1, LLC v Venta Realty Group, et al (Case #A-12-672963-C). This report is not intended for any other use or in any other case.

**Appraisers Who Completed the Work under Review:**

R. Scott Dugan (Dugan), Nevada Certified General Appraiser #A.0000166-CG  
Patrick K. Egger (Egger), Nevada Certified General Appraiser #A.0000154-CG

**Identification of the Work under Review:**

The Dugan/Egger report is a general-purpose form report that includes 30 pages (Bates: Chase-CRC-Expert\_0238 – 0267). It is a retrospective appraisal with an effective date of September 21, 2012 and a signed date of October 6, 2015.

Subject Property Address:	1076 Slate Crossing Lane #2 Henderson, Nevada 89002
APN:	179-34-713-236
Location:	Southeast – Paradise Court
Property Type:	Single-family residential townhome
Owner of Record:	Harned, Delaine L. (Current: SFR Investment Pool 1, LLC.)
Interest Appraised:	Fee Simple.

**Purpose and Scope of Assignment:**

The purpose of this assignment is to develop a credible and reliable opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review. This opinion is developed in the context of compliance with the USPAP and generally accepted appraisal methodology. An independent value opinion is part of the scope of this assignment. The following scope of work was developed in accordance with the objective of the assignment and in compliance with the USPAP.

- Collected and analyzed pertinent background information about the subject property.
- Examined various documents provided and requested of the client.
- Examined the expert report completed by Dugan/Egger.
- Verified relevant data from the work under review with the cited source when available or other reliable source as applicable.
- Noted compliance and lack of compliance with relevant sections of the USPAP.
- Noted compliance or lack of compliance with generally accepted appraisal methodology
- Developed opinions of the quality of the work under review.
- Developed an independent opinion of retrospective value.
- Concluded to final opinions.

My Appraisal Review Report is a summary report of the data, analysis, and conclusions. Supporting documentation is retained in the work file. Future stages of the assignment may include additional valuation services, including but not limited to additional analysis, consulting, deposition, and/or testimony.



**Relevant Dates:**

Transmittal date of Dugan/Egger appraisal:	October 6, 2015
Effective date of Dugan/Egger appraisal:	September 21, 2012
Date subject viewed by Dugan/Egger:	October 5, 2015
Date subject acquired at auction:	September 21, 2012

Additional relevant dates are noted in the body of the review.

**Effective date of appraisal review:**

The effective date of this appraisal review is September 21, 2012 corresponding to the effective date of the work under review. The 2014-2015 version of the USPAP is relevant to both the Dugan/Egger appraisal and this review.

**Reviewer Competency and Professional Assistance:**

The Competency Rule of the USPAP states in part that, “Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently...” As an AQB Certified USPAP Instructor, I am competent concerning the Uniform Standards and their application. As a Certified General Appraiser, I am competent concerning the type of property and the analytical methods necessary to produce credible assignment results. My primary area of practice is Southern Nevada. I am competent concerning the geographic area and market.

**USPAP Background:**

The Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Foundation, are the recognized measure of professional due diligence for all licensed or certified appraisers. The preamble of the USPAP provides a brief overview as to the purpose and intent of the Uniform Standards, stating in part:

The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to **intended users** of their services in a manner that is **meaningful** and **not misleading**...

(Bold added for emphasis).

The following excerpt from the Preamble helps the reader understand the relevance and applicability of the specific portions of the USPAP referenced in the report that follows.

USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules, Standards, Standards Rules, and Statements.

- The DEFINITIONS establish the application of certain terminology in USPAP.
- The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity, independent judgment, and ethical conduct.
- The RECORD KEEPING RULE establishes the workfile requirements for appraisal, appraisal review, and appraisal consulting assignments.
- The COMPETENCY RULE presents pre-assignment and Assignment Conditions for knowledge and experience.
- The SCOPE OF WORK RULE presents obligations related to problem identification, research, and analyses.
- The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if a portion is contrary to law or public policy of a jurisdiction.
- The ten Standards establish the requirements for appraisal, appraisal review, and appraisal consulting service and the manner in which each is communicated.
  - STANDARDS 1 and 2 establish requirements for the development and communication of a real property appraisal.
  - STANDARD 3 establishes requirements for the development and communication of an appraisal review.
  - (Note: STANDARDS 4 and 5 have been retired)
  - STANDARD 6 establishes requirements for the development and communication of a mass appraisal.
  - STANDARDS 7 and 8 establish requirements for the development and communication of a personal property appraisal.
  - STANDARDS 9 and 10 establish requirements for the development and communication of a business or intangible asset appraisal.
- Statements on Appraisal Standards clarify, interpret, explain, or elaborate on a Rule or Standards Rule.
- Comments are an integral part of USPAP and have the same weight as the component they address. These extensions of the DEFINITIONS, Rules, and Standards Rules provide interpretation and establish the context and conditions for application.

It is important to note that the USPAP make a significant distinction between the *Development* of an appraisal or appraisal review and the *Communication* (reporting) of an appraisal or appraisal review. Standards Rule 1 (SR-1) applies to the *Development* of an appraisal of real property whereas SR-2 applies to the *Communication* of the appraisal. SR-3 is one of two Standards Rules where both development and communication are addressed in the same rule. However, the sections of SR-3 that apply to the development of an appraisal review are clearly labeled and the sections that apply to communication are clearly labeled.

This review focuses on compliance with generally accepted appraisal methodology and the USPAP – specifically the Preamble, Definitions, General Rules, Standards Rule 1, and Standards Rule 2 for the Development and Reporting of a Real Property Appraisal.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Dugan/Egger report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

The table on the following page provides a summary of the Standards Rules applicable to the Dugan/Egger appraisal and a brief summary of my findings related to each specific USPAP rule. Green cells indicate compliance. Red cells indicate a lack of compliance. Yellow cells indicate either; technical violations of USPAP that do not significantly influence the overall credibility of the appraisal; or issues that are subject to interpretation.

Appraisal Report SR-2 Review Checklist (2014-2015 USPAP)					
USPAP Reference	Item	Location	Notes	Compliance	
2-1(a)	Clear, Accurate, Not Misleading		False information. Inconsistent conclusions. Inappropriate Value. Unreasonable assumption.	N	
2-1(b)	Sufficient Information for Understanding		Failure to report relevant aspects of the case. Failure to indicate how the utilized definition applies to the problem to be solved.	N	
2-1(c)	Disclose all Assumptions & Limiting Conditions	Form, Addenda		Y	
2-2	Report Type Prominently Disclosed	Form		Y	
Identify Problem and Determine Adequate Scope of Work				Compliance	
2-2(a)(vi)	Transmittal Date	0239, 0260		Y	
	Effective Date 1-2(d)				
	Report Date				
2-2(a)(i) 1-2(a)	Client Identity	0239, 0241		Y	
2-2(a)(i); 1-2(a)	Intended User(s)	0241		Y	
2-2(a)(ii); 1-2(b)	Intended Use	0241, 0259	Statement-9	Y	
2-2(a)(iii); 1-2(e)	Legal Description or Other Property ID	0241		Y	
2-2(a)(iv); 1-2(e)(ii)	Property Interest	0241		Y	
2-2(a)(v) 1-2(c)	Type of Value	0241, 0260	Utilized definition is disclosed, but even under the assumption, is not applicable to the facts of the case.	N	
	Definition of Value	0260			
	Source of Definition	0260			
	Applicability/Application of Definition	No			
	Reasonable Exposure Time (if developed)	0243			
2-2(a)(vii) 1-2(h)	Scope of Work	0256, 0259	Proper disclosure.	Y	
Analysis and Development				Compliance	
2-2(a)(ix); 1-3(a)(b)	Use Existing, Use Appraised	0241		Y	
2-2(a)(x)	Summarize HABU (if developed)	0241		Y	
2-2(a)(xi) 1-2(f) 1-2(g)	Standard Assumptions and Limiting Conditions	0259	The assumption noted in the reconciliation is a hypothetical condition. The assumption does not result in a credible analysis and does not contain the required disclosure of the potential impact on the assignment results.	N	
	- Extraordinary Assumptions	0241, 0259			
	- Disclosure of Affect	Yes			
	- Hypothetical Conditions	0243			
	- Disclosure of Affect	No			
2-2(a)(viii)	1-4	Collect/Verify/Analyze Info for Credible Results	Assumption ignores prior recorded notices and leins that would impact a typical buyer's decision to purchase. Sales used do not meet definition of market value.	N	
	1-4	(a) Sales Comparison Approach			0242, 0244
		(b) Cost Approach			-
		(c) Income Approach			-
	1-5(a)&(b)	Sales, Contracts and Listing History			0242
1-6	Reconcile Data/Analysis and Approaches	0243		Y	
1-1(a)	Be Aware of, Understand, Correctly Employ	-	Numerous issues noted above.	Y	
1-1(b)	Substantial Error: Omission or Commission	-	Numerous issues noted above.	Y	
1-1(c)	Carelessness or Negligence		Totality of errors. Negligent performance.	Y	
Certification				Compliance	
2-2(a)(xii)	Include a Signed Certification (SR 2-3)	0260		Y	
2-3	USPAP Certification	0260		Y	
General Rules				Compliance	
ETHICS RULE	Conduct	Avoid Bias or Advocacy; Gross Negligence; Disclosure of Prior Work	-	The use of an inappropriate definition and an inappropriate assumption may be an indication of bias.	Y
	Management	Disclosure of Payment to Procure; Contingent Compensation; Proper Advertising; Signature Issues	-		
	Confidentiality	Protect Appraiser-Client Relationship	-		
RECORD KEEPING RULE		Prepare and maintain a workfile. Must exist prior to issuance of any report. Must contain name of client/intended users; true copies of all reports; summaries of oral reports; and all data, info, docs to support opinions/conclusions and show compliance with USPAP.	workfile	Unknown. Workfile not provided.	-
COMPETENCY RULE		Applies to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.		Lack of competent performance.	N
SCOPE OF WORK RULE		Problem Identification	0256, 0259	Failure to properly identify the problem. Failure to use an appropriate type/definition of value. Results are not credible in context of Intended Use.	N
		SOW Acceptability	0256, 0259		
		Disclosure	0256, 0259		
JURISDICTIONAL EXCEPTION RULE			-		N/A

*SFR Investments Pool 1, LLC v Venta Realty Group, et al*  
 1076 Slate Crossing Lane #2

**FINDINGS - Dugan/Egger Appraisal**

Finding No. 1: The Dugan/Egger appraisal lacks credibility and the report is misleading. It purports to measure market value, but does not. The analysis fails to properly apply recognized appraisal methodology and uses sales that do not qualify under the utilized type and definition of value.

**Key Observations:**

The definition of market value in the Dugan/Egger appraisal is from the Interagency Appraisal and Evaluation Guidelines (shown below for clarification).

**Market Value<sup>18</sup>**

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. *Buyer and seller are typically motivated;*
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*(Emphasis added)*

The use of non-traditional sales in a market value appraisal has been a significant topic in the appraisal community following the bursting of the housing bubble. This topic is so significant that both The Appraisal Practices Board of The Appraisal Foundation<sup>19</sup> and the Appraisal Institute<sup>20</sup> have issued advisory papers regarding the proper way to appraise in a declining market.

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<sup>18</sup> Chase-CRC-Expert\_0260.

<sup>19</sup> APB Valuation Advisory #3: Residential Appraising in a Declining Market, (The Appraisal Foundation, May 7, 2012).

<sup>20</sup> Guide Note 11, Comparable Selection in a Declining Market, (The Appraisal Institute, January 19, 2012).

Arm's-length transactions and typical buyer/seller motivation are key components of any appraisal using the Market Value definition. Yet, Dugan/Egger use five short sales and one REO with no adjustments and no proper explanation of the market conditions. Guide Note 11 states, *"When the objective of the assignment is market value, ideally each comp selected for use in the sales comparison approach should have sold under the conditions specified in the definition of market value being used. ... When the conditions of the sale do not reflect the conditions outlined in the market value definition, either (1) the appraiser must consider making adjustments for such differences if it is to be used as a comp, or (2) the sale must not be used as a comp."*

The Dugan/Egger appraisal is based on the sales comparison approach to value. The premise of this approach is the economic principal of Substitution. This principal states that when comparably equivalent goods or services are available, a buyer in an open market will choose the one with the lowest price. The sales comparison approach also considers the secondary principals of Supply and Demand, Balance, and Externalities. An indicated value is developed by analyzing closed sales, listings, and/or pending sales of properties similar to the subject, using relevant units of comparison.

Dugan/Egger use six comparable sales in the sales comparison analysis. Sale 1 is an investor sale following a trustee's deed foreclosure. Sale 3 is an REO. The remaining sales (2, 4, 5, and 6) are short sales. While, the argument could be made that the analysis adheres to the principal of Substitution by comparing sales of similar distressed properties, the argument would fail for several reasons. First, there is no referenced analysis or adjustment for conditions of sale. Second, the sales utilized do not conform to the type and definition of value that the assignment claims to measure. Third, Dugan/Egger indicate, *"The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date..."*<sup>21</sup>

The sales comparison uses elements of comparison to explain the differences in price between properties. Generally accepted appraisal methodology requires transactional adjustments be applied before property adjustments **and** in the specific sequence shown below.

1. Real property rights conveyed
2. Financing terms
3. Conditions of sale
4. Expenditures made immediately after purchase
5. Market conditions

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<sup>21</sup> Chase-CRC-Expert\_0243.



The 14<sup>th</sup> edition states, *Before a comparable sale property can be used in sales comparison analysis, the appraiser must first ensure that the sale price of the comparable property applies to property rights that are similar to those being appraised.*<sup>22</sup>

Guide Note 11 continues, *“It is misleading to use sales that occurred under distress conditions, fail to adjust them (when necessary) for the conditions of the market value definition that were not met, and refer to the resulting value as market value.”* There are no transactional adjustments in the Dugan Egger report. The only comment that *may* relate to the use of these sales is on the 20<sup>th</sup> page. They state, *“In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading.”*<sup>23</sup>

This statement is improper and misleading for several reasons. First, differences in transaction type and motivation *can* and *must* be qualified and/or quantified for an appraisal to be credible. Second, is it simply unacceptable to state, in so casual a manner, that the sales used do not meet the criteria of the definition of value. Finally, placing a statement about such foundational issues, in the middle of a paragraph on the 20<sup>th</sup> page of a professional report is inappropriate and possibly unethical.

A professional appraisal report *must* be ***meaningful and not misleading***. If a non-arm’s-length sale is used, it *must* be adjusted for conditions of sale and it *must* be applicable to the definition of value used in the report. If the market is such that no adjustments are warranted, the appraiser *must* provide a comment explaining *why* no adjustment was warranted.

Independent analysis, using the parameters stated and implied in the Dugan/Egger report resulted in the table and graphs shown below and on the following pages.

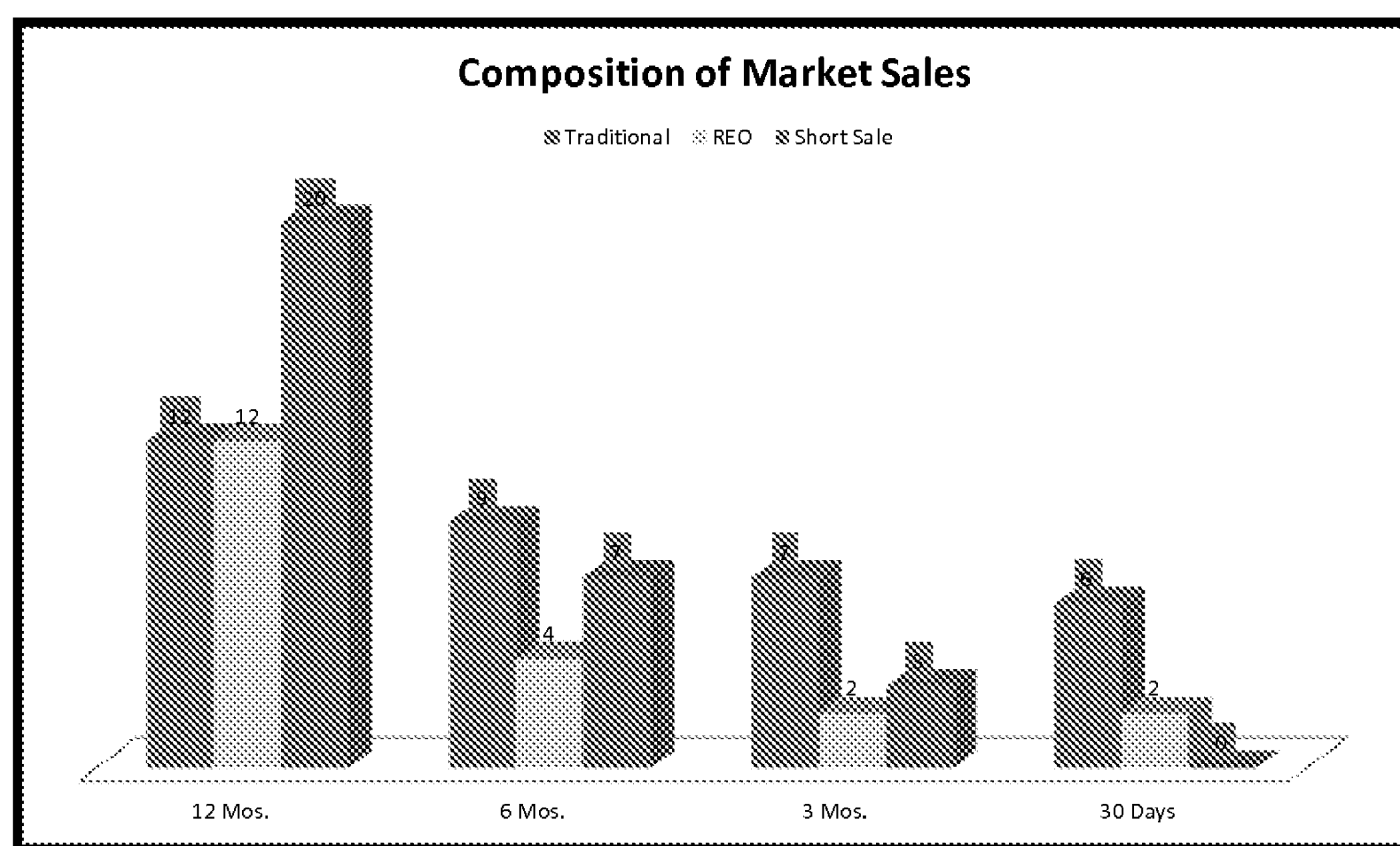
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<sup>22</sup> The Appraisal of Real Estate, 14th Edition, p 406. (Chicago: Appraisal Institute, 2013).

<sup>23</sup> Chase-CRC-Expert\_0258.

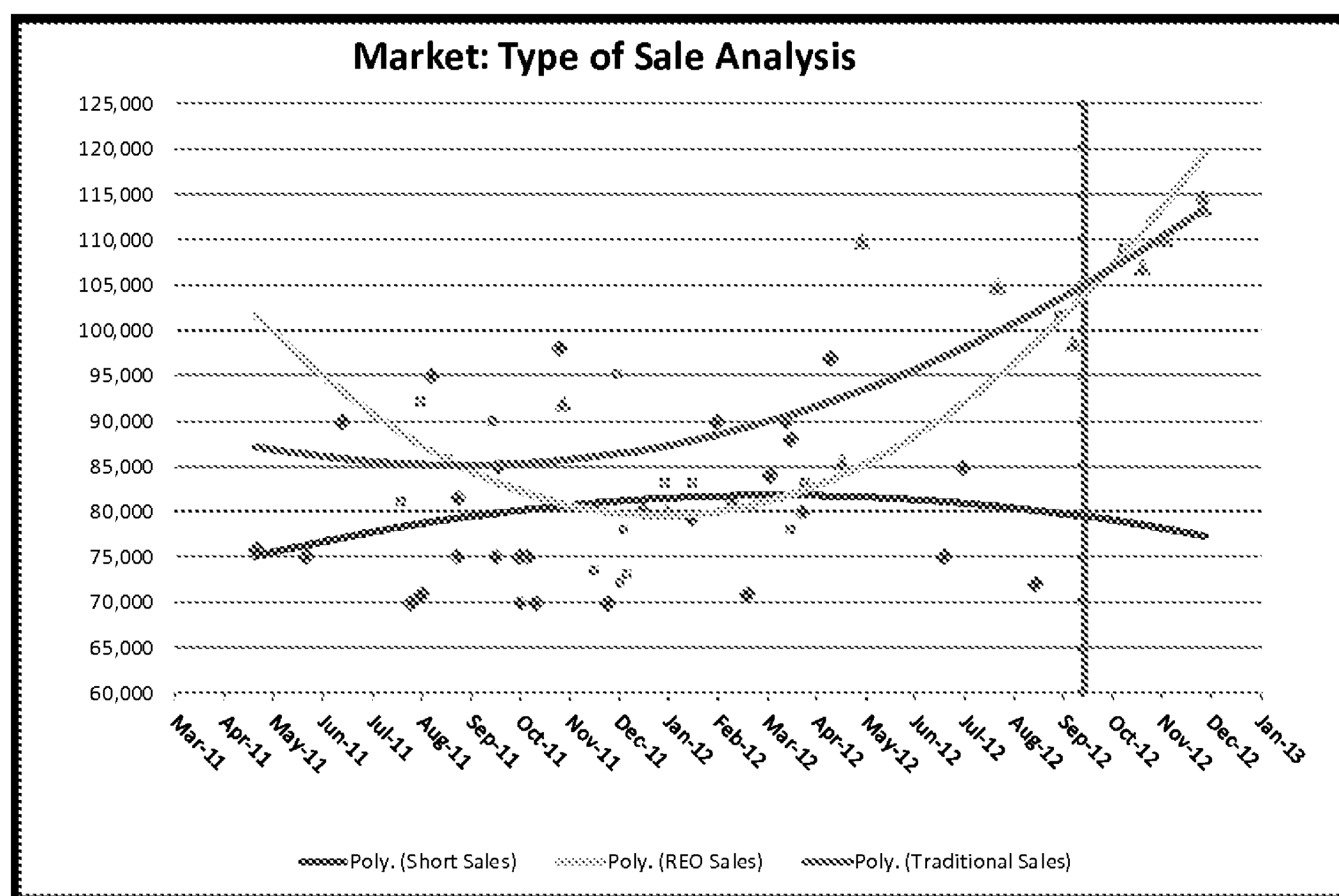
Market Output								
	Sale Price	List Price	YearBlt	Concessions	DOM	Concessions	Sales to List Price Ratio	
				\$		%	% less than 90 days	
mean	85,879	87,019	2005	3,664	64	4.1%	100.5%	
median	83,000	84,900	2005	0	21	0.0%	100.0%	
mode	75,000	75,000	2005	0	4	0.0%	100.0%	
min	70,000	66,100	2003	0	2	0.0%	94.0%	
max	114,900	114,900	2009	180,000	281	200.0%	107.6%	
	Analysis Date:	9/21/2012						
	12 Mos.		6 Mos.		3 Mos.		30 Days	
Sales	#	%	#	%	#	%	#	%
Traditional	12	27.3%	9	45.0%	7	58.3%	6	75.0%
REO	12	27.3%	4	20.0%	2	16.7%	2	25.0%
Short-Sale	20	45.5%	7	35.0%	3	25.0%	0	0.0%
Total	44	100.0%	20	100.0%	12	100.0%	8	100.0%

The upper portion of the table above contains point statistics of some transactional characteristics. The lower portion shows the composition of the types of sale in the market in the prior year. The numbers in the lower portion indicate that non-traditional sales were dominating this market. However, traditional sales did exist for comparison. Adequate data was available to determine an adjustment. The chart on the following page shows the same information from the lower portion of the table in a graphic.



Clearly, non-traditional sales dominated this market. However, there were traditional sales that could have been used either as comparables or for comparison/analysis and adjustment.





The graph above separates the data into the various types of transactions and demonstrates the basis for an adjustment to the short sales. Traditional sales were available for comparison and analysis. REO sales were erratic and limited in number. Short sales were prevalent, but an adjustment was warranted if they were going to be utilized.

### Conclusion:

Best practices and generally recognized appraisal methodology indicate that Market Value appraisals should avoid the use of non-traditional sales when possible. This is because they do not meet the test of “typical buyer and seller motivation” required by the definition of Market Value. In the instance where the use of non-traditional sales is necessary, analysis of any transactional differences *must* be completed. Appropriate adjustments and/or comments (especially when adjustments are not needed) *must* be made.

In the Dugan/Egger report, the non-traditional sales are properly reported as such, yet no type of transaction adjustment is made and no proper explanation for the lack of adjustment exists. This represents numerous violations of the USPAP and causes the appraisal to lack credibility and the report to be misleading.

Finding No. 2: The basis of the Dugan/Egger appraisal is an assumption that ignores the central facts of the assignment. Examination of known facts demonstrates that the assumption is not reasonable. The use and disclosure of the assumption demonstrates a lack of competent performance. It also causes the Dugan/Egger appraisal to lack credibility and the appraisal report to be misleading.

Key Observations:

The Dugan/Egger report is part of a larger body of work involving the foreclosure of properties under NRS 116. It is similar to previous appraisal reports I have reviewed in that it is a retrospective Market Value appraisal with an effective date that is the same day as the HOA foreclosure auction. It is different from previous appraisal reports in that it contains the following statement in the reconciliation on page five, *“The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed and under normal terms.”*<sup>24</sup>

The central issue of this case is the HOA foreclosure under NRS 116. This statement and the statement of the intended use (*“Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property.”*<sup>25</sup>) are the only mention of the HOA foreclosure in the entire report. To assume away the central issue of the case is improper. To do so in the reconciliation section with no additional comment causes the appraisal to lack credibility and the appraisal report to be misleading.

Under the assumption and the definition of value used, Dugan/Egger assert that the typical, well informed, buyer at some point between 12:01 a.m. and the actual time of the HOA auction would have paid an unimpaired Market Value of \$82,000 for the subject. The USPAP requires diligence *“to identify the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results.”*<sup>26</sup> Appraisers must consider whether the assumption is reasonable and/or necessary and whether its use results in a credible analysis. The time line on the following page presents the known facts that an informed buyer would have considered in making a decision to purchase. The Dugan Egger assumption is highlighted in blue toward the bottom of the table.

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<sup>24</sup> Chase-CRC-Expert\_0243.

<sup>25</sup> Chase-CRC-Expert\_0241.

<sup>26</sup> USPAP 2014-2015 Edition, SR 1-1(b), The Appraisal Foundation.

## Timeline of Known Facts

Date	Information	Party	Source
2/5/2010	Notice of Delinquent Assessment Lien	CA Reconveyance Company.	Doc. #201002050001923
12/6/2010	Notice of Default & Election to Sell	Paradise Court	Doc. #201012060000317
4/12/2011	Certificate NV Foreclosure Mediation	CA Reconveyance Company.	Doc. #201104120001990
6/1/2011	Notice of Trustee Sale	CA Reconveyance Company.	Doc. #201106010003269
7/13/2011	Utility Lien	Republic Services	Doc. #201107130002403
7/14/2011	Municipal Lien	City of Henderson	Doc. #201107140000902
8/13/2011	Subject listed as a short sale for \$85,000	Harned, Delaine L.	GLVAR ML #1175815
8/22/2011	List price reduced to \$75,000	Harned, Delaine L.	GLVAR ML #1175815
9/23/2011	Under contract (contingent) for \$75,000	Harned, Delaine L.	GLVAR ML #1175816
9/29/2011	Notice of Trustee Sale	CA Reconveyance Company.	Doc. #201109290003457
12/23/2011	Utility Lien	Republic Services	Doc. #201112230005003
3/7/2012	Notice of Default & Election to Sell	Paradise Court	Doc. #201203070000441
8/30/2012	Notice of Trustee Sale	NV Association Services (Agt)	Doc. #201208300003067
9/21/2012	<b>\$82,000 MARKET VALUE SALE</b>	<b>Assumption by Dugan/Egger</b>	<b>Dugan/Egger Report</b>
9/21/2012	Sale at HOA Auction	SFR Investments Pool I LLC	Doc. #201208300003067

With two separate parties in line to foreclose and sell the property at auction; utility and municipal liens against the property; and a current agreement of sale at a reported \$75,000 – the assertion that an informed buyer would pay an unimpaired market value of \$82,000 is not reasonable. It results in an appraisal that lacks credibility and a report that is misleading.

Ignoring its unreasonableness, the USPAP would define such an assumption as a Hypothetical Condition. While the USPAP does not require the use of the specific term, it does require:

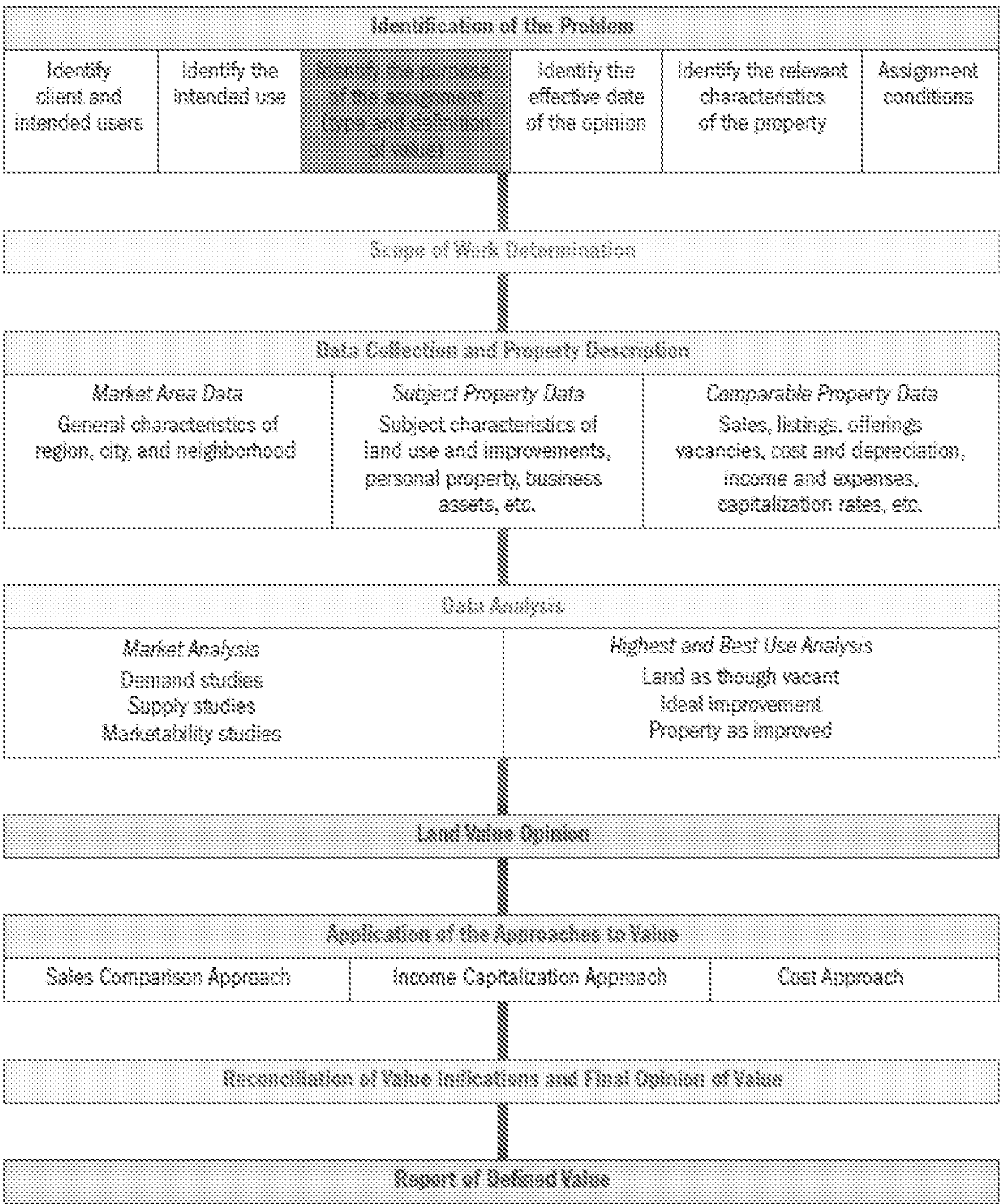
- that all hypothetical conditions result in a credible analysis. In the context of the case and the stated intended use, this assumption does not result in a credible analysis.
- that the assumption be “*clearly and conspicuously*” reported. Disclosure of such a foundational assumption *only* in the reconciliation cannot be considered clear and conspicuous.
- that the reporting of the disclosure include a statement that the use of the assumption might have affected the assignment results. No such statement exists in the Dugan/Egger report associated with this assumption.

Conclusion:

The assumption and the reporting of the assumption represents numerous violations of the USPAP and generally accepted appraisal methodology.

Finding No. 3: The Dugan/Egger report contains numerous errors and inconsistencies. Despite their assumption, they fail to identify a type and definition of value applicable in the context of the assignment. This demonstrates a lack of competent performance. It also causes the Dugan/Egger appraisal to lack credibility and the appraisal report to be misleading.

The diagram below comes from The Appraisal of Real Estate, 14<sup>th</sup> Edition. It shows the 8-step valuation process. The added highlight in step-1 shows that the type and definition of value are part of the first step.<sup>27</sup>



<sup>27</sup> The Appraisal of Real Estate, 14th Edition, p 37 (Chicago: Appraisal Institute, 2013).

The Market Value definition from the Dugan/Egger report appears below.

### **Market Value**<sup>28</sup>

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. *Buyer and seller are typically motivated;*
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*(Emphasis added)*

The 14th Edition states:

*One essential task that the appraiser must complete at the very onset of the valuation process is identifying and defining the type of value that will be the focus of the appraisal assignment. The type of value should be one of the terms of engagement between the client and appraiser. The appraiser should be certain of this at the time the assignment is accepted, notwithstanding certain unusual situations.*<sup>29</sup>

...

*Properties in distressed markets often do not meet the conditions specified in the definition of market value. Other types of value might be more appropriate for properties when a forced sale or some other form of distress is influencing the decisions of the buyer or seller.*<sup>30</sup>

In 3Q 2012, the Las Vegas market was still recovering from the bursting of the housing bubble. Nevada's new robo-signing law (AB284) was affecting supply and demand. Cash purchases, typically indicative of an investor, were dominating the market. Following the most significant rise and fall of any housing market in the nation, Las Vegas was most certainly a distressed market.

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<sup>28</sup> Chase-CRC-Expert\_0260.

<sup>29</sup> The Appraisal of Real Estate, 14th Edition, p 57 (Chicago: Appraisal Institute, 2013).

<sup>30</sup> The Appraisal of Real Estate, 14th Edition, p 65 (Chicago: Appraisal Institute, 2013).

*“The intended use of an appraisal dictates which definition of market value is applicable.”*<sup>31</sup> Dugan/Egger indicate the intended use is *“for litigation involving the HOA foreclosure of the subject property.”*<sup>32</sup>

As noted, the utilized definition of market value requires *that the buyer and seller be typically motivated*. Even under their assumption (ignoring the HOA foreclosure sale on the same day), the subject was listed and under contract as a short sale as of the effective date. Clearly, market value does not apply to a property that was listed and under contract as a short sale.

The entire Dugan/Egger appraisal is based on a definition of value that does not apply to the circumstances of this case (even under their assumption). It also fails to recognize and consider the significant difference between the transactional characteristics of an HOA foreclosure sale and those of a traditional sale.

#### Conclusion:

The Dugan/Egger report contains issues, errors, and contradictions<sup>33</sup> that individually could be benign, but in aggregate cause the credibility of the appraisal to suffer.

Based on the above information; the purpose of the assignment; and details of the case: an alternate definition of value is warranted. Failure to utilize an appropriate type and definition of value causes the appraisal to lack credibility and the appraisal report to be misleading.

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<sup>31</sup> The Appraisal of Real Estate, 14th Edition, p 60. (Chicago: Appraisal Institute, 2013).

<sup>32</sup> Chase-CRC-Expert\_0241.

<sup>33</sup> Refer to the Appraisal Report Std-3 Review Checklist on page 16 of this report.

**Conclusion – Dugan/Egger Expert Appraisal Report**

The appraisal completed by Dugan/Egger ignores central facts of the case. The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to demonstrate the use of generally recognized appraisal methodology. These errors of omission and commission cause the overall appraisal to lack credibility and the appraisal report to be misleading.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Dugan/Egger report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

-- END OF REVIEW --



## **Appraisal Report**

All assignment characteristics from the review are extended to the independent opinion of value. Information from the Dugan/Egger appraisal regarding physical characteristics are assumed accurate. The retrospective condition is assumed to have been *average. The use of these assumptions is reasonable but may have affected the assignment results.*

### **Detrimental Conditions**

**Classification:** In the study of Real Estate Damages, specific circumstances, known as Detrimental Conditions (DC), are categorized into ten classes. This assignment deals with the HOA foreclosure of the subject under NRS 116.

### **Class II Detrimental Condition – Transactional Conditions:**

*Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays than necessary to acquire a property or a seller disposes of a property at a discount.<sup>34</sup>*

### **Type and Definition of Value**

Generally accepted appraisal methodology indicates, “The intended use of an appraisal dictates which definition of market value is applicable.”<sup>35</sup> The intended use of this appraisal is litigation in the matter of SFR Investments Pool 1, LLC v Venta Realty Group, et al (Case #A-12-672963-C). The deed indicates that after appropriate notices, disclosures, and waiting periods, the subject sold at auction as an HOA foreclosure sale in compliance with NRS 116.

The seller was under compulsion to sell. Therefore, the traditional definition of Market Value cannot apply. In fact, the forced sale under NRS 116 precludes *any* definition of value that includes a requirement that neither party is under compulsion to sell, or any similar requirement that buyer and seller are typically motivated.

Professional appraisers recognize that “*other types of value might be more appropriate for properties when a forced sale or some other form of distress is influencing the decisions of the buyer or seller.*”<sup>36</sup> Appraisers familiar with real estate damages know

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<sup>34</sup> Randall Bell; with Orell C. Anderson, Michael V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions, 2nd ed. (Chicago: Appraisal Institute, 2008), p. 62

<sup>35</sup> The Appraisal of Real Estate, 14th Edition, p 60. (Chicago: Appraisal Institute, 2013).

<sup>36</sup> The Appraisal of Real Estate, 14th Edition, p 65 (Chicago: Appraisal Institute, 2013).



that, “*liquidation value is often associated*”<sup>37</sup> with transactions that contain some sort of duress, non-market motivation, and/or limited exposure. The current definition of Liquidation Value appears below.

#### Liquidation Value<sup>38</sup>

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a *short* time period.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under extreme compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. A normal marketing effort is not possible due to the *brief* exposure time.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

A *short* exposure time and the lack of a “normal marketing effort due to *brief* exposure” are the relevant components of this definition. A trustee’s deed under NRS 107 requires 21 days between the public notice of sale and the auction. In the context of trustee deed auction properties (under either NRS 107 or NRS 116), investors (the typical buyer) consider the property *on the market* as of the notice of sale. Therefore, the contextual marketing/exposure time of the subject is identical to other trustee’s deed transactions and cannot be considered *brief*.

As of the retrospective effective date, reasonable exposure for owner-seller transactions of comparable housing was between 0 and 120 days (with a mean of 64 days and a median of 21 days). Trust deed foreclosures (under either NRS 107 or NRS 116) have a 90-day mandatory period following the notice of default and 21 days between the notice of sale and the auction. Dugan/Egger use sales with exposure of 25, 4, 17, 14, 43 and 213 days.<sup>39</sup> The subject exposure cannot be considered *short*. Based on the above analysis, liquidation value is not an appropriate definition of value to measure the worth of an HOA foreclosure property.

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<sup>37</sup> Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 65.

<sup>38</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

<sup>39</sup> Chase-CRC-Expert\_0242 and 0244.

The current definition of Disposition Value appears below.

Disposition Value<sup>40</sup>

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

A *specified* exposure time and *adequate marketing effort* are the relevant components of this definition. Under NRS 116, the exposure time of the subject was specified by statute. As noted earlier, the marketing effort was similar to any other trust deed property. In the context of this case, this represents an adequate marketing effort. Based on these facts, this definition most closely captures the circumstances of the subject HOA foreclosure sale under NRS 116.

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<sup>40</sup> The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

## VALUATION METHODOLOGY

### Approach to Value and Selection of Comparable Sales

Neither the income approach nor the cost approach are necessary for credible assignment results. Neither approach is part of the scope of work for this assignment. The sales comparison approach represents the most reasonable methodology for this assignment.

The premise of the sales comparison approach is the economic principle of Substitution. This principle states that when comparably equivalent goods or services are available, a buyer in an open market will choose the one with the lowest price. The sales comparison approach also considers the secondary principles of Supply and Demand, Balance, and Externalities. An appraiser develops an indicated value by analyzing closed sales, listings, and/or pending sales of properties similar to the subject, using relevant units and elements of comparison.

Units of comparison represent the way that typical buyers measure and compare similar properties. Elements of comparison explain the differences in price between properties based on transactional and property characteristics. Generally accepted appraisal methodology requires transactional adjustments be applied before property adjustments **and** in the specific sequence shown below.

1. Real property rights conveyed
2. Financing terms
3. Conditions of sale
4. Expenditures made immediately after purchase
5. Market conditions

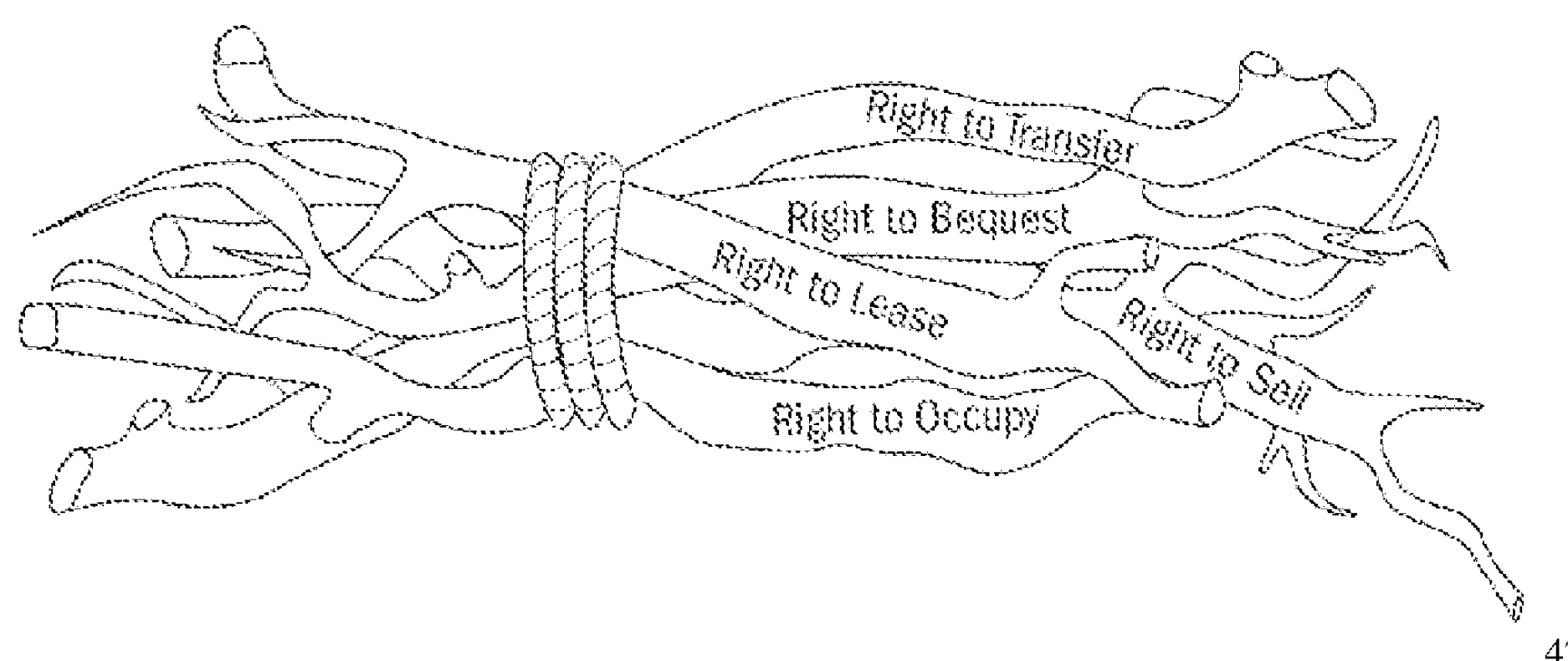
The 14<sup>th</sup> edition states: *Before a comparable sale property can be used in sales comparison analysis, the appraiser must first ensure that the sale price of the comparable property applies to property rights that are similar to those being appraised.*<sup>41</sup>

The bundle of rights is a common way of referencing the components of interest in real estate. A proper understanding of the bundle of rights is foundational to a properly developed and communicated appraisal. The interest or rights associated with real estate ownership include the right to: use the real estate; sell it; lease it; enter it; and give it away. Each stick has value and can be separated and traded in the market. As shown on the following page, they are often illustrated as a bundle of sticks.

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<sup>41</sup> The Appraisal of Real Estate, 14th Edition, p 406. (Chicago: Appraisal Institute, 2013).

### The Bundle of Rights



In this assignment, the interest appraised is fee simple. However, there were limitations on the bundle of rights that must be considered. Buyers of HOA foreclosures can face limitations on any or all of the rights including but not limited to restrictions on occupancy, possession, or use of the property. This risk to the rights was not present in traditional, short-sale, REO, or non-HOA foreclosure transactions.

Another consideration is the limitation on salability and financing. The retrospective effective date is September 21, 2012 (the date of acquisition at public auction). As of that date, there was no title company in Southern Nevada willing to issue title insurance following an HOA foreclosure sale. The lack of insurable clear title would have precluded traditional financing options to a typical buyer. This represents risk to the right of transfer and precludes typical financing options. These issues were not present in traditional, short-sale, REO, or non-HOA foreclosure transactions.

An additional risk in the purchase of HOA lien properties was the likelihood of litigation. As of the retrospective effective date, the typical buyer would have been aware of numerous district court cases that ended with decisions both against and in favor of a buyer's position.

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<sup>42</sup> The Appraisal of Real Estate, 14th Edition, p 5 (Chicago: Appraisal Institute, 2013).

The 14<sup>th</sup> Edition states:

*The real property rights to be appraised are singled out among the relevant characteristics of the property because, like the appropriate type and definition of value for the assignment, the property rights appraised are a fundamental element of the assignment. An oversight in the analysis of some other characteristic of the property may or may not have a noticeable effect on the ultimate opinion of value, but a poor understanding of what precisely is being valued guarantees a critical error in the development of the appraisal.<sup>1</sup> ... Real property appraisal involves not only the identification and valuation of a variety of different rights, but also the analysis of the many limitations on those rights, and the effect that the limitations have on value.<sup>43</sup>*

The cited Appraisal Journal article deals solely with commercial property. However, the concept, that the bundle of rights is fundamental to an appraisal assignment, applies.

### Conclusion

The most likely buyer was an investor. The risk noted above represents a Class II Detrimental Condition - Transactional Conditions.<sup>44</sup> The risk and associated costs would have affected a typical investor's decision to purchase. Thereby, reducing the number of potential buyers.

Traditional sales are so different that they cannot be used as comparable measures of worth for HOA lien properties. Short sales, REO sales and non-HOA foreclosures should not be used as comparable measures of worth for HOA lien properties without analysis and adjustment of the transactional elements of comparison.

Based on the above analysis, the most logical definition of value would be Disposition Value. The most similar transactions, and therefore the best comparable sales, are other HOA foreclosures.

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<sup>43</sup> The Appraisal of Real Estate, 14th Edition, p 69-70. (Chicago: Appraisal Institute, 2013).

<sup>1</sup> See David Lennhoff, "You Can't Get the Value Right If You Get the Rights Wrong," *The Appraisal Journal* (Winter 2009): 60-65.

<sup>44</sup> Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 61

Sales Comparison Analysis

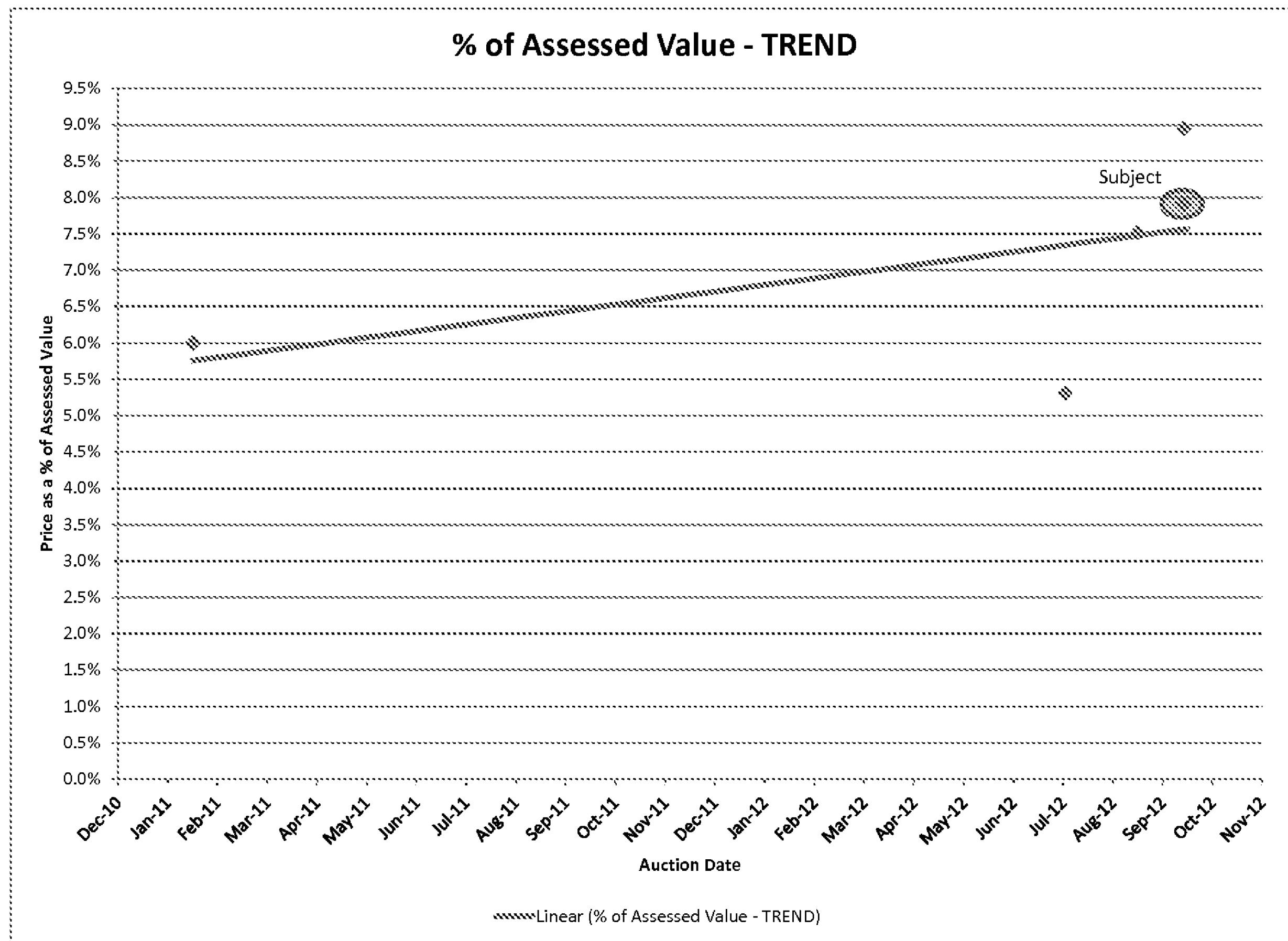
Research of historical foreclosures and trustees deeds in the MLS tax assessor’s database revealed 20,272 transactions, recorded in Clark County, between September 1, 2011 and December 31, 2012. Restricting the search criteria to detached, single-family townhouses between 1,200 and 1,600 square feet of GLA, and built between 2000 and 2010 reduced the number of transactions to 212. The assessor classifies the subject transaction as a “recorded value.” Expanding the type of transactions and restricting the search to MLS area 601-606 lead to a potential 199 comparable transactions. I expanded into MLS area 303 to include as many similar townhomes as possible.

Based on prior analysis, the best comparable sales will be similar HOA foreclosures. Research into the deeds found that only 5 of those properties (including the subject) were HOA foreclosures under NRS 116. Those transactions appear in the table below. They are sorted by auction date with the most current transactions on top. The subject is highlighted in green.

Area	Address	Property	GLA	Bed	Bath	Year Built	Land Sq Ft	Garage	Assessed Value	Auction Price	% of Assessed Value	Auction Date	Owner
605	1076 SLATE CROSSING LN	TOWNHO	1413	3	2.5	2005	871	411	\$77,963	\$6,100	7.9%	9/21/2012	SFR INVESTMENTS POOL
605	1150 GRASS POND PL	TOWNHO	1413	3	2.5	2006	871	411	\$78,157	\$7,000	9.0%	9/21/2012	SFR INVESTMENTS POOL
605	1069 SLATE CROSSING LN	TOWNHO	1413	3	2.5	2005	871	411	\$77,063	\$5,800	7.5%	8/24/2012	WHITEHOUSE, JOHN & S
602	1633 XANADU DR	TOWNHO	1508	3	2.5	2002	2178	252	\$97,983	\$5,200	5.3%	7/11/2012	SFR INVESTMENTS POOL
505	10962 AMPUS PL	TOWNHO	1489	2	2	2001	3485	400	\$106,809	\$6,406	6.0%	2/1/2011	MONTAGNE MARRON HO

7.1%
7.5%
#N/A
1.5%
5.3%
9.0%

In many HOA lien transactions, the assessed value was used to calculate the real property transfer tax. Assessed value becomes a constant point of reference for comparison. Looking at the auction price as a percentage of the assessed value reveals a range from 5.3% to 9.0%. The subject auction price of \$6,100 is 7.9% of the retrospective assessed value. The trend indicated by the data appears on the following page.



The subject, falls just above the overall trend and is well within the range of contemporaneous transactions.

### Reconciliation

The subject auction price of \$6,100 (7.9% of the retrospective assessed value) is within the range of contemporaneous transactions and within 1% of the mean and median. The conditions of the auction sale meet the conditions of the definition of disposition value. Therefore, my professional opinion is that the subject's acquisition price is equivalent to the retrospective disposition value.

As an HOA foreclosure property, affected by a Class II detrimental condition, the impaired, fee simple, disposition value as of September 21, 2012 was:

**\$6,000**  
**Seven Thousand Dollars (rounded)**

-- END OF APPRAISAL --  
 -- END OF REPORT --

Addenda

- A. Qualifications of Michael Brunson
- B. Expert Disclosure for Michael Brunson



**Addendum A: Qualifications of Michael Brunson****Michael L. Brunson, SRA, MNAA**

AQB Certified USPAP Instructor

Nevada Certified General Appraiser #A.0207222-CG

Member of the Nevada Real Estate Division Appraisal Advisory Review Committee

Collateral Valuation Specialist

mike@brunson-jiu.com    www.brunson-jiu.com

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**VALUATION BUSINESS BACKGROUND**


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**Brunson-Jiu, LLC** (Partner, 2011 – Present) Founding partner of a firm providing real property valuations, consulting and expert witness services. Areas of specialty include: real estate damages analysis for residential, commercial, vacant land and multi-family properties; and business valuation and exit planning strategies.

**Bell Anderson & Sanders LLC** (Contract Appraiser, 2008 – 2014) Engagement involved studying the economic impact of detrimental conditions, including issues such as environmental contamination, construction defects, legal conditions such as eminent domain, and proximity effects.

**Columbia Institute** (Instructor, 2009-Present) Approved to teach pre-licensing and continuing education courses related to residential appraisal

**Ascent Appraisal, Inc.** (Principle/Chief Appraiser, 1997 – 2011) An independent real estate valuation and consulting firm providing a comprehensive range of professional valuation products and services. We specialize in expert witness services; litigation support and consulting; forensic review; and complex valuation assignments.

**Institute for Real Estate and Appraisal Studies** (Instructor, 2003 – 2009) Approved to teach both pre-licensing and continuing education courses related to residential appraisal.

**Ascent Inspection, Inc.** (Owner/Primary Inspector, 2001 – 2003) An independent residential and commercial inspection firm providing both pre-purchase and pre-listing property inspections.

**Berry & Associates** (Registered Intern/Office Manager, 1995 – 1997) Performed single and multi-family residential appraisal assignments in form reports on various property types; conducted extensive market research & due diligence; performed internal appraisal review function; and appraisal office management.

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EXPERT WITNESS / CONSULTING

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**AQB Certified USPAP Instructor** The Uniform Standards of Professional Appraisal Practice (USPAP) are the recognized standard of care for professional appraisers. Michael is one of only six certified appraisers qualified as an AQB Certified USPAP Instructor in Nevada. He teaches USPAP courses and provides USPAP consultation to attorneys, appraisers, and lending clients. Michael has completed assignments for civil, probate, real estate damages, and divorce cases. He has qualified as an expert witness in real estate valuation in the 8<sup>th</sup> Judicial District Court of Clark County, Nevada.

Assignments in which an expert has provided deposition or court testimony are disclosed in compliance with state/federal law. Cases lacking such testimony are confidential.

Cases with Court Testimony:     Johnson et al v Stanpark, A-606013

Santos Probate, P-068058

Dennett v Miller, A-459131

Cases with Deposition:

Sunlight Trust v Brogan, A-691473

Wells Fargo v SFR, 2:15-cv-00576-RFB-CWH

SFR v Green Tree Servicing, A-680704

FDIC v CoreLogic, SACV11-704 DOC

Nguyen v Taylor, A-644936

Aguirre v American Nevada, A-600566

Copper Sands HOA v Copper Sands Realty A-560139

Deutsche Bank National Trust Co. v Mha, A-532836

Carlisle v Pardee, A-421939

Demby v Chamberlin, A-443513

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INTERVIEWS, PUBLICATIONS AND PUBLIC TESTIMONY

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Local and national media recognize Michael as an expert in the Las Vegas Real Estate market.

- Panel Member, Spring 2015 Housing Outlook, Homebuilders Research (May 29, 2015)
- Panel Member, Lied Institute and Nevada Department of Business and Industry - Nevada Housing Forum (September 22, 2014)
- Panel Member, Using the Cost Addendum for High Performance Homes (October, 16, 2013)
- Panel Member, The Green Home Valuation Summit, Phoenix, AZ (September 23, 2013)
- Appraisal Industry Representative, Special City Council Meeting of the City of North Las Vegas, Regarding the underwater mortgage crisis (June 11, 2013)
- Panel Member, Spring 2013 Housing Outlook, Homebuilders Research (April 12, 2013)
- Interviewed by Diana Olick of CNBC (March 5, 2013 published on cnbc.com and aired on the NPR Nightly Business Report)
- Panel Member and Presenter, 2012 High Performance Home & Building Summit (August 15-16, 2012)
- Panel Member, Spring 2012 Housing Outlook, Homebuilders Research (April 27, 2012)  
Quoted by Hubble Smith of the Las Vegas Review Journal.
- Real Estate Panel Member, Spring 2011 Economic Outlook, UNLV Center for Business and Economic Research, (June 20, 2011)
- Interviewed by Jason Morgan of *Valuation Review*, Appraisers caught in the middle of Las Vegas housing market tensions, Online: March, 31, 2011, Print: April 25, 2011
- Interviewed by Calvert Collins of KLAS-TV (aired March 28, 2011)
- Author, Growing Business: Giving Clients What They Need, Vol. 217, February 16, 2011, *Working RE Magazine*
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (August 5, 2010).
- Interviewed by Calvert Collins of KLAS-TV (aired May 5, 2010)
- Interviewed by Dana Gentry of Las Vegas 1 (aired March 27, 2009)
- Interviewed by Chris Saldana of KLAS-TV (aired March 9, 2009)
- Interviewed by Stephanie Dhue of the Nightly Business Report (aired October 62, 2007).
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (June 7, 2007).

Michael has provided public comment and testimony before the Nevada Commission of Real Estate Appraisers, the Nevada Assembly Committee on Commerce and Labor and the Nevada Senate Committee on Commerce and Labor on numerous occasions.

MEMBERSHIPS

National Association of Appraisers: 2013, 2014 President; 2010-2012 Vice President,  
Coalition of Appraisers in Nevada: 2011, 2010 President; 2009 Vice President; Government Relations Committee Chair 2009-2014.  
SRA Designated Member, Appraisal Institute  
National Association of Realtors  
Greater Las Vegas Association of Realtors

TEACHING EXPERIENCE

Approved by the State of Nevada to teach both pre-licensing and continuing education appraisal courses. Michael has also been approved to teach courses in California, Arizona, Indiana, Michigan, Wisconsin, and Utah. A partial list of classes includes:

Fundamentals of Real Estate Appraisal	7 and 15 Hour National Uniform Standards of
Applied Residential Appraisal Techniques I	Professional Appraisal Practice
Appraisal Law in Nevada	How Finance affects Value
Highest & Best Use Analysis I	Advanced Neighborhood and Market Area
Appraising Small Residential Income	Analysis
Properties	Appraising 2-4 & Multi-Family Properties
Cost Approach Revisited	Foreclosures & Short Sales: Dilemmas and
Communicating the Appraisal I, II, III and IV	Solutions

Private seminars authored and instructed by Mr. Brunson:

Neighborhood and Market Analysis I and II  
Cost Approach – The Square Foot Method  
Mortgage Fraud – An Appraiser’s Perspective (NV CLE Seminar)  
Residential Real Estate Appraisal (For Brokers/Agents)  
How to Select & Evaluate an Expert Witness (NV CLE Seminar)

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## EDUCATION

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### ***Professional Education***

**University of Nevada, Las Vegas**, Introductory and Intermediate Statistics  
**Clark County Community College**, Principles of Real Estate Appraisal  
**Appraisal Institute**, Standards of Professional Practice, Part A (410)  
**Appraisal Institute**, Standards of Professional Practice, Part B (420)  
**Appraisal Institute**, Standards of Professional Practice, Part C (430)  
**Appraisal Institute**, Nevada Appraisal Statutes  
**Appraisal Institute**, FHA and the Appraisal Process  
**Appraisal Institute**, Complex Litigation Appraisal Case Studies  
**Appraisal Institute**, Analyzing the Effects of Environmental Contamination on Real Estate  
**Appraisal Institute**, Advanced Income Capitalization  
**Appraisal Institute**, Advanced Spreadsheet Modeling for Valuation Applications  
**Appraisal Institute**, General Appraiser Site Valuation and Cost Approach  
**Appraisal Institute**, General Appraiser Sales Comparison Approach  
**Appraisal Institute**, General Appraiser Market Analysis and Highest and Best Use  
**Appraisal Institute**, Real Estate Finance, Statistics, and Valuation Modeling  
**Appraisal Institute**, Advanced Residential Report Writing, Part I and II  
**Nevada Commission of Appraisers**, Valuing Residential Energy Efficiency  
**Chicopee Group**, Impact of Financing on Appraisals  
**TWI Systems**, 50 hours of Professional Inspection Training  
**Clark County Community College**, 60 hours of home Inspectors Training  
**Institute for Real Estate and Appraisal Studies**, Applied Residential Appraisal Techniques I  
**Institute for Real Estate and Appraisal Studies**, Highest and Best Use Analysis I  
**Institute for Real Estate and Appraisal Studies**, Introduction to Business Appraisal  
**Institute for Real Estate and Appraisal Studies**, Small Residential Income Properties I  
**Institute for Real Estate and Appraisal Studies**, Introduction to Commercial Appraisal  
**Institute for Real Estate and Appraisal Studies**, Income Capitalization I and II  
**IRWA**, Principles of Real Estate Engineering  
**IRWA**, Understanding Environmental Contamination in Real Estate  
**IRWA**, Environmental Due Diligence and Liability  
 (Current Continuing Education course list available upon request)

### Other Education

**University of Nevada at Las Vegas**, Las Vegas, NV - 1991  
 B.A. in Psychology. Emphasis on experimental psychology and methodology.

**Chaparral High School**, Las Vegas, NV ■ 1987  
 Graduated with High Honors.

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## REFERENCES

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- Available upon request

*SFR Investments Pool 1, LLC v Venta Realty Group, et al*  
 1076 Slate Crossing Lane #2

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**Addendum B: Expert Disclosure Requirements**Compensation for Study and Testimony:

Michael L. Brunson charged an hourly rate of \$300 per hour for this stage of the assignment. Michael's hourly rate is \$300 for non-testimony time and \$350 for testimony time. Non-testimony time is billed for research, consultation, meetings, field inspections, travel, analysis, deposition preparation, and court preparation.

Publications:

Author, Growing Business: Giving Clients What They Need, February 16, 2011, Vol. 217, *Working RE Magazine*

National Association of Appraisers, Appraisal 4-1-1 e-newsletters

Summary of Recent Testimony:

Court testimony: Johnson v Stanpark, A-606013

Santos Probate, P-068058

Dennett v Miller, A-459131

Deposition Testimony: Sunlight Trust v Brogan, A-691473

Wells Fargo v SFR, 2:15-cv-00576-RFB-CWH

SFR v Green Tree Servicing, A-680704

FDIC v CoreLogic, SACV11-704 DOC

Nguyen v Taylor, A-644936

Aguirre v American Nevada, A-600566

Copper Sands HOA v Copper Sands Realty, A-560139

Deutsche Bank v Mha, A-532836

Carlisle v Pardee, A-421939

Demby v Chamberlin, A-443513

*SFR Investments Pool 1, LLC v Venta Realty Group, et al*  
1076 Slate Crossing Lane #2

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# EXHIBIT D

# EXHIBIT D

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

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

vs.

VENTA REALTY GROUP, a Nevada  
corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No. A-12-672963-C

Dept. No. 27

**SFR INVESTMENTS POOL 1, LLC'S  
SUPPLEMENTAL REBUTTAL EXPERT  
DISCLOSURE**

SFR Investments Pool 1, LLC ("SFR"), hereby submits its supplemental rebuttal expert disclosure.



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

A true and correct copy of the supplemental report is attached hereto as **Exhibit 1**.  
DATED this 2nd day of June, 2016.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of June, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing SFR INVESTMENTS POOL 1, LLC'S SUPPLEMENTAL REBUTTAL EXPERT DISCLOSURE, to the following parties:

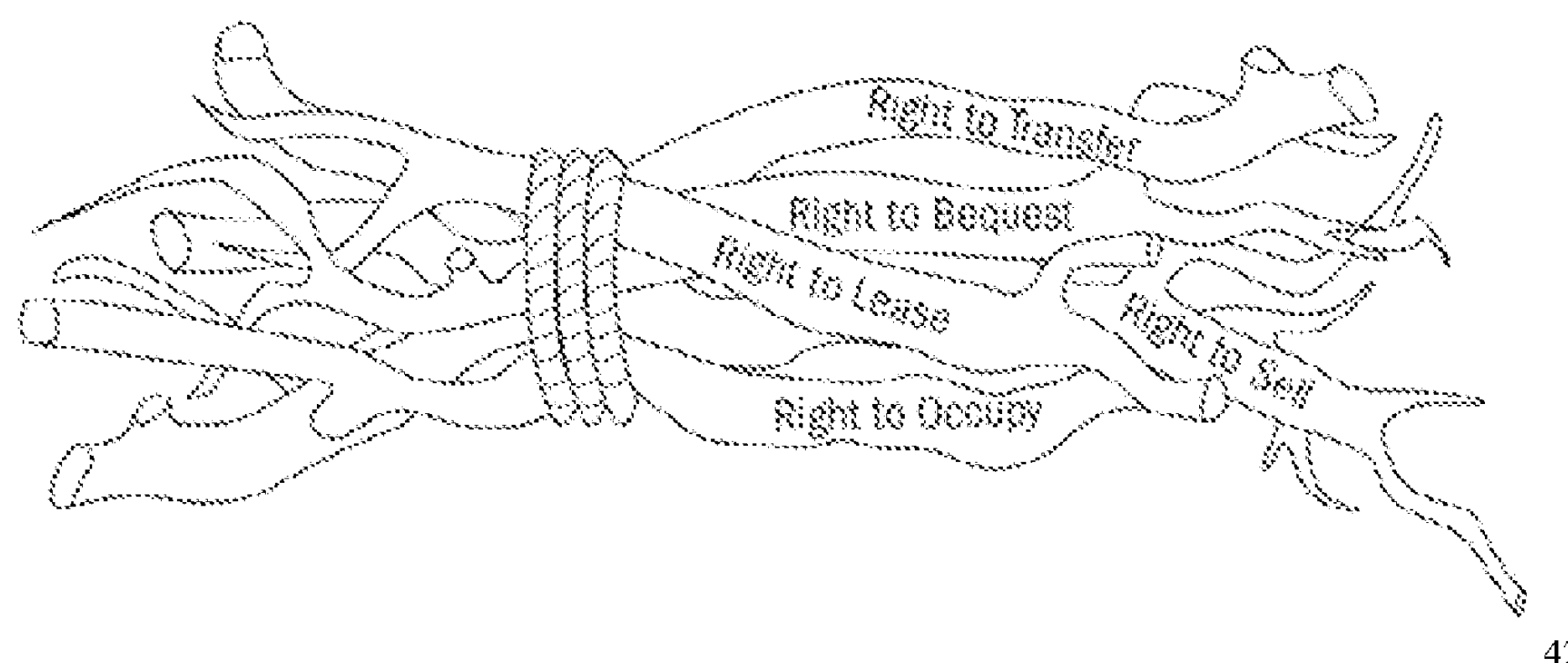
<b>Ballard Spahr LLP</b>		
	<b>Contact</b>	<b>Email</b>
	Abran E. Vigil	vigila@ballardspahr.com
	Holly Ann Priest	priesth@ballardspahr.com
	Lindsay Demaree	demareel@ballardspahr.com

/s/ Karen L. Hanks

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# EXHIBIT 1

### The Bundle of Rights



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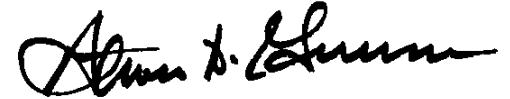
In this assignment, the interest appraised is fee simple. However, there were limitations on the bundle of rights that must be considered. Buyers of HOA foreclosures can face limitations on any or all of the rights including but not limited to restrictions on occupancy, possession, or use of the property. This risk to the rights was not present in traditional, short-sale, REO, or non-HOA foreclosure transactions.

Another consideration is the limitation on salability and financing. The retrospective effective date is September 21, 2012 (the date of acquisition at public auction). As of that date, there was no title company in Southern Nevada willing to issue title insurance following an HOA foreclosure sale. The lack of insurable clear title would have precluded traditional financing options to a typical buyer. This represents risk to the right of transfer and precludes typical financing options. These issues were not present in traditional, short-sale, REO, or non-HOA foreclosure transactions.

An additional risk in the purchase of HOA lien properties was the likelihood of litigation. As of the retrospective effective date, the typical buyer would have been aware that the Nevada Supreme Court had not yet interpreted NRS 116.3116. They would also be aware that the banks were acting as if their deeds of trust had not been extinguished. This left owners with the option of either abandoning the property or pursuing litigation. These issues were not present in traditional, short sale, REO, or non-HOA foreclosure transactions.

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<sup>42</sup> The Appraisal of Real Estate, 14th Edition, p 5 (Chicago: Appraisal Institute, 2013).



CLERK OF THE COURT

1 **OML**

DIANA CLINE EBRON, ESQ.

2 Nevada Bar No. 10580

E-mail: diana@kgelegal.com

3 JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

4 E-mail: jackie@kgelegal.com

KAREN L. HANKS, ESQ.

5 Nevada Bar No. 9578

E-mail: karen@kgelegal.com

6 KIM GILBERT EBRON

7625 Dean Martin Drive, Suite 110

7 Las Vegas, Nevada 89139

Telephone: (702) 485-3300

8 Facsimile: (702) 485-3301

*Attorneys for SFR Investments Pool 1, LLC*

9  
10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 SFR INVESTMENTS POOL1, LLC a Nevada  
13 limited liability company,

14 Plaintiff,

15 VENTA REALTY GROUP, a Nevada  
16 corporation, JP MORGAN CHASE BANK,  
17 N.A., a national association, successor by  
18 merger to CHASE HOME FINANCE LLC, a  
19 foreign limited liability corporation,  
20 NATIONAL DEFAULT SERVICING  
21 CORPORATION, an Arizona corporation,  
22 CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

23 Defendants.

24  
25 **AND ALL RELATED CLAIMS.**

Case No. A-12-672963-C

Dept. No. XXVII

**OPPOSITION TO MOTION TO EXCLUDE  
TESTIMONY OF MICHAEL BRUNSON**

**Hearing Date: August 10, 2016**

**Hearing Time: 9:00 a.m.**

26 SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its counsel, Kim Gilbert  
27 Ebron, hereby submits its Opposition to JP MORGAN CHASE BANK, N.A., a national  
28 association, successor by merger to CHASE HOME FINANCE LLC's ("the Bank") Motion to

1 exclude the expert opinion and testimony of SFR's rebuttal expert, Michael Brunson ("Bank's  
2 MIL"). This opposition is based on the papers and pleadings on file herein, the following  
3 memorandum of points and authorities, and any such evidence and oral argument as may be  
4 presented at the time of the hearing on this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 The Bank misses the mark regarding rebuttal expert disclosures when it erroneously asks  
8 this Court to exclude expert opinion and testimony from SFR's rebuttal expert, Michael Brunson  
9 ("Brunson"), as an untimely initial expert opinion. In short, Brunson's opinion was intended solely  
10 for the purpose of rebutting the opinion and testimony of the Bank's designated expert, R. Scott  
11 Dugan ("Dugan"), which offered an opinion of fair market value which the Bank belatedly alleges  
12 is relevant in determining inadequacy of price in the commercial reasonableness context, despite  
13 having never specifically alleged or asserted commercial reasonableness in its pleadings. NRCP  
14 8(a)-(c), 12(b). Furthermore, pursuant to the cases cited to by the Bank, the court has discretion  
15 to determine the reliability of Brunson's expert opinion, and it is clear that Brunson's rebuttal  
16 opinion satisfies all of the necessary factors. Lastly, notwithstanding the Bank's misunderstanding  
17 of Nevada law on commercial reasonableness, this argument goes to the weight of the evidence,  
18 not admissibility. As such, the Court should defer this determination of the weight of the evidence  
19 to the time of trial.

20 For these reasons, the Bank's Motion should be denied.

21 **II. STATEMENT OF RELEVANT FACTS**

22 On September 21, 2012, SFR purchased, via a public foreclosure sale, real property located  
23 at 1076 Slate Crossing Lane, Unit 2, Henderson, Nevada 89002 (the "Property") from Paradise  
24 Court Homeowners Association (the "Association"). Although the sale extinguished the First  
25 Deed of Trust, the Bank proceeded to record a Notice of Trustee's Sale on October 11, 2012.

26 On December 4, 2012, SFR filed its Complaint for quiet title and injunctive relief. See  
27 Complaint on file herein. On January 25, 2013, the Bank filed its Answer to SFR's Complaint.  
28 See Bank's Answer on file herein. It outlined a number of affirmative defenses, none of which

1 asserted commercial unreasonableness, price inadequacy, or the like. Id. at pp. 4-5. On October  
2 19, 2015, the Bank filed an Amended Answer and Counterclaim for unjust enrichment against  
3 SFR. See Bank's Amended Answer and Counterclaim on file herein. Again, it outlined a number  
4 of affirmative defenses, none of which specifically asserted commercial unreasonableness, price  
5 inadequacy, or the like. Id. at pp. 8-11.

6 On October 13, 2015, the Bank served its Initial Expert Disclosure, disclosing Mr. Dugan  
7 as its expert witness and providing an Appraisal Report prepared by Mr. Dugan, purporting to  
8 contain a retrospective market analysis of the fair market value of the subject Property. On  
9 November 12, 2015, SFR served its Rebuttal Expert Disclosure, disclosing Mr. Brunson as a  
10 rebuttal expert and providing a rebuttal expert report challenging Mr. Dugan's Appraisal Report.  
11 On June 2, 2016, SFR served a Supplemental Rebuttal Expert Disclosure.

### 12 **III. ARGUMENT**

#### 13 **A. Standard for Motions in Limine.**

14 "[M]otions in limine to admit or exclude evidence must be in writing and filed not less than  
15 45 days prior to the date set for trial." Eighth Judicial District Court Rule ("EDCR") 2.47.  
16 Additionally, such motions must include a sworn declaration/ affidavit by counsel for movant,  
17 identifying "what attempts to resolve the matter were made, what was resolved, what was not  
18 resolved and the reasons therefore." EDCR 2.47(b). In Nevada, it is well-settled that motions in  
19 limine provide the Court an opportunity to determine in advance whether specific evidence should  
20 be admitted or excluded at the time of trial. State ex rel. Dept. of Highways v. Nevada Aggregates  
21 & Asphalt Co., 92 Nev. 370, 376, 551 P.2d 1095 (1976).

#### 22 **B. Mr. Brunson's Designation as a Rebuttal Expert Complies With the Law.**

##### 23 **1. *Brunson's Opinion Rebuts and Contradicts Dugan's Opinion.***

24 The Bank is wrong when it claims that certain opinion and testimony of SFR's rebuttal  
25 expert, Michael Brunson, should be excluded as an untimely and improper expert disclosure  
26

27 ///

28 ///

1 pursuant to NRCP 16.1(a)(2). Brunson's opinion and report fall exactly within the requirements  
2 of NRCP 16.1(a)(2)(C)(ii), which provides:

3 If the evidence is *intended solely to contradict or rebut evidence on the same*  
4 *subject matter* identified by another party under paragraph (2)(B), the disclosures  
5 shall be made within 30 days after the disclosure made by the other party. This later  
6 disclosure deadline does not apply to any party's witness whose purpose is to  
7 contradict a portion of another party's case in chief that should have been expected  
and anticipated by the disclosing party, or to present any opinions outside of the  
scope of another party's disclosure.

8 Id. (emphasis added).

9 Here, the opinion offered by Brunson is "intended solely to contradict or rebut" Dugan's  
10 opinion and Appraisal Report. Id. Specifically, Brunson's report rebuts Dugan's report by  
11 explaining the errors in Dugan's analysis, including the fact that Dugan (1) used faulty  
12 assumptions, (2) did not account for the specifics of the subject Property, (3) did not account for  
13 the circumstances of Association non-judicial foreclosure sales in general, and (4) applied the  
14 wrong definition of value. In the natural flow of a rebuttal, Brunson explained his rebuttal of  
15 Dugan's analysis, and illustrated the flaws in Dugan's analysis by providing the correct definition  
16 of value that Dugan should have applied (disposition value);<sup>1</sup> Brunson then went on to apply that  
17 definition of value for demonstrative purposes.

18 Brunson's labeling of the rebuttal definition of value and application section of his report  
19 as "Independent Opinion of Value" does not remove it from the spectrum of rebuttal expert opinion  
20 under the law. NRCP 16.1(a)(2)(C)(ii). Rather, this title is just the nomenclature for headings in  
21 the appraisal world. One should not be persuaded by form over substance; the nature and scope  
22 of Brunson's report is rebuttal opinion.

23 The Bank attempts to confuse this Court by suggesting that Brunson's disposition value  
24 (what the Bank calls "forced sale value approach") is "not the same subject matter" as Dugan's  
25 retrospective market analysis of fair market value (what the Bank calls "fair market value

26 \_\_\_\_\_  
27 <sup>1</sup> This is no different than when a rebuttal expert in a personal injury case critiques and rebuts another  
28 expert's opinion regarding a patient's long-term life care plan. For example, the initial expert may opine  
that surgery is needed; an appropriate rebuttal expert may critique that analysis and opine that medication  
and physical therapy would best serve the patient's needs.

1 approach”). See Bank’s MIL, 9:16-10:6, 13:1-4, 13:22-14:3.<sup>2</sup> However, to be clear, the subject  
2 matter **is** the same – the **value** of the Property. The experts simply have a difference of opinion  
3 regarding the correct definition of value, and Brunson’s rebuts and contradicts Dugan’s opinion.

4 **2. Dugan’s Opinion of Value Was Not Expected or Anticipated by SFR.**

5 Notwithstanding the Bank’s citation to unpublished authority not binding on this Court, it  
6 is nonetheless disingenuous of the Bank to contend that SFR should have expected and anticipated  
7 the Bank’s commercial unreasonableness argument. See Bank MIL, 13:12-21; see also NRCP  
8 16.1(a)(2)(C)(ii). The Bank **never specifically alleged or asserted commercial reasonableness**  
9 **as an affirmative defense** in its pleadings, and never sought to further amend its answer  
10 accordingly. NRCP 8(a)-(c), 12(b).

11 Furthermore, generally, during the time period between the filing of this Complaint and  
12 expert disclosure deadline, commercial reasonableness allegations by lenders were not consistent  
13 or commonplace like they are today, particularly after the decision in Shadow Wood Homeowners  
14 Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105  
15 (2016). Additionally, the use of an expert, for purposes of assessing the value of a property, could  
16 not have been anticipated or expected when Nevada law is clear that there must first be an  
17 allegation of fraud, oppression or unfairness which “accounted for and brought about” the price  
18 paid by a purchaser; inadequacy of price alone is never sufficient to set aside a sale. Golden v.  
19 Tomiyasu, 79 Nev. 503, 504, 514, 387 P.2d 989, 995 (1963).

20 **C. Brunson’s Expert Opinion Meets the *Hallmark* standard; *Higgs* is Instructive.**

21 An expert witness’ specialized knowledge must “assist the trier of fact to understand the  
22 evidence or to determine a fact in issue.” NRS 50.275; Hallmark v. Eldridge, 124 Nev. 492, 498,  
23

24  
25 <sup>2</sup> Additionally, the Bank’s citation to R&O Constr. Co. v. Rox Pro Int’l Grp., Ltd., No. 2:09-cv-01749-  
26 LRH-LRL, 2011 WL 2923703 is misplaced. See Bank’s MIL, 7:5-11. There, the court found that the  
27 rebuttal opinion exceeded the scope of rebuttal where (1) the Plaintiff specifically alleged a cause of action  
28 related to its initial report, (2) the rebuttal report “did not directly address the findings . . . of [the initial  
expert’s] report” and (3) the rebuttal report posted alternate theories completely unrelated to the initial  
expert’s opinion. Id. at \*3. Here, Brunson’s rebuttal directly responded to Dugan’s opinion regarding fair  
market value (an issue not specifically alleged by the Bank in its pleadings), and Brunson provided what  
he concluded was the appropriate method of valuation which Dugan should have used.



1 501, 198 P. 3d 646, 650 (2008). Expert testimony is said to assist the trier of fact “only when it is  
2 relevant and the product of reliable methodology.” Hallmark, 124 Nev. at 498, 501, 198 P.3d at  
3 650. While there are a number of factors a court may consider when determining whether a  
4 particular methodology is reliable, “those factors may be afforded varying weights and may not  
5 apply equally in every case. It is up to the district court judge to make the determination regarding  
6 the varying factors as he or she is the gatekeeper.” Higgs v. State, 126 Nev. 1, 20, 222 P.3d 648,  
7 660 (2010).

8 Here, the parties do not dispute that Brunson’s opinion is “within a recognized field of  
9 expertise.” See Bank’s MIL, 14:19-20. Additionally and importantly, contrary to the Bank’s  
10 contentions, Brunson’s methodology is indeed based on the **particularized** facts of this case, and  
11 is not the product of “assumption, conjecture or generalization.” Hallmark, 124 Nev. at 501, 198  
12 P.3d at 652. Specifically, Brunson critiqued Dugan’s analysis using the **specific circumstances**  
13 surrounding **this particular Property**. See Bank’s MIL, Exhibit C, Ex. 1 thereto, at p. 23.  
14 Further, Mr. Brunson analyzed properties similar to the subject Property, that also sold at NRS 116  
15 sales, and compared the prices paid for those properties to the price **specifically paid by SFR for**  
16 **this subject Property**. Id. at pp. 34-35.

17 It is preposterous for the Bank to contend that Brunson “invented” his rebuttal methodology  
18 for the purposes of appeasing investor clients. See Bank’s MIL, 14:24-27. Disposition value is a  
19 widely recognized methodology of value, and indeed its definition is contained in the Dictionary  
20 of Real Estate Appraisal, Fifth Edition. See also Bank’s MIL, Exhibit C, Ex. 1 thereto, at pp. 7,  
21 30. To that end, the disposition value, as a methodology of value in the appraisal world, has  
22 arguably been “tested[,]” has been “subject to peer review[,]” and is generally accepted in the  
23 appraisal community. Hallmark, 124 Nev. at 501, 198 P.3d at 652.

24 Nonetheless, Higgs illustrates the discretion of the trial judge in determining the weight of  
25 each Hallmark factor. In Higgs, the Nevada Supreme Court upheld the trial court’s finding that  
26 the expert witness’ testimony would assist the trier of fact, using the Hallmark factors, even where  
27 (1) the methodology was “testable although it [was] unclear whether it had been tested[;]” (2) there  
28 was no evidence whether the expert’s work had been “subject to peer review[;]” and (3) where the

1 scope of general acceptance of the methodology in the expert's community was unknown. Id. The  
2 Court nonetheless found that the trial judge "acted within its discretion when it found that  
3 Montgomery's testimony would assist the jury in understanding the evidence and determining a  
4 fact in issue." Id.

5 In sum, it is clear that Brunson's opinion and testimony meet the reliability requirements  
6 as dictated by Hallmark and Higgs.

7 **D. The Bank's Arguments Regarding Commercial Reasonableness Go to the Weight of**  
8 **the Evidence, Not Admissibility.**

9 "A motion in limine is a procedural device to obtain an early and preliminary ruling on the  
10 admissibility of evidence" but "should not be used to resolve factual disputes or weigh evidence."  
11 Goodman v. Las Vegas Metropolitan Police Dept., 63 F.Supp.2d 1036, 1046-1047 (D.Nev. 2013)  
12 (rev'd in part on other grounds). Unless evidence is inadmissible on all grounds, "evidentiary  
13 rulings should be deferred until trial so that questions of . . . relevancy . . . may be resolved in  
14 proper context." Id. at 1047 (quoting Hawthorne Partners v. AT & T Tech., Inc., 831 F.Supp. 1398,  
15 1400 (N.D.Ill.1993)). While rulings at the motion in limine phase may save time and expense, "a  
16 court is almost always better situated during the actual trial to assess the value and utility of  
17 evidence." Id. (quoting Wilkins v. Kmart Corp., 487 F.Supp.2d 1216, 1219 (D.Kan.2007)).

18 The Bank argues that Brunson's [rebuttal] analysis of value, in concluding that disposition  
19 value is the correct definition, is irrelevant in light of Shadow Wood, and then proceeds to explain  
20 why Shadow Wood supports a fair market value analysis. See Bank's MIL, 9:3-12:15. In short,  
21 while the Bank is wrong regarding the Nevada Supreme Court's holding in Shadow Wood and the  
22 rule of law in Nevada, this nonetheless illustrates the fact that their argument goes to the weight  
23 of the evidence, not to the admissibility of Brunson's opinion and testimony. As such, the Bank's  
24 Motion should be denied.

25 As a first matter of course, commercial reasonableness is not required by NRS 116.  
26 Second, the Bank failed to specifically assert or allege commercial reasonableness in its pleadings,  
27 thus waiving the argument and rendering expert opinion on the subject unnecessary. Nonetheless,  
28 even if the Court considers commercial reasonableness, commercial reasonableness is not judged

1 by the price paid, but by the sale process, and if the sale process was fair and not fraudulent, price  
2 alone will never be sufficient.

3 Contrary to the Bank's assertion, Shadow Wood **did not** adopt the Restatement.  
4 Restatement (Third) of Property: Mortgages § 8.3, cmt. B.<sup>3</sup> Rather, it reaffirmed long standing  
5 Nevada law that inadequacy of price alone is insufficient to set aside a sale; "there must also be a  
6 showing of fraud, unfairness, or oppression." Shadow Wood, 366 P.3d at 1110 (2016) (citing  
7 Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see also Golden, 79 Nev. at 504, 514,  
8 387 P.2d at 995 (adopting the California rule that "inadequacy of price, **however gross**, is not in  
9 itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition  
10 proof of some element of fraud, unfairness or oppression **as accounts for and brings about the**  
11 **inadequacy of price**" (internal citations omitted) (emphasis added). To be clear, the Nevada  
12 Supreme Court re-affirmed this rule of law in Centeno v. JP Morgan Chase Bank, N.A., Nevada  
13 Supreme Ct. Case No. 67365 (unpublished Order Vacating and Remanding) (Nev. Mar.18, 2016)  
14 (reaffirmance of the holding in Shadow Wood).<sup>4</sup> In fact, in adopting the California rule in Golden,  
15 the Nevada Supreme Court expressly rejected an inference that a sale could be set aside merely  
16 because the price was so low as to "shock the conscience," which is often used synonymously with  
17 "grossly inadequate." See Golden, 79 Nev. at 504, 514, 387 P.2d at 995.

18 While arguably the Bank's expert opinion is irrelevant given the law in Nevada as  
19 described above, this illustrates that the Bank's challenge to Brunson's rebuttal analysis goes to  
20 the weight of the evidence, not to its admissibility. Williams v. Eighth Judicial Dist. Court, 127  
21 Nev. \_\_\_, \_\_\_, 262 P.3d 360, 368 (2011) (quality of expert testimony goes to weight, not  
22 admissibility, of evidence); see also Nevada Power Co. v. 3 Kids, LLC, 129 Nev. \_\_\_, \_\_\_, 302  
23

24  
25 <sup>3</sup> Not only was the Court's reference to the Restatement there mere dicta, but a full reading of the comments  
26 and examples for the twenty percent figure used by the Restatement shows that not one California case is  
27 cited for adopting that standard. See Restatement (Third) of Property § 8.3 (1997); see also Shadow Wood,  
366 P.3d at 1112 (citing Golden, 79 Nev. at 511, 387 P.2d at 995). In fact, the only California cases cited  
by the Restatement are in the section for looking at price plus more: the Nevada standard. Id.

28 <sup>4</sup> A copy of the Nevada Supreme Court unpublished order is available at  
<http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>, as Doc. 16-08672.

1 P.3d 1155, 1159 (2013) (any alleged weaknesses in expert opinion are appropriate topics for cross-  
2 examination).

3 As explained above, Brunson satisfied the requirements of rebuttal opinion and testimony,  
4 and thus SFR's disclosure was timely. The Bank's arguments regarding the sufficiency of his  
5 opinion go to the weight of the evidence. For these

6 **IV. CONCLUSION**

7 Based on the above, the Court should deny the Bank's Motion to exclude Brunson's  
8 opinion and testimony, as his opinion falls squarely within the requirements of rebuttal expert  
9 disclosure, satisfy the reliability requirements for expert testimony, and the Bank's arguments go  
10 to the weight of the evidence, an issue appropriate for determination by the trier of fact at trial.

11 Dated this 25th day of July, 2016.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks  
Karen L. Hanks, Esq.  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
*Attorneys for SFR Investments Pool 1, LLC*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25th day of July 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **OPPOSITION TO MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON**, to the following parties:

**Ballard Spahr**

**Contact**

**Email**

Abran Vigil

[vigila@ballardspahr.com](mailto:vigila@ballardspahr.com)

Catherine

[wranghamc@ballardspahr.com](mailto:wranghamc@ballardspahr.com)

Holly Priest

[priesth@ballardspahr.com](mailto:priesth@ballardspahr.com)

Las Vegas Docketing

[lvdocket@ballardspahr.com](mailto:lvdocket@ballardspahr.com)

Mary Kay Carlton

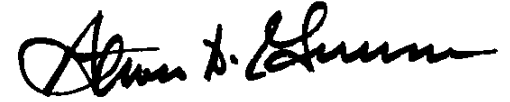
[carltonm@ballardspahr.com](mailto:carltonm@ballardspahr.com)

Lindsay Demaree

[demareel@ballardspahr.com](mailto:demareel@ballardspahr.com)

*/s/ Vanessa S. Goulet*

An employee of Kim Gilbert Ebron



CLERK OF THE COURT

**OPPC**

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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

VENTA REALTY GROUP, a Nevada  
corporation, JP MORGAN CHASE BANK,  
N.A., a national association, successor by  
merger to CHASE HOME FINANCE LLC, a  
foreign limited liability corporation,  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona corporation,  
CALIFORNIA RECONVEYANCE  
COMPANY a California corporation,  
REPUBLIC SILVER STATE DISPOSAL,  
INC., a Nevada corporation, PARADISE  
COURT HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation and DELANIE  
L. HARNED, an individual, DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No. A-12-672963-C

Dept. No. XXVII

**OPPOSITION TO JPMORGAN CHASE  
BANK'S MOTION TO COMPEL SFR'S  
RULE 30(b)(6) TESTIMONY  
-and-  
SFR'S COUNTERMOTION FOR  
PROTECTIVE ORDER RELATING TO  
RULE 30(b)(6) DEPOSITION OF SFR  
INVESTMENTS POOL 1, LLC**

SFR Investments Pool 1, LLC ("SFR"), by and through its counsel, Kim Gilbert Ebron, hereby files its Opposition to JPMorgan Chase Bank, N.A.'s ("Chase" or "the Bank") Motion to Compel the SFR's Rule 30(b)(6) Deposition Testimony and SFR's Countermotion for a protective order pursuant to NRCP 26(c) to limit the scope of the JPMorgan Chase Bank, N.A.'s ("Chase" or "the Bank") deposition of SFR's 30(b)(6) witness.

**DECLARATION OF COUNSEL PURSUANT TO EDCR 2.34 AND IN SUPPORT OF**  
**MOTION FOR PROTECTIVE ORDER**

I, Karen L. Hanks, hereby declare as follows:

1. On June 15, 2016, I participated in a telephone conference in regards to topics of the deposition, namely Topics 14, 15, 16, 17, 18, 19, 20, 28 and 29. Specifically, SFR informed the Bank's counsel that these topics had been protected in case A672769 and that the Bank would need to move to compel these topics prior to the deposition of SFR.
2. On or about June 21, 2016, my office was served with a Notice of Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC in the above-entitled matter.
3. In discussing each of these topics, Lindsay C. Demaree, Esq., counsel for the Bank, explained that she believed the topics related to whether SFR was a bona fide purchaser at the time of the sale.
4. I in turn explained that these topics have previously been protected in case A672769 because these topics were overly broad and not limited to the specific facts of the subject sale. I explained it was my understanding that even under a BFP analysis, only those facts relating to the subject sale were relevant. I also explained that some topics asked for information that post-dated the sale, and as such, I could not see how this information related to a BFP analysis.
5. After this discussion, counsel and I were unable to resolve our dispute.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
AND CORRECT.

Dated this 25<sup>th</sup> day of July, 2016.

/s/ Karen L. Hanks  
Karen L. Hanks

**MEMORANDUM OF POINTS AND AUTHORITIES**

**OPPOSITION TO JPMORGAN CHASE BANK'S MOTION TO COMPEL SFR'S RULE  
30(b)(6) TESTIMONY**

**I. PREFATORY STATEMENT**

This is an Association foreclosure sale title dispute. SFR purchased real property commonly known as 1076 Slate Crossing Lane, #102, Henderson, Nevada 89002 (the "Property") at an Association foreclosure sale. On December 4, 2012, SFR filed its initial Complaint against the Bank and alleged two causes of action: declaratory relief/quiet title; and (2) preliminary and permanent injunction. On January 25, 2013, the Bank filed its initial Answer to SFR's Complaint. On October 19, 2015, after a substitution of attorneys, the Bank filed its Amended Answer and Counterclaim alleging a singular claim: unjust enrichment. The crux of the Bank's allegation against SFR under this claims is the Bank's Deed of Trust and resulting interest was not extinguished by the foreclosure sale. The Bank seeks to have its lien remain to encumber the property.

On November 6, 2015, SFR filed its answer to the Bank's counter-claim. See Answer, on file herein. Specifically, SFR alleges that based on the deed recitals, the foreclosure sale complied with all requirements of law, the Association lien is prior to the deed of trust, the Bank had actual or constructive notice of the Association's foreclosure proceedings, no entity paid the super-priority portion of the lien prior to the sale, and the foreclosure sale vested title in SFR without equity or right of redemption.

**II. ARGUMENT**

**a. The Bank is not entitled to deposition testimony from SFR on the below-disputed topics.**

This case presents a simple question: was the Bank's deed of trust extinguished as a result of the Association foreclosure sale? Despite this simple question, which in reality has already been answered by the Nevada Supreme Court, the Bank seeks irrelevant and overly broad discovery that has no bearing on this simple question or any other issue in this case. Specifically, SFR opposes the Bank's Motion to Compel regarding the following Rule 30(b)(6) topics:



1           **Topic 14** - SFR's disposition of properties acquired from homeowners associations,  
2 including, without limitation, its procedures to manage, lease and/or sell the properties.

3           **Topic 15** - The portion of SFR's business related to purchasing, managing, renting,  
4 and/or selling properties acquired from a homeowners association foreclosure sale.

5           **Topic 16** - SFR's formation and company purpose, including, without limitation, the  
6 facts and circumstances that led to SFR's creation.

7           **Topic 17** - SFR's company structure, including, without limitation, the identity of its  
8 members, managers and/or officers and the identity of all parent companies and/or other parties  
9 with an interest in SFR at the time SFR attended any association foreclosure sale of the  
10 Property.

11           **Topic 18** - The source(s) of funds used by SFR to purchase the Property.

12           **Topic 19** - SFR's knowledge of any prospectuses, private placement memoranda, or  
13 other documents that explain its business model to investors, members, managers, potential  
14 investors, potential members, or any other third parties who may have a current or prospective  
15 pecuniary interest in SFR.

16           **Topic 20** - SFR's relationship to other SFR entities.

17           **Topic 28** - SFR's actions with respect to the Property since the HOA Sale, including,  
18 without limitation, any leases entered into by SFR, any attempts to lease and/or sell the  
19 Property, and any costs incurred or payments made to maintain the Property (e.g., taxes,  
20 insurance, and homeowners association assessments).

21           **Topic 29** - SFR's communications with any tenant of the Property from the date of the  
22 HOA sale to present about this Litigation or Chase.

23           These exact topics have already been ruled on in case A672769. In case A672769, a  
24 bank, with same counsel herein, filed a notice of deposition with the same exact disputed topics.  
25 See Notice of Deposition of SFR in case A672769 attached hereto as **Exhibit 1**. The only  
26 difference in the A672769 notice is that topics 27 and 28 are numbered as 28 and 29 in the  
27 deposition notice herein. See Notice of Deposition of SFR attached hereto as **Exhibit 2**. This  
28 Court found all of these topics to be protected. See A672769 DCRR attached hereto at **Exhibit**

1 3. Yet, the Bank seeks to circumvent this decision by filing this motion. For the same reasons as  
2 stated in the DCRR from case A672769, this Court should deny the Bank's Motion to Compel.

3 **b. SFR have adequately answered topics 13, 25 and 26.**

4 The Bank's only complaint in regards to SFR's answering of topics 13, 25 and 26 is that  
5 SFR did not produce Mr. Diamond, the purchaser of the property. Ms. Kelso, the prepared  
6 30(b)(6) designee, was able to testify to the policies and procedures at the time SFR had at the  
7 time of the sale. Ms. Kelso had in the past prepared with Mr. Diamond to answer the relevant  
8 question regarding his time as a purchaser for SFR. To the degree that Ms. Kelso could not  
9 answer questions asked of her, it was because the questions were far beyond the scope of the  
10 deposition and had little relevance to any material fact. For these reasons the Bank's Motion to  
11 Compel must be denied.

12 **c. The Bank Must be Denied Fees and Costs**

13 Based on this Court's previous ruling and the arguments set forth above, no adequate  
14 basis for fees or costs exist. As such, they must be denied.

15 **SFR'S COUNTERMOTION FOR PROTECTIVE ORDER RELATING TO RULE**  
16 **30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC**

17  
18 **I. LEGAL ARGUMENT**

19 **a. This Court Should Issue a Protective Order Under NRCP 26(c)(4).**

20 Pursuant to NRCP 26(c)(4), a party may seek a protective order to protect it from  
21 "annoyance, embarrassment, oppression, or undue burden," by requesting that "certain matters  
22 not be inquired into, or that the scope of the discovery be limited to certain matters."  
23 Additionally, NRCP 26(b)(1) only permits discovery into matters that are "relevant to the subject  
24 matter involved in the pending action." Moreover, NRS 48.015 defines "relevant evidence" as  
25 "evidence having any tendency to make the existence of any fact that is of consequence to the  
26 determination of the action more or less probable than it would be without the evidence."

27 Here, SFR seeks a protective order preventing inquiry for Topics 14, 15, 16, 17, 18, 19,  
28 20, 25, 28 and 29 because these topic areas have nothing to do with the issue at hand in this

1 case. In discussing these issues, the Bank has claimed that this information is needed to  
2 determine if SFR was a bona fide purchaser at the time of the sale. While not required in the  
3 first instance, the above-listed topics have absolutely no bearing on a BFP analysis.

4 **Topic 14**

5 **SFR's disposition of properties acquired from homeowners' associations, including,**  
6 **without limitation, its procedures to manage, lease and/or sell the properties.**

7 This topic has no relevance to the issues in this case. Any post sale disposition of the  
8 properties SFR acquires has no relevance to whether SFR was a BFP at the time of the sale, nor  
9 is it relevant to whether the Bank's deed of trust was extinguished. This topic should be  
10 protected.

11 **Topic 15**

12 **The portion of SFR's business related to purchasing, managing, renting, and/or**  
13 **selling properties acquired from a homeowners association foreclosure sale.**

14 Again, this topic has no bearing on the question of whether the Bank's interest was  
15 extinguished by the foreclosure sale in this case. How SFR conducts its business operations  
16 post sale is not relevant. This question is no more relevant than asking the Bank how much of its  
17 business was affected by extinguished deeds of trust, and what portion of that book of business  
18 it hoped to recoup based on the current litigation. This topic should be protected.

19 **Topic 16**

20 **SFR's formation and company purpose, including, without limitation, the facts and**  
21 **circumstances that led to SFR's creation.**

22 This topic has no bearing on whether the Bank's First Deed of Trust was extinguished.  
23 Why SFR, or any LLC for that matter, is created, has no bearing on whether an entity is a BFP.  
24 This topic should be protected.

25 **Topic 17**

26 **SFR's company structure, including, without limitation, the identity of its**  
27 **members, managers and/or officers and the identity of all parent companies and/or other**  
28 **parties with an interest in SFR at the time SFR attended any association foreclosure sale of**

1 **the Property.**

2 This topic is irrelevant to the issue of extinguishment. If that were not enough, SFR has  
3 answered this question on countless occasions in both deposition and written discovery (over  
4 objections of course). The answer is and has always been SFR Funding, LLC is the owner of  
5 SFR Investments, LLC and Chris Hardin is the manager of SFR Investments, LLC. SFR's  
6 parent entities have no bearing on the issue of extinguishment, just as the Bank's company  
7 structure and individual investors have no bearing on the issues in this case. What is relevant is  
8 SFR's relationship with the Association and its agent, and this topic area is more than covered by  
9 the other Topics.

10 **Topic 18**

11 **The source(s) of funds used by SFR to purchase the Property.**

12 Again, this topic has no bearing on whether the Bank, after being noticed, failed to  
13 protect its interest and thus had its First Deed of Trust extinguished or whether SFR was a BFP.  
14 Whether SFR used funds from elderly grandmothers or lottery winnings to purchase the  
15 property is not relevant. Further, as SFR has stated on numerous occasions, it has no  
16 relationship with the Association or its agent outside of attending auctions and bidding on  
17 properties. This would include not being funded by either of these entities. This topic should be  
18 protected.

19 **Topic 19**

20 **SFR's knowledge of any prospectuses, private placement memoranda, or other**  
21 **documents that explain its business model to investors, members, managers, potential**  
22 **investors, potential members, or any other third parties who may have a current or**  
23 **prospective pecuniary interest in SFR.**

24 Again, SFR's proprietary business model, and any information used to explain that  
25 business model to third parties, has no bearing on whether SFR was a BFP at the time of the  
26 sale. This topic should be protected.

27 ...

28 ...

**Topic 20**

**SFR's relationship to other SFR entities.**

Again, as stated above, this topic is irrelevant to the issue of extinguishment and/or BFP status. If that were not enough, SFR has answered this question on countless occasions in both deposition and written discovery (over objections of course). The answer is and has always been SFR Funding, LLC is the owner of SFR Investments, LLC and Chris Hardin is the manager of SFR Investments, LLC. SFR's parent entities have no bearing on the issue of extinguishment, just as the Bank's company structure and individual investors have no bearing on these topics. What is relevant is SFR's relationship with the Association and its agent, and this topic area is more than covered by the other Topics. This topic should be protected.

**Topic 25**

**SFR's preparations for the HOA Sale, including without limitation, evaluations of the Property's value, risk assessments related to bidding on the Property at the HOA Sale, bidding authority, and SFR's investment criteria as it relates to the Property.**

This topic is not relevant to whether the Bank's interest in the property was extinguished. The Bank has not set forth a commercial reasonableness argument, and even if it had, any valuations that SFR could have received prior to its purchase of the property (frankly, these are non-existent given that SFR had no way to access the property prior to the sale) has no bearing on whether the sale itself was commercially unreasonable. Further, there is no expectation that a BFP is absolutely ignorant about the purchasing process, therefore SFR's investment criteria, for example, would not be relevant to its status as a BFP. This topic should be protected.

**Topic 28**

**SFR's actions with respect to the Property since the HOA Sale, including, without limitation, any leases entered into by SFR, any attempts to lease and/or sell the Property, and any costs incurred or payments made to maintain the Property (e.g., taxes, insurance, and homeowners association assessments).**

Whether the Property is currently leased or was previously leased has no bearing on

whether the foreclosure sale extinguished the Bank's first deed of trust or whether SFR was a BFP at the time of the sale. Like all the other topics, expenses SFR has paid after the sale toward the Property has no bearing on the issues in this case. Frankly, the Bank could not articulate a plausible reason for needing discovery into this issue. Whether SFR has paid taxes, insurance and homeowner association assessments changes nothing legally about whether the Bank's deed of trust was extinguished or whether SFR was a BFP at the time of the sale. Therefore, this topic should be protected.

**Topic 29**

**SFR's communications with any tenant of the Property about this Litigation or about Chase, Washington Mutual Bank, or any other mortgagee of the Property.**

SFR's communication with any tenant regarding the property post-sale regarding this litigation or about the Bank is not relevant to whether SFR was a BFP at the time of the sale, nor is it relevant to whether the Bank's interest was extinguished. This is an unwarranted fishing expedition into SFR's business operations. This topic should be protected.

**II. CONCLUSION**

Based on the foregoing, SFR asks this Court to enter a protective order prohibiting the Bank from inquiring into Topics 14, 15, 16, 17, 18, 19, 20, 25, 28 and 29.

Dated this 25<sup>th</sup> day of July, 2016.

**KIM GILBERT EBRON**

/s/ Jacqueline A Gilbert, Esq.  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
*Attorneys for SFR Investments Pool 1, LLC*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of July, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **OPPOSITION TO JPMORGAN CHASE BANK'S MOTION TO COMPEL SFR'S RULE 30(b)(6) TESTIMONY -and- SFR'S COUNTERMOTION FOR PROTECTIVE ORDER RELATING TO RULE 30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC,** to the following parties:

<b>Ballard Spahr</b>		
	<b>Contact</b>	<b>Email</b>
	Abran Vigil	<a href="mailto:vigila@ballardspahr.com">vigila@ballardspahr.com</a>
	Holly Priest	<a href="mailto:priesth@ballardspahr.com">priesth@ballardspahr.com</a>
	Mary Kay Carlton	<a href="mailto:carltonm@ballardspahr.com">carltonm@ballardspahr.com</a>
<b>Ballard Spahr LLP</b>		
	<b>Contact</b>	<b>Email</b>
	Catherine Wrangham-Rowe	<a href="mailto:wranghamrowec@ballardspahr.com">wranghamrowec@ballardspahr.com</a>
	Las Vegas Docketing	<a href="mailto:lvdocket@ballardspahr.com">lvdocket@ballardspahr.com</a>
	Lindsay Demaree	<a href="mailto:demareel@ballardspahr.com">demareel@ballardspahr.com</a>

/s/ Zachary Clayton  
An Employee of Kim Gilbert Ebron

# EXHIBIT 1



1 Abran E. Vigil  
Nevada Bar No. 7548  
2 Lindsay Demaree  
Nevada Bar No. 11949  
3 Holly Ann Priest  
Nevada Bar No. 13226  
4 BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
5 Las Vegas, Nevada 89106-4617  
Telephone: (702) 471-7000  
6 Facsimile: (702) 471-7070  
E-Mail: vigila@ballardspahr.com  
7 E-Mail: demareel@ballardspahr.com  
E-Mail: priesth@ballardspahr.com  
8  
9 Attorneys for JPMorgan Chase Bank N.A.,  
for itself and as acquirer of certain assets  
10 and liabilities of Washington Mutual Bank,  
through the FDIC

11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

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

15 Plaintiff,

16 v.

17 WASHINGTON MUTUAL BANK, a Federal  
Association, JPMORGAN CHASE BANK,  
18 N.A., MTC FINANCIAL, INC. dba  
TRUSTEE CORPS, a California  
19 Corporation, and GREGORY E. COOPER,  
an individual, DOES I through X; ROE  
20 CORPORATIONS I through X, inclusive,

21 Defendants.

22 JPMORGAN CHASE BANK, N.A.,

23 Counterclaimant,

24 v.

25 SFR INVESTMENTS POOL1, LLC,

26 Counterdefendants.  
27  
28

CASE NO. A-12-672769-C

DEPT NO. 28

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

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

SECOND NOTICE OF 30(b)(6) DEPOSITION OF  
SFR INVESTMENTS POOL 1, LLC

TO: ALL INTERESTED PARTIES; and

TO: THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT Defendant and Counterclaimant JPMorgan Chase Bank N.A., for itself and as acquirer of certain assets and liabilities of Washington Mutual Bank, through the FDIC ("Chase") will take the deposition of the N.R.C.P. 30(b)(6) designee of SFR Investments Pool 1, LLC ("SFR") on the topics listed in Exhibit A, upon oral examination, pursuant to N.R.C.P. 26 and 30.

Place: Law Offices of Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106

Date: March 9, 2016

Time: 2:00 P.M.

The deposition will take place before a notary public or some other officer authorized by law to administer oaths. The deposition will be recorded by videotape and/or stenographic means. You are invited to attend and cross-examine.

Dated: February 16<sup>th</sup>, 2016.

BALLARD SPAHR LLP

By: 

Abran E. Vigil  
Nevada Bar No. 7548  
Lindsay C. Demaree  
Nevada Bar No. 11949  
Holly Ann Priest  
Nevada Bar No. 13226  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106  
*Attorneys for JPMorgan Chase Bank  
N.A., for itself and as acquirer of certain  
assets and liabilities of Washington  
Mutual Bank, through the FDIC*

EXHIBIT A

General Definitions

a. The term "communication," and its plural or any synonym thereof, means any dissemination of information or transmission of a statement from one person to another, or in the presence of another, whether by written, oral, or electronic means or by action or conduct and shall include, but is not limited to, every discussion, conversation, conference, meeting, interview, memorandum, telephone call, and/or visit.

b. The term "document" includes, but is not limited to, any letter, book, drawing, note, record, e-mail, minutes of meetings, agreement, contract, memorandum, map, diagram, illustration, photograph, telegram, written analysis, report, recording of any type, transcription, and memoranda made of any telephone communication or face-to-face oral meeting or conversation, written communication (which includes, but is not limited to, any letter, interoffice communication and telegram), paper, or other writing of any sort. The term includes the original, any copy, and any draft versions thereof.

c. The term "person" means natural persons, corporations, partnerships, limited liability companies, joint ventures, and any other entity recognized by law of whatever type, whatever form, and however nominated.

d. The term "you," "your," or "SFR" means SFR Investments Pool 1, LLC, as well as its partners, officers, members, directors, managers, agents, employees, accountants, counsel, trustees, affiliated organizations, any successor or predecessor in interest, and any other persons or entities under its control or direction, or acting on its behalf, regardless of its affiliation or employment.

e. The term "Chase" means Defendant and Counterclaimant JPMorgan Chase Bank N.A., for itself and as acquirer of certain assets and liabilities of Washington Mutual Bank, through the FDIC, acting as receiver.

- 1           f.       The term "Act" means the Nevada Uniform Condominium Ownership  
2 Act, NRS Chapter 116.
- 3           g.       The term "CC&Rs" means the Heritage Estates Homeowners  
4 Association Declaration of Covenants, Conditions, and Restrictions, recorded on  
5 September 24, 1999 as Instruments No. 19990924.01463.
- 6           h.       The term "Property" means the real property located at 2792 Jupiter  
7 Creek Street, Las Vegas, Nevada 89156.
- 8           i.       The term "Lien" means the "Notice of Delinquent Assessment Lien,"  
9 recorded on May 17, 2011, as Instrument No. 201105170002452, in Clark County,  
10 Nevada.
- 11          j.       The term "Notice of Default" means the "Notice of Default and Election  
12 to Sell Under Homeowners Association Lien," recorded on July 18, 2011, as  
13 Instrument No. 201107180001262 in Clark County, Nevada.
- 14          k.       The terms "Notice of Sale" means the "Notice of Foreclosure Sale,"  
15 recorded on December 1, 2011, as Instrument No. 201112010001557 in Clark County,  
16 Nevada.
- 17          l.       The term "Litigation" means the above-captioned proceeding in Nevada  
18 District Court, Clark County, Case No. A-12-672769-C.
- 19          m.       The term "Complaint" means the "Complaint" filed on December 4, 2012  
20 as part of the Litigation.
- 21          n.       The term "NAS" means Nevada Association Services, Inc., as well as its  
22 members, officers, employees, agents, assigns, representatives, any successor or  
23 predecessor in interest, and any other person or entity acting or purporting to act on  
24 its behalf.
- 25          o.       The term "HOA" means Heritage Estates Homeowners Association, as  
26 well as its members, officers, employees, agents, assigns, representatives, any  
27 successor or predecessor in interest, and any other person or entity acting or  
28 purporting to act on its behalf.



1 p. The term "HOA Sale" means the sale of the Property purportedly  
2 conducted under the Lien on or about July 27, 2012.

3 q. The term "Foreclosure Deed" means the "Foreclosure Deed" recorded on  
4 August 1, 2012, as Instrument No. 201208010001741, in Clark County, Nevada.

5 r. The term "Borrower" means Defendant Gregory E. Cooper.

6 s. Unless otherwise stated, names of documents shall have the meanings  
7 set forth in the Act.

8  
9 **Matters on Which Testimony Will be Taken**  
(for witnesses designated pursuant to N.R.C.P. 30(b)(6))

10 1. The factual basis for SFR's allegations in paragraphs 11, 25, 38, and 43  
11 of the Complaint.

12 2. The factual basis for SFR's affirmative defenses numbered 3, 7, 10, 11,  
13 and 15.

14 3. The factual basis for SFR's responses to Request Nos. 1, 6, and 9 in  
15 "JPMorgan Chase Bank, N.A.'s First Set of Requests for Admission to SFR  
16 Investments Pool 1, LLC," served in this Litigation.

17 4. The factual basis for SFR's responses to Interrogatory Nos. 15, 17, 19,  
18 25, 26, and 28 in "JPMorgan Chase Bank, N.A.'s First Set of Interrogatories to SFR  
19 Investments Pool 1, LLC," served in this Litigation.

20 5. The authenticity and content of documents disclosed and/or produced by  
21 you in the Litigation.

22 6. All communications between SFR and any other party to the Litigation  
23 that mention association assessments, the HOA's lien, the Notice of Default, the  
24 Notice of Sale, the Foreclosure Deed and/or purported foreclosure as related to the  
25 Property.

26 7. All communications between SFR and NAS.

27 8. All communications between SFR and the HOA related to the Property.

28 This request is limited in time from May 1, 2011 to August 31, 2012.

1           9.     All communications between SFR and the Borrower.

2           10.    SFR's relationship with NAS, including, without limitation, SFR's  
3 participation in homeowners association foreclosure sales conducted by NAS.

4           11.    SFR's relationship with the HOA, including, without limitation, SFR's  
5 bidding, purchase, and/or ownership of properties located within the HOA, SFR's  
6 involvement with the HOA's governance, and SFR's attendance at any HOA  
7 meetings.

8           12.    SFR's relationship with the Borrower.

9           13.    SFR's practices, policies, and procedures related to purchasing properties  
10 at homeowners association foreclosure sales, including, without limitation, frequency  
11 of attending homeowners association foreclosure sale, geographic focus, internal risk  
12 assessments, determination of bid amounts, and knowledge of and communications  
13 with mortgagees, homeowners association foreclosure agents, and/or collection  
14 companies about a property prior to purchase. This request is limited in time from  
15 the date the HOA recorded its Notice of Delinquent Assessment Lien to the date of  
16 the HOA Sale.

17           14.    SFR's disposition of properties acquired from homeowners associations,  
18 including, without limitation, its procedures to manage, lease and/or sell the  
19 properties.

20           15.    The portion of SFR's business related to purchasing, managing, renting,  
21 and/or selling properties acquired from a homeowners association foreclosure sale.

22           16.    SFR's formation and company purpose, including, without limitation,  
23 the facts and circumstances that led to SFR's creation.

24           17.    SFR's company structure, including, without limitation, the identity of  
25 its members, managers and/or officers and the identity of all parent companies  
26 and/or other parties with an interest in SFR at the time SFR attended any  
27 association foreclosure sale of the Property.

28           18.    The source(s) of funds used by SFR to purchase the Property.

1           19.    SFR's knowledge of any prospectuses, private placement memoranda, or  
2 other documents that explain its business model to investors, members, managers,  
3 potential investors, potential members, or any other third parties who may have a  
4 current or prospective pecuniary interest in SFR.

5           20.    SFR's relationship to other SFR entities.

6           21.    SFR's knowledge and understanding of the effect and purpose of the  
7 CC&R's provisions related to mortgagees and lien foreclosure at the time SFR  
8 attended any association foreclosure sale of the Property.

9           22.    SFR's knowledge and understanding of Chase's or Washington Mutual  
10 Bank's interests in the Property.

11           23.    Any communications between SFR and any prospective purchaser of the  
12 Property from the time SFR first learned the Property was subject to a homeowners  
13 association foreclosure to the present.

14           24.    Any communications between SFR and any title company relating to the  
15 marketability of title to the Property from the time SFR first learned the Property  
16 was subject to a homeowners association foreclosure to the present.

17           25.    SFR's preparations for the HOA Sale, including, without limitation,  
18 evaluations of the Property's value, risk assessments related to bidding on the  
19 Property at the HOA Sale, bidding authority, and SFR's investment criteria as it  
20 relates to the Property.

21           26.    Facts relating to the HOA Sale, including, without limitation, SFR's  
22 knowledge of and attendance at any previously-scheduled sale(s) for the Property,  
23 statements made at the HOA Sale or any previously-scheduled sale(s) for the  
24 Property, the sale process, and participation in the sale by SFR and any other  
25 attendees.

26           27.    SFR's actions with respect to the Property since the HOA Sale,  
27 including, without limitation, any leases entered into by SFR, any attempts to lease  
28

1 and/or sell the Property, and any costs incurred or payments made to maintain the  
2 Property (e.g., taxes, insurance, and homeowners association assessments).

3 28. SFR's communications with any tenant of the Property about this  
4 Litigation or about Chase, Washington Mutual Bank, or any other mortgagee of the  
5 Property.

6 29. SFR's involvement in the drafting, preparation, or recording of the Lien,  
7 Notice of Default, Notice of Sale, and/or Foreclosure Deed.

8 30. SFR's understanding of the effect and purpose of the State of Nevada  
9 Declaration of Value included with the Foreclosure Deed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16<sup>th</sup> day of February, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the SECOND NOTICE OF 30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC, was served to the parties following in the manner set forth below:

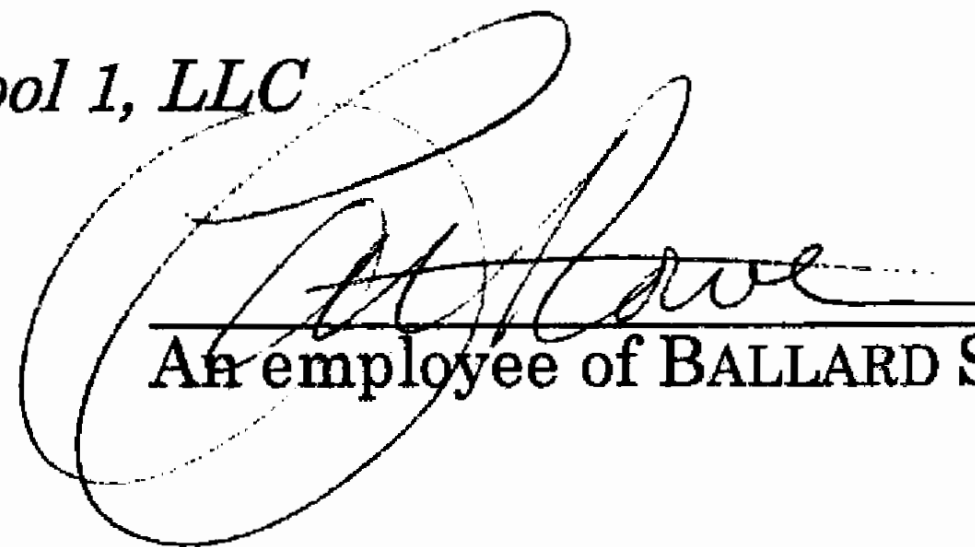
☐ Hand Delivery

☐ U.S. Mail, Postage Pre-Paid

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

Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
Karen L. Hanks, Esq.  
HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89011

*Attorneys for SFR Investments Pool 1, LLC*

  
An employee of BALLARD SPAHR LLP

# EXHIBIT 2

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

1 Abran E. Vigil  
Nevada Bar No. 7548  
2 Lindsay Demaree  
Nevada Bar No. 11949  
3 BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
4 Las Vegas, Nevada 89106-4617  
Telephone: (702) 471-7000  
5 Facsimile: (702) 471-7070  
E-Mail: [vigila@ballardspahr.com](mailto:vigila@ballardspahr.com)  
6 E-Mail: [demareel@ballardspahr.com](mailto:demareel@ballardspahr.com)  
*Attorneys for Defendant and Counterclaimant*  
7 *JPMorgan Chase Bank, N.A., as successor by*  
*merger to Chase Home Finance LLC*

8  
9 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO. A-12-672963-C

12 Plaintiff,

DEPT NO. 27

13 v.

14 VENTA REALTY GROUP, a Nevada  
corporation, JP Morgan Chase Bank, NA, a  
15 National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
16 limited liability corporation, NATIONAL  
DEFAULT SERVICING CORPORATION, an  
17 Arizona corporation, CALIFORNIA  
CONVEYANCE COMPANY, a California  
18 corporation, REPUBLIC SILVER STATE  
DISPOSAL, INC., a Nevada Corporation,  
19 PARADISE COURT HOMEOWNERS  
ASSOCIATION, a Nevada non-profit  
20 corporation and DELANIE L. HARNED, an  
individual, DOES I through X, ROE  
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 JPMORGAN CHASE BANK, N.A., as successor  
by merger to Chase Home Finance LLC,

24 Counter-Claimant,

25 vs.

26 SFR INVESTMENTS POOL 1, LLC a Nevada  
27 Limited liability company

28 Counter-Defendant.

**SEVENTH AMENDED NOTICE OF 30(b)(6) DEPOSITION OF  
SFR INVESTMENTS POOL 1, LLC**

**TO:** ALL INTERESTED PARTIES; and

**TO:** THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT Defendant and Counterclaimant JPMorgan Chase Bank N.A., as successor by merger with Chase Home Finance LLC ("Chase") will take the deposition of the N.R.C.P. 30(b)(6) designee for SFR Investments Pool 1, LLC ("SFR") on the topics listed in Exhibit A, upon oral examination, pursuant to N.R.C.P. 26 and 30.

Place: Law Offices of Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106

Date: **June 24, 2016**

Time: **1:00 P.M.**

The deposition will take place before a notary public or some other officer authorized by law to administer oaths. The deposition will be recorded by videotape and/or stenographic means.

You are invited to attend and cross-examine.

DATED this 21 day of June, 2016.

BALLARD SPAHR LLP

By: /s/ Holly Ann Priest  
Abran E. Vigil  
Lindsay Demaree  
Holly Ann Priest  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

*Attorneys for Defendant and  
Counterclaimant JPMorgan Chase Bank,  
N.A., as successor by merger to Chase  
Home Finance LLC*

## EXHIBIT A

### General Definitions

a. The term “communication,” and its plural or any synonym thereof, means any dissemination of information or transmission of a statement from one person to another, or in the presence of another, whether by written, oral, or electronic means or by action or conduct and shall include, but is not limited to, every discussion, conversation, conference, meeting, interview, memorandum, telephone call, and/or visit.

b. The term “document” includes, but is not limited to, any letter, book, drawing, note, record, e-mail, minutes of meetings, agreement, contract, memorandum, map, diagram, illustration, photograph, telegram, written analysis, report, recording of any type, transcription, and memoranda made of any telephone communication or face-to-face oral meeting or conversation, written communication (which includes, but is not limited to, any letter, interoffice communication and telegram), paper, or other writing of any sort. The term includes the original, any copy, and any draft versions thereof.

c. The term “person” means natural persons, corporations, partnerships, limited liability companies, joint ventures, and any other entity recognized by law of whatever type, whatever form, and however nominated.

d. The term “you,” “your,” or “SFR” means SFR Investments Pool 1, LLC, as well as its partners, officers, members, directors, managers, agents, employees, accountants, counsel, trustees, affiliated organizations, any successor or predecessor in interest, and any other persons or entities under its control or direction, or acting on its behalf, regardless of its affiliation or employment.

e. The term “Chase” means Defendant and Counterclaimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC .

1 f. The term "Act" means the Nevada Uniform Condominium Ownership  
2 Act, NRS Chapter 116.

3 g. The term "FHA" means the Federal Housing Administration.

4 h. The term "CC&Rs" means the Paradise Court's Declaration of  
5 Covenants, Conditions, and Restrictions, recorded on May 18, 2004.

6 i. The term "Property" means the real property located at 1076 Slate  
7 Crossing Lane, #102, Henderson, NV 89002.

8 j. The term "Lien" means the "Notice of Delinquent Assessment Lien,"  
9 recorded on February 5, 2010, as Instrument No. 201002050001923, in Clark County,  
10 Nevada.

11 k. The term "Notice of Default" means the "Notice of Default and Election  
12 to Sell Under Homeowners Association Lien," recorded on March 7, 2012, as  
13 Instrument No. 201203070000441 in Clark County, Nevada.

14 l. The terms "Notice of Sale" means the "Notice of Foreclosure Sale,"  
15 recorded on August 30, 2012, as Instrument No. 201208300003067 in Clark County,  
16 Nevada.

17 m. The term "Litigation" means the above-captioned proceeding in Nevada  
18 District Court, Clark County, Case No. A-12-672963-C.

19 n. The term "Complaint" means the "Complaint" filed on December 4, 2012  
20 as part of the Litigation.

21 o. The term "NAS" means Nevada Association Services, Inc., as well as its  
22 members, officers, employees, agents, assigns, representatives, any successor or  
23 predecessor in interest, and any other person or entity acting or purporting to act on  
24 its behalf.

25 p. The term "HOA" means Paradise Court Homeowners Association, as  
26 well as its members, officers, employees, agents, assigns, representatives, any  
27 successor or predecessor in interest, and any other person or entity acting or  
28 purporting to act on its behalf.

1 q. The term "HOA Sale" means the sale of the Property purportedly  
2 conducted under the Lien on or about September 21, 2012.

3 r. The term "Foreclosure Deed" means the "Foreclosure Deed" recorded on  
4 September 25, 2012, as Instrument No. 201209250001230, in Clark County, Nevada.

5 s. The term "Borrower" means Delaine L. Harned.

6 t. Unless otherwise stated, names of documents shall have the meanings  
7 set forth in the Act.

8 **Matters on Which Testimony Will be Taken**

9 (for witnesses designated pursuant to N.R.C.P. 30(b)(6))

10 1. The factual basis for SFR's allegations in paragraphs 11, 14, 19, 43, 49  
11 and 55 of the Complaint.

12 2. The factual basis for SFR's affirmative defenses numbered 3, 4, 7, 10,  
13 and 16 in "SFR Investments Pool 1, LLC's Answer to Counterclaim" filed in the  
14 Litigation.

15 3. The factual basis for SFR's responses to Request Nos. 1, 6, and 9 in  
16 "JPMorgan Chase Bank, N.A.'s First Set of Requests for Admission to SFR  
17 Investments Pool 1, LLC," served in this Litigation.

18 4. The authenticity and content of documents disclosed and/or produced by  
19 you in the Litigation.

20 5. All communications between SFR and any other party to the Litigation  
21 that mention association assessments, the HOA's lien, the Notice of Default, the  
22 Notice of Sale, the Foreclosure Deed and/or purported foreclosure as related to the  
23 Property.

24 6. All communications between SFR and NAS pertaining to: the Property;  
25 the notices and association's foreclosure related to the Property; NRS 116.3116 *et*  
26 *seq.*; the Borrower's delinquency; the association's lien interest in the Property; or,  
27 the association foreclosure process.

1           7. All communications between SFR and the HOA pertaining to: the  
2 Property; the notices and association's foreclosure related to the Property; NRS  
3 116.3116 *et seq.*; the Borrower's delinquency; the association's lien interest in the  
4 Property; or, the association foreclosure process.

5           8. All communications between SFR and the Borrower.

6           9. All communications between SFR and Chase related to the Property.

7           10. SFR's relationship with NAS, including, without limitation, SFR's  
8 participation in homeowners association foreclosure sales conducted by NAS.

9           11. SFR's relationship with the HOA, including, without limitation, SFR's  
10 bidding, purchase, and/or ownership of properties located within the HOA, SFR's  
11 involvement with the HOA's governance, and SFR's attendance at any HOA  
12 meetings.

13           12. SFR's relationship with the Borrower.

14           13. SFR's practices, policies, and procedures related to purchasing properties  
15 at homeowners association foreclosure sales, including, without limitation, frequency  
16 of attending homeowners association foreclosure sale, geographic focus, internal risk  
17 assessments, determination of bid amounts, and knowledge of and communications  
18 with mortgagees, homeowners association foreclosure agents, and/or collection  
19 companies about a property prior to purchase. This request is limited in time from  
20 the date the HOA recorded its Notice of Delinquent Assessment Lien to the date of  
21 the HOA Sale.

22           14. SFR's disposition of properties acquired from homeowners associations,  
23 including, without limitation, its procedures to manage, lease and/or sell the  
24 properties.

25           15. The portion of SFR's business related to purchasing, managing, renting,  
26 and/or selling properties acquired from a homeowners association foreclosure sale.

27           16. SFR's formation and company purpose, including, without limitation,  
28 the facts and circumstances that led to SFR's creation.



1 17. SFR's company structure, including, without limitation, the identity of  
2 its members, managers and/or officers and the identity of all parent companies  
3 and/or other parties with an interest in SFR at the time SFR attended any  
4 association foreclosure sale of the Property.

5 18. The source(s) of funds used by SFR to purchase the Property.

6 19. SFR's knowledge of any prospectuses, private placement memoranda, or  
7 other documents that explain its business to investors, members, managers, potential  
8 investors, potential members, or any other parties who may have a current or  
9 prospective pecuniary interest in SFR.

10 20. SFR's relationship to other SFR entities.

11 21. SFR's knowledge and understanding of the effect and purpose of the  
12 CC&R's provisions related to mortgagees and lien foreclosure at the time SFR  
13 attended any association foreclosure sale of the Property.

14 22. SFR's knowledge and understanding of FHA's and Chase's interests in  
15 the Property.

16 23. Any communications between SFR and any prospective purchaser of the  
17 Property from the time SFR first learned the Property was subject to a homeowners  
18 association foreclosure to the present.

19 24. Any communications between SFR and any title company relating to the  
20 marketability of title to the Property from the time SFR first learned the Property  
21 was subject to a homeowners association foreclosure to the present.

22 25. SFR's preparations for the HOA Sale, including, without limitation,  
23 evaluations of the Property's value, risk assessments related to bidding on the  
24 Property at the HOA Sale, bidding authority, and SFR's investment criteria as it  
25 relates to the Property.

26 26. Facts relating to the HOA Sale, including, without limitation, SFR's  
27 knowledge of and attendance at any previously-scheduled sale(s) for the Property,  
28 statements made at the HOA Sale or any previously-scheduled sale(s) for the

1 Property, the sale process, and participation in the sale by SFR and any other  
2 attendees.

3 27. The identity, real estate experience, and current contact information of  
4 the person(s) who decided to attend the HOA Sale on SFR's behalf and/or who bid on  
5 the Property on SFR's behalf.

6 28. SFR's actions with respect to the Property since the HOA Sale,  
7 including, without limitation, any leases entered into by SFR, any attempts to lease  
8 and/or sell the Property, and any costs incurred or payments made to maintain the  
9 Property (e.g., taxes, insurance, and homeowners association assessments).

10 29. SFR's communications with any tenant of the Property about this  
11 Litigation or about any mortgagee of the Property.

12 30. SFR's involvement in the drafting, preparation, or recording of the Lien,  
13 Notice of Default, Notice of Sale, and/or Foreclosure Deed.

14 31. SFR's understanding of the effect and purpose of the State of Nevada  
15 Declaration of Value included with the Foreclosure Deed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of June, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing SEVENTH AMENDED NOTICE OF 30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC was served on the following counsel of record via the Court's electronic service system:

DIANA S. EBRON  
KAREN HANKS  
KIM GILBERT EBRON  
7265 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Attorneys for SFR Investments Pool, LLC

/s/ CM Rowe  
An employee of BALLARD SPAHR LLP

# EXHIBIT 3

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Case No. A-12-672769-C

Plaintiff,

Dept. No. 28

WASHINGTON MUTUAL BANK, a Federal  
Association, JP MORGAN CHASE BANK,  
N.A., MTC FINANCIAL, INC dba  
TRUSTEE CORPS, a California Corporation,  
and GREGORY E. COOPER, an individual,  
DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

**DISCOVERY COMMISSIONER'S REPORT  
AND RECOMMENDATION**

Defendants.

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

Hearing Date: May 27, 2016  
Hearing Time: 10:00 a.m.

Attorney for SFR Investments Pool 1, LLC: Karen Hanks, Esq. of Kim Gilbert Ebron

Attorney for JPMorgan Chase Bank, N.A.: Abran E. Vigil, Esq. of Ballard Spahr LLP

**I. FINDINGS**

Plaintiff, SFR Investments Pool 1, LLC's Motion for Protective Order Relating to Rule  
30(b)(6) Deposition of SFR Investments Pool 1, LLC came on for hearing on May 27, 2016 at  
10:00 a.m. Certain topic areas not in line with the current law and the decisions of the Nevada  
Supreme Court; and, SFR scheme and what their motivations were are completely irrelevant.

1 The only issue is whether SFR was a bona fide purchaser at the time of this particular sale.

2 The Commissioner reviewed the motions, papers and pleadings, and the oral arguments  
3 of counsel for JPMorgan Chase and counsel for SFR and, good cause appearing, the  
4 Commissioner makes the following recommendations.

## 5 II. RECOMMENDATIONS

6 IT IS RECOMMENDED that Plaintiff's Motion for Protective Order Related to Certain  
7 Topic Items of Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC is GRANTED In Part  
8 and DENIED In Part as discussed below:

9 Topic #1, as to allegations in complaint SFR should answer as it relates to the foreclosure  
10 sale in this case;

11 Topic item #2, #3, #4 have no problem;

12 Topic #7 SFR should answer as it relates to the sale in this case, and the same with topic  
13 #13;

14 Topic #14, the procedures to manage lease or sell property is overly broad and not  
15 relevant, and the same with topic #15;

16 Topic #16, how SFR was formed is irrelevant, however, their standing or structure,  
17 organization of the company at the time of the sale in this case might be a relevant area of  
18 inquiry;

19 Topic #17 would be limited to the sale in this particular case;

20 Topic #18 is irrelevant and would be protected, unless it was modified to address where it  
21 is the funding came from for the purchase of this property and if the funding came through SFR;

22 Topic #19 is protected;

23 Topic #20, the knowledge of any business models, prospectus(es) is not relevant and is  
24 protected;

25 Topic #25, SFR's preparation for the HOA sale, as related to this case only;

26 Topic #27, actions with respect to the property after the sale is irrelevant and protected;

27 Topic #28, any tenant from the HOA sale after-the-fact is irrelevant and protected;

28 Topic #30, the declaration of value, as it relates to the sale in this case.

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

1 IT IS FURTHER RECOMMENDED that ONLY granted topic areas allowed must  
2 relate to the sale of the property in this case.

3 IT IS FURTHER RECOMMENDED, all remaining areas are PROTECTED.

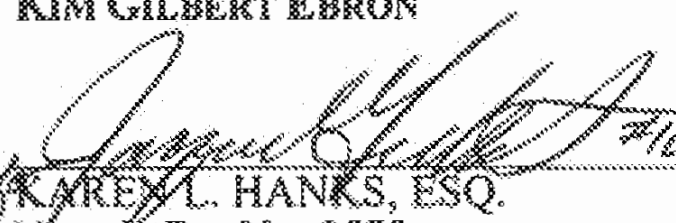
4 The Discovery Commissioner met with counsel for the parties, having discussed the  
5 issues noted above and having reviewed any materials proposed in support thereof, hereby  
6 submits the above recommendations.

7 Dated: \_\_\_\_\_

8  
9 \_\_\_\_\_  
DISCOVERY COMMISSIONER


10 Submitted by:

11 KIM GILBERT EBRON

12   
13 KAREN L. HANKS, ESQ.  
14 Nevada Bar No. 9578  
15 7625 Dean Martin Drive, Suite 110  
16 Las Vegas, Nevada 89139  
17 Attorneys for SFR Investments Pool 1, LLC

18 Approved as to form:

19 BALLARD SPAHR LLP

20   
21 ABRAN E. VIGIL, ESQ.  
22 Nevada Bar No. 7548  
23 LINDSAY DEMAREE, ESQ.  
24 Nevada Bar No. 11494  
25 100 North City Parkway, Ste 1750  
26 Las Vegas, Nevada 89106  
27 Attorneys for JPMorgan Chase Bank, N.A.  
28

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NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f), any objections must be filed and served no more than five (5) judicial days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the Clerk of the Court deposits a copy of the Report in the folder of a party's lawyer in the Clerk's Office. See E.D.C.R. 2.34(f)]

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_, 2016:

\_\_\_\_\_ Placed in the folder of Plaintiff's and Defendant's counsel in the Clerk's Office on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BY \_\_\_\_\_  
Deputy Clerk

KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3361



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

CASE NAME: *SFR Investments Pool 1, LLC v.*  
*Washington Mutual Bank et al.*  
CASE NUMBER: A-12-672769

ORDER

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

The parties having waived the right to object thereto,

No timely objection having been received in the office of the Discovery Commissioner  
pursuant to E.D.C.R. 2.34(f),

Having received the objections thereto and the written arguments in support of said  
objections, and good cause appearing,

\* \* \*

AND

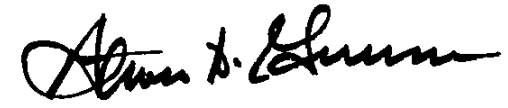
IT IS HEREBY ORDERED the Discovery Commissioner's Report and  
Recommendations  
are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report and  
Recommendations  
are affirmed and adopted as modified in the following manner. (attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report  
and Recommendations is set for \_\_\_\_\_, 2016 at \_\_\_\_\_m.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DISTRICT COURT JUDGE



CLERK OF THE COURT

1 RPLY  
Abran E. Vigil  
2 Nevada Bar No. 7548  
Lindsay Demaree  
3 Nevada Bar No. 11949  
BALLARD SPAHR LLP  
4 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
5 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
6 E-Mail: vigila@ballardspahr.com  
E-Mail: demareel@ballardspahr.com

7  
8 *Attorneys for Defendant and Counterclaimant*  
9 *JPMorgan Chase Bank, N.A., as successor by*  
10 *merger to Chase Home Finance LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 v.

15 VENTA REALTY GROUP, a Nevada  
corporation, JPMORGAN CHASE BANK, NA,  
16 a National Association, successor by merger to  
CHASE HOME FINANCE LLC, a foreign  
17 limited liability corporation, ET AL.,

18 Defendants.

19 JPMORGAN CHASE BANK, N.A., as successor  
20 by merger to Chase Home Finance LLC,

21 Counter-Claimant,

22 vs.

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

24 Counter-Defendant.  
25

CASE NO. A-12-672963-C

DEPT NO. 27

26 **REPLY IN SUPPORT OF CHASE'S MOTION TO COMPEL**  
27 **AND**  
**OPPOSITION TO SFR'S COUNTERMOTION FOR PROTECTIVE ORDER**  
28 **RELATING TO**  
**RULE 30(b)(6) DEPOSITION OF SFR INVESTMENTS POOL 1, LLC**

1 Defendant/counter-claimant JPMorgan Chase Bank, N.A. (“Chase”) responds  
2 to SFR Investments Pool 1, LLC’s (“SFR”) Opposition to Chase’s Motion to Compel  
3 SFR’s Rule 30(b)(6) Deposition Testimony (the “Opposition”) and Countermotion for  
4 Protective Order Relating to Rule 30(b)(6) Deposition of SFR (the “Countermotion”).

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 SFR knew since December 2015 that Chase intended to depose its Rule  
7 30(b)(6) designee on topics that SFR incorrectly claims are irrelevant. SFR  
8 expressly represented to Chase and this Court that it needed additional time for  
9 discovery, so it could move for a protective order on the Rule 30(b)(6) deposition  
10 topics. Months passed, and SFR did not move for a protective order. Chase re-  
11 noticed SFR’s deposition (which was previously vacated so SFR could seek a  
12 protective order), but SFR still did not file a motion for a protective order in this  
13 case. Chase explained to SFR, before the scheduled deposition, that SFR had the  
14 burden of moving for a protective order, but SFR still did not file a motion in this  
15 case. Instead, SFR took the position that, unlike other litigants, it could ignore the  
16 applicable Rules of Civil Procedure and instruct its Rule 30(b)(6) not to testify based  
17 on a *non-final* recommendation issued in *a different case*, before *a different district*  
18 *court judge*.

19 SFR is wrong. The Nevada Rules of Civil Procedure apply to all litigants—  
20 SFR is no exception. Applying the rules to *this* case, the Court must grant Chase’s  
21 Motion and deny SFR’s Countermotion.

22 **I. THE COURT MUST GRANT CHASE’S MOTION TO COMPEL**

23 The Court should compel SFR to provide complete deposition testimony on  
24 the Disputed<sup>1</sup> and Unanswered Topics.<sup>2</sup> First, SFR incorrectly bases its Opposition  
25 on a ruling decided in a different matter, which should not be permitted as a matter  
26

27 <sup>1</sup> The Disputed Topics are Topics 14, 15, 16, 17, 18, 19, 28, and 29. See also *infra*  
28 notes 4 and 5.

<sup>2</sup> The Unprepared Topics are Topics 13, 25, and 26.

1 of fairness. Rather, discovery disputes should be adjudicated on a case-by-case  
2 basis—a point that SFR has not and cannot refute.<sup>3</sup> Second, as set forth in Chase’s  
3 Motion to Compel (the “Motion”) and later in this Reply, each of the Disputed Topics  
4 is relevant and discoverable. *See* Motion at 10-16; *infra* at Section III.C. Finally,  
5 the Court should require SFR to provide a witness who can adequately respond to  
6 the discovery topics on which SFR did not even object. For these reasons, Chase’s  
7 Motion should be granted.

8 **A. SFR Cannot Rely on the Different Case Ruling in Refusing to Testify**

9 Despite SFR’s contentions in its Opposition, SFR cannot rely on a  
10 commissioner decision from *another* case to obstruct Chase’s attempts to obtain  
11 discovery. Specifically, SFR’s counsel instructed its 30(b)(6) deponent not to testify  
12 on the Disputed Topics due to a report and recommendation entered in a *different*  
13 matter in a *different* department (the “Different Case Ruling”). Kelso Dep.,  
14 attached as **Exhibit F** hereto, at 13:18–14:25. The Different Case Ruling was an  
15 oral decision, rather than a written order. The bank in that case has objected to the  
16 Different Case Ruling and, to date, the district court has not yet adopted the  
17 recommendation. Moreover, SFR has not pointed to any legal authorities to support  
18 its argument that, rather than move for a protective order, it can withhold  
19 deposition testimony based merely on a non-final recommendation issued in another  
20 case.

21 Accordingly, it would be highly prejudicial to Chase for an *unresolved*  
22 commissioner ruling in a *different* case to dictate the course of this action. Litigants  
23 must be allowed to litigate based on the merits of an individual action, the facts of  
24 which differ in each circumstance—not based on the decisions made in a different  
25 proceeding. In light of these considerations, Chase’s Motion should be granted.

26 . . .

27 . . .

---

28 <sup>3</sup> Indeed, as noted in Chase’s Motion to Compel, the Chief Judge has already denied  
SFR’s prior attempt to obtain coordinated discovery orders.

1           **B.     The Unanswered Topics are Relevant to Chase’s Position in this Action**  
2                                   **and Were Not Properly Addressed in the Deposition**

3           For the several topics to which SFR did *not* object, SFR provided a witness  
4 who was not properly prepared to testify. The Unprepared Topics about which Ms.  
5 Kelso could not adequately respond, are as follows:

- 6           •     **Topic 13:** SFR’s practices, policies, and procedures related to  
7 purchasing properties at homeowners association foreclosure sales,  
8 including, without limitation, frequency of attending homeowners  
9 association foreclosure sale, geographic focus, internal risk  
10 assessments, determination of bid amounts, and knowledge of and  
11 communications with mortgagees, homeowners association foreclosure  
12 agents, and/or collection companies about a property prior to purchase.  
13 This request is limited in time from the date the HOA recorded its  
14 Notice of Delinquent Assessment Lien to the date of the HOA Sale.
- 15           •     **Topic 25:** SFR’s preparations for the HOA Sale, including, without  
16 limitation, evaluations of the Property’s value, risk assessments  
17 related to bidding on the Property at the HOA Sale, bidding authority,  
18 and SFR’s investment criteria as it relates to the Property.
- 19           •     **Topic 26:** Facts relating to the HOA Sale, including, without  
20 limitation, SFR’s knowledge of and attendance at any previously-  
21 scheduled sale(s) for the Property, statements made at the HOA Sale  
22 or any previously-scheduled sale(s) for the Property, the sale process,  
23 and participation in the sale by SFR and any other attendees.

24           As outlined in Chase’s Motion and more fully below, such topics sought facts  
25 that were highly relevant to Chase’s case—namely, SFR’s bona fide purchaser  
26 status and the potential prejudice in unwinding the sale, among others. However,  
27 Chase was not able to pursue these avenues of questioning because Ms. Kelso was  
28 barely aware of the circumstances surrounding the sale itself.

          Case law makes clear that organizations have “a duty to make a  
conscientious good-faith effort to designate knowledgeable persons for Rule 30(b)(6)  
depositions and to prepare them to fully and unequivocally answer questions about  
the subject matter.” *Great Am. Ins. Co. of New York v. Vegas Constr. Co., Inc.*, 251  
F.R.D. 534, 538 (D. Nev. 2008) (internal citations omitted); *see also FDIC v. 26*  
*Flamingo, LLC*, No. 2:11-cv-01936-JCM-NJK, 2013 U.S. Dist. LEXIS 108231, at  
\*11–12 (D. Nev. Aug. 1, 2013) (internal citations and quotations omitted) (“[T]he  
served party is required to prepare [the Rule 30(b)(6) deponent] to fully and  
unequivocally answer questions about the designated subject matter. The deponent

1 must be thoroughly educated . . . about the noticed deposition topics and facts  
2 known to the corporation or its counsel.”). Here, no such witness was provided.

3 SFR choose to produce an individual who had spoken to Mr. Diamond, the  
4 person with personal information about the topics at issue, *four (4) months* before  
5 the actual deposition for a matter of minutes, without asking any questions about  
6 the property involved in this case. Kelso Dep. at 38:4–6, 64:18–25. Ms. Kelso’s lack  
7 of knowledge on the information was clear. When asked about topics such as  
8 whether SFR prepared for the sale in advance, whether SFR looked to see if there  
9 were CC&Rs recorded against the Property before the sale, and why SFR drove by  
10 the Property to confirm its condition before the sale, Ms. Kelso could not answer.  
11 *Id.* at 69:10–21, 70:10–11, 73:3–7; *see also* Motion at 17–18 (outlining additional  
12 areas about which Ms. Kelso could not properly answer). Moreover, questions  
13 regarding SFR’s pre-sale rent projections and consideration of the risk of litigation  
14 were met with uncertainty. Kelso Dep. at 75:11–19, 77:1–6; *see also* Motion at 18.

15 This is not a situation in which SFR objected to the Unprepared Topics as  
16 irrelevant. Rather, SFR was willing to allow Chase to delve into these matters, but  
17 it failed to “thoroughly educate” the witness about the facts. *See 26 Flamingo, LLC*,  
18 2013 U.S. Dist. LEXIS 108231, at \*11–12. Thus, it is inapposite for SFR to claim  
19 that the questions were beyond the scope of the deposition or had little relevance to  
20 any material fact. SFR should be forced to provide a knowledgeable witness  
21 prepared to testify on these matters.

## 22 **II. SFR’S COUNTERMOTION MUST BE DENIED**

23 Finally, SFR now, after several missed opportunities, countermoves for a  
24 protective order. SFR’s untimely Countermotion should not be granted.

### 25 **A. SFR’s Countermotion for a Protective Order Is Untimely**

26 SFR had ample opportunity to move for a protective order *before* forcing  
27 Chase to file a Motion to Compel SFR’s 30(b)(6) Deposition Testimony (the  
28 “Motion”). There are “implicit limitations providing a motion [for a protective order]

1 must be timely.” *Ayers v. Continental Cas. Co.*, 240 F.R.D. 216, 221 (N.D.W. Va.  
2 2007). “**Motions for a protective order must be made before or on the date the**  
3 **discovery is due.**” *Id.* (emphasis added). Only where a party has had *no*  
4 opportunity to move for a protective order beforehand may this untimeliness be  
5 excused. *Id.* Thus, in *Ayers*, the district court denied a motion for protective order  
6 as untimely where the moving party did not file its motion for a protective order  
7 until two months after the discovery at issue was due. *Id.* As the court explained,  
8 “Plaintiffs had ample opportunity to file this Motion [for a protective order] before  
9 the deadline and so cannot claim an excuse for their tardiness.” *Id.*; *see also Paige*  
10 *v. Consumer Programs, Inc.*, 248 F.R.D. 272, 277 (C.D. Cal. 2008) (granting motion  
11 to compel deposition where the deponent “failed to file a motion for a protective  
12 order under Rule 26(c) before the date of the deposition”).

13 Here, SFR waited seven months to move this Court for a protective order.  
14 The parties had twice agreed to extend the discovery deadlines, so SFR could file  
15 this motion. SFR did not act. Instead, SFR took the position that it did not have to  
16 comply with the Court’s discovery rules and instructed its witness not to answer  
17 deposition questions even though SFR had not requested—much less obtained—a  
18 protective order in this case. While SFR has counter-moved for a protective order, it  
19 did so only *after* Chase moved to compel and *after* its deposition has taken place.  
20 The Court should not permit SFR to disregard procedural rules, and then obtain  
21 relief through its untimely Countermotion. The Court must deny the  
22 Countermotion.

23 **B. SFR Fails to Carry Its Heavy Burden to Show Good Cause Exists for a**  
24 **Protective Order**

25 Even if the Court could ignore the untimeliness of SFR’s countermotion (it  
26 cannot), SFR’s Countermotion must fail because it does not demonstrate good cause.  
27 In order to obtain a protective order under Nevada Rule of Civil Procedure 26(c), the  
28 moving party bears the “heavy burden” of demonstrating that good cause exists to  
deny discovery. N.R.C.P. 26(c); *Okada v. Eight Jud. Dist. Ct.*, 359 P.3d 1106, 1111

1 (Nev. 2015). To establish good cause, a party must show that it will experience  
2 “specific prejudice or harm” or a “clearly defined and serious injury” without a  
3 protective order. *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d  
4 417, 424, 427 (9th Cir. 2011) (internal quotations omitted). “A mere showing that  
5 discovery may involve inconvenience and expense will not meet this threshold  
6 requirement.” *Campbell v. U.S. Dep’t of Justice*, 231 F. Supp. 2d 1, 7 (D.D.C. 2002).

7 “[B]road allegations of harm, unsubstantiated by specific examples or  
8 articulated reasoning, do not satisfy the Rule 26(c) test.” *Id.* at 424. Good cause  
9 requires more than “a mere showing that discovery may involve inconvenience and  
10 expense.” *Campbell v. U.S. Dep’t of Justice*, 231 F. Supp. 2d 1, 7 (D.D.C. 2002)<sup>4</sup>;  
11 *Turner Broadcasting System, Inc. v. Tracinda Corporation*, 175 F.R.D. 554, 556 (D.  
12 Nev. 1997). Instead, “[s]ome extraordinary justification must be shown to satisfy  
13 the good cause requirement of [Rule] 26(c).” *Twin City Fire Ins. Co. v. Employers*  
14 *Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989) (emphasis added).

15 Here, SFR’s Countermotion offers no justification whatsoever—much less  
16 extraordinary justification—to satisfy the good cause requirement. It merely  
17 asserted that the Disputed Topics were irrelevant or “not appropriate.” These  
18 objections are not a “specific prejudice or harm” or “a clearly defined and serious  
19 injury” to SFR that can satisfy Rule 26(c), thus the Court must deny SFR’s  
20 Countermotion on this basis alone. *See, e.g., Caesars Entm’t, Inc.*, 237 F.R.D. at  
21 431-32 (D. Nev. 2006) (“As a general rule, courts will not grant protective orders  
22 that prohibit the taking of deposition testimony.”); *Cooper Hosp./Univ. Med. Ctr. v.*  
23 *Sullivan*, 183 F.R.D. 135, 145 (D.N.J. 1998) (denying protective order because  
24 movant “failed to satisfy its burden of demonstrating ‘good cause’”).

25 . . .

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26 <sup>4</sup> For example, in *Campbell*, the district court denied a motion for protective order  
27 supported by a declaration that the requested discovery would require a burdensome hand-  
28 search of the movant’s files. *Campbell*, 231 F. Supp. 2d 1. The movant alleged only “a  
generalized injury that compliance with the plaintiff’s discovery request . . . would be a  
strain on its resources.” *Id.* at 15. This was not sufficient to establish good cause for a  
protective order. *Id.*



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1 is a question that Chase should be permitted to litigate. No. 2:15-cv-01534, 2015  
2 WL 6962860, at \*5 (D. Nev. Nov. 9, 2015). To determine the retroactive  
3 applicability of a decision, *Breithaupt v. USAA Prop. & Cas. Ins. Co.* evaluated  
4 three factors, including whether litigants relied on the precedential decision and  
5 whether retroactive application would lead to inequitable results. 867 P.2d 402, 405  
6 (Nev. 1994). For Chase to fully brief those factors, it must be permitted to, again,  
7 conduct discovery on issues bearing on the equity of setting aside the sale.

8       Lastly, the Disputed Topics try to ascertain facts regarding SFR's knowledge  
9 of the Property being encumbered by Chase's deed of trust at the time of purchase.  
10 Chase has several reasons to believe that such information is relevant to the  
11 present litigation. First, Chase received lease agreements, executed by SFR, which  
12 indicate that before the *SFR v. U.S. Bank* decision, it was aware that lenders  
13 "maintained [their] security interest[s] in the property after the homeowner's  
14 association foreclosure sale." *See* Foreclosure Addendum to Residential Lease  
15 Agreement (dated Nov. 3, 2012), attached as **Exhibit D** to the Motion. Second, news  
16 articles have suggested that investors such as SFR were purchasing properties from  
17 HOA sales with the mere intention of "stepping into" the place of the association  
18 *See* H. Smith, *Shrewd Investors Snap Up HOA Liens, Rent Out Houses*, Review  
19 Journal (posted Mar. 18, 2013), *available at* [www.reviewjournal.com/  
20 business/housing/shrewd-investors-snap-hoa-liens-rent-out-houses](http://www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-houses), attached as  
21 **Exhibit E** to the Motion. With the knowledge that the properties were still  
22 encumbered by a first deed of trust, the investors would then rent or lease  
23 properties post-sale in order to make a profit before the banks would foreclose and  
24 take possession. *Id.* In addition to the added income, investors would also recoup  
25 the amount of the association's lien after the bank's foreclosure (collectively referred  
26 to as the "HOA Scheme"). *Id.*

27       Given these circumstances, Chase has reason to believe that SFR followed a  
28 similar business model and was fully aware that the first deed of trust was still on

1 the Property. To determine whether that is actually the case, and as laid out more  
2 fully in the Motion, Chase desires to pursue the following Disputed Topics:

- 3 • **Topic 14:** SFR's disposition of properties acquired from homeowners  
4 associations, including, without limitation, its procedures to manage,  
5 lease and/or sell the properties.
- 6 • **Topic 15:** The portion of SFR's business related to purchasing,  
7 managing, renting, and/or selling properties acquired from a  
8 homeowners association foreclosure sale.
- 9 • **Topic 16:** SFR's formation and company purpose, including, without  
10 limitation, the facts and circumstances that led to SFR's creation.
- 11 • **Topic 17:** SFR's company structure, including, without limitation, the  
12 identity of its members, managers and/or officers and the identity of all  
13 parent companies and/or other parties with an interest in SFR at the  
14 time SFR attended any association foreclosure sale of the Property.
- 15 • **Topic 18:** The source(s) of funds used by SFR to purchase the Property.
- 16 • **Topic 19:** SFR's knowledge of any prospectuses, private placement  
17 memoranda, or other documents that explain its business to investors,  
18 members, managers, potential investors, potential members, or any  
19 other parties who may have a current or prospective pecuniary interest  
20 in SFR.
- 21 • **Topic 25:** SFR's preparations for the HOA Sale, including, without  
22 limitation, evaluations of the Property's value, risk assessments  
23 related to bidding on the Property at the HOA Sale, bidding authority,  
24 and SFR's investment criteria as it relates to the Property.
- 25 • **Topic 28:** SFR's actions with respect to the Property since the HOA  
26 Sale, including, without limitation, any leases entered into by SFR,  
27 any attempts to lease and/or sell the Property, and any costs incurred  
28 or payments made to maintain the Property (e.g., taxes, insurance, and  
homeowners association assessments).
- **Topic 29:** SFR's communications with any tenant of the Property  
about this Litigation or about any mortgagee of the Property.

22 Indeed, **Topics 14, 15, 19, 28, and 29** would shed light on the equitable  
23 circumstances surrounding the sale and SFR's intentions behind bidding on the  
24 Property, among other things. Specifically, they seek information about SFR's  
25 decision to bid on the Property as an investment that would return a profit *in spite*  
26 *of the fact* that the Property remained subject to Chase's deed of trust. These facts  
27 are relevant to show that: SFR will not suffer prejudice if the HOA sale is set aside  
28 in this case—it simply will recoup the rental income it expected, rather than a

1 windfall of free and clear title; *SFR v. U.S. Bank* should not apply retroactively, as  
2 this decision turned the prevailing interpretation of NRS 116.3116 *et seq.* at the  
3 time of the sale on its head; and, SFR is not a bona fide purchaser, as it bid an  
4 excessively low amount for the Property given its belief that the Property remained  
5 subject to Chase's deed of trust. Testimony on Topics 14, 15, 28, and 29 are critical  
6 to developing Chase's position in this matter.

7 Likewise, **Topic 16** seeks information about SFR's formation and purpose,  
8 which will shed light on SFR's goal of profiting based on rental income acquired  
9 until a deed of trust beneficiary foreclosed. This information is relevant to Chase's  
10 arguments regarding the lack of prejudice that SFR will suffer if the HOA Sale is  
11 set aside, the inequities that will be caused if *SFR v. US Bank* is allowed to apply  
12 retroactively in this case, and SFR's inability to claim bona fide purchaser status.

13 **Topics 17 and 18** seek to go one step further and inquire about who was  
14 ultimately responsible for SFR's decision to invest in HOA sales. Not only are these  
15 topics relevant to whether SFR colluded with the HOA or its agents in this case, but  
16 this information will show that the people responsible for SFR's business decisions  
17 were sophisticated in the real estate industry and sought to profit from legislation  
18 that delayed a deed of trust beneficiary's ability to foreclose. This not only  
19 encompasses SFR as a corporate entity, but also its investors, shareholders, and  
20 any other individuals or bodies that have influence in SFR's decision-making  
21 process.

22 Finally, SFR waived any objection to **Topic 25**, as it made no objection at the  
23 time of its deposition.<sup>5</sup> See **Exhibit F**, attached hereto, Kelso Dep. at 13:18–14:11  
24 (objecting to only 14, 15, 16, 17, 18, 28 and 29). Moreover, Topic 25 is relevant. It  
25 speaks to SFR's knowledge at the time of the HOA sale, including its knowledge  
26 about the fact that it was bidding mere pennies on the dollar for the Property. Prior

27 \_\_\_\_\_  
28 <sup>5</sup> SFR includes Topic 25 in its protective order, though Chase categorizes Topic 25  
as an Unanswered Topic in both its Motion and this Reply. Accordingly, Chase  
addresses its relevance as part of the Disputed Topics.

1 cases have found that, when the purchase price for a home is so low that it is  
2 grossly inadequate, the sale must be invalidated. *See, e.g., In re Krohn*, 52 P.3d  
3 774, 779 (Ariz. 2002). Any valuations of the Property SFR received or arranged  
4 would indicate that SFR knew of the actual market value of the Property before the  
5 sale (and, in turn, knew the payment price was grossly inadequate). Similarly,  
6 SFR's consideration of the Property's ability to be quickly transitioned into a rental  
7 is relevant to show SFR's investment scheme and undermine any argument that  
8 SFR is a bona fide purchase or will otherwise be unfairly prejudiced if the Court  
9 sets aside the HOA Sale. In light of these considerations, the Disputed Topics are  
10 relevant and discoverable, SFR's Countermotion should be denied.

11 **IV. CONCLUSION**

12 For these reasons, Chase respectfully requests this Court grant its Motion to  
13 Compel, deny SFR's Countermotion for Protective Order, and issue an order:

- 14 • Compelling SFR to provide a Rule 30(b)(6) witness to testify about the  
15 Disputed Topics (Topic Areas 14, 15, 16, 17, 18, 19, 20, 25, 28, 29);
- 16 • Compelling SFR to adequately prepare and provide a Rule 30(b)(6)  
17 witness to testify about the Unprepared Topics (Topic Areas 13, 25,  
18 26); and,
- 19 • Awarding Chase its reasonable fees and costs incurred in bringing this  
20 Motion. *See* N.R.C.P. 37(4)(A).

21 Dated: August 3, 2016

BALLARD SPAHR LLP

23 By: /s/ Lindsay Demaree  
24 Abran E. Vigil  
25 Lindsay Demaree  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

26 *Attorneys for Defendant and*  
27 *Counterclaimant JPMorgan Chase*  
28 *Bank, N.A., as successor by merger to*  
*Chase Home Finance LLC*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of August, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing REPLY TO SFR’S OPPOSITION TO CHASE’S MOTION TO COMPEL DEPOSITION TESTIMONY and OPPOSITION TO SFR’S COUNTERMOTION FOR A PROTECTIVE ORDER was served on the following counsel of record via the Court’s electronic service system:

DIANA S. CLINE  
JACQUELINE A. GILBERT  
KIM GILBERT EBRON  
KAREN L. HANKS  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

/s/ Mary Kay Carlton  
An employee of BALLARD SPAHR LLP

# EXHIBIT F

# EXHIBIT F

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CASE NO.  
A-12-672963-C

VENTA REALTY GROUP, a Nevada  
Corporation, JP MORGAN CHASE  
BANK, N.A., a national  
association, successor by  
merger to CHASE HOME FINANCE  
LLC, a foreign limited  
liability corporation, NATIONAL  
DEFAULT SERVICING CORPORATION,  
an Arizona corporation,  
///

/

DEPOSITION OF PAULINA KELSO

30(b)(6) SFR INVESTMENTS POOL 1, LLC

Taken at the offices of Ballard Spahr, LLP

on Friday, June 24, 2016

at 1:38 p.m.

at 100 N. City Parkway, Suite 1750  
Las Vegas, Nevada

Reported by: Denise R. Kelly, CCR #252, RPR

CSR ASSOCIATES OF NEVADA  
LAS VEGAS, NEVADA (702) 382-5015



1 CALIFORNIA RECONVEYANCE COMPANY,  
2 a California corporation, REPUBLIC  
3 SILVER STATE DISPOSAL, INC., a  
4 Nevada corporation, PARADISE COURT  
5 HOMEOWNERS ASSOCIATION, a Nevada  
6 non-profit corporation and  
7 DELANIE L. HARNED, an individual,  
8 DOES I through X; and ROE  
9 CORPORATIONS I through X, inclusive,  
10 Defendants.

11 JPMorgan Chase Bank, N.A., as  
12 successor by merger to Chase Home  
13 Finance LLC,  
14 Counterclaimant,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a  
17 Nevada limited liability Company,  
18 Counterdefendant.

## 1 APPEARANCES:

2 For Plaintiff/  
3 Counterdefendant:LINDSAY DEMAREE, ESQ.  
BALLARD SPAHR, LLP  
100 N. City Parkway  
Suite 1750  
Las Vegas, Nevada 891065 For Defendant  
6 Counterclaimant:KAREN HANKS, ESQ.  
KIM GILBERT EBRON  
7625 Dean Martin Drive  
Suite 110  
Las Vegas, Nevada 891399  
10  
11 \* \* \* \* \*12  
13  
14 INDEX

## WITNESS

## PAGE

15 PAULINA KELSO

Examination by Ms. Demaree

17

18  
19 INFORMATION TO BE SUPPLIEDNone  
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1 MS. DEMAREE: -- no preparation.

2 MS. HANKS: Correct. And that's my  
3 understanding what Bulla meant by that.

4 MS. DEMAREE: Okay.

5 For example, where the funds that were in  
6 the account came from.

7 MS. HANKS: Correct. My understanding she  
8 protected that. She thought it was okay to ask what  
9 was the source from the check that was actually  
10 provided at the sale, and we always are prepared to  
11 talk about that.

12 And other than that, I don't have any  
13 other objections to how the topics are stated.

14 MS. DEMAREE: And then turning to the  
15 deposition notices for which you did not move for a  
16 Protective Order.

17 MS. HANKS: Correct.

18 MS. DEMAREE: So if we start with  
19 Case 672963, which topics do you object to?

20 MS. HANKS: It would be again, I'm just  
21 objecting to anything that Commissioner Bulla already  
22 protected and so I believe she protected 14.

23 I don't think topic 15 was before her, so  
24 I'm okay abiding by Commissioner Beecroft's ruling on  
25 that one.

1 I thought she protected 16, other than she  
2 did a caveat that you could ask if SFR was in good  
3 standing at the time of the sale. But that was my  
4 understanding of how she tweaked 16.

5 And that's the same for 17.

6 And then No. 18 she protected, other than  
7 if you want to do the caveat of the check or the  
8 source of the check was.

9 And then I think she protected 19.

10 She protected 28, 29.

11 And that's all I have for that.

12 MS. DEMAREE: And just so it's clear,  
13 there has been no Discovery Commissioner Report and  
14 Recommendation entered on those topics in this  
15 particular case; you're abiding by another case's  
16 recommendation.

17 MS. HANKS: Correct. Because the topics  
18 mirror.

19 MS. DEMAREE: And the witness if asked  
20 questions in those topics, she is not prepared; is  
21 that correct.

22 MS. HANKS: Correct.

23 MS. DEMAREE: And if I ask questions on  
24 those topics, you'll instruct her not to answer?

25 MS. HANKS: Correct.

REPORTER'S DECLARATION

3 STATE OF NEVADA )  
 ) ss  
4 COUNTY OF CLARK )

I Denise R. Kelly, CCR #252, RPR, do hereby declare:

That I reported the taking of the deposition of the witness, PAULINA KELSO, commencing on Friday, June 24, 2016, at the hour of 1:38 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript. The original signature page is being forwarded to Karen Hanks, Esq. to obtain the deponent's signature. After 30 days the original transcript will be sent to Lindsay Demaree, Esq.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

Dated this 1st day of July, 2016.

Quinn R. Kelley

Denise R. Kelly  
CCR #252, RPR