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

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 4

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CHRONOLOGICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Complaint for Quiet Title and Injunctive Relief	December 4, 2012	1 AA 001-011
Affidavit of Service – California Reconveyance Company	December 20, 2012	1 AA 012
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
Answer of JPMorgan Chase Bank, N.A., as Successor by Merger to Chase Home Finance LLC, and California Reconveyance Company	January 25, 2013	1 AA 016-021
Affidavit of Service – Paradise Court Homeowners Association	January 31, 2013	1 AA 022
Affidavit of Service – Venta Realty Group	January 31, 2013	1 AA 023
Affidavit of Publication – Delaine L. Harned	May 31, 2013	1 AA 024
Amended Answer and Counterclaim	October 19, 2015	1 AA 025-037
SFR Investments Pool 1, LLC's Answer to Counterclaim	November 6, 2015	1 AA 038-042
JPMorgan Chase Bank, N.A.'s Motion to Compel SFR's Rule 30(b)(6) Deposition Testimony	July 8, 2016	1 AA 043-100
JPMorgan Chase Bank, N.A.'s Motion to Exclude Testimony of Michael Brunson	July 8, 2016	1 AA 101-116
Excerpts from Appendix of Exhibits to Defendant JPMorgan Chase Bank's Motion to Exclude Testimony of Michael Brunson	July 8, 2016	1 AA 117-171
Opposition to Motion to Exclude Testimony of Michael Brunson	July 25, 2016	1 AA 172-181

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	July 25, 2016	1 AA 182-217
Reply in Support of Chase's Motion to Compel and Opposition to SFR's Countermotion for Protective Order relating to Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC	August 3, 2016	1 AA 218-237
JPMorgan Chase Bank, N.A.'s Reply in Support of Motion to Exclude Testimony of Michael Brunson	August 3, 2016	2 AA 238-257
Transcript of Hearing on JP Morgan Chase Bank, N.A.'s Motion to Exclude Testimony of Michael Brunson	August 10, 2016 (Date of Hearing)	2 AA 258-270
SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 11, 2016	2 AA 271-457
Discovery Commissioner's Report and Recommendations	August 24, 2016 (Date Signed)	2 AA 458-465
JPMorgan Chase Bank, N.A.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 29, 2016	3 AA 466-494
Appendix of Exhibits to Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 29, 2016	3 AA 495-644
SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment	September 8, 2016	3 AA 645-665
JPMorgan Chase Bank, N.A.'s Objection to Discovery Commissioner's Report and Recommendation	September 12, 2016	4 AA 666-730
Defendant and Counter-Claimant JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment	September 13, 2016	4 AA 731-759
Excerpts from Appendix of Exhibits to Defendant JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment	September 13, 2016	4 AA 760-774

Order Denying Motion to Exclude Testimony of Michael Brunson	September 14, 2016	4 AA 775-776
Notice of Entry of Order Denying Motion to Exclude Testimony of Michael Brunson	September 15, 2016	4 AA 777-780
Transcript of Hearing on SFR Investments Pool 1, LLC's Motion for Summary Judgment	September 15, 2016 (Date of Hearing)	4 AA 781-801
Findings of Fact, Conclusions of Law, and Order	October 26, 2016	4 AA 802-816
Notice of Entry of Findings of Fact, Conclusions of Law, and Order	October 27, 2016	4 AA 817-833
Notice of Appeal	November 22, 2016	4 AA 834-836
Stipulation and Order Directing Entry of Final Judgment as between SFR Investments Pool 1, LLC and JPMorgan Chase Bank, National Association	December 19, 2016	4 AA 837-840

ALPHABETICAL INDEX

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CERTIFICATE OF SERVICE

I certify that on April 21, 2017, I filed **Appellant's Appendix – Volume 4**. Service will be made on the following through the Court's electronic filing system:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, v. VENTA REALTY GROUP, a Nevada corporation, JPMorgan Chase Bank, NA, a National Association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL., Defendants.	CASE NO. A-12-672963-C DEPT NO. 27
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.	

JPMORGAN CHASE BANK, N.A.'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

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Pursuant to EDCR 2.34, defendant/counter-claimant JPMorgan Chase Bank, N.A. ("Chase") objects to the Discovery Commissioner's Report and Recommendation ("DCRR") to grant in part and deny in part Chase's "Motion to Compel SFR's Rule 30(b)(6) Deposition Testimony" (the "Motion to Compel") and to grant in part and deny in part the "Countermotion for Protective Order Relating to the Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC" (the "Countermotion"), filed belatedly by plaintiff/counter-defendant SFR Pool 1 Investments, LLC ("SFR"). *See* **Exhibit A**, DCRR. The Court should reject the DCRR in this HOA lien case, as it disregards Nevada law:

- The DCRR ignores Rule 26's standard for granting a protective order. It fails to find any specific prejudice or harm that SFR would suffer if required to provide the requested deposition testimony. Nor could it, as SFR merely objected to relevance, without providing any such discussion (much less actual evidence) of prejudice or harm.

- The DCRR pre-litigates the merits of this action by reaching premature and overly-restrictive conclusions about what information may be relevant. This approach undermines Rule 26, which broadly allows discovery on the subject matter of this litigation.

- The DCRR misconstrues the underlying law. It proceeds under the erroneous assumption that the only issues before the Court are SFR's bona fide purchaser status and the "unfairness" of the subject sale. The governing law, however, also requires the Court to consider, among other things, the extent to which SFR would be harmed if the Court invalidates the subject association sale and SFR's 2012 beliefs about the effect of NRS 116.3116 *et seq.* on Chase's deed of trust. By ignoring these issues, the DCRR unfairly prevents Chase from obtaining critical evidence from SFR.

For these reasons, this Court should overrule the DCRR and order SFR to produce a 30(b)(6) witness capable of testifying about the topics at issue. Alternatively, if this Court elects to uphold the restrictive DCRR and thwart Chase's ability to conduct discovery into, *inter alia*, SFR's business model and strategy, funding, post-sale profits on the Property, and its 2012 understanding of NRS 116.3116 *et seq.*, then the Court must also preclude SFR from offering any testimony or evidence on these issues at trial.

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I. BACKGROUND

A. Chase's Efforts to Obtain SFR's Deposition Testimony

This is a quiet-title action arising from a homeowners association ("HOA") foreclosure sale. SFR claims that, since it allegedly purchased the property at issue[1] from an association foreclosure sale, it acquired the Property free and clear of all preexisting liens, including a Chase deed of trust. Chase disputes SFR's quiet title claim for various reasons, including, without limitation, the following[2]:

- The foreclosure sale is invalid under *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016). When determining whether to set aside a foreclosure sale based on equitable reasons, the Court must consider the *entirety* of the circumstances surrounding the sale, as well as what harm an innocent third party may suffer. *Id.* at 1114-15.

- The 2014 *SFR v. U.S. Bank,* 130 Nev. ___, 334 P.3d 408 (2014), decision cannot apply retroactively to the 2012 foreclosure sale at issue in this case. As explained in *Breithaupt v. USAA Property & Casualty Insurance Co.*, to determine whether a new ruling should apply retrospectively, a Court must consider the litigants' understanding of the law at the time of the sale and the equities if the new decision is given retroactive effect. 110 Nev. 31, 35, 867 P.2d 402, 405 (1994).

These theories implicate SFR's pre-sale beliefs about the property interest it was purchasing; SFR's general understanding and beliefs about the effects of NRS 116; and, SFR's post-sale conduct and profits related to the Property.

Accordingly, Chase sought deposition discovery from SFR's 30(b)(6) designee on these issues. SFR, however, refused to allow its witness to testify about several duly-noticed deposition topics (i.e., topics 14, 15, 16, 17, 18, 19, 28 and 29); in addition, the witness was unprepared to answer questions within the scope of other topics (i.e., topics 14, 18, 28, and 29 ("Unprepared Topics")). *See* **Exhibit B**, Seventh Amended Notice of 30(b)(6) Deposition of SFR Investments Pool 1, LLC, at Topics 14–19, 28, and 29 (all topics together, the "Disputed Topics"). Notably, Chase had agreed to multiple extensions to allow SFR to move for a protective order before its

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[1] The term "Property" refers to 1076 Slate Crossing Lane #2, Henderson, Nevada.

[2] These two theories are not Chase's only arguments against SFR's quiet title claim. For example, Chase also contends that the version of NRS 116.3116 *et seq.* in effect at the time of the HOA Sale is facially unconstitutional. *See Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Appeal No. 15-15233, 2016 WL 4254983 (9th Cir. Aug. 12, 2016).

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30(b)(6) deposition. SFR failed to do so, however. Disregarding the applicable procedural rules, SFR instead improperly instructed its witness not to answer questions based merely on relevance objections.

B. Chase's Motion to Compel and SFR's Untimely Countermotion

SFR's improper deposition conduct forced Chase to move to compel SFR's complete testimony. In response, SFR filed an opposition and untimely countermotion for a protective order. It argued only that the disputed topics were irrelevant. SFR failed to identify any specific prejudice or harm that it would suffer if required to provide the requested deposition testimony. Without this showing, SFR cannot, as a matter of law, satisfy its "heavy burden" for a protective order. *Okada v. Eighth Jud. Dist. Ct.*, 359 P.3d 1106, 1111 (Nev. 2015).

The Discovery Commissioner considered Chase's Motion to Compel and SFR's Countermotion, granting each in part and denying each in part. *See generally* DCRR. Specifically, DCRR protected **Deposition Topics 15–19** in their entirety, and significantly limited **Deposition Topics 14, 25[3], 28, and 29** (altogether, the "Protected Topics"). These Protected Topics include the following:

Protected Topic	***DCRR Ruling***
13. SFR's practices, policies, and procedures related to purchasing properties at homeowners association foreclosure sales, including, without limitation, frequency of attending homeowners association foreclosure sale, geographic focus, internal risk assessments, determination of bid amounts, and knowledge of and communications with mortgagees, homeowners association foreclosure agents, and/or collection companies about a property 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.	Parties shall conduct further 2.34 conference prior to continued deposition of SFR's Rule 30(b)(6) designee to discuss topic.

[3] Neither party had initially disputed Topic 25, but the DCRR limited Chase's discovery as to this issue. Chase therefore includes it among the "Protected Topics."

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Protected Topic	***DCRR Ruling***
14. SFR's disposition of properties acquired from homeowners associations, including, without limitation, its procedures to manage, lease and/or sell the properties.	SFR shall provide a Rule 30(b)(6) designee prepared to testify regarding SFR's disposition of the property at issue in this case, including: what SFR intended to do with the property, SFR's possible plans for the property, and what in fact has happened to the property, if SFR knows, as these issues related to the equitable inquiry on fairness. This topic shall permit questions about SFR's procedure for renting out the property; however, information regarding lease terms, SFR's profits, and lessees' assets is protected for purposes of SFR's Rule 30(b)(6) deposition. Chase may instead serve an interrogatory to SFR regarding the amount of rent that SFR charged for the subject property.
15. The portion of SFR's business related to purchasing, managing, renting, and/or selling properties acquired from a homeowners association foreclosure sale.	This topic is protected. Parties shall conduct further 2.34 conference prior to continued deposition of SFR's Rule 30(b)(6) designee to discuss topic.
16. SFR's formation and company purpose, including, without limitation, the facts and circumstances that led to SFR's creation	This topic is protected.
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	This topic is protected.
18. The source(s) of funds used by SFR to purchase the Property.	This topic is protected, unless the funds used to purchase the subject property were obtained illegally. SFR shall provide a Rule 30(b)(6) designee prepared to confirm that the funds were not obtained illegally or to testify about the illegal funds.
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.	This topic is protected.
20. SFR's relationship to other SFR entities.	While this topic was not disputed, it is protected.

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Protected Topic	*DCRR Ruling*
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 for the Property, and SFR's investment criteria as it relates to the Property.	Although not disputed by the Parties, the topic shall be limited to the sale and use at issue in the case.
26. Facts relating to the HOA Sale, including, without limitation, SFR's knowledge of and 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.	Parties shall conduct further 2.34 conference prior to continued deposition of SFR's Rule 30(b)(6) designee to discuss 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).	SFR shall provide a Rule 30(b)(6) designee prepared to provide testimony regarding Topic No. 28 as it relates to the property at issue in this case
29. SFR's communications with any tenant of the Property about any mortgagee of the Property, including, without limitation, the language pertaining to a lender's deed of trust contained in the first lease agreement that SFR used following the HOA Sale.	SFR shall provide a Rule 30(b)(6) designee prepared to provide testimony regarding SFR's communications with tenants about Chase's deed of trust, including the specific language pertaining to a lender's deed of trust contained in the first lease agreement that SFR used following the association sale in this case. The rest of the lease's terms and conditions are protected. SFR's communications with tenants about this litigation are irrelevant and protected.

In the interim, given the trial setting in this case, the parties resumed SFR's 30(b)(6) deposition on the topics permitted by the DCRR. SFR's witness, however, still was not prepared to answer even basic questions about the Property, however. *See* DCRR (ordering SFR to provide a witness for its continued deposition). For example, the witness could not confirm: who SFR's bidder contacted to get money to purchase an interest in the Property; whether the funds used to purchase the Property came from legal sources; whether SFR was aware of the risk of litigation

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at the time of the HOA Sale; or SFR's intent for the Property at the time of the HOA Sale. *See* **Exhibit C**, Continued SFR 30(b)(6) Deposition, at 38:12-39:14, 42:5-50:1.

This Court cannot allow SFR to withhold relevant information from discovery based on nothing more than a premature—and incorrect—relevance objection. Such a result pre-litigates the merits of this dispute and unfairly prejudices Chase's ability to prove its case. Rather, the Court should hold consistently with Nevada's rules favoring liberal discovery, reject the DCRR, and order SFR to produce a 30(b)(6) witness prepared to testify about the Protected Topics. Alternatively, if this Court elects to uphold the restrictive DCRR and thwart Chase's ability to conduct discovery into, *inter alia*, SFR's business model and strategy, funding, post-sale profits on the Property, and its 2012 understanding of NRS 116.3116 *et seq.*, then the Court must also preclude SFR from offering any testimony or evidence on these issues at trial.

II. ADOPTING THE DCRR IS AN ABUSE OF DISCRETION BECAUSE THE DCRR FAILS TO APPLY N.R.C.P. 26(c)

Parties seeking a protective order under Nevada Rule of Civil Procedure 26(c) face a "heavy burden" of demonstrating that good cause exists to deny discovery. N.R.C.P. 26(c); *Okada v. Eighth Jud. Dist. Ct.*, 359 P.3d 1106, 1111 (Nev. 2015).[4] A showing of good cause requires evidence that he or she will suffer "specific prejudice or harm" or a "clearly defined and serious injury" without a protective order. *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424, 427 (9th Cir. 2011) (internal quotations omitted). However, simply demonstrating mere inconvenience or expense with the discovery "will not meet this threshold requirement." *Campbell v. U.S. Dep't of Justice*, 231 F. Supp. 2d 1, 7 (D.D.C.

[4] *See also Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975) (holding defendants failed "to carry a heavy burden of showing why discovery was denied"); *Lakeland Partners, L.L.C. v. United States*, 88 Fed. Cl. 124, 137 (2009) ("Contrary to the [movant's] intimation that [the party seeking discovery] bears the burden of addressing why discovery on an issue that has been fully briefed is warranted, it is the [movant] that bears the burden of demonstrating good cause for the issuance of a protective order."); *U.S. E.E.O.C. v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 431–32 (D. Nev. 2006) ("The burden of persuasion under Fed. R. Civ. P. 26(c) is on the party seeking the protective order.").

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2002).[5] Similarly, "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Id.* at 424. Rather, there must be "[s]ome *extraordinary* justification . . . to satisfy the good cause requirement of [Rule] 26(c)." *Twin City Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989) (emphasis added).

Here, the DCRR makes no findings about what specific prejudice or injury SFR would suffer if forced to provide the requested deposition testimony. Indeed, SFR failed to provide *any*, let alone adequate, indication of prejudice or harm to satisfy the good cause requirement. *See, e.g.*, *Caesars Entm't, Inc.*, 237 F.R.D. at 431-32 (D. Nev. 2006) ("As a general rule, courts will not grant protective orders that prohibit the taking of deposition testimony."); *Cooper Hosp./Univ. Med. Ctr. v. Sullivan*, 183 F.R.D. 135, 145 (D.N.J. 1998) (denying protective order because movant "failed to satisfy its burden of demonstrating 'good cause'"). As Chase has indicated on numerous occasions, such Protected Topics are, in fact, relevant to its theories in this litigation. Thus, the DCRR's failure to account for Rule 26(c), which this Court must follow, warrants reversal. *See, e.g.*, *Okada*, 359 P.3d at 1111.

III. THE DCRR IMPROPERLY CONSTRUES RELEVANCE UNDER RULE 26

Additionally, the DCRR severely limits Chase's ability to conduct discovery in direct contravention of Rule 26(b). Specifically, Rule 26(b) permits parties to obtain discovery on "*any* matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . ." N.R.C.P. 26(b)(1) (emphasis added). Relevance for discovery "encompasses 'any matter that

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[5] When considering procedural issues under the Nevada Rules of Civil Procedure, Nevada courts consider case law regarding the analogous rules of federal procedure. *See, e.g.*, *Okada v. Eighth Jud. Dist. Ct.*, 359 P.3d 1106, 1111 (Nev. 2015) (relying on federal authorities to deny motion for protective order under N.R.C.P. 26(c)). Notably, however, the scope of discovery is broader in Nevada courts than it is in federal courts. Nevada allows discovery on matters "relevant to the *subject matter* involved in the pending action." N.R.C.P. 26(b)(1) (emphasis added). The Federal Rules of Civil Procedure, in contrast, limit discovery to matters "relevant to *any party's claim or defense*." Fed. R. Civ. P. 26(b)(1) (emphasis added).

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bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be [presented] in the case.'" *Shaw v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 296 (S.D. Cal. 2015) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). Thus, the information sought does not necessarily need to directly relate to a particular issue in the case in order to be relevant. *Id.*

The DCRR conflates this subject-matter standard with the burden for succeeding on the merits of a case. Chase cannot be limited to the discovery on the Commissioner's narrow interpretation of SFR's bona fide purchaser status and unfairness. Chase's theories require this Court to evaluate *all* the equities in setting aside the subject association sale, as well as SFR's pre-*SFR v. U.S. Bank* understanding of NRS Chapter 116. Thus, Chase must be allowed to conduct discovery into *all* the circumstances surrounding SFR's purported purchase of the Property, including SFR's business model and strategy, formation, funding, and post-sale profits.

IV. THE DCRR MISCONSTRUES THE UNDERLYING LAW

As explained more fully below, the Protected and Unprepared Topics are highly relevant to the issues in this action. In fact, federal court decisions have denied SFR's requests for protective orders over the same issues. This Court should do the same.

A. This Case Implicates SFR's Business and Profits

Shadow Wood confirms that whether a sale purchaser is "bona fide" is a central issue in quiet title actions like the one here. 366 P.3d at 1116. There, the court vacated summary judgment in the bank's favor based on, among other things, the lack of evidence on the bona fide purchaser issue. *Id.* In doing so, *Shadow Wood* also emphasized consideration of the "entirety of the circumstances upon the equities," including the "potential harm" to purchasers upon invalidation of a sale. *Id.* at 1114–15. Applying this standard, at least one court has rejected SFR's bona fide purchaser claim based on evidence that SFR was on notice "of the legal

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possibility that the DOT might survive the [HOA] foreclosure sale." *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 2:15-cv-583, 2016 WL 1718374, at *5 (D. Nev. Apr. 29, 2016) (refusing to "limit the remedies available in this case based on any supposed inequity to SFR of reversing the sale").

Though the DCRR recognizes *Shadow Wood's* "unfairness" inquiry, Chase must be allowed to conduct discovery on issues beyond this single point. *See* DCCR at 2. Information about the profits SFR anticipated and realized before a first deed of trust foreclosure, among others, is pertinent to uncovering any "potential harm" SFR would suffer if the sale is invalidated. Indeed, unlike the DCRR, Nevada's federal district courts have found such issues to be relevant, particularly in light of *Shadow Wood*. *See* **Exhibit D**, *Daisy Trust v. Chase, Mot. for Protective Order* at 2-3 (permitting Chase to depose Daisy Trust's 30(b)(6) witness about topics related to Daisy Trust's bona fide purchaser status, including its policies and procedures related to HOA sales, its source of funds, documents given to potential members or investors regarding its business practices, and preparations for HOA sales); **Exhibit E**, *Nationstar Mortgage, LLC v. Augusta Belford and Ellingwood Homeowners Association, Mot. for Protective Order* at 8 (permitting discovery on SFR's corporate structure in light of *Shadow Wood* and other inconsistencies within the record).

This Court should follow the federal courts' decision to permit banks to depose 30(b)(6) witnesses on issues nearly identical to those as Chase's Protected Topics. As such this Court should also permit Chase to conduct additional discovery of SFR on those issues.

B. This Case Implicates SFR's 2012 Understanding of NRS Chapter 116

Equally germane to this case is the *SFR v. U.S. Bank* decision and whether it should apply retroactively. *See, e.g.*, *Christiana Trust v. K & P Homes*, Case No. 2:15-cv-01534, 2015 WL 6962860, at *5 (D. Nev. Nov. 9, 2015) (finding that "*SFR Investments Pool 1* does not apply retroactively in this case under the *Huson* rule, as approved in *Breithaupt*"); *see also id.*, 2016 WL 923091, at *2 (D. Nev. Mar. 9, 2016) (certifying question about retroactive application of *SFR v. U.S. Bank* to the

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Nevada Supreme Court). Much like in *Shadow Wood, Breithaupt* requires courts to consider, among other things, whether the litigants relied on the overturned precedent and whether retroactive application would "produce substantial inequitable results" to determine whether a decision applies retrospectively. *Breithaupt*, 110 Nev. at 35, 867 P.2d at 405.

Despite the Commissioner's consideration of unfairness, the DCRR does not allow Chase to probe into issues of prejudice. The Court, however, must permit Chase to conduct discovery regarding factors that influence the inequities, including SFR's understanding of NRS 116.3116's effect. These issues are directly relevant to Chase's position that the *SFR v. U.S. Bank* cannot apply retroactively.

C. Chase Will Face Severe Prejudice if This Court Limits Its Discovery

In light of these considerations, the Protected Topics are relevant to this litigation. This Court should not restrict Chase's ability to gather evidence. Rather, the Court must allow Chase to develop the record on SFR's understanding, in 2012, that it acquired the Property subject to Chase's deed of trust and SFR's post-sale profits—including related areas that provide the necessary circumstantial evidence of SFR's knowledge and intent.

Indeed, documents obtained from third parties underscore that the Protected Topics are anticipated to lead to such admissible evidence. Namely, an SFR lease agreement indicates that, prior to the 2014 *SFR v. U.S. Bank* decision, SFR believed that lenders "maintained [their] security interest[s] in the property after the homeowner's association foreclosure sale." *See* Foreclosure Addendum to Residential Lease Agreement (dated Nov. 3, 2012), attached as **Exhibit F** to Chase's Motion to Compel. This is direct evidence that SFR believed properties purchased at association foreclosure sales remained subject to a preexisting deed of trust. This fact, in turn, bears directly on the equities of the association sale: it would not be unfair to unwind the sale to provide SFR exactly what it bargained for—a property encumbered by Chase's deed of trust.

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The language of the lease also strikes at the heart of a deeper issue—an investment strategy where investors such as SFR purchased properties at association sales with the mere intention of "stepping into" the place of the association. *See* H. Smith, *Shrewd Investors Snap Up HOA Liens, Rent Out Houses*, Review Journal (posted Mar. 18, 2013), *available at* www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-houses, attached as **Exhibit F** to Chase's Motion to Compel. Investors would then rent or lease properties post-sale to turn a profit prior to the bank's foreclosure actions. *Id.* Not only would this provide the investors with added income, they would also recoup the amount of the association's lien after the bank's foreclosure. *Id.*

Again, the scope of the DCRR is insufficient, as it does not allow Chase to obtain additional information related SFR's knowledge of the first deed of trust. More importantly, it fails to account for this HOA Scheme. Chase's position in this litigation has been, and continues to be, that SFR engaged in improper business practices at Chase's expense. Whether SFR profited from the sale, the people responsible for and their knowledge of the scheme are of much interest to Chase. Any facts that are uncovered would also aid the Court in determining the harm SFR would suffer in the event the Court unwinds the sale. *See Shadow Wood*, 366 P.3d at 1114–15. This information also tends to show that SFR understood that the property remained subject to the first deed of trust after the association foreclosure, a relevant consideration for the retroactivity argument. *See Breithaupt*, 110 Nev. at 35, 867 P.2d at 405.

The discussion below explains in greater detail the relevance of each Protected Topic erroneously protected from discovery by the DCRR:

- **Topics 14, 15 and 19** seek information about SFR's participation in and practices related to carrying out its investment strategy, which reflects its apparent understanding, at the time of the HOA Sale, that NRS Chapter 116 did not extinguish deeds of trust. This information also shows that SFR profited from its strategy, such that setting aside the sale will not unfairly prejudice SFR; it will merely prevent SFR from

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gaining a windfall.

- **Topics 16, 17, and 18** are relevant to determining SFR's intent for the Property and its understanding of NRS 116.3116 *et seq.* SFR appears created to take advantage of minimal HOA foreclosure sale prices and laws passed around the time of its formation that created foreclosure hurdles for banks. Additionally, this information is important to confirm whether SFR colluded with or gained inside knowledge from association foreclosure agents.

- **Topics 28 and 29** speak to SFR's strategic investment and leasing of properties purchased at HOA sales, in addition to SFR's knowledge of the first deed of trust at the time of sale, which are relevant to whether SFR has already profited from the Property and the extent of damages it would incur if the Court rules that the Property remains subject to Chase's deed of trust.

The DCRR also improperly limits **Topic 25**, to which neither party even objected. Information regarding SFR's preparations for the sale goes directly towards the issues of SFR's knowledge and beliefs about NRS 116.3116 *et seq.*, its lack of BFP status, and the general unfairness of the sale. Namely, this information addresses whether SFR knew the market value of the Property that it now claims to have acquired, for pennies on the dollar, free and clear of Chase's lien. While the DCRR sua sponte limited this inquiry to the Property at issue, SFR claims that it cannot recall any facts specific to a particular property. Thus, Chase must be allowed to inquire about SFR's practices in general.

Accordingly, the Protected Topics are discoverable under Rule 26, and SFR has failed to carry its burden to show some "extraordinary reason" that justifies denying Chase's ability to obtain this relevant information. *See Twin City Fire Ins. Co.*, 124 F.R.D. at 653. This Court should not adopt the DCRR and prematurely decide relevance for trial. Rather, it should allow Chase to proceed with the requested discovery so the Court can render a judgment based on a developed record. *See Shadow Wood*, 366 P.3d at 1109 (noting that district courts may enter orders to obtain "a fuller development of the circumstances of the case").

. . .

. . .

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V. CONCLUSION

The Court should reject the erroneous DCRR and, pursuant to Rule 26(c), enter an order directing SFR to prepare and provide a Rule 30(b)(6) witness to provide full deposition testimony regarding topics 14, 15, 16, 17, 18, and 19, 25, 28, and 29 of Chase's Notice of 30(b)(6) Deposition of SFR Investments Pool 1, LLC. Alternatively, if this Court elects to uphold the restrictive DCRR, then it must also preclude SFR from offering any testimony or evidence on these topics at trial.

Dated this 12th day of September, 2016.

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By: /s/ Lindsay Demaree
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JPMORGAN CHASE BANK, N.A.'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of September, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of JPMORGAN CHASE BANK, N.A.'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION re: SFR INVESTMENTS POOL 1, LLC'S MOTION FOR PROTECTIVE ORDER RELATING TO RULE 30(b)(6) DEPOSITION OF SFR was served in the manner set forth below:

[ ] Hand Delivery

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

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

Howard C. Kim, Esq.
Diana Ebron, Esq.
Karen L. Hanks, Esq.
7625 Dean Marin Drive, Suite 110
Las Vegas, NV 89139

Attorneys for SFR Investments Pool 1, LLC

/s/ Mary Kay Carlton
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EXHIBIT A

EXHIBIT A

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Attorneys for Defendant and Counterclaimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance 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, NA, a national association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL., Defendants.	CASE NO. A-12-672963-C DEPT NO. 27

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.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

CASE NO. A-12-672963-C
Hearing Date: August 10, 2016

Hearing Time: 9:00 a.m.

Attorney for Plaintiff: Diana Ebron, Esq.
Karen Hanks, Esq.
Kim Gilbert Ebron

Attorney for Defendant: Abran Vigil, Esq.
Lindsay Demaree, Esq.
Ballard Spahr LLP

I.

FINDINGS

This matter came on for a hearing on defendant and counterclaimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC's ("Chase") "Motion to Compel SFR's Rule 30(b)(6) Deposition Testimony" (hereinafter the "Motion") filed on July 8, 2016. On July 25, 2016, plaintiff and counter-defendant SFR Investments Pool 1, LLC ("SFR") filed an "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" (hereinafter the "Countermotion"). On August 3, 2016, Chase filed a "Reply in Support of Chase's Motion to Compel and Opposition to SFR's Countermotion for Protective Order Relating to Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC."

After considering the Parties' briefs and the arguments of counsel at the hearing set for this matter, the Discovery Commissioner finds SFR should move for a protective order in the future. The Discovery Commissioner further finds good cause to grant in part and deny in part the Motion and to grant in part and deny in part the Countermotion to permit discovery on the equitable issue of unfairness, as set forth in the recommendations below.

[Continued on following page.]

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II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that the Court grant in part Chase's Motion and to grant in part SFR's Countermotion. The Rule 30(b)(6) deposition topics disputed by the Parties shall be addressed as follows:

Topic No. 14: SFR shall provide a Rule 30(b)(6) designee prepared to testify regarding SFR's disposition of the property at issue in this case, including: what SFR intended to do with the property, SFR's possible plans for the property, and what in fact has happened to the property, if SFR knows, as these issues related to the equitable inquiry on fairness. This topic shall permit questions about SFR's procedure for renting out the property; however, information regarding lease terms, SFR's profits, and lessees' assets is protected for purposes of SFR's Rule 30(b)(6) deposition. Chase may instead serve an interrogatory to SFR regarding the amount of rent that SFR charged for the subject property.

Topic No. 15: This topic is protected.

Topic No. 16: This topic is protected.

Topic No. 17: This topic is protected.

Topic No. 18: This topic is protected, unless the funds used to purchase the subject property were obtained illegally. SFR shall provide a Rule 30(b)(6) designee prepared to confirm that the funds were not obtained illegally or to testify about the illegal funds.

Topic Nos. 19 & 20: While topic 20 was not disputed, both topics are protected.

Topic No. 25: Although not disputed by the Parties, the topic shall be limited to the sale and use at issue in the case.

Topic No. 28: SFR shall provide a Rule 30(b)(6) designee prepared to provide testimony regarding Topic No. 28 as it relates to the property at issue in this case.

Topic No. 29: SFR shall provide a Rule 30(b)(6) designee prepared to provide testimony regarding SFR's communications with tenants about Chase's deed of trust,

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including the specific language pertaining to a lender's deed of trust contained in the first lease agreement that SFR used following the association sale in this case. The rest of the lease's terms and conditions are protected. SFR's communications with tenants about this litigation are irrelevant and protected.

IT IS FURTHER RECOMMENDED that the Parties shall conduct a 2.34 conference prior to the continued deposition of SFR's Rule 30(b)(6) designee to discuss Topic Nos. 13, 15, and 26.

IT IS FURTHER RECOMMENDED that each party shall bear its own fees and costs.

The Discovery Commissioner, met with counsel for the Parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 24 day of August, 2016.

DISCOVERY COMMISSIONER

Submitted by:

BALLARD SPAHR LLP

By: _____
Abran E. Vigil
Nevada Bar No. 7548
Lindsay Demaree
Nevada Bar No. 11949
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Las Vegas, Nevada 89106-4617
Attorneys for Defendants JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC

Approved as to form by:

KIM GILBERT EBRON

By: _____
Diana Cline Ebron
Nevada Bar No. 10580
Jacqueline A. Gilbert
Nevada Bar No. 10593
Karen L. Hanks

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including the specific language pertaining to a lender's deed of trust contained in the first lease agreement that SFR used following the association sale in this case. The rest of the lease's terms and conditions are protected. SFR's communications with tenants about this litigation are irrelevant and protected.

IT IS FURTHER RECOMMENDED that the Parties shall conduct a 2.34 conference prior to the continued deposition of SFR's Rule 30(b)(6) designee to discuss Topic Nos. 13, 15, and 26.

IT IS FURTHER RECOMMENDED that each party shall bear its own fees and costs.

The Discovery Commissioner, met with counsel for the Parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this _____ day of _____, 20__.

_____
DISCOVERY COMMISSIONER

Submitted by:

BALLARD SPAHR LLP

By: _____
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Attorneys for Defendants JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC

Approved as to form by:

KIM GILBERT EBRON

By: _____
Diana Cline Ebron
Nevada Bar No. 10580
Jacqueline A. Gilbert
Nevada Bar No. 10593
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SFR v. VENTA
A672963

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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 EDCR 2.34(f) an objection must be filed and served not more than five (5) 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 a folder of a party's lawyer in the Clerk's office. *See* EDCR 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

____ Mailed to Counsel at the following address on the day of _____, 2016.

__✓__ Placed in the folder of Plaintiff/Defendant's counsel in the Clerk's office on the 30 day of August, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: JENNIFER LOTT
Deputy Clerk

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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 objections having been received in the office of the Discovery Commissioner pursuant to EDCR 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 is set for _____, 20____, at ____:____ __.m.

Dated this _____ day of _____, 2016.

_____
DISTRICT COURT JUDGE

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EXHIBIT B

EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, v. VENTA REALTY GROUP, a Nevada corporation, JP Morgan Chase Bank, NA, a National Association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation, CALIFORNIA CONVEYANCE 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, ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-12-672963-C DEPT NO. 27
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.	

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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: Time:	June 24, 2016 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 .

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f. The term "Act" means the Nevada Uniform Condominium Ownership Act, NRS Chapter 116.

g. The term "FHA" means the Federal Housing Administration.

h. The term "CC&Rs" means the Paradise Court's Declaration of Covenants, Conditions, and Restrictions, recorded on May 18, 2004.

i. The term "Property" means the real property located at 1076 Slate Crossing Lane, #102, Henderson, NV 89002.

j. The term "Lien" means the "Notice of Delinquent Assessment Lien," recorded on February 5, 2010, as Instrument No. 20100205000192 3, in Clark County, Nevada.

k. The term "Notice of Default" means the "Notice of Default and Election to Sell Under Homeowners Association Lien," recorded on March 7, 2012, as Instrument No. 20120307000441 in Clark County, Nevada.

l. The terms "Notice of Sale" means the "Notice of Foreclosure Sale," recorded on August 30, 2012, as Instrument No. 20120830000306 7 in Clark County, Nevada.

m. The term "Litigation" means the above-captioned proceeding in Nevada District Court, Clark County, Case No. A-12-672963-C.

n. The term "Complaint" means the "Complaint" filed on December 4, 2012 as part of the Litigation.

o. The term "NAS" means Nevada Association Services, Inc., as well as its members, officers, employees, agents, assigns, representatives, any successor or predecessor in interest, and any other person or entity acting or purporting to act on its behalf.

p. The term "HOA" means Paradise Court Homeowners Association, as well as its members, officers, employees, agents, assigns, representatives, any successor or predecessor in interest, and any other person or entity acting or purporting to act on its behalf.

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

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

s. The term "Borrower" means Delaine L. Harned.

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

Matters on Which Testimony Will be Taken

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

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

2. The factual basis for SFR's affirmative defenses numbered 3, 4, 7, 10, and 16 in "SFR Investments Pool 1, LLC's Answer to Counterclaim" filed in the Litigation.

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

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

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

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

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

8. All communications between SFR and the Borrower.

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

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

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

12. SFR's relationship with the Borrower.

13. SFR's practices, polices, and procedures related to purchasing properties at homeowners association foreclosure sales, including, without limitation, frequency of attending homeowners association foreclosure sale, geographic focus, internal risk assessments, determination of bid amounts, and knowledge of and communications with mortgagees, homeowners association foreclosure agents, and/or collection companies about a property 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.

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

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

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

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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.

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

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.

20. SFR's relationship to other SFR entities.

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

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

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

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

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.

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

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

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

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).

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

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

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

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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

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EXHIBIT C

EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

Case No. A-12-672963-C
Dept. 27

VENTA REALTY GROUP, a Nevada corporation, JP Morgan Chase Bank, NA, a National Association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation, CALIFORNIA CONVEYANCE 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, ROE CORPORATIONS I through X, inclusive,

Defendants.

_____/...

30(b)(6) DEPOSITION OF PAULINA KELSO

Taken at the Law Offices of Ballard Spahr LLC
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106
On Friday, August 26, 2016
At 2:00 p.m.

Reported By: PAULINE C. MAY, CCR 286, RPR

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.

_____/

-oOo-

APPEARANCES:

For the Plaintiff: KAREN HANKS, ESQ.
Kim, Gilbert, Ebron
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139
(702)485-3300

For the Defendants: LINDSAY DEMAREE, ESQ.
Ballard Spahr LLP
100 North City Parkway
Suite 1750
Las Vegas, Nevada 89106-4617
(702)471-7000

* * * * *

I N D E X

WITNESS	PAGE
PAULINA KELSO	
Examination By Ms. Demaree	4

EXHIBITS		PAGE
Defendants':		
A	Notice of Deposition	4
B	Recorder's website printout	16
C	Foreclosure Deed	40
D	Residential Lease Agreement with redactions	57

-o0o-

specific language. It was more that -- not what he could rent the property for, but I believe that it was rentability and I believe that was what I have in my notes.

Q Did the property's location make a difference to whether SFR would bid on it?

A I recall him mentioning location. When he was looking at the -- I believe it was Foreclosure Radar, that he mentioned that location was something that they listed so that could have played into it.

Q What did SFR intend to do with the property if it -- if it purchased the --

A I don't know that SFR -- at that time when Bob was purchasing, I don't know that they had -- that he I guess had an intent from reading his transcripts and that. It just seemed like he was just buying properties. I don't know that it had an intent.

Q Who was Bob Diamond purchasing properties for?

A For SFR.

Q And he was just an independent contractor employee of SFR; correct?

MS. HANKS: I'll object to form. Asking if he had a W-2 versus 1099?

BY MS. DEMAREE:

Q I'm just trying to say -- you know, the question that I originally asked is what SFR intended to do if it obtained the property after the HOA sale, and you are telling me that Bob Diamond didn't have a plan for the properties. So I'm just wondering if SFR, not Bob Diamond.

A Only because if Bob was the only one who was buying the properties, as far as SFR -- I don't know that there was an intent at that time. I think it grew into an intent later.

But I don't know that at this specific time, when Bob was buying up those properties, that SFR had an intent.

Q After Bob Diamond submitted the winning bid at the HOA sale, the HOA foreclosure agent recorded a foreclosure deed in SFR's name; correct?

A When you say that the HOA agent, are you talking about -- I always call my collection agency.

Q Yeah.

A In this case is it NAS?

Q Yes. And actually, we can go ahead and mark this as Exhibit C.

A Sure. My understanding with -- from reviewing Bob's testimony is that it was the -- he

litigation when it decided whether to purchase this property?

A When Bob was purchasing the property, that's something that he didn't consider.

Q Was anybody at SFR aware of the risk of litigation at the time of the HOA sale?

A Again, it's kind of hard to answer that because as I said, Bob was the only one there for SFR other than counsel; and what counsel thought I do not know.

Q Have you asked anyone?

A Asked anyone?

MS. HANKS: I'm sorry, what?

BY MS. DEMAREE:

Q Yeah. Have you asked anyone about what they thought about litigation and the prospect of litigation during this time period? We have a guy who is purchasing properties on behalf of SFR, but, you know, he's not the manager, he's not an officer, owner of the company as far as I know.

So was there anybody actually running SFR who believed there was a risk of litigation?

MS. HANKS: Object to form.

BY MS. DEMAREE:

Q What's the --

MS. HANKS: "Running." There's nothing to run is what we have tried to explain. There was nothing. SFR wasn't what it was today so there was nothing to run. They didn't even have an office.

MS. DEMAREE: Right. But there's still more people involved besides just the guy who is bidding on the property.

MS. HANKS: Not at that time, other than the manager and the attorney. That's the point. There is no more people involved so that's why when you say "running," there's nothing to run. There's no business operations at that point.

BY MS. DEMAREE:

Q Okay. So let me back up, then.

A Can you repeat that?

Q At the time of this HOA sale in September of 2012, you had Bob Diamond who was bidding on properties for SFR. Were there -- and you also mentioned I believe David Rosenberg, counsel for SFR.

Were there any other people involved with SFR?

A It's my understanding that, I guess that -- I don't know if I would say "involved." Well, there is counsel -- there was counsel in California.

Q Who was that?

A David Camel.

Q Anyone else?

A Well, SFR, you know, Investments Pool 1 is wholly owned by SFR Investments so I don't know if -- if that counts. But as far as another person or -- I believe that -- that it was -- that SFR had those two counsels at that time and then it was Bob and that's my understanding.

Q So is it your testimony today that at the time of the sale, SFR was not aware of the risk of litigation?

A No, that's not going to be my testimony because I don't know.

Q I just want to make sure.

A No. I'm just -- you know. They had counsel and whether or not counsel -- I don't know what they thought at that time. So as far as...

Q Did you ask anyone?

A I don't know who I would ask. I know that Bob didn't consider that when he was bidding on the properties. But other than that, I don't know.

Q So you don't know whether or not SFR had any knowledge of the risk of litigation at the time of the sale?

A Well, it's just really tricky because Bob

was purchasing them on behalf of SFR so he kind of -- I don't want to say he was SFR, but he was the one person who was bidding on those homes.

And as far as he was concerned, I believe he stated, no, that he was not -- the risk of litigation wasn't a factor into whether or not he purchased property. But to that, that's the extent that I can -- that I have knowledge about.

Q And that's my question, is: Are we going to, you know, go down the path and go to trial and SFR is going to say, Wait, no, we did know that there was a risk of litigation? That was just Bob's -- what he thought.

This is my opportunity to try to get SFR's position and understanding, so I just want to make sure that the record's clear. So you are not able to testify about SFR's understanding of the risk of litigation?

A Other than what Bob had thought at the time when he was purchasing the properties, I do not know what -- I guess I don't know what SFR's stance would be at that time on litigation.

Q Who determined the limit that SFR would bid for the property?

A That would be Bob.

Q Anyone else involved in that decision?
A My understanding it was his decision.
Q Did he have unlimited funds at his disposal?
A He would set the amount of funds or he would request the amount of funds that he wanted, and then he stated that the funds would be there for him to purchase the property.
Q Who did he request the funds to purchase the property from?
A He doesn't recall the specific person. He was given a phone number that he would text when he needed money.
Q You are here on behalf of SFR; right?
A Yes.
Q And knowing -- you know, being SFR's representative, who did Bob Diamond contact to obtain funds for this particular property sale?
A He doesn't recall.
Q But did you look into this issue at all?
A No. He was able to get -- no, I did not.
Q Did you research --
A I know it was a Wells Fargo account where the funds were provided.
Q Okay. One of the topics, if you would, Topic 18, it discusses whether the funds were obtained

legally. So what did you do to research this topic other than confirm that there was a Wells account?

A Just knowing that Wells account -- I mean it's a bank, and that's where he pulled the funds from to purchase the property.

Q Do you know how the funds in the Wells Fargo account were obtained?

MS. HANKS: I'll just object to scope.

THE WITNESS: No, I do not.

BY MS. DEMAREE:

Q And you know that SFR's purchaser, Bob Diamond, contacted somebody, but you don't know who?

A For the funds?

Q Correct.

A No, I do not. He didn't recall, and he was the person that requested those funds and he doesn't recall.

Q Did you do any independent research into this issue?

A I don't know what independent research that would be to find out about that, other than he's the one who did it. So, no, I don't know other than that.

Q Okay. I mean this is an extreme example, but, you know, if Bob Diamond happened to be texting, you know, some -- I don't know -- Osama Bin Laden or

something. I mean I know it's an extreme example, but I'm trying to figure out how he could confirm that these funds weren't, in fact, illegal. I don't think that they are, but again I'd just --

MS. HANKS: Well, that's why I'm going to object to scope, because but to protect the topic to then put that in there -- and frankly, I don't know what the heck she meant by that and I don't know how you would ever confirm that. So to me, it was an absurd comment to say "protected" unless it was illegal activity, but that's what the minute order says, this topic was protected.

So I mean I think all SFR can do is we're getting it from a legitimate bank account where it's a legitimate company.

MS. DEMAREE: Well, I guess that's the thing. I don't know if it's a legitimate bank account because we don't know --

MS. HANKS: Wells Fargo does legitimate bank accounts is what I'm saying.

MS. DEMAREE: I don't think banks necessarily --

MS. HANKS: Actually, they do. They do.

MS. DEMAREE: They don't necessarily always know how funds are getting in there.

MS. HANKS: They do.

MS. DEMAREE: I understand your objection and we won't --

THE WITNESS: I don't believe that SFR has any reason to believe that the funds were obtained illegally. That would be what I would testify to.

As far as, you know, SFR was a legitimate company, incorporated here in Nevada, and then the funds were pulled from a Wells Fargo bank account and that would be my response to that. Other than that, I don't know.

BY MS. DEMAREE:

Q All right. But you don't know who Bob Diamond texted in order to get the funds to purchase the property?

A He doesn't recall.

Q And you don't know either?

A I don't know.

MS. HANKS: And I just object to the scope. I don't think that was in the scope. That was protected.

MS. DEMAREE: I think we were able to relate to the facts relating to the sale, the facts about the presale preparation for this property, so I would argue that it is within the scope. This would be part

of the presale preparation.
BY MS. DEMAREE:
Q Did SFR have any communications with NAS about the property before the sale?
A I don't believe so, no.
Q Did SFR have any communications with the homeowner about the property before its sale?
A I don't believe so, no. Those are two things that I believe Bob has testified to that he did not with any -- okay. With the one caveat that there were times he would call prior to a sale to make sure the home was going to be sold.
But I don't know that that happened specifically at this point, but that is one instance that there would have been some kind of contact prior to a sale. Other than that, no, and the homeowner, no.
Q And -- I'm sorry. What?
A I said "the previous homeowners."
Q Any communications with the HOA about the property before the sale?
A No, I don't believe so.
Q Bob Diamond was the one that decided whether or not to attend the HOA sale on SFR's behalf?
A Yes.

EXHIBIT D

EXHIBIT D

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

***

DAISY TRUST,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A.; et.al.,

Defendant.

Case No. 2:13–cv–966–RCJ–VCF

ORDER

MOTION FOR PROTECTIVE ORDER (ECF NO. 66)

Before the court are Daisy Trust's motion for protective order (ECF No. 66), Chase's response (ECF No. 71), and Daisy Trust's reply (ECF No. 72). For the reasons stated below, the Daisy Trust's motion is denied.

I. Legal Standard

"A party or any person from whom discovery is sought may move for a protective order." FED. R. CIV. P. 26(c). "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." FED. R. CIV. P. 26(c).

"Parties may obtain discovery regarding any nonprivleged matter that is relevant to any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b)(1).

II. Discussion

As part of discovery, Chase noticed Daisy Trusts Rule 30(b)(6) deposition. (ECF No. 66-1) Daisy Trust now moves for a protective order regarding topic 12 through 18, 24, and 26. (ECF No. 66). The trust argues that these topics seek irrelevant information. Chase contends that these topics are relevant to whether Daisy Trust was a bona fide purchaser of the property and to the issue of damages. This court agrees.

1. Topics 12, 17, 18, 24, and 26 are Relevant to Whether Daisy Trust was A Bona Fide Purchaser

> Topic 12: Your practices, policies, and procedures related to purchasing properties at homeowner's association foreclosure sales. … This request is limited in time form the date the Association recorded its Notice of Delinquent Assessment Lien to the date of HOA sale.
>
> Topic 17: The source(s) of funds used by You to purchase the Property.
>
> Topic 18: Your 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 Daisy Trust.
>
> Topic 24: Your preparations for the Association Sale, including, without limitation, evaluations of the Property's value, risk assessments related to the bidding on the Property at the HOA Sale, bidding authority, and Your investment criteria as it relates to the Property.
>
> Topic 26: The identity, real estate experience, and current contact information of the person(s) who decided to attend the HOA Sale on Your behalf and/or who bid on the Property on Your behalf.

Daisy Trust argues that it is a bona fide purchaser of the property and took the property free and clear of all other property interests. (ECF No. 1) Chase contends that Daisy Trust's operations and practices contradict this claim. Information about Daisy Trust's preparation for the HOA sale, Daisy Trust's purchasing agent, and its policies regarding the purchase of HOA foreclosed upon properties is relevant to determine whether Daisy Trust was a bona fide purchaser. Chase is permitted to ask Daisy Trust's Rule 30(b)(6) witness about Topics 12, 17, 18, 24, and 26.

2. Topics 13 through 16 are Relevant to Whether Daisy Trust was a Bona Fide Purchaser and to the Issue of Damages

> Topic 13: Your disposition of properties acquired from homeowner's associations, including, without limitation, its procedures to manage, lease and/or sell the properties.

Topic 14: The portion of Your business related to purchasing, managing, renting, and/or selling properties acquired from a homeowner's association foreclosure sale.

Topic 15: Your formation and company purpose, including, without limitation, the facts and circumstances that led to Your creation.

Topic 16: Your 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 Daisy Trust at the time You attended any association foreclosure sale of the Property.

Chase believes that Daisy Trust took advantage of the protracted HOA foreclosure litigation in Nevada to rent out the homes it purchased for extended periods of time in order to recoup the purchase price. (ECF No. 71 at 7-8) If the HOA's sale to Daisy Trust is unwound, Chase would be entitled to know what, if any, damages Daisy Trust might claim. Information about Daisy Trust's internal operations, company structure, use of the purchased properties, and profits derived from the purchased properties is relevant to the issues of whether Daisy Trust was a bona fide purchaser and whether Daisy Trust would suffer damage if the HOA sale was unwound. Chase is permitted to ask Daisy Trust's Rule 30(b)(6) witness about Topics 13 through 16.

ACCORDINGLY, and for good cause shown,

IT IS HEREBY ORDERED that Daisy Trust's motion for protective order (ECF No. 66) is DENIED.

IT IS SO ORDERED.

DATED this 5th day of August, 2016.

CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE

EXHIBIT E

EXHIBIT E

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

NATIONSTAR MORTGAGE, LLC, Plaintiff, v. AUGUSTA BELFORD AND ELLINGWOOD HOMEOWNERS ASSOCIATION, et al., Defendant.	Case No. 2:15-cv-01705-MMD-PAL ORDER (Mot Prot Ord – Dkt. #42) (Mot Prot Ord – Dkt. #43) (Counter Mot Compel – Dkt. #52)

The court held a hearing on Nationstar Mortgage, LLC's Motion for Protection from the Deposition Notice of Rule 30(b)(6) Witnesses (Dkt. #42), SFR Investment Pool 1, LLC's Motion for Protective Order Relating to Rule 30(b)(6) Deposition of SFR Investments Pool 1, LLC (Dkt. #43) and SFR's Countermotion to Compel (Dkt. #52). The court has considered the moving and responsive papers, as well as the arguments of counsel at the hearing. Donna Wittig appeared on behalf of Nationstar, Diana Ebron and Karen Hanks appeared on behalf of SFR Investments Pool 1, LLC, and Megan Hummell appeared on behalf of Augusta Belford and Elingwood Homeowners Association.

I. Nationstar's Motion for Protective Order.

Nationstar's Motion for Protective Order (Dkt. #42) argues that SFR's Rule 30(b)(6) deposition notice topics are overbroad, irrelevant, and that written discovery is a more appropriate mechanism to obtain the same information. Additionally, Nationstar argues that the Rule 30(b)(6) designee's principle place of business is in Dallas, Texas, and that the deponent should not be required to travel to Nevada. Counsel proposes that the deposition take place in Dallas if the court orders a Rule 30(b)(6) deposition to proceed, or alternatively, that the witness appear by video. SFR opposed the motion and filed a countermotion to compel Nationstar and

the Bank Defendants to respond to Request for Production of Document Nos. 1, 4, 9, 16, and 17, and/or to produce a privileged document log with respect to any documents withheld on the basis of attorney-client work product or other privilege.

As the parties' disputes involve, in part, the adequacy of the Bank Plaintiff/Counterdefendants' responses to SFR's discovery requests, and the response to the countermotion to compel is not due until June 13, 2016, the court will defer decision on Nationstar's motion for protective order until resolving the underlying written discovery response disputes.

II. SFR's Motion for Protective Order

SFR's Motion for Protective Order (Dkt. #43) involves a dispute over Nationstar's Rule 30(b)(6) topic No. 10. It requests:

> SFR's corporate structure, from 2012 to the present, including:
>
> a. The identity and location of SFR's principals, managers, members, officer and investors;
>
> b. The identity and location of SFR's parent or subsidiary corporations and affiliates, and the principals, managers, members, officers and investors of those entities;
>
> c. The identity of any wholly or partially owned subsidiary of SFR as well as any company or corporation over which SFR expects control or otherwise participates, or has participated in the management or direction of SFR investors;
>
> d. The identity of SFR's sources of operating capital;
>
> e. The content and application of SFR's Operation Agreement(s) and Articles of Incorporation from 2012 to present.

Counsel for SFR has previously sought and obtained protective orders in both state court and this federal district on the same subject matter. Protective orders have been granted by Magistrate Judge Koppe, the undersigned, State Discovery Commissioner Bonnie Bulla, State Discovery Commissioner Chris Beecroft, Jr., and District Judge Boulware. SFR argues that the broad categories of information sought are not relevant to the issue of whether it was a bona fide purchaser at the HOA sale. Additionally, while the bank claims it needs the information about the parent entities' knowledge about the HOA sale, SFR has no control or authority over these

entities, and the broad requests for information are burdensome. SFR has given deposition testimony in multiple cases "countless times" about its knowledge regarding facts and circumstances surrounding HOA sales. It was SFR which attended the sale in this case and researched the property, and has previously testified that it was aware of risk of litigation because bank/lenders were disputing whether their respective deeds of trust were extinguished. Additionally, SFR's representative will testify in this case that it is not aware of any pre-sale disputes that may have occurred between the bank and the HOA or its collection company prior to sale. Under these circumstances, Topic 10 is nothing more than a fishing expedition and a protective order should be entered.

Nationstar opposes the motion asserting the discovery sought is relevant to the issue of whether SFR is a bona fide purchaser because this depends, at least in part, on the sophistication of its owners and operators. Nationstar relies on the Nevada Supreme Court's recent decision in *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.,* 132 Nev. Ad. Op. 5 366 P.3d 1105 (2016) to support its position the discovery is relevant. In *Shadow Wood*, the Nevada Supreme Court indicated that a parties' status as a bona fide purchaser is a factor a court sitting in equity should balance and observed that actual, constructive, and inquiry notice bears on a party's bona fide purchaser status. Additionally, Adam Bailey, a former SFR employee, executed an affidavit March 7, 2016, identifying David and Barbara Rosenberg as the ones who created and funded SFR and ultimately rearranged the company's corporate structure. A copy of the affidavit is attached as Exhibit A to the Opposition. If Mr. Bailey's information is correct, the Rosenbergs' personal knowledge and sophistication as real estate investors bears on the bona fide purchaser analysis. SFR's current manager, Chris Hardin, responded to the Bailey affidavit with a declaration of his own, a copy of which is attached as Exhibit B. Mr. Hardin's declaration impugns Mr. Bailey's credibility and knowledge, but fails to refute a number of Bailey's statements.

Nationstar also argues that the prior protective orders on the same topic were obtained prior to *Shadow Wood* and Mr. Bailey's "whistle-blowing affidavit." Additionally, Judge Hoffman denied SFR's motion for protective order on the exact topic at issue less than two

weeks ago. A state district court judge also recently overturned a pre-*Shadow Wood* protective order recommended by a discovery commissioner, finding the inquiry into SFR's operations, ownership and status is now in play in light of *Shadow Wood*.

Mr. Hardin was deposed in a state court case in one of hundreds of properties owned by SFR involved in quiet title litigation. He testified that he did not know who the owners of SFR were and that he reported to Attorney Howard Kim. He also testified that Mr. Kim was the only source of information about who the investors were. The state court permitted Mr. Kim's deposition to proceed based on Mr. Hardin's testimony. Mr. Kim was deposed on February 25, 2015, and contradicted Mr. Hardin. Specifically, Mr. Kim testified that he has no knowledge of when SFR was formed and no knowledge of who formed it. He also testified that he did not hire Hardin, despite Hardin's sworn testimony to the contrary, and that he did not know who hired Mr. Hardin. However, Mr. Kim testified he recommended Mr. Hardin to Dave Rosenberg. Mr. Kim believed that Dave Rosenberg was in-house counsel for SFR. Mr. Kim also testified that he controls a trust account for SFR, transfers money to Hardin, and has no knowledge about the funds in the trust account.

Nationstar also cites testimony of Mr. Kim that he did not know who formed SFR's parent company and that his law firm was not involved in the formation of SFR Investments, Inc. Public records including SFR Investments, LLC's Articles of Organization list David A. Tilem as the original managing member with an address at 400 N. Stephanie Street in Henderson, Nevada -- the address of Kim's law firm. Mr. Tilem is a bankruptcy attorney, and sits on the board of at least one HOA. Mr. Rosenberg and Mr. Kim are bankruptcy attorneys and trustees. Additionally, a deposition of Paulina Kelso, a 30(b)(6) representative for SFR, was taken. Ms. Kelso testified that to her knowledge, David Rosenberg was not employed by SFR investment Pool 1, LLC, is not in-house counsel, and other than acting as an attorney, has no other role with SFR Investment Pool 1, LLC.

Nationstar maintains that *Shadow Wood* has changed the landscape and that courts are now required to consider the totality of the circumstances in HOA quiet title actions. Among the circumstances the Nevada Supreme Court found were relevant were the "status and action in all

parties involved" in deciding whether to set aside an HOA sale on equitable grounds. The Nevada Supreme Court identified a party's bona fide purchaser status as one of the factors to consider in evaluating the fairness of the transaction and conducting the required equitable balancing test. Topic 10 is targeted to determine SFR's bona fide purchaser defense. Topic 10 seeks testimony on SFR's corporate structure, including the identity of its principals, managers, members, officers, and investors, as well as information on the identity and role of what Nationstar understands to be the corporate shells involved in SFR's business. It also seeks information on the identity of SFR's sources of operating capital and the content of its operation agreements and Articles of Incorporation from 2010, to the present. All of this information is important in light of *Shadow Wood*'s instruction to the trial courts to develop the facts and examine the entirety of the circumstances that bear on the equities, including considering the status and actions of all parties involved, and whether an innocent party may be harmed by granting the desired relief.

SFR replies that the Bank already knows from previous depositions of SFR Pool that it is owned by SFR Investments, LLC, and that SFR Investments is owned by SFR Funding, LLC, a Delaware LLC. The Bank already knows that SFR Pool has never known who the manager of that entity is. Contrary to the Bank's arguments, knowledge of the parent entities is not attributed to SFR Pool because SFR Pool is a manager-managed LLC rather than a member-managed LLC. Chris Hardin is the sole manager and does not seek input from any other entity. SFR Pool has a legal right to conduct its business how it desires, and if it chooses to put full faith and power in Chris Hardin, it is entitled to do so. Because the individual members have no say in the day-to-day operations of SFR Pool and have lawfully used the protections afforded under the law to remain anonymous, this discovery should not be allowed because knowledge of a member of a manager-managed LLC cannot be imputed to the LLC, absent an alter-ego claim or an attempt to pierce the corporate veil. For these reasons, this topic is not aimed at determining SFR Pool's bona fide purchaser status and the court should issue the protective order.

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DISCUSSION

SFR Pool 1, LLC is a closely held corporation which was recently required to disclose the citizenship of each of its members in response to an order to show cause issued in aid of the court's determination of whether it had diversity jurisdiction in this case. In Case No. 2:15-cv-00218-KJD-NJK, SFR Investment Pool 1, LLC filed a certificate of interested parties indicating that the following entities have an interest in the outcome of that case:

1. SFR Investment Pool 1, LLC, a wholly owned subsidiary of SFR Investments LLC. SFR Investment, LLC is a Nevada limited liability company.
2. SFR Investment, LLC is wholly owned by SFR Funding, LLC. SFR Funding, LLC is a Delaware limited liability company.
3. SFR Funding, LLC is wholly owned by Xiemen Limited Partnership. Xiemen Limited Partnership is a Canadian entity.
4. Xiemen Limited Partnership is comprised of two partners, Xiemen Investments, Ltd., and John Gibson.
5. Xiemen Investments, Ltd., a Canadian corporation and John Gibson is domiciled in South Africa.
6. No publicly held corporation owns more than ten percent of Xiemen Investments, Ltd.

See Certificate of Interested Parties, Case No. 2:15-cv-00218-KJD-NJK (Dkt. #52)

Nationstar has presented substantial evidence supporting its claim that the people who actually control SFR Investment Pool 1, LLC, and make decisions concerning properties acquired are other than its purported managing agent, Chris Hardin. The conflicting testimony given in other HOA foreclosure/quiet title acquisitions by Mr. Kim, Mr. Hardin, and Ms. Kelso, coupled with Mr. Bailey's declaration, and Mr. Hardin's countering declaration, persuade the court that the discovery sought by Topic 10 is discoverable in light of the Nevada Supreme Court's recent decision in *Shadow Wood*. Mr. Bailey's declaration avers that he was employed by SFR Pool 1 between 2012, and 2013, regularly talked with Chris Hardin, and observed the day-to-day operation of the business, including the people who were involved in the day-to-day

running of the company. Exhibit A, Affidavit of Adam Bailey, ¶¶2, 3. Some of the paragraphs of his affidavit are conclusory. However, other paragraphs consist of his observations, *e.g.,* that David Rosenberger had an office where he conducted his bankruptcy trustee business in the same place as SFR Pool 1's office on the other side of a wall. *Id.* ¶9. David Rosenberg had a door cut into the wall separating his office from SFR Pool 1's office, so he could easily walk between the two offices. *Id.* Chris Hardin reported to David Rosenberg, Barbara Rosenberg, and Howard Kim. *Id.* ¶10. Howard Kim and Chris Hardin would talk about what properties they would try to buy at foreclosure sales. *Id.* ¶12.

The declaration of Chris Hardin in response to Mr. Bailey's affidavit is remarkable for what it does not say. Essentially, Mr. Hardin relates the circumstances of Mr. Bailey's termination and allegations that he stole money from SFR Pool, and swindled tenants. Chris Hardin Declaration, Exhibit B. Hardin's declaration claims that David Rosenberg's role with SFR Pool is as its legal counsel, and that Howard Kim's role with SFR Pool is as its legal counsel. *Id.* ¶¶7, 8. Hardin's declaration does not controvert Bailey's affidavit regarding the location of David Rosenberger's office or regular communications between Rosenberg and SFR Pool 1, or allegations that Hardin reported to David Rosenberg, Barbara Rosenberg, and Howard Kim. Similarly, the Hardin declaration does not controvert Bailey's affidavit attesting that Kim and Hardin talked about what properties they would try to buy at foreclosure sales.

In *Shadow Wood*, the Nevada Supreme Court reversed the trial court's grant of summary judgment in favor of the Bank finding that there were material issues of fact that required full development of the record and fact finding. Specifically, the Nevada Supreme Court found that material questions of fact remained concerning whether the Bank demonstrated sufficient grounds to justify the district court setting aside *Shadow Wood*'s foreclosure sale. The court reiterated that inadequacy of the sales price was not sufficient to invalidate a foreclosure. 366 P.2d at 1112. Rather, a common interest community association's non-judicial sale may be set aside upon a showing of grossly inadequate price plus fraud, unfairness or oppression. *Id.* at 1110. In addition, the court emphasized that a quiet title action is an equitable one. A court

sitting in equity must consider the totality of the circumstances that bear on the equities. *Id.* at 1114.

The question of whether an HOA foreclosure purchaser is an innocent purchaser who took the property without any knowledge of the pre-sale dispute between the Bank and the HOA is a question of fact to resolve in weighing a request for equitable relief. *Id.* A subsequent purchaser is a bona fide purchaser under common law principles: 1) if it takes the property for valuable consideration; 2) and without notice of prior equity; 3) and without notice of facts upon which diligent inquiry would be indicated; 4) and from which notice would be imputed to him, if he failed to make such inquiry. *Id.* (internal citations and quotations omitted.) When an HOA foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices, and without any facts to indicate to the contrary, the purchaser would only have "notice" that the former owner had the ability to raise a post-sale equitably-based challenge, the basis of which is unknown to the purchaser. *Id.* It is not enough to show the purchaser took the property with notice of potential future disputes over title. *Id.* at 1116. Additionally, courts sitting in equity must consider the harm to the purchaser in evaluating the equitable relief requested. *Id.*

In short, given the Nevada Supreme Court's decision in *Shadow Wood* and substantial questions raised about whether SFR Pool 1 is actually operating as a manager-managed LLC, the court concludes, on this record, that Nationstar is entitled to information from SFR Pool 1, LLC's parent companies, including SFR Investments, LLC, SFR Funding, LLC, and Xiemen, LP. SFR Investment Pool 1, LLC claims it has no control over the parents and cannot compel the parents to cooperate. It may or may not have the ability to require cooperation from its parent entities. However, the court certainly does. If SFR Investments Pool 1, LLC is unable to obtain the necessary information to answer the subject matter of Topic 10 in dispute in this motion the court will grant Nationstar leave to conduct discovery directly from the entities who do.

IT IS ORDERED that:

1. SFR Investment Pool 1, LLC's Motion for Protective Order relating to Rule 30(b)(6) Deposition (Dkt. #43) is **DENIED.**

2. A decision on Nationstar's Motion for Protective Order (Dkt. #42) is **DEFERRED** until completion of briefing on SFR's Countermotion to Compel (Dkt. #53).

3. A hearing on the Countermotion to Compel (Dkt. #53) and a status check concerning denial of SFR's otion for protective order is scheduled for **2:00 p.m., June 28, 2016**, in Courtroom 3B.

DATED this 6th day of June, 2016.

PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

EXHIBIT F

EXHIBIT F

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 Yoshanna 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 YS 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 Redacted	11/3/12 Date	Landlord/Owner By: Saul Lopez Property Manager for SFR Investments Pool I, LLC	11/3/12 Date
Tenant	11/3/12 Date		
Tenant	Date		
Tenant	Date		

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Attorneys for Defendant and Counter-Claimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, v. VENTA REALTY GROUP, a Nevada corporation, JPMORGAN CHASE BANK, N.A., a National Association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL., Defendants.	CASE NO. A-12-672963-C DEPT NO. 27
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.	

DEFENDANT AND COUNTER-CLAIMANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

Defendant and Counter-Claimant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC ("Chase"), moves for summary judgment on Plaintiff SFR Investment Pool 1, LLC's ("SFR") claims for "declaratory relief/quiet title" and "preliminary and permanent injunction." As set forth in the points and authorities below, SFR is not entitled to an order quieting title to the subject property. Rather, the Court should enter judgment in favor of **Chase** for several reasons:

- NRS 116.3116, *et seq.* is facially unconstitutional;
- NRS 116.3116, *et seq.* cannot interfere with the federal government's FHA insurance program by purporting to extinguish Chase's federally-insured deed of trust;
- *SFR v. U.S. Bank* does not apply retroactively to the 2012 HOA Sale in this case;
- The $6,100 sale price was grossly inadequate and the HOA Sale was unfair;
- SFR is not a bona fide purchaser of the Property; and
- SFR purchased, at most, a lien interest in the Property.

This Motion for Summary Judgment ("Motion") is based on Rule 56 of the Nevada Rules of Civil Procedure ("N.R.C.P."), the following memorandum of points and authorities, the attached exhibits, the pleadings and papers on file, and any oral argument the Court may hear.

DATED: September 13, 2016

BALLARD SPAHR LLP

By:/s/ Lindsay Demaree
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NOTICE OF MOTION

Please take notice that the undersigned will bring the foregoing Motion for Summary Judgment on for hearing on the 19 day of OCTOBER, 2016, at the hour of 10:00A o'clock ___.m. in Department 27, or as soon afterwards as counsel can be heard.

DATED: September 13, 2016

BALLARD SPAHR LLP

By: /s/ Lindsay Demaree
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MEMORANDUM OF POINTS AND AUTHORITIES

This is a quiet title action arising from a homeowners' association foreclosure sale ("HOA Sale"). On September 21, 2012, Plaintiff SFR Investments Pool 1, LLC ("SFR") purportedly purchased an interest held by Paradise Court Homeowners' Association ("Association") in the real property located at 1076 Slate Crossing Lane #2, Henderson, Nevada ("Property"). At the time of the HOA Sale, the Property was subject to a first deed of trust. Defendant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC ("Chase"), is the beneficiary of that first deed of trust. SFR now contends that by virtue of the HOA Sale, it owns the Property free and clear of Chase's interest. SFR brought this action asserting claims against Chase for (1) declaratory relief/quiet title pursuant to NRS 30.010, *et seq.* and 116.3116, *et seq.*, and (2) preliminary and permanent injunction. Compl. at 6-8.

SFR's claims fail both factually and legally. The undisputed facts of this case demonstrate that SFR is not entitled to free and clear title of the Property for several reasons:

- As the Ninth Circuit recently recognized in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Appeal No. 15-15233, 2016 WL 4254983 (9th Cir. Aug. 12, 2016), NRS 116.3116, *et seq.*'s "opt-in" notice provision is facially unconstitutional.
- Chase's deed of trust is insured through the Federal Housing Administration ("FHA") insurance program; thus, NRS 116.3116, *et seq.* is preempted by the Supremacy and Property Clauses of the U.S. Constitution.
- *SFR v. U.S. Bank* does not apply retroactively to the 2012 HOA Sale in this case.
- The $6,100 sale price was grossly inadequate. In addition, the Association (or its agents) unfairly conducted the HOA Sale. The Association represented its lien interest as subordinate to Chase's deed of trust—thereby deterring potential bidders. The Association also failed to pay Chase any excess proceeds of the HOA Sale, which the Association was required to do if Chase held a subordinate lien.
- SFR is not a bona fide purchaser of the Property because it was aware of Chase's deed of trust.
- SFR purchased, at most, a lien interest in the Property.

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For any one of these reasons, the Court should dismiss SFR's claims and grant summary judgment in favor of Chase.

I. STATEMENT OF UNDISPUTED FACTS

A. Chase Becomes the Beneficiary of the Deed of Trust

On or about May 7, 2008, Delaine Harned ("Borrower") borrowed $159,497.00 ("Loan") from Venta Realty Group, d/b/a Venta Home Loans ("Venta") for purposes of purchasing the Property. On or about May 7, 2008, the Borrower executed a note, evidencing the Loan, in the original principal amount of $159,497.00, in favor of Venta ("Note"). *See* **Ex. A**, Declaration of JPMorgan Chase Bank, N.A. ("Chase Decl.") at ¶ 5.a. & **Ex. A-1**, Note. On or about May 14, 2008, the Borrower executed a deed of trust securing the Loan and the Borrower's obligation under the Note. On May 14, 2008, this deed of trust was recorded in the Official Records of the Clark County Recorder ("Official Records") as Instrument No. 200805140005041 ("First Deed of Trust"). *See* **Ex. J**, First Deed of Trust.[1] The First Deed of Trust is insured by the FHA. *See id.* at 000002, 000012 (referring to FHA); *see also* **Ex. K**, S. Newby Dep. 14:24-25, 35:14; **Ex A**, Chase Decl. ¶¶ 5.a. & 6 & **Ex. A-2**, Mortgage Insurance Certificate.

The First Deed of Trust identifies as its beneficiary Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Venta. **Ex. J**, First Deed of Trust. On December 6, 2010, MERS assigned its interest in the First Deed of Trust to Chase by executing an Assignment of Deed of Trust, recorded in the Official Records on December 6, 2010 as Instrument No. 201012060000315. *See* **Ex. L**, Assignment of Deed of Trust.

B. SFR Purchases the Association's Lien Interest

On February 5, 2010, Nevada Association Services, Inc. ("NAS"), on behalf of the Association, recorded a Notice of Delinquent Assessment Lien ("HOA Lien") against the Property as Instrument No. 201002050001923. *See* **Ex. M**, Notice of Delinquent Assessment Lien. According to the HOA Lien, the Association had a lien on the Property in accordance with its

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

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Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), recorded on May 18, 2004 in the Official Records as Instrument No. 200405180001999. *Id.*

The CC&Rs include a mortgagee protection provision ("Mortgagee Protection Provision") that states an HOA lien is subordinate to a deed of trust despite "all other" CC&R provisions:

> Notwithstanding all other provisions hereof, **no lien created under this Article 7** [regarding "Effect of Nonpayment of Assessments" and "Remedies of Association"], **nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust** encumbering a Unit, made in good faith and for value. . . . The lien of the Assessments, including interest and costs, **shall be subordinate** to the lien of any First Mortgage upon the Unit.

Ex. C, CC&Rs (emphasis added). The CC&Rs further state that "[a] lien for Assessments . . . shall be prior to all other liens and encumbrances on a unit **except for** . . . a first Mortgage Recorded before the delinquency of the Assessment sought to be enforced[.]" *Id.* (emphasis added). Thus, according to the CC&Rs, the HOA Lien was subordinate to the First Deed of Trust.

On March 7, 2012, NAS, on behalf of the Association, recorded a Notice of Default and Election to Sell under Homeowners Association Lien ("Notice of Default") against the Property in the Official Records as Instrument No. 201203070000441. *See* **Ex. N**, Notice of Default.

On August 30, 2012, NAS, on behalf of the Association, recorded a Notice of Foreclosure Sale ("Notice of Sale") in the Official Records as Instrument No. 201208300003067. *See* **Ex. O**, Notice of Sale. Chase's business records reflect that it received the Notice of Sale on August 31, 2012. *See* **Ex. K**, S. Newby Dep. at 25:5-20. The Notice of Sale specified a lien amount of $5,068.57. *See* **Ex. O**, Notice of Sale.

On September 21, 2012, NAS conducted a foreclosure sale of the Property and SFR purchased the interest sold for $6,100.00. *See* **Ex. O**, Notice of Sale; **Ex. B**, Foreclosure Deed. NAS claims that $2,935.00 of that amount was for past due assessments. *See* **Ex. H,** S. Moses & C. Yergensen Dep. 58:21-59:6; 66:2-67:15. The Foreclosure Deed was recorded on September 25, 2012 in the Official Records as Instrument No. 201209250001230. *See* **Ex. B**, Foreclosure Deed. The plain language of the Foreclosure Deed indicates that SFR purchased, at most, only **the Association's** "right, title and interest in and to" the Property:

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> Nevada Association Services, Inc., as agent for Paradise Court does hereby grant and convey, but without warning express or implied to: SFR Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all **its** right, title, and interest to that certain property. . . .

Id. (emphasis added). Following the sale, NAS distributed the proceeds to the Association, NAS, the Borrower, and Republic Services. **Ex. H**, S. Moses & C. Yergensen Dep. at 65:22–69:21; **Ex. P**, NAS Disbursement Requisition. NAS did not distribute any sale proceeds to Chase. *See id.*

C. The Property's Market Value

Pursuant to a Broker Price Opinion dated February 25, 2012 ("BPO"), the estimated market value for the Property was $67,100.00 as of the BPO date. *See* **Ex. A**, Chase Decl. ¶ 7 & **Ex. A-3**, BPO. Further, pursuant to an expert appraisal by Scott Dugan, the market value for the Property was $82,000.00 on the date of the HOA Sale. *See* **Ex. G**, Expert Report by Scott Dugan. The price paid by SFR for the Property ($6,100) represents 9% and 7.4%, respectively, of these market values. Moreover, despite SFR's purported ownership of the Property, Chase has paid its property taxes and hazard insurance, which in total amount to approximately $6,277.06 as of April 11, 2016. *See* **Ex. A**, Chase Decl. at ¶ 8 & **Ex. A-4**, Escrow Activity.

II. STANDARD OF REVIEW

Summary judgment is "an integral part" of Nevada's procedural rules, "which are designed to secure the just, speedy, and inexpensive determination of every action." *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1031 (2005) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). A court should grant summary judgment when the moving party demonstrates that no genuine issue of material fact exists, such that the moving party is entitled to judgment as a matter of law. N.R.C.P. 56(c). A fact is material if it "might affect the outcome of the suit under the governing law," and a dispute as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On a summary judgment motion, "[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise supported motion for summary judgment." *Anderson,* 477 U.S. at 256. Once the moving party has carried its burden of showing that no

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material fact is in dispute, "the party opposing the motion 'may not rest upon the mere allegations or denials in his pleadings, but . . . must set forth specific facts showing there is a genuine issue for trial.'" *Liberty Lobby, Inc.*, 477 U.S. at 248. A party opposing summary judgment "'must do more than simply show that there is some metaphysical doubt as to the material facts,' . . . and [it] 'may not rely on conclusory allegations or unsubstantiated speculation.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Here, no genuine issue of material fact exists that could preclude summary judgment in Chase's favor. Instead, the law demonstrates that Chase is entitled to judgment as a matter of law.

III. CHASE IS ENTITLED TO SUMMARY JUDGMENT

As set forth below, the undisputed facts and applicable law demonstrate that the HOA Sale could not extinguish the First Deed of Trust. **First**, and as a threshold matter, the Court cannot apply NRS 116.3116, *et seq*. in this case to quiet title in SFR's favor. Doing so would violate Due Process and the Supremacy and Property Clauses of the U.S. Constitution. Moreover, fairness requires that the Court only *prospectively* apply the Nevada Supreme Court's holding in *SFR*. **Second**, under *Shadow Wood Homeowners Assoc. v. New York Community Bancorp* and the Restatement (Third of Property: *Mortgages* (1997) (hereinafter, "Restatement")), the facts of this case justify setting aside the HOA Sale in Chase's favor. 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111 (2016). **Third**, since SFR had notice of the sale improprieties, it cannot claim bona fide purchaser ("BFP") status to save itself from quiet title. SFR's reliance on the Foreclosure Deed likewise fails to establish title in SFR's favor, as the plain language of this non-warranty provision provides SFR with only the Association's lien interest in the Property, not the former homeowner's fee interest (much less free and clear title). For any one of these reasons, the Court must grant summary judgment in favor of Chase.

A. NRS 116.3116, *et seq.* Is Facially Unconstitutional

The Court should grant Chase summary judgment because, as enacted in 2012, NRS 116.3116, *et seq*. ("State Foreclosure Statute") is facially unconstitutional.[2] As the Ninth Circuit

[2] As explained below, the Nevada Legislature amended the notice provisions of NRS Chapter 116 in 2015. Because the sale in this case occurred in 2012, it is governed by the pre-amendment version of Chapter 116.

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recently concluded in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, the State Foreclosure Statute violates due process on its face by requiring lienholders to "opt in" to ensure they receive notice of an association foreclosure sale. Appeal No. 15-15233, 2016 WL 4254983 (9th Cir. Aug. 12, 2016). Therefore, a sale under NRS 116.3116, *et seq.* cannot constitutionally extinguish the First Deed of Trust, and this Court cannot enforce this facially unconstitutional statute to save SFR from quiet title or to quiet title in its favor.

1. The State Foreclosure Statute Violates Due Process On Its Face

A party may challenge the constitutionality of a statute in two ways: (1) based on the statute's application to the specific facts of a case (i.e., an as-applied challenge) or (2) based on the statute's intrinsic terms that violated a constitutional right from the day of the law's enactment (i.e., a facial challenge). *See Ezell v. City of Chicago*, 651 F.3d 684, 698-99 (7th Cir. 2011); *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997) ("[I]f a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances."). Unlike as-applied challenges that must consider the facts of a particular case, for a facial challenge, "individual application of the facts do[es] not matter," and "the plaintiff's personal situation becomes irrelevant. It is enough that '[w]e have only the [statute] itself' and the 'statement of basis and purpose that accompanied its promulgation.'" *Ezell*, 651 F.3d at 697 (citing *Reno v. Flores*, 507 U.S. 292, 300-01 (1993)). *See also John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010); *Women's Med. Prof'l Corp*, 130 F.3d at 193.

2. Due Process Requires Actual Notice

The Due Process Clause of the U.S. Constitution requires that "at a minimum, [the] deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Bourne Valley Court Trust*, 2016 WL 4254983, at *3 (internal quotations and alterations omitted) ("Before it takes an action that will adversely affect an interest in life, liberty, or property, a State must provide notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

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This basic constitutional premise applies to a mortgagee that faces extinguishment of its lien interest. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983). Accordingly, state action affecting such real property must be accompanied by "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services, Inc. v. Pope*, 485 U.S. 478, 484 (1988); *accord Bourne Valley Court Trust*, 2016 WL 4254983, at *3. "When notice is a person's due, **process which is a mere gesture is <u>not</u> due process.**" *Mullane*, 339 U.S. at 314 (emphasis added), *cited by SFR*, 334 P.3d at 422 (dissenting op.); *accord Kotecki v. Augusztiny*, 87 Nev. 393, 395, 487 P.2d 925, 0926 (1971).

The United State Supreme Court emphasized the importance of the notice requirement in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), where the Court addressed whether a mortgagee was entitled to actual notice before its lien could be extinguished at a tax sale. The Court held that any reasonably-ascertainable party with an interest in real property subject to deprivation must receive actual notice of the event that causes the deprivation:

> Since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale. **When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication <u>must</u> be supplemented by notice mailed to the mortgagee's last known available address, or by personal service.**

Id. at 798 (emphasis added). *See also id.* at 800 (emphasis in original) ("Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of <u>any</u> party, whether unlettered or well versed in commercial practice").

Here, the Nevada Legislature gave, vis-à-vis the State Foreclosure Statute, homeowners' associations the right to non-judicially foreclose. However, this **statutorily-created** foreclosure mechanism must still comply with Due Process before it can extinguish a first deed of trust that **but for** the State's enactment of the statute would enjoy priority status. *See J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 375, 240 P.3d 1033, 1040 (2010); *Bourne Valley Court Trust*, 2016 WL 4254983, at *5 ("[W]here the mortgage lender and the homeowners' association had no preexisting relationship, the Nevada Legislature's enactment of the Statute is a 'state action'"). In

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short, under U.S. Supreme Court and Ninth Circuit precedent, the State Foreclosure Statute must require actual notice to any reasonably-ascertainable mortgagee to satisfy the demands of due process.

3. The Statute's "Opt-In" Process Fails to Satisfy Due Process.

The State Foreclosure Statute does not include any express or mandatory notice provision requiring notice to a lender or other lienholder – an overarching constitutional defect that infects the entire homeowner's association foreclosure scheme. As the Ninth Circuit explained, the State Foreclosure Statute's "peculiar" notice scheme unconstitutionally required lien holders "to ask the homeowners' association to please keep it in the loop regarding the homeowners' association's foreclosure plans":

> Thus, despite that only the homeowners' association knew when and to what extent a homeowner had defaulted on her dues, the burden was on the mortgage lender to ask the homeowners' association to please keep it in the loop regarding the homeowners' association's foreclosure plans. How the mortgage lender, which likely had no relationship with the homeowners' association, should have known to ask is anybody's guess, and indeed Bourne Valley offers no arguments here. But this system was not just strange; in our view, it was also unconstitutional.
> * * *
> [The State Foreclosure Statute] shifted the burden of ensuring adequate notice from the foreclosing homeowners' association to a mortgage lender. It did so without regard for: (1) whether the mortgage lender was aware that the homeowner had defaulted on her dues to the homeowners' association, (2) whether the mortgage lender's interest had been recorded such that it would have been easily discoverable through a title search, or (3) whether the homeowners' association had made any effort whatsoever to contact the mortgage lender.

Bourne Valley Court Trust, 2016 WL 4254983, at *3-4.

None of the State Foreclosure Statute's four notice provisions mandate actual notice to a mortgagee. Rather, each required the mortgagee to "opt-in" and request notice.[3] Such a system is unconstitutional and cannot be enforced.

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[3] More specifically, compliance with (1) NRS 116.31162 required only that an association mail notice to "the unit's owner or his or her successor in interest, at his or her address, if known, and the address of the unit"; (2) NRS 116.31163 required only that an association notify lenders or lienholders of record that have affirmatively "opted-in" and requested notice; (3) NRS 116.311635 required only that an association notify "[t]he holder of a recorded securing interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease, or contract of sale, as applicable"; and (4) NRS 116.31168 required only that associations notify "interested persons" of notices of default who requested such notice.

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4. Recent Amendments Confirm that the State Foreclosure Statute Was an Unconstitutional Opt-In Provision

"[W]hen the [Nevada] Legislature substantially amends a statute, it is ordinarily presumed that the Legislature intended to change the law." *Pub. Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 156-57, 179 P.3d 542, 554 (2008); *accord Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783-84 (2004); *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 528 (2001). Here, the Nevada Legislature recently passed two bills to amend the notice provisions contained in NRS Chapter 116, thereby confirming that the State Foreclosure Statute required a deed of trust beneficiary to opt-in before it was assured of receiving notice. *See* S.B. 306, 78th Leg., 2015 Nev. Stat. 266; A.B. 141, 78th Leg., 2015 Nev. Stat. 304. As the *Bourne Valley* court explained, these 2015 amendments provide "further evidence that the version of the Statute applicable in this action did not require notice unless it was requested. If the Statute already required homeowners' associations affirmatively to provide notice, there would have been no need for the amendment." *Bourne Valley Court Trust*, 2016 WL 4254983, at *4, n. 4.

The first bill, S.B. 306, amends numerous provisions of Chapter 116 in response to the *SFR* decision. Most significantly, S.B. 306 amends NRS 116.31163 to categorically require an association to mail its notice of default to any holder of a recorded security interest. *See id.* § 3. The bill also amends NRS 116.311635 to categorically require an association to mail its notice of sale to any security interest holder. *See id.* § 4. An association must mail each notice to the interest holder's address on file with the Nevada Division of Financial Institutions. *See id.* §§ 3-4. In addition, S.B. 306 provides a mortgagee with a right of redemption for 60 days after an association foreclosure sale. *See id.* § 6.

The second bill, A.B. 141, focuses solely on notice. It amends NRS 1167.31163(2), which governs the mailing of an association's notice of default. Therefore, the amended statute requires an association to mail its notice of default to any holder of a recorded security interest, regardless of whether the holder of the interest has opted-in for such notice.

The legislative history further demonstrates the Legislature did **not** believe the pre-amendment version of Chapter 116 required notice. *See, e.g., Hrg. On S.B. 306 before the S. Comm.*

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On Jud., 2015 Leg., 78th Sess., at 6 (Nev. 2015), www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/829.pdf (statement of Senator Scott Hammond); *Hrg. On S.B. 306 before the Assemb. Comm. On Jud.*, 2015 Leg., 78th Sess., at 2:02:40, 2:03:35 (Nev. 2015), *available at* http://nvleg.granicus.com/MediaPlayer.php?view_id=14&clip_id=4497 (statement of Senator Aaron D. Ford). As the United States District Court for the District of Nevada explained, "the very need for these amendments indicates that the Nevada Legislature perceived that the statutes previously did not require such notice, i.e., that NRS 116.31168 did not incorporate NRS 107.090(3)-(4)." *U.S. Bank, N.A. v. SFR Invests. Pool 1, LLC*, 124 F. Supp. 3d 1063, 1079 (D. Nev. 2015). While the Legislature's amendments "probably avoid any facial due process notice issues going forward," *id.*, the legislative histories of S.B. 306 and A.B. 141 demonstrate that the State Foreclosure Statute did not require notice to lenders. It only required notice if a deed of trust beneficiary **affirmatively requested** it.[4]

For these reasons, the Court cannot enforce the unconstitutional version of NRS 116.3116, *et seq.* under which the Association foreclosed, and instead, must grant summary judgment in Chase's favor. *See Ezell*, 651 F.3d at 698 ("The remedy [for a facial challenge] is necessarily directed at the statute itself and must be injunctive and declaratory; a successful facial attack means the statute is wholly invalid and cannot be applied to anyone").

B. The Federally-Insured Deed of Trust Trumps SFR's Interests

The First Deed of Trust is insured by the FHA; thus, the HOA Sale violates the Supremacy and Property Clauses of the U.S. Constitution. *See* **Ex. A**, Chase Decl. at ¶¶ 5.a. & 6; **Ex. A-1,** Note; & **Ex. A-2,** Mortgage Insurance Certificate. Stated differently, the HOA Sale cannot extinguish a federally-insured First Deed of Trust, and as such, SFR's claims for quiet title must be

[4] A 1993 amendment to NRS 116.3116, *et seq.* further confirms that the scheme at issue did not require actual notice. As originally enacted in 1991, NRS 116.31168(1) read: "The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it." 1991 Statutes of Nevada, Page 570 (Chapter 245, AB 221). In 1993, the Legislature deleted the underlined sentence, and in the same bill, added NRS 116.31163 & 116.311635, thereby indicating its intent to alter the original requirement for actual notice to opt-in notice. 1993 Statutes of Nevada, Pages 2355 & 2373 (Chapter 573, AB 612).

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dismissed.

1. The State Foreclosure Statute Violates the Supremacy Clause by Interfering with the FHA Insurance Program

Federal provisions, such as those governing FHA insurance, oftentimes conflict with state laws. In such situations, the Supremacy Clause finds that "[s]tate legislation must yield . . . to the interests of the federal government when the legislation as applied interferes with the federal purpose or operates to impede or condition the implementation of federal policies and programs." *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979); *accord Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("[S]tate law is naturally preempted to the extent of any conflict with a federal statute"); *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 929 (9th Cir. 2003) (internal citations and quotations omitted) ("The Supremacy Clause of the Constitution, Art. VI, cl. 2, invalidates state laws that interfere with, or are contrary to federal law"). *See also Fidelity Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) ("Federal regulations have no less preemptive effect than federal statutes"). Stated differently, federal law displaces local law or regulation "where compliance with both federal and state regulations is a physical impossibility," or "where state law stands as an obstacle to the accomplishment and execution of the **full purposes and objectives of Congress**." *Bernhardt*, 339 F.3d at 939 (emphasis added) (internal citations and quotations omitted).

The full purposes and objectives of the FHA program are to "expand[ ] homeownership opportunities, strengthen[ ] neighborhoods and communities, and ensure[ ] a maximum return to the mortgage insurance funds." *Sec'y of Hous. & Urban Dev. v. Sec'y of Hous. & Urban Dev*, 117 F. Supp. 2d 970, 974 (C.D. Cal. 2000). Things that "run the risk of substantially impairing [the U.S. Housing and Urban Development Department's ("HUD")] participation in the home mortgage market" and ability to effectuate these objectives defeat the purpose of the FHA's creation. *Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 U.S. Dist. LEXIS 57461, at *6 (D. Nev. Apr. 30, 2015). For this reason, "courts consistently apply federal law, ignoring conflicting state law, in determining rights related to federally-insured loans." *Id.* at *6–7 (citing *United States v. Stadium Apartments, Inc.*, 425 F.2d 358, 362 (9th Cir. 1970) (holding that federal law applies to

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FHA-insured mortgages "to assure the protection of the federal program against loss, state law to the contrary notwithstanding"); *United States v. Victory Highway Vill., Inc.*, 662 F.2d 488, 497 (8th Cir. 1981) (citing to the Ninth Circuit and "not[ing] that federal law, not [state] law, governs the rights and liabilities of the parties in cases dealing with the remedies available upon default of a federally held or insured loan."); *Washington & Sandhill Homeowners Ass'n v. Bank of Am.*, N.A., No. 2:13–cv–01845-GMN-GWF, 2014 U.S. Dist. LEXIS 136167 (D. Nev. Sept. 25, 2014) (holding that the Supremacy Clause barred a foreclosure sale where deed of trust was federally insured)).

Allowing a homeowners' association to foreclose on FHA-insured property significantly impedes the purpose of the FHA program by substantially reducing a lender's incentives to loan money to high-risk, low-income individuals. *Sec'y of Hous. & Urban Dev.*, 117 F. Supp. 2d at 980 (holding that the extinguishment of FHA insured property "will frustrate the purpose of the program—i.e., to insure home loans extended by private lenders to enable low to moderate income buyers to purchase a home"). Indeed, any interpretation of the State Foreclosure Statute that precludes HUD's ability to sell a property and replenish the fund invariably obstructs its purpose and objectives. *Sandhill Homeowners Ass'n*, 2014 U.S. Dist. LEXIS 136167, at *17 ("Because a homeowners association's foreclosure under Nevada Revised Statute § 116.3116 on a Property with a mortgage insured under the FHA insurance program would have the effect of limiting the effectiveness of the remedies available to the United States, the Supremacy Clause bars such foreclosure sales").

The foregoing considerations implicate the Supremacy Clause of the U.S. Constitution. Accordingly, this Court should quiet title in Chase's favor.

2. NRS 116.3116 et seq. Also Violates the Property Clause.

Allowing the HOA Sale to extinguish Chase's federally-insured First Deed of Trust would also violate the Property Clause. Under the Property Clause, only "Congress has the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. As the District of Nevada acknowledged in *Sandhill Homeowners Ass'n*, "it would not be a significant extension of the Property Clause's protection to hold that HUD's insurance of a mortgage under the FHA insurance

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program created a federal property interest that can only be divested by an act of Congress." 2014 U.S. Dist. LEXIS 136167, at *17. *See also County of Nassau v. United States,* 412 U.S. 922 (1973) (stating that a party "cannot take any action . . . against property which would have the effect of reducing or destroying the value of a federally held purchase-money mortgage lien"). Accordingly, this Court should hold that the State Foreclosure Statute cannot extinguish HUD's federal property interest.

C. The *SFR* Decision Cannot Apply Retroactively

The *SFR* decision cannot apply retroactively to the 2012 HOA Sale in this case. As the Nevada Supreme Court explains, in certain cases fairness dictates that a new judicial ruling apply only **prospectively**. *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev. 31, 35, 867 P.2d 402, 405 (1994). To determine whether the 2014 *SFR* decision can apply to the 2012 HOA Sale, this Court would have to consider: (1) whether the decision "establish[ed] a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed"; (2) "whether retrospective operation will further or retard" the rule announced by *SFR*; and (3) "whether retroactive application 'could produce substantial inequitable results.'" *Id.* (quoting *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971)). Each of these factors favors limiting *SFR* to only **prospective** effect.

First, *SFR* decided an issue of first impression the resolution of which was not clearly foreshadowed. Until *SFR*, actors in the Nevada real estate market understood that a sale under NRS Chapter 116 **would not** extinguish a first deed of trust recorded against a property. SFR's own bidding agent—an experienced real estate investor—believed SFR acquired properties subject to a bank's mortgage loan:

> Q. This question is: You just said that you thought you were getting a property free and clear.
>
> A. Well, I don't know about free and clear. I'll correct it. I felt that you were getting ownership of the property is really what I meant to say. So as you paid these attorneys [at Alessi] handling these, then you'd have to come back and get your paperwork [e.g., the foreclosure deed] that you have new ownership. Okay. **Is the loan still on the property? Yes. That I do know.**

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Ex. E, R. Diamond Dep., 69:21–70:3, 75:14–76:11 (emphasis added). *See also id.*, 11:8-23 (testifying that a bank foreclosed on a property he purchased at an association sale **after** the date of the association sale). Further, SFR's own 2012 Foreclosure Addendum reflects SFR's understanding that properties it acquired from an association foreclosure sale remained subject to a lender's security interest. *See* **Ex. F**, Foreclosure Addendum. This addendum advised SFR's tenants that a lien holder like Chase still had a security interest after a foreclosure sale

Second, giving retroactive effect to the *SFR* decision would not promote the underlying goal of NRS 116.3116(2). According to *SFR*, the statute's purpose is to force mortgage lenders to pay off assessments under the threat of losing their security interests. *See SFR*, 334 P.3d at 414. With respect to sales after the *SFR* decision, this rationale arguably makes sense: now that lienholders know an HOA foreclosure can extinguish a first deed of trust, they know to pay off the super-priority portion of the assessment lien. Lienholders, however, cannot pay off liens that were foreclosed **before** the *SFR* decision. Allowing a pre-*SFR* sale to extinguish a lender's security interest would serve no discernible public policy.

Third, giving retroactive effect to *SFR* would produce substantial inequitable results. It is unfair for a first deed of trust to be extinguished for pennies on the dollar by a Chapter 116 foreclosure when no one understood that this was the law in Nevada. *See Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP*, No. 2:13-cv-00895-JCM-GWF, 2013 U.S. Dist. LEXIS 112590, at *10 (D. Nev. 9, 2013) (noting that it "would be completely absurd" to allow $3,197.47 in HOA fees to extinguish a deed of trust securing a $305,992 loan). It would also harm homeowners, since it makes them personally liable to their lender for the full remaining balance of their mortgage loan. *See In re Krohn*, 52 P.3d 774, 780 (Ariz. 2002) ("[P]ublic policy and the courts should not endorse extraordinary bargains at the expense of already troubled debtors").

Finally, giving retroactive effect to *SFR* would provide real estate speculators a windfall amounting to hundreds of millions, if not billions, of dollars. *See id.* at 779 ("Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators"). Accordingly, the Court should not retroactively apply *SFR* to the HOA Sale in this case, which was held more than two years before

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the decision was issued. *See generally Christiana Tr. v. K&P Homes*, No. 2:15-cv-01534-RCJ-VCF, 2015 U.S. Dist. LEXIS 152385, at *14-16 (D. Nev. Nov. 9, 2015).

D. The HOA Sale Is Void Based on the Grossly Inadequate Purchase Price

The improprieties surrounding the HOA Sale, including inadequate price and unfairness, also provide sufficient grounds to grant Chase's motion for summary judgment. For instance, SFR's purchase price of only $6,100 invalidates the HOA Sale under the Restatement (Third) of Property: Mortgages ("Restatement"), without any further evidence of a sale impropriety. In this case, however, this grossly inadequate purchase price is accompanied by sale improprieties. The Association foreclosed on a purported lien despite having recorded a Notice of Default and Notice of Sale that explicitly referenced CC&Rs containing a Mortgage Protection Provision. Further, the Association never paid Chase its excess sale proceeds, as the Association was required to do if Chase was indeed a "subordinate claim of record." *See* NRS 116.31164(7)(c)(4) (statute in effect in 2012). These facts require the Court to void the HOA Sale even under the decades old holding in *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963).

1. SFR's Grossly Inadequate Sale Price of Less than 8% of the Property's Fair Market Value Voids the Sale

Citing § 8.3 of the Restatement, the Nevada Supreme Court has recognized that if the price paid at a HOA foreclosure sale is so "obviously inadequate," then the sale may be set aside. *Shadow Wood Homeowners Ass'n v. New York Cmt. Bankcorp. Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (Nev. 2016) (quoting the Restatement (Third) of Property: Mortgages § 8.3 cmt. b (1997)).[5]

Section 8.3 provides:

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[5] The Nevada Supreme Court consistently looks to the Restatement (Third) of Property: Mortgages for guidance, including in *SFR v. U.S. Bank*, as well as numerous other recent decisions. *See SFR v. U.S. Bank*, 130 Nev. ___, 334 P.3d at 412; *Montierth v. Deutsche Bank (In re Montierth)*, 131 Nev. Adv. Rep. 55, 354 P.3d 648, 651 (2015) (adopting Restatement rule); *United States Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. Adv. Rep. 9, 343 P.3d 603, 605-06 (2015) (citing Restatement); *First Fin. Bank, N.A. v. Lane*, 130 Nev. Adv. Rep. 96, 339 P.3d 1289, 1290-91 (2014) (citing Restatement); *Recontrust Co., N.A. v. Zhang*, 130 Nev. Adv. Rep. 1, 317 P.3d 814, 817-18 (2014) (citing Restatement); *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Rep. 61, 290 P.3d 249, 253 n.6 (2012) (citing Restatement); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. Adv. Rep. 48, 286 P.3d 249, 257-60 (2012) (adopting § 5.4 of Restatement); *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. Adv. Rep. 41, 245 P.3d 535, 539-41 (2010) (citing Restatement); *Houston v. Bank of Am.*, 119 Nev. 485, 490, 78 P.3d 71, 74 (2003) (adopting § 7.6 of Restatement).

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> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **unless the price is grossly inadequate.**

Restatement § 8.3 (emphasis added). The commentary to § 8.3 explains that a sale price is "grossly inadequate" if it is less than 20% of the property's fair market value:

> "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than **20 percent of fair market value** and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that **it would be an abuse of discretion for the court to refuse to invalidate it**.

Id. § 8.3 cmt. b (internal citation omitted and emphasis added). The Restatement thus allows a court to void a foreclosure sale based on **price alone** and suggests that refusing to invalidate a sale price well below the 20% standard would be an abuse of discretion.[6] Courts should void foreclosure sales when the purchase price falls below 20% because "[w]indfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators." *In re Krohn*, 52 P.3d at 779.

a. The Nevada Supreme Court Has Adopted Restatement § 8.3

As noted above, the Nevada Supreme Court adopted § 8.3 of the Restatement in its recent *Shadow Wood* decision. In *Shadow Wood*, a mortgage lender held a first deed of trust against a residential property. 366 P.3d at 1107. The lender foreclosed under its deed of trust and bought the property through a credit bid. *Id.* At the time the lender foreclosed, the property was also encumbered by an HOA super-lien. *Id.* After the lender acquired the property, the association held a separate foreclosure sale under its super-lien. *Id.* at 1108. The property sold for $11,018.39 at the

[6] Several other jurisdictions have adopted the gross inadequacy of price doctrine. *See, e.g., In re Krohn*, 52 P.3d 774, 783 (Ariz. 2002) (invalidating sale for 17.5% of fair market value and holding that "a sale of real property under power of sale in a deed of trust may be set aside solely on the basis that the bid price was grossly inadequate"); *Baskurt v. Beal*, 101 P.3d 1041 (Alaska 2004) (noting that "several courts have upheld the invalidation of a foreclosure sale that produced a price of twenty percent of fair market value or less"); *Burge v. Fidelity Bond & Mortg. Co.*, 648 A.2d 414, 419 (Del. 1994) ("If the fair market value of the property is over twice the sales price, the price is considered to be grossly inadequate, shocking 'the conscience of the court,' and justifying the setting aside of the sale"); *Armstrong v. Csurilla*, 817 P.2d 1221, 1233 (N.M. 1991) (stating that an inadequacy of price of 25% plus or minus 15% "fall[s] into the 'shock the conscience' range").

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association's foreclosure sale despite its appraised $53,000 fair market value and despite the lender's prior credit bid of $45,900 at its own foreclosure sale. *Id* at 1108, 1112, 1113 n.3. The lender sued to invalidate the association's sale, arguing among other things that the price obtained at the sale was inadequate. *Id.*

In its opinion, the Nevada Supreme Court analyzed the property's sale price under Section 8.3 of the Restatement. *Id.* at 1112-13. The Supreme Court noted that the $11,018.39 sale price was more than 20% of the property's $53,000 appraised value. *Id.* at 1113 n.3. It also noted the price was greater than 20% of the $45,900 credit bid the lender had submitted at its own foreclosure sale. *Id.* at 1112-13. Since the price was greater than the 20% of the property's fair market value, the Supreme Court held it was not "grossly inadequate as a matter of law." *Id.* at 1112. Therefore, while the Nevada Supreme Court ultimately ruled against the lender in *Shadow Wood*, it followed Section 8.3 of the Restatement to reach its decision. Indeed, by adopting Section 8.3 of the Restatement in *Shadow Wood*, the Nevada Supreme Court followed a long line of Nevada precedents adopting other Restatement provisions. *See, e.g.*, *Montierth v. Deutsche Bank (In re Montierth)*, 131 Nev. Adv. Rep. 55, 354 P.3d 648,651 (2015) (adopting Restatement rule that note and deed of trust do not have to be held by same individual at time of foreclosure so long as beneficiary of deed of trust is agent of note holder); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. Adv. Rep. 48, 286 P.3d 249, 257-60 (2012) (adopting § 5.4 of Restatement, governing assignments of promissory notes and deeds of trust); *Houston v. Bank of Am.*, 119 Nev. 485, 490, 78 P.3d 71, 74 (2003) (adopting § 7.6 of Restatement, governing equitable subrogation).

b. Restatement § 8.3 Is Consistent with *Golden v. Tomiyasu*

Shadow Wood and the Restatement embody the accepted common law principle that a court may invalidate a foreclosure sale where the price is grossly inadequate or is so small as to shock the conscience.[7] They are also consistent with prior Nevada case law, such as *Golden v. Tomiyasu*, 79

[7] *See, e.g., Armstrong v. Csurilla*, 591, 817 P.2d 1221, 1233 (N.M 1991) (sale may be set aside "when the disparity is so great as to shock the court's conscience"); *United Okla. Bank v. Moss*, 793 P.2d 1359, 1364 (Okla. 1990) (setting aside sale for approximately 20% of fair market value, noting that court may refuse to confirm sale where "the sale price is so grossly inadequate that it shocks the conscience of the court"); Am. Jur. 2d *Mortgages* § 541 ("The standard applied to determine whether the purchase price on property sold at a foreclosure sale was so inadequate as to constitute a breach of fiduciary duty as a matter of law is whether the purchase price as compared with the

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Nev. 503, 387 P.2d 989 (1963).

In *Shadow Wood*, the Nevada Supreme Court cited a portion of *Golden* that held "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price." *Shadow Wood*, 132 Nev. Adv. Op. 5, 366 P.3d at 1111 (quoting *Golden*, 387 P.2d at 995). This passage from *Golden* was taken from the California case of *Oller v. Sonoma Cty. Land Title Co.*, 290 P.2d 880, 882 (Cal. Ct. App. 1955). At first blush, *Shadow Wood* appears to contradict itself on the issue of price. On one hand, it assesses the sale price using the Restatement framework, but on other hand, it quotes *Golden* and suggests there must be some irregularity in addition to inadequacy of price for a court to invalidate a sale. However, the Restatement approach is easily reconciled with *Golden*, as illustrated by an Arizona case that also adopts the Restatement.

In *Krohn v. Sweetheart Props, LTD (In re Krohn)*, the Arizona Supreme Court adopted § 8.3 of the Restatement to govern non-judicial foreclosure sales. 52 P.3d 774, 783 (Ariz. 2002). There, the court invalidated the trustee's sale because the price was only 17.5% of the property's fair market value and thus grossly inadequate. *Id.*[8] Much like Nevada, Arizona had prior case law which suggested that price alone was never a sufficient reason to void a sale. *See Sec. Sav. & Loan Ass'n v. Fenton*, 806 P.2d 362, 364 (Ariz. Ct. App. 1990) ("The setting aside of a trustee sale for inadequacy of price has no basis in either Arizona case law or statute"). Indeed, the *Fenton* opinion was based on the same California precedent as the Nevada Supreme Court's *Golden* opinion. *See id.* (quoting *Oller*, 290 P.2d at 882). ("[E]ven assuming that the price was inadequate, that fact standing alone would not justify setting aside the trustee's sale . . . it is a settled rule that inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.")

---

market value was so grossly inadequate as to invalidate the sale").

[8] The Nevada Supreme Court looks to Arizona case law as persuasive authority. *See Foley v. Kennedy*, 110 Nev. 1295, 1301-02, 885 P.2d 583, 587 (1994) (following Arizona case law discussing equitable estoppel).

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However, the court in *Krohn* explained that *Fenton* was fully compatible with the Restatement approach. "The policy articulated in *Fenton* is correct as to inadequacy of price . . . [b]ut *Fenton* did not involve a price found to be grossly inadequate, one that shocked the conscience of the court." 52 P.3d at 778. "Thus, the *Fenton* court did not consider the question before us now." *Id.* "The present case is one of first impression as neither we nor our court of appeals has ever considered the particular issue of setting aside a deed of trust sale for **gross** inadequacy of price." *Id.* (emphasis original). The *Krohn* court then addressed the rule from *Golden* and *Fenton* that there must be "fraud, unfairness, or oppression" before a court may void a sale. The *Krohn* court explained that "**gross** inadequacy **is** proof of unfairness, and as we have seen, gross inadequacy, as defined in comment b to RESTATEMENT § 8.3, is more than inadequacy." *Id.* "Thus, a rule allowing limited judicial oversight does not conflict with *Fenton*—it is still the law in Arizona that trustee's sales will not be set aside for inadequacy of price without more." *Id.*

For the same reasons, the Restatement approach is fully consistent with Nevada's precedent in *Golden*. **Neither *Golden* nor *Shadow Wood* involved a sale price which fell below the Restatement's 20% threshold**. The price in *Golden* was roughly 28.5% of fair market value, 387 P.2d at 993, while the price in *Shadow Wood* was between 20% and 23% of market value. Thus, neither *Golden* nor *Shadow Wood* involved a **grossly inadequate** price, as exists here. As *Krohn* illustrates, real property law recognizes a fundamental distinction between a price which is merely smaller than the property's market value (virtually all foreclosure prices are) and a price which is so small as to be **grossly** inadequate. In the former case, a court generally cannot invalidate the sale; but in the latter case, the grossly inadequate price constitutes "fraud, unfairness, or oppression" within the meaning of *Golden* and *Shadow Wood*. Therefore, under Nevada law as construed by *Golden* and *Shadow Wood*, a court may invalidate an HOA foreclosure where, as here, the sale price is grossly inadequate.

c. The HOA Sale is Void Because the Price Was Grossly Inadequate

In this case, SFR purports to have purchased the Property for only $6,100 at the HOA Sale. *See* **Ex. B**, Foreclosure Deed. An appraisal of the property's market value as of September 21, 2012—the day of the HOA Sale—shows the Property's fair market value was $82,000. *See* **Ex. G**,

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Expert Report by Scott Dugan. Similarly, a BPO estimated the Property's market value as $67,100.00 as of February 25, 2012, only a few months prior to the sale. *See* **Ex. A**, Chase Decl. ¶ 7 & **Ex. A-3**, BPO. Since SFR has not disclosed any estimation of the Property's **market** value—the measure used by the Restatement and Nevada law—for this time period, there can be no genuine dispute that the Property's fair market value was between $67,100 and $82,000 at the time of the HOA Sale. *See* Restatement § 8.3, cmt. b (referring to market value); *Shadow Wood*, 366 P.3d at 1113 n.3 (using appraisal). It is therefore undisputed that the price obtained at the HOA Sale was between **7.4%** and **9%** of the of the Property's fair market value, which is well below the Restatement's 20% threshold for setting aside a sale. Even if the HOA Sale was otherwise fair and proper (it was not), the sale is void. Chase is entitled to summary judgment.

2. SFR's Grossly Inadequate Purchase Price Was Accompanied by Other Sale Improprieties

Alternatively, if the Court does not invalidate the sale based on the grossly inadequate price, it should still enter summary judgment for Chase due to the additional defects in the sale. In *Golden*, the Nevada Supreme Court explained that, "where the inadequacy [of price] is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought." 387 P.2d at 995 (internal quotations omitted). *Accord* Restatement § 8.3 cmt. c ("[E]ven a slight irregularity in the foreclosure process coupled with a sale price that is substantially below fair market value may justify or even compel the invalidation of the sale"). Restatement § 8.3 further illustrates this concept with the following examples:

> 9. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for $15,000. The fair market value of Blackacre at the time of the sale is $ 50,000. The foreclosure proceeding is regularly conducted in compliance with state law except that at the foreclosure sale the sheriff fails to read the foreclosure notice aloud as required by the applicable statute. A court is warranted in refusing to confirm the sale.
>
> 10. The facts are the same as Illustration 9, except that the foreclosure is by power of sale. The foreclosure proceeding is regularly conducted in compliance with state law except that notice of the sale is published only 16 times rather than 20 times as required by the applicable statute. Mortgagor files suit to set aside the sale. A court is warranted in setting the sale aside.

Restatement § 8.3 cmt. c.

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It is undisputed that the Association purported to foreclose on a lien created pursuant to CC&Rs that **expressly prohibited** an HOA lien from "defeat[ing] or render[ing] invalid the rights of the beneficiary under any Recorded first deed of trust." *See* **Ex. C**, CC&Rs; **Ex. M**, Notice of Delinquent Assessment Lien; **Ex. N**, Notice of Default. By telling the world, through its recorded documents, that its lien would not extinguish a first deed of trust, the Association unfairly chilled bidding at its sale.

Moreover, the Association failed to disburse the excess sale proceeds to Chase. The applicable version of NRS 116.31164(7)(c) required the Association to disburse sale proceeds in the following order:

> (1) The reasonable expenses of sale;
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
> (3) Satisfaction of the association's lien;
> (4) Satisfaction in the order of priority of any subordinate claim of record; and
> (5) Remittance of any excess to the unit's owner.

NRS 116.31164(7)(c). Here, the Association did not disburse any sale proceeds to Chase. *See* **Ex. H**, S. Moses & C. Yergensen Dep. at 66:23–69:21; **Ex. P**, NAS Disbursement Requisition. It did, however, disburse proceeds to the Borrower, which it was required to do only after satisfying "any subordinate claim of record." *Id.* It is unfair to allow the HOA's Sale to extinguish Chase's deed of trust where the Association itself refused to treat Chase's lien as subordinate or pay Chase the excess sale proceeds.

Even if the Court believes these are minor defects, they are enough to invalidate the sale when combined with the grossly inadequate price. If publishing a notice of sale 16 times instead of 20 times is a sufficient reason to invalidate a sale, *see* Restatement § 8.3, cmt. c, ill. 10, then it is certainly sufficient to invalidate a sale where the Association misrepresented its lien interest on a property and subsequently failed to act consistently with its position.

E. SFR Is Not a Bona Fide Purchaser

Chase anticipates that SFR may claim that it is entitled to bona fide purchaser status. SFR

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would be wrong. "The bona fide doctrine protects a subsequent purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance." *25 Corp. v. Eisenman Chem. Co.*, 101 Nev. 664, 709 P.2d 164, 172 (1985) (citing 77 Am.Jur.2d Vendor and Purchaser § 633 at 754 (1975) and *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246 (1979)). A subsequent purchaser is not a bona fide purchase if he, she, or it is under a duty to enquire. *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1088 (D. Nev. 2012) (citing *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246, 249 (1979)). A duty to inquire arises when a purchaser "possesses facts which would lead a reasonable person under the circumstances to investigate. Even if the subsequent purchaser does not actually conduct an investigation, the law deems him or her to have constructive notice of whatever the investigation would uncover." *Id.* (internal citation omitted).

SFR is not a bona fide purchaser of the Property. SFR knew that the Property was at risk of competing claims to title by virtue of the Association sale on September 21, 2012. *See* **Ex. D**, P. Kelso Dep. at 53:21–54:3 (Hardin "was aware when he was bidding on these properties [including 1076 Slate Crossing #2] and purchasing them from the HOA sales that there was a risk of litigation"); *id.* at 54:7-12 (SFR knew "the homes were going for the prices that they were [] because of the risk of litigation [] associated with it"); *id.* at 134:7-12 (testifying that "probably somebody associated with the First Deed of Trust" would be involved in the litigation); *id.* at 129:12-16, 130:16-22. SFR also knew that a court could find that the deed of trust was not extinguished by the sale. *Id.* at 56:2-9 (SFR knew **"that there was that possibility that the Court wouldn't rule with SFR's interpretation"** of NRS 116) (emphasis added); *id.* at 129:17-24. Despite such risks, SFR purchased the Property.[9]

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[9] Moreover, SFR is a commercial enterprise that specializes in buying HOA-foreclosed properties, and many of the properties it owns have been rented after Association sales. **Ex. D**, P. Kelso Dep. at 58:19-25–59:5; 73:22–74:2. Thus, even when SFR is not able to acquire clear title to an HOA-foreclosed property, it still recoups its minimal investment and make a substantial profit through rental income alone.

Moreover, SFR's business model is consistent with that of other investors who purchased properties at HOA sale. Such investors could make money by "rent[ing] [the property] out until the mortgage-holding bank gets around to foreclosing and trying to take possession." *See* **Ex. I**, H. Smith, "Shrewd Investors Snap Up HOA Liens, Rent Out Houses," *Review Journal* (posted Mar. 18, 2013), available at www.reviewjournal.com/business/housing/shrewd-investors-snap-hoa-liens-rent-out-

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Furthermore, the recorded documents in this case would have caused a reasonable person in SFR's position to investigate the sale. *See* NRS 111.315 (recording operates as notice to third persons). All of the foreclosure notices state that the Association is foreclosing pursuant to its CC&Rs. *See, e.g.* **Ex. M**, Notice of Delinquent Assessment Lien; **Ex. O**, Notice of Foreclosure Sale; **Ex. B**, Foreclosure Deed. This fact should have led SFR to review the CC&Rs to determine whether the foreclosing Association lied to lenders about subordinating the Association's position to that of the lender. SFR, however, did not investigate the facts. *See* **Ex. D**, P. Kelso Dep.at 108:9-10; 134:22–135:10. Cloaking SFR with bona fide purchaser status would unfairly reward SFR for remaining oblivious, ignoring signs that the sale was flawed, and acting oppressively by exploiting NRS Chapter 116 to the unfair detriment of the lender. The Court should reject any argument that SFR is a bona fide purchaser (because it is not) and grant summary judgment in favor of Chase.

2. Bona Fide Purchaser Status Is Not Dispositive

Even if SFR is a bona fide purchaser (which it is not), such status is not dispositive. In *Shadow Wood*, the Nevada Supreme Court instructed that courts determining whether to set aside a foreclosure sale "must consider the **entirety of the circumstances** that bear on the equities" to determine whether to set aside an association's sale. *Shadow Wood*, 366 P.3d at 1114 (emphasis added). Accordingly, the *Shadow Wood* Court considered **all** the issues raised by the parties. *Id.* at 1115. Notably, the Nevada Supreme Court held that a purchaser's BFP status is not dispositive. Rather, if a purchaser is found to be a BFP, then the district court may consider the harm to the innocent purchaser when deciding whether it is equitable to set aside the association foreclosure sale. *Id.* at 1115. In other words, **BFP status is merely one factor for the district court to evaluate as part of the "entirety of circumstances."** *Id.* at 1114. Based on SFR's admitted knowledge of the risk of competing claims to title, the recorded documents, and SFR's lack of investigation, the equities clearly weigh in favor of granting summary judgment to Chase.

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houses. Then, upon the bank's foreclosure, these investors would also recoup the amount of the lien. To say that SFR was unaware of the First Deed of Trust at the time when numerous investors were using banks' property interests to their advantage is to ignore the obvious. SFR was fully aware that it may not obtain clear title to the Property in this case, and this risk was assessed prior to a purchase. **Ex. D**, P. Kelso Dep. at 53:21–54:3. Therefore, it is fully appropriate for the Court to charge SFR with that risk. See *Shadow Wood*, 366 P.3d at 1114-15 (courts must consider "entirety of the circumstances").

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F. At Most, SFR Acquired Only a Lien Interest in the Property

Even if the Court could disregard the above-discussed Constitutional constraints or patent unfairness of the HOA Sale (which it cannot), the undisputed facts demonstrate that SFR acquired a mere lien interest in the Property. The plain language of the Foreclosure Deed conveys the Association's interest in the Property: a lien. It does not grant SFR the unit owner's interest, as required under NRS 116.31164 to take title to the Property.

A basic principle of property law is that a deed's granting clause determines the interest conveyed. *Griffith v. Cloud*, 764 P.2d 163, 165 (Okla. 1988). *See also* 23 Am. Jur 2d *Deeds* § 237. A conveyance cannot transfer an interest greater than the interest provided for in the granting clause. *Griffith*, 764 P.2d at 165. Thus, in order to vest in a purchaser "the title of the unit's owner without equity or right of redemption" a foreclosure deed must grant all title of the **unit owner** to a sale purchaser:

> After the sale, the person conducting the sale **shall**: (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee **all title of the unit's owner to the unit**.

NRS 116.31164(3) (emphasis added); NRS 116.31166(3).

Here, the Foreclosure Deed does not follow NRS 116.31164's mandatory requirement. Instead, it granted SFR only the **Association's** interest in the Property, rather than that of the unit owner:

> Nevada Association Services, Inc. as agent for Paradise Court does hereby grant and convey, but without warranty express or implied, to: SFR Investments Pool I, LLC (herein called Grantee) . . . all **its** right, title and interest in and to that certain property…

Ex. B, Foreclosure Deed (emphasis added). Since the Association's only interest in the Property was limited to its lien, SFR received, at most, this lien. *See Griffith*, 764 P.2d at 165. Accordingly, SFR cannot possibly hold title to the Property.

IV. CONCLUSION

For the reasons above, Chase respectfully requests that the Court grant its motion for summary judgment and quiet title in its favor.

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DATED: September 13, 2016

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I HEREBY CERTIFY that on September 13, 2016, I served a true and correct copy of the foregoing **DEFENDANT AND COUNTER-CLAIMANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT**, on the following parties in the manner set forth below:

[ ] E-MAIL TRANSMISSION

[ ] U.S. MAIL, POSTAGE PREPAID

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, v. VENTA REALTY GROUP, a Nevada corporation, JP Morgan Chase Bank, NA, a National Association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation, CALIFORNIA CONVEYANCE 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, ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-12-672963-C DEPT NO. 27

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, N.A'S MOTION FOR SUMMARY JUDGMENT[1]

Tab	Document	Appendix Page
A	Declaration of JPMorgan Chase Bank, N.A.	001-063
B	Foreclosure Deed recorded in the Official Records of Clark County September 25, 2012	064-068
C	Excerpts of Declaration of Covenants Conditions and Restrictions of Paradise Court recorded in the Official Records of Clark County May 18, 2004	069-079
D	Excerpts of Deposition of Paulina Kelso taken June 24, 2016	080-096
E	Excerpts of Deposition of Robert Diamond taken July 14, 2016	097-107
F	SFR Foreclosure Addendum dated November 3, 2012	108-109
G	Defendant's Designation of Initial Expert Witness served October 13, 2015	110-145
H	Deposition of Susan Moses and Christopher Yergensen taken January 8, 2016	146-152

[1] This Appendix also contains all Exhibits referenced in Defendant JPMorgan Chase Bank, N.A's Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment (filed August 29, 2016).

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I	Shrewd Investors Article in Las Vegas Review Journal March 18, 2013	153-155
J	Deed of Trust recorded in the Official Records of Clark County May 14, 2008	156-170
K	Excerpts of Deposition of Susan Lyn Newby taken July 23, 2015	171-177
L	Assignment of Deed of Trust recorded in the Official Records of Clark County December 6, 2010	178-181
M	Notice of Delinquent Assessment Lien recorded in the Official Records of County February 5 2010	182-184
N	Notice of Default and Election to Sell recorded in the Official Records of County March 7, 2012	185-188
O	Notice of Trustee's Sale recorded in the Official Records of County October 11, 2012	189-193
P	NAS Disbursement Requisition dated May 5, 2010	194-196

DATED this 13th day of September, 2016.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 13th day of September, 2016, an electronic copy of the APPENDIX OF EXHIBITS TO DEFENDANT JPMORGAN CHASE BANK'S MOTION FOR SUMMARY JUDGMENT was served on the following counsel of record via the Court's electronic service system:

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EXHIBIT H

EXHIBIT H

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, CALIFORNIA RECONVEYANCE COMPANY, a California corporation, REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada corporation, PARADISE COURT HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation, and DELANIE L. HARNED, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

_____/

DEPOSITION OF SUSAN MOSES

DEPOSITION OF CHRIS YERGENSEN

Taken at the law offices of Ballard Spahr LLP

Taken on Friday, January 8, 2016

At 9:31 a.m.

At 100 North City Parkway, Ste. 1750
Las Vegas, Nevada

Reported by: Barbara Kulish, CCR #247, RPR

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* * * * *

INDEX

WITNESS: SUSAN MOSES	Exam
By Ms. Demaree	3
By Ms. Goulet	70

WITNESS: CHRIS YERGENSEN	Exam
By Ms. Demaree	75

EXHIBITS

Defendants'	Page
1 - Updated Subpoena Duces Tecum	8
2 - Subpoena Duces Tecum	8
3 - Packet of Documents Containing Documents Bates NAS 00002-00296	9
4 - Handwritten Document of Plan Payments	33

INFORMATION TO BE SUPPLIED
None

Q. Would any other statements about the property have been made aside from this foreclosure script?

A. It would have been read verbatim, just the portion at the top.

Q. So just the part that says, "Are there are any offers?"

A. "Would anyone like to qualify ... On behalf of Paradise Court, I am conducting their foreclosure sale." That whole two paragraphs would have been read.

Q. Okay. So below, it says "Postponement Script," and it's scratched out. So that would not have been read, correct?

A. No, because the sale went forward.

Q. I just wanted to confirm.

A. Okay.

Q. According to the script on page 263, it lists the opening bid from Paradise Court at $5,646.57. Do you know why that was the opening bid?

A. It would have been the amount due on the ledger on 262.

Q. And can you tell from the notes, it looks like, that are handwritten below, how many bidders attended the sale?

A. It's hard to read on here. It looks like

there were two bidders on the property.

Q. And then again, the handwritten notes below that, they appear to me to indicate 5700, 5900, 6,000, 6100. Do you know, does that look right?

A. It's really difficult to see what it is.

Q. Do you know what those notations may refer to?

A. No.

Q. Do you know if they would refer to the bid amounts?

A. I don't know.

Q. Do you know who conducted the sale for NAS?

A. It looks like Misty Blanchard. If you look at 266, it's a Certificate of Sale.

Q. Do you know what the property ultimately sold for?

A. It says on page 264, the successful bid was $6100.

Q. If you look at page 263, under the four numbers that I previously read, it looks like there's a 6100; is that correct?

A. It looks like it. It's hard to read, but yes, it looks like 6100.

Q. And to the left of that, there appears to be a notation. Do you know what that is?

A. It looks like her handwriting.

Q. Do you know who the excess proceeds were distributed to in this case?

A. It looks like $635.98 went back to the homeowner, if you look at the Disbursement Requisition on 288.

Q. Okay. And was there also a disbursement to Republic Services of Southern Nevada for $34.30?

A. Correct.

Q. And do you know -- I'm not good at math, but I believe that would total the excess proceeds of 670.88 listed on page 275?

A. Okay.

Q. Or I guess does it total? Is that the full amount of the excess proceeds?

A. Do you want me to add it? I can add it.

Q. I just want to make sure that there's nothing left over. I doubt there is, but...

A. It looks like it was $670.28.

I couldn't read her handwriting, so it's actually, on 275, it says 670.28, not 670.88.

MS. DEMAREE: Okay. That's all I have.

Do you have any questions?

MS. GOULET: I have a few questions.

///

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

I, Barbara Kulish, a duly licensed court reporter in the State of Nevada, do hereby certify:

That I reported the taking of the deposition of SUSAN MOSES and CHRIS YERGENSEN, on Friday, January 8, 2016, commencing at the hour of 9:31 a.m. That prior to being examined, the witnesses were 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.

That there being no request for the deponents to read and sign the deposition transcript, under Rule 30(e) the signatures are deemed waived; and that the original transcript will be forwarded to the custody and control of Lindsay Demaree, Esq.

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

Dated this 16th day of January, 2016.

Barbara Kulish, CCR 247, RPR

EXHIBIT L

EXHIBIT L

Inst #: 201012060000315
Fees: $15.00
N/C Fee: $0.00
12/06/2010 08:04:34 AM
Receipt #: 601100
Requestor:
SPL INC - LA
Recorded By: STN Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN#: 179-34-713-236

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Space above this line for recorder's use only

Title Order No. 100730608-NV-MAI **Trustee Sale No. 144017NV** Loan No. [redacted]860

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Chase Home Finance LLC all beneficial interest under that certain Deed of Trust dated 05-07-2008 executed by DELAINE L. HARNED, AN UNMARRIED WOMAN, as Trustor; to LSI TITLE AGENCY, as Trustee; and Recorded 05-14-2008, Instrument 0005041, Book 20080514, Page of Official Records in the Office of the County Recorder of CLARK County, Nevada..

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part the real property described therein.

Property Address: 1076 SLATE CROSSING LANE #2
HENDERSON, NV 89002

Title Order No. 100730608-NV-MAI **Trustee Sale No. 144017NV** Loan No. 1880635860

Date: November 29, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

_____

Colleen Irby,Assistant Secretary

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On November 29, 2010 before me, C. Lucas, "Notary Public," personally appeared Colleen Irby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

C. LUCAS
Commission # 1821933
Notary Public - California
Los Angeles County
My Comm. Expires Nov 9, 2012

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2015 15 DEC

Debbie Conway
RECORDER

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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 **ORDER DENYING MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON**

This matter came before the Court on August 10, 2016, on JP-Morgan Chase Bank, N.A's Motion to Exclude Testimony of Michael Brunson. Abran Vigil, Esq. appeared on behalf of JPMorgan Morgan Chase Bank, N.A. Karen L. Hanks, Esq. appeared on behalf of SFR Investments Pool 1, LLC.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing,

IT IS HEREBY ORDERED that JPMorgan Chase Bank, N.A.'s Motion to Exclude Testimony of Michael Brunson is DENIED.

So ordered this 12 day of Sept., 2016

DISTRICT COURT JUDGE

Respectfully Submitted By:

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Approved as to Form by:

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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 coproation, 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-13-672963-C

Dept. No. XXVII

NOTICE OF ENTRY OF ORDER DENYING MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON

PLEASE TAKE NOTICE that on September 14, 2016 this Court entered a **Order**

///

Denying Motion to Exclude Testimony of Michael Brunson. A copy of said Order is attached hereto.

DATED this 15th day of September, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorney for SFR Investments Pool 1, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF ORDER DENYING MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON** to the following parties:

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/s/ Tomas Valerio
An Employee of Kim Gilbert Ebron

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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 **ORDER DENYING MOTION TO EXCLUDE TESTIMONY OF MICHAEL BRUNSON**

This matter came before the Court on August 10, 2016, on JP-Morgan Chase Bank, N.A's Motion to Exclude Testimony of Michael Brunson. Abran Vigil, Esq. appeared on behalf of JPMorgan Morgan Chase Bank, N.A. Karen L. Hanks, Esq. appeared on behalf of SFR Investments Pool 1, LLC.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing,

IT IS HEREBY ORDERED that JPMorgan Chase Bank, N.A.'s Motion to Exclude Testimony of Michael Brunson is DENIED.

So ordered this 12 day of Sept, 2016

DISTRICT COURT JUDGE

Respectfully Submitted By:

KIM GILBERT EBRON

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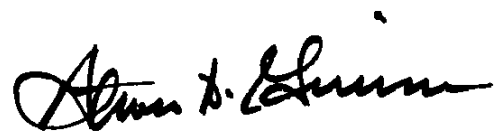

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SFR INVESTMENTS POOL 1, LLC, Plaintiff, vs. VENTA REALTY GROUP, et al, Defendants.	CASE NO. A-672963 DEPT NO. XXVII **Transcript of Proceedings**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

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

THURSDAY, SEPTEMBER 15, 2016

APPEARANCES:

FOR THE PLAINTIFF: JACQUELINE A. GILBERT, ESQ.

FOR THE DEFENDANTS: LINDSAY C. DEMAREE, ESQ.

RECORDED BY: PATTI SLATTERY, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 15, 2016, 10:33 A.M.

(Court was called to order)

THE COURT: Appearances, please.

MS. GILBERT: Good morning, Your Honor. Jacqueline Gilbert on behalf of SFR Investments Pool 1, LLC.

THE COURT: Thank you.

MS. DEMAREE: Hi. Lindsay Demaree on behalf of Chase.

THE COURT: Thank you. This is -- I think this is the plaintiff's motion for summary judgment; is that correct?

MS. GILBERT: Yes, Your Honor.

THE COURT: Thank you.

MS. GILBERT: And for the record I do note -- I will note, and Ms. Demaree and I spoke about this, that the defendants' motion is on for the 9th?

THE COURT: The 29th.

MS. GILBERT: 29th. But SFR has requested summary judgment on all claims.

THE COURT: I understand.

MS. GILBERT: So if this one is granted, it would render that moot.

MS. DEMAREE: And just --

THE COURT: I understand that, but did you want to go forward today?

MS. DEMAREE: I think that it would make more sense in the interest of judicial economy to push this hearing to the

hearing on Chase's motion for summary judgment so they can be heard together. I'll also note for the record that we have an objection to the discovery commissioner's report and recommendation in this case, which I think it would make more sense to resolve that issue prior to a summary judgment hearing.

THE COURT: And the discovery commissioner objection is September 29th. I was mistaken. And the defendants' summary judgment is on for October 19th. Frankly, I had reviewed everything today and I was inclined to grant the motion for summary judgment. So tell me why the objection to the discovery commissioner's report would matter to you.

MS. DEMAREE: Sure, Your Honor. So in this case it's a motion for summary judgment. As you're aware, you have to look at the facts in the record --

THE COURT: Right.

MS. DEMAREE: -- and look in the light most favorable to Chase. Here, the facts in the record show that at the time of the sale SFR itself understood that the deed of trust was going to remain. In light of that --

THE COURT: Why does that matter?

MS. DEMAREE: Well, because --

THE COURT: We're talking about an application of law.

MS. DEMAREE: When you couple it with the inadequate price in this case, I think that it shows their unfairness, as well, that accompanied the sale.

THE COURT: And I saw that there was a Dugan appraisal. I saw that in your opposition. But price alone isn't enough.

MS. DEMAREE: Correct. You're right. So that's why we go to this next step, the understanding of SFR at the time of the sale about what it was purchasing; the understanding of the HOA about what it was selling. Everybody at the time of the sale according to the evidence in the record, which, again, must be taken in the light most favorable to Chase, understood that SFR was acquiring the property subject to Chase's deed of trust. When you look at it in that perspective, I think it would absolutely be unfair. Which, again, this is the unfairness that you couple with the price to allow SFR to obtain the property free and clear.

THE COURT: And what is it about the discovery commissioner's report that you believe is necessary for me to consider before I consider the summary judgment?

MS. DEMAREE: The objection to the discovery commissioner's report and recommendation targets issues that go to SFR's knowledge at the time of the sale. We specifically asked for things like documents that would show what their understanding was at the time of the sale. We have testimony from their -- their purchaser, but we don't have actual evidence from SFR itself. In addition --

THE COURT: Well, we have the Diamond affidavit.

MS. DEMAREE: We have -- we have his deposition.

THE COURT: Right, or the deposition.

MS. DEMAREE: But, again, SFR has -- has claimed that even though he was the only purchaser, there are other people involved in the company. So if we're going to allow SFR to put forward Diamond as their witness, then I think we need to make clear that he is the speaker on SFR's behalf in this issue. We can't go forward and then have SFR say, no, no, disregard this witness who has already testified that he believed he was purchasing a property subject to the deed of trust to then saying, no, he can't bind SFR the company. So that's one issue.

The other thing that we have here is in the *Shadow Wood* decision it explains the bona fide purchaser status isn't dispositive. It's a factor to be considered. So if you do happen to find that SFR is a bona fide purchaser, which I don't think it's appropriate in this case, you have to take the next step and weigh the prejudice to SFR if this sale is to be set aside.

In this case we specifically sought discovery on the profits that SFR has recouped since the sale. We believe SFR has already recouped more than $6,100, the purchase price.

THE COURT: Why is that relevant?

MS. DEMAREE: That's relevant because it's -- it's not going to be prejudicial to satisfy the sale as to SFR. You can tailor a remedy as the Court that would, you know, compensate

them for the sale price if necessary. But the fact is if they've already profited from this, then simply setting aside the sale so they don't get a windfall of free and clear title would not be prejudicial to them.

THE COURT: And let me just check. You had a stipulation to extend your discovery deadlines, and discovery was completed long before you -- this matter came before the discovery commissioner; is that not correct?

MS. DEMAREE: I believe that in this case, and I apologize, I don't have the exact procedural history on that issue in front of me, but I believe in this case because of the issues with the SFR deposition, we actually took the deposition outside the scope -- or outside the close of discovery.

THE COURT: Okay. It looks to me as though your close of discovery by stipulation was January 11, 2016.

MS. DEMAREE: Correct. And I believe the deposition of SFR occurred well after that time period by agreement of the parties.

THE COURT: Okay. And there was a motion to extend discovery, and that wasn't part of what you asked me to reconsider based upon the decision of the discovery commissioner; is that correct?

MS. DEMAREE: No, Your Honor. The -- just the objection to the discovery commissioner's report and recommendation --

THE COURT: Hang on.

MS. DEMAREE: -- was targeted.

THE COURT: I'm seeing a third stipulation to extend the discovery deadlines. This is something I didn't look at when I looked at the motion. So let me just -- all right. So the discovery closed on May 27, 2016, based upon the third stipulation to extend discovery entered on or about June 28, 2016. Based upon that stipulation, I'm going to go ahead today and hear the motion for summary judgment.

Ms. Gilbert.

MS. GILBERT: Thank you, Your Honor.

Basically let me just start with that SFR has asked for summary judgment on all claims primarily because other than price there is no evidence of fraud, oppression, or unfairness in the sales process. And that's what you have to look at. Intent is really irrelevant here as to SFR, what the purchaser's understanding was, etcetera, the law is the law.

There is no fraud, oppression, or unfairness in the conduction of this sale, which is what you have to look at in making a determination of whether you would even go to equity. And here they've provided nothing. They simply talk about the -- the price, which we know isn't enough. And we talk about -- and they talk about an impotent and unenforceable CC&R provision, which they offer no evidence of that it in any way, shape, or form influences the sale.

In other words, they have brought no witnesses. They have no affidavits that they relied or even read the CC&Rs prior to loaning them money. We know that the bank was sent all of the notices. I believe they -- they admit that they received all of the notices. They took no action to protect the lien, allowed the sale to go forward, and this Court, working with all the presumptions and without any evidence to the contrary, and this is summary judgment and this was their time to bring it, must presume that the sale was properly held.

While it's our motion and SFR's motion, the presumption shifted all of the burden to -- because it -- as a proper sale and they have to show that it wasn't and they simply haven't done that. So we know that -- that, you know, even going to commercial unreasonableness, they can't get -- they can't go any further because all they have is price.

And *Golden* made it clear that even if the price was so low as to shock the conscience, you would still need something further. And nothing has changed in that. The only other issue I believe that they have, the constitutional issue, SFR believes, has always believed, the interpretation the *SFR* decision in one -- has in three places noted the incorporation of 107.090 and the noticing provisions therein.

It's irrelevant here because they have actual notice and, therefore, even lack standing to raise anything about the statutes themselves because actual notice would deprive them of

that. You can't bring a hypothetical before the Court.

Second, I assume that she will argue *Bourne Valley*. *Bourne Valley* is not binding on this Court and it's unsettled at this point in time. There has been a petition for rehearing and there has been an order for a response to that. The same issues were argued before the Nevada Supreme Court last week as far as constitutionality goes. And the biggest problem that -- that everybody has run into is there's no state actor. There simply is not a state actor to even -- even implicate due process. But even if there was, the statutes require notice, and they got it.

So I think in this case, at least, for sure it shouldn't even reach constitutionality because they have -- they got all the notice that they're entitled to under the statutes, and they received the notice of default and notice of sale. The only other thing I believe that they have raised is the FHA argument that this is a HUD insured loan. But I think *Freedom Mortgage* addresses that the best, Judge Dorsey.

THE COURT: It's an FHA insured? Wasn't that -- was it HUD or FHA?

MS. GILBERT: Well, HUD -- FHA is through HUD.

THE COURT: Right.

MS. GILBERT: So FHA -- it's an insurance policy. They didn't have it done what they needed to protect their interest to be able to even get their insurance on that. There's nothing that says that you don't have to expound upon or

you don’t have to protect your collateral in able to get your insurance. You can’t set your house on fire and then go collect on your homeowners. That’s exactly what they did here. I think that any interest HUD may have would be way too attenuated and this isn't the party to bring a claim on behalf of HUD.

Also, *Armstrong* says that private parties can't use, you know, federal -- the -- the -- pardon me, Your Honor. Can't use the supremacy clause in order to bring a claim or to fight something like this. It has to be the party. You know, those -- congress decides who gets to make claims on behalf of HUD.

And HUD isn't here; FHA isn't here. They have no interest at this point. They have an insurance policy that they don’t have to pay out on at this point because the bank didn’t do what it was required to do. I think *Freedom Mortgage*, and we briefed it, I think, completely in our -- in our papers, addresses that extremely well.

What we have here are CC&Rs recorded in 2004, a deed of trust given out in 2008, and a foreclosure that took place in 2012 with full noticing. Based on that, we believe that we would get quiet title. As for their claims for unjust enrichment, the bank hasn’t shown that they have anything that would take it out of voluntary payment because they can't show that the taxes even that they paid were not -- were made in defense of property because SFR never had a chance to pay them.

There was no pending sale, something that they -- you

know, or -- or foreclosure by the County going on for taxes, which might have raised it, but they never got there. They just simply paid -- voluntarily paid amounts that they didn't have to because SFR was the title holder of the property. Whether they believe that their deed of trust was extinguished or not, SFR was on title and responsible and they voluntarily paid it. And so I think at that point they haven't shown that it was in defense of property and would be entitled to any refund on that. Thank you, Your Honor.

THE COURT: Thank you, Ms. Gilbert.

Ms. Demaree.

MS. DEMAREE: Thank you, Your Honor. Just to go back to the point that we previously touched on.

THE COURT: Sure.

MS. DEMAREE: Ms. Gilbert argues that the only thing that we can show here is the sale price and price alone isn't enough in this case. Again, I think there is unfairness in this particular sale and it infiltrates the sale process.

Just to note at the outset, Ms. Gilbert mentioned a shifting of burdens. We disagree that there's any sort of shifting of burdens under *Shadow Wood*. And even if there is, that doesn't change the standard of review right now on this motion. There is evidence in the record that the Court must take in the light most favorable to Chase. When you look at that evidence, it includes CC&R provisions that explicitly state

the HOA's lien remains subject to the first deed of trust.

In addition, you have all of the HOA notices that go back and refer to those CC&Rs. So looking at the notices that give rise to the sale, they all claim to be consistent with the CC&Rs that state the HOA's foreclosure is subject to Chase's deed of trust. On top of that we have, again, the testimony of SFR's own sale purchaser that says he thought he was buying something that was subject to a deed of trust. And I think that's evidence that if sale purchasers like SFR who were, you know, leading the charge on these sales believed that, other sale purchasers did, too. There's no other evidence that SFR has put forward to counter that.

So we do have evidence that shows people in the industry thought that they were -- HOAs were selling properties subject to deeds of trust. For that reason it reflects these low, low, low sale prices. So you have a process here where the HOA is making representations saying the deed of trust remains on the property. You then have exceedingly low sale prices that mean there are no excess proceeds to go to lien holders who may have been stripped off by the sale, which is clearly unfair.

So to refute the point raised by Ms. Gilbert that, you know, oh, all we have is sale price, that's simply not reflected in this record. We also pointed out in our briefing an SFR lease agreement. It was an addendum that we actually got from another case because SFR wouldn't provide it to us in this case,

and it shows that they thought that -- there is explicit language in that lease addendum that says a deed of trust holder may have maintained -- or maintained its property after a homeowner sale.

So if you look at those provisions, those are on page 9 of our opposition brief. I think those, again, show that there is evidence that all the actors in these cases were under the impression that the deed of trust was going to remain. In light of that, it absolutely infected the sale process and was unfair.

Ms. Gilbert also mentioned the facial unconstitutionality argument which we are making in this case. And she says that we have no standing to make it because we got actual notice in this case. That's incorrect. If the statute is facially unconstitutional, this Court cannot enforce an unconstitutional statute under any circumstances, and that's what it would be doing here.

Just because the HOA in this case may have gone above and beyond, that does not negate the fact that what SFR is asking is for this Court to say, yeah, maybe this statute is unconstitutional, but I'm going to go ahead and apply it. That's -- that's simply improper.

She also said that there was no state action, and that, again, is untrue. The only reason that the HOA is allowed to extinguish a deed of trust, and, again, I am saying this

after the amendments to the HOA statute. The only reason is because of the statute itself.

This isn't a situation like a deed of trust where the homeowners says, yes, I'll go ahead and make an agreement with you, lender, so if I happen to become delinquent on my mortgage, lender, I am specifically agreeing in this document to let you foreclose on me. This is something that's imposed on the parties by the state, and so there is state action. There is no separate agreement between the HOA and the homeowner in this case. If there was, it would be under the CC&Rs which explicitly state that that HOA's lien is not prior to the deed of trust in this case.

So, again, if you're asking to impose this statute, there is state action by the enactment of the statute. The FHA argument is briefed in our papers. I'm sure Your Court -- or Your Honor has encountered this argument before. So if you have any questions, I'm happy to answer them, but --

THE COURT: I don't.

MS. DEMAREE: Okay.

THE COURT: But if you wish to make a record, please feel free.

MS. DEMAREE: I'll leave it to the briefs. I think our position is set for there. As to the unjust enrichment claim, the voluntary payment doctrine just simply doesn't apply here. If you look at the case law to discussing it, it seeks

repayment from the entity to which the payment was made.

So in this case the voluntary payment doctrine may apply if Chase was seeking to get its payment back from the Clark County Treasurer or from its insurance company. Here they're not. They're saying, look, we paid this, SFR, you had an obligation to pay it. So if for whatever reason, you know, if the deed of trust is determined to be extinguished in this case, you -- you have to pay that back. You don't get a free house and then free tax payments on top of it. That -- it's just completely unfair.

And, again, the voluntary payment doctrine simply doesn't apply. Essentially what SFR would be asking for if that were the case would be a windfall. So if -- unless Your Honor has any other questions, again, you know, I think that at a minimum the ruling on this motion should be continued to the hearing on Chase's motion for summary judgment and after this Court considers the objection to the discovery commissioner's deed of trust.

Because, again, the issue raised in that objection directly implicate evidence that would go the issue of unfairness in the sale. If the Court declines to do that I simply don't think that on this record, given the evidence of unfairness here, the Court, when it takes the evidence in the light most favorable to Chase as it must, I don't think the Court can rule -- or can grant summary judgment to SFR.

THE COURT: Thank you, Ms. Demaree.

Ms. Gilbert, your reply, please.

MS. GILBERT: Thank you, Your Honor. First, as far as any reliance on the CC&Rs, they're saying that the CC&Rs exist and, therefore, you have to look at that in the light most favorable to Chase. That is untrue. SFR said that provision doesn't apply. It simply doesn't apply. And, therefore, nobody could rely on it, and certainly not Chase, and certainly nobody else. The law was the law.

And as both *SFR* and *Shadow Wood* have said that somebody's misinterpretation of the law doesn't give them equity. And if Mr. -- if Mr. Diamond who was the purchaser believed something, misinterpreted the law, it's irrelevant. He was at a sale. He was the highest bidder. The bank didn't show up to bid and make sure that the price went higher.

So that is irrelevant as far as -- as what their unfairness is, what anybody thought. If the price had gone higher, they would have paid more. If the banks hadn't been challenging this, they would have paid more. The purchasers would have paid more. What everybody knew was that the banks were never going to sit by and say, oh, well, of course we're extinguished, that's what the law says.

Even though to say everybody, and they may -- we're getting these huge everybodies and making these huge sweeping statements. Let's be clear, banks knew they could be

extinguished, that's why you have cases in front of you where there are tender issues. If they didn't think that they were at risk, they never would have paid. That this bank didn't take that action is irrelevant. It simply shows they didn't choose to protect it. They put all their eggs in one basket.

As far as the state action, it doesn't exist here. They're saying that the enactment of the statute alone is enough when the legislative acts doctrine. And their chance to say there's no due process here was back in 1991. The fact that they are now under the statute, the timing is wrong. They don't get to raise it.

And they don't get to make a facial challenge because if you could -- if they are saying that there's certain parts of this statute that are -- are potentially unconstitutional, you don't wipe out the whole statute. You take those parts out and then you look and see do they work for them. You don't simply wipe out the whole statute and say this person got constitutional, this person didn't.

But nevertheless, they still haven't come up with a state actor because an HOA foreclosing on its private lien, making a private decision using private actors without state involvement in that, in that process is not a state actor any more than a bank is when it forecloses. And let's be clear. Whatever rights the bank has under its deed of trust arise through its borrower who is bound by the CC&Rs, who understands

they have to pay, and understands that the CC&Rs, certain provisions don't apply.

So to stay we're a stranger here is simply wrong and disingenuous. And, let's be clear, SFR didn't get anything for free. It paid. It paid the highest amount. The bank chose not to be there to protect. It has had to fight for four years over this property. It had to fight over the meaning of the statute, something they all knew because they tried to pay. So the banks knew.

THE COURT: But there's no tender in this case.

MS. GILBERT: But there's no tender in this case. But nevertheless, this bank chose to do nothing although it had notice. Even told its borrower you need to pay. And even though it had a PUD rider in this case that says if you don't pay, we will, and we'll add it to your loan. But it didn't do that, either, even though it got an amount and chose not to pay it.

So to be clear, the bank chose not to do anything to protect its lien in this case other than reach out to others rather than take action itself. And the voluntary acts doctrine, the voluntary -- when we looked at somebody trying to get their money back of payment made on behalf of someone else and trying to get money that was voluntarily paid, they voluntarily paid it. SFR doesn't owe that money to them.

Had they chosen to allow SFR to pay the moneys, the

HOA dues like it does and taxes like it does when it has the ability, they would never have had to come out of pocket. They chose to go forward and pay it. And under that, they're not entitled to reimbursement from anybody. Thank you.

THE COURT: Thank you both.

This is the plaintiff's motion for summary judgment on all causes of action. The motion will be granted for the following reasons. The case has been pending since December 4, 2012, and the defendant simply has provided no evidence to -- to contradict the claims of the plaintiff. The defendant got notices of the sale process, and there's -- there's just no proof that the conduct of the sale was improper here. Price alone is not enough.

The notices of the HOA sale went to the defendant. The homeowners association and the lender told the owner to pay. The *SFR* decision by the Nevada Supreme Court is binding. And while I notice with great interest the *Bourne Valley* case, it simply is not binding on this Court, especially in its current posture.

The Court rejects the argument that the loan was FHA insured. The Court is not applying the *SFR* case in a retroactive. I consider it only as an explanation of what the law is. The Court rejects the mortgage protection argument with regard to Article 13 of the CC&Rs as it did not inure to the benefit of the bank in this case. Even considering the Dugan

appraisal, it simply wasn't enough based upon the lack of any evidence that there was any other problem with the conduct of the sale.

And the Court finds that the defense with regard to the Diamond allegation as to what Diamond thought when he purchased the property is inapplicable based upon the application of law in this case. So for all of those reasons, the plaintiff's motion for summary judgment will be granted. The plaintiff will prepare the order. Make sure the defendant has the ability to review and approve the form of the order. And thank you both.

MS. DEMAREE: Thank you.

MS. GILBERT: Thank you, Your Honor.

(Proceedings concluded at 10:59 a.m.)

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
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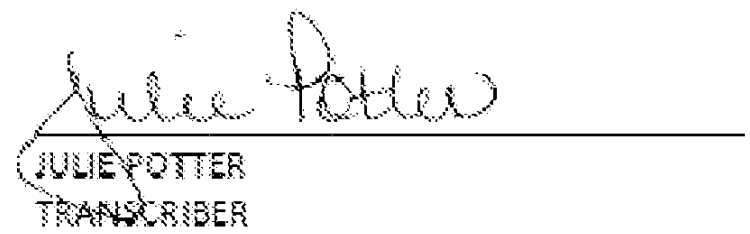

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. VENTA REALTY GROUP, a Nevada corporation, JPMORGAN CHASE BANK, N.A., a national association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL., Defendants.	Case No. A-12-672963-C Dept. No. XXVII **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
JPMORGAN CHASE BANK, N.A., as successor by merger to Chase Home Finance LLC, Counterclaimant, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-defendant.	

This matter came before the Court for hearing on September 15, 2016 at 9:30 a.m. on SFR Investments Pool 1, LLC's ("SFR") motion for summary judgment on SFR's claims against

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)

☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

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JPMorgan Chase Bank, N.A., successor by merger to Chase Home Finance LLC ("Chase" or the "Bank") and on Chase's counterclaims against SFR. Jacqueline A. Gilbert of the law firm of Kim Gilbert Ebron appeared on behalf of SFR. Lindsay C. Demaree of the law firm of Ballard Spahr, LLP appeared on behalf of Chase.

The Court, having considered the briefing on the motions, the pleadings and papers on file herein, and argument of counsel, hereby finds and concludes as follows:[1]

FINDINGS OF UNDISPUTED FACT

The Property and Corresponding Foreclosure Sale

1. Delaine L. Hamed ("Hamed") obtained title to real property commonly known as **1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236** (the "Property") by way of a Grant, Bargain, Sale Deed ("GBS Deed") from U.S. Bank National Association, as Trustee, on behalf of the holders of the Home Equity asset Trust 2006-3 Home Equity Pass Through Certificates, Series 2006-3 by Select Portfolio Servicing, its Attorney in Fact. The GBS Deed was recorded in the Official Records of the Clark County Recorder on May 14, 2008 as Instrument No. 20080514-0005040.

2. Hamed appears to have taken out a loan against the Property, executing a promissory note, and the Deed of Trust ("First DOT") that secured the note in favor of was recorded in the Official Records of the Clark County Recorder on May 14, 2008 as Instrument No. 20080514-0005041. The First DOT named Mortgage Electronic Registration Systems ("MERS") as the beneficiary on behalf of Venta Realty Group, dba Venta Home Loans, a Nevada Corporation ("Venta"), the lender. The First DOT also included a Planned Unit Development Rider that allowed the Lender to pay the Borrower's Association Assessment and add that amount to the Borrower's debt to Lender.

3. The Property is located within the common interest community of Paradise Court ("Association") as referenced in the First DOT. The Association recorded its Declaration of Covenants, Conditions and Restrictions ("CC&Rs") in the Official Records of the Clark County

[1] Any finding of fact that is more properly deemed a conclusion of law shall be so deemed.

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Recorder on May 18, 2004 as Instrument No. 20040518-0001999. The CC&Rs include, *inter alia*, the requirement that homeowners or members of the Association pay periodic assessments to benefit the common-interest community. The CC&Rs also incorporate the provisions of NRS 116.3116 et seq. for non-payment of assessments. The First DOT also included a Planned Unit Development Rider that allowed the Lender to pay the Borrower's Association Assessment and add that amount to the Borrower's debt to Lender.

4. On February 5, 2010, Nevada Association Services ("NAS") on behalf of the Association, recorded a Notice of Delinquent Assessment Lien against the Property. That notice was recorded in the Official Records of the Clark County Recorder as Instrument No. 20100205-0001923 (the operative NODA). The Operative NODA was mailed to Hamed.

5. MERS executed an Assignment of Deed of Trust ("Assignment") transferring all beneficial interest in the First DOT and the underlying note to Chase. The Assignment was recorded in the Official Records of the Clark County Recorder on December 6, 2010, as Instrument No. 20101206000315.

6. The same day Chase recorded a Substitution of Trustee, naming California Reconveyance Company ("CRC"), as Instrument No. 20101206000316. Immediately thereafter, CRC recorded a Notice of Default and Election to Sell Under Deed of Trust ("Bank NOD"), as Instrument No. 20101206000317.

7. CRC recorded a Foreclosure Mediation Certificate on April 12, 2011, as Instrument No. 20110412000199O, stating that Chase could proceed with the foreclosure process.

8. CRC recorded a Notice of Trustee's sale on June 1, 2011, as Instrument No. 20110601000326g, giving a sale date of June 21, 2011. The sale apparently did not take place that day, and on September 29, 2011, CRC recorded another Notice of Trustee's Sale as Instrument No. 20110929000345?, giving a sale date of October 20, 2011. The sale apparently did not take place that day.

9. On March 7, 2012, NAS recorded on behalf of the Association, a Notice of Default and Election to Sell Under Homeowners Association Lien ("Association NOD"), as

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Instrument No. 201203070000441. The Association NOD was mailed to Hamed, Venta, Chase, CRC, and MERS. The Bank does not dispute receiving the Association NOD.

10. Chase did not attempt to pay the Association after receiving the Association NOD.

11. On May 25, 2012, Chase sent a letter to Hamed advising her that she should correct the situation or Chase may initiate appropriate actions to bring the account current per the terms of the mortgage.

12. On August 30, 2012, more than ninety days after recording of the Association NOD, NAS recorded a Notice of Trustee's Sale ("Association NOS"), as Instrument No. 20120830-0003067, giving September 21, 2012 as the sale date. This Association NOS was mailed to Hamed, Venta, Chase, CRC and MERS. Chase received the Association NOS and does not dispute this. The NOS included the following language in larger font than the remainder of the notice: "WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE." The NOS included the contact information for NAS, as agent for the Association. The NOS stated that the sale would take place on November 30, 2012 at 10:00 a.m. and provided the location of the sale. The NOS also stated in all capital letters: "UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE." Chase appears to have taken no action after receipt of the Association NOS.

13. The Association NOS was properly posted and published pursuant to NRS 116.311635.

14. The Association auction took place on September 21, 2012 ("Association Foreclosure Sale"). At that sale, SFR placed a winning bid of $6,100.00. There were multiple bidders in attendance at the sale. No one acting on behalf of the Bank attended the Association Foreclosure Sale.

15. The Foreclosure Deed vesting title in SFR was recorded in the Official Records of

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the Clark County Recorder on September 25, 2012 as Instrument No. 20120925-0001230 ("Foreclosure Deed"). The Foreclosure Deed included the following recitals:

> This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Paradise Court governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein [recorded February 5, 2010]. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 3/7/2012 as instrument # 0000441 Book 10120307 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Paradise Court at public auction on 9/21/2012, at the place indicated on the Notice of Sale.

16. The Bank did not make any payments to the Association or its agent, NAS, prior to the Association Foreclosure Sale nor did the Bank challenge the Association Foreclosure Sale in any administrative or civil proceeding prior to filing its complaint in this case.

Chase Attempts to Foreclose Yet Again

17. On October 11, 2012, Chase substituted National Default Servicing Corporation ("NDSC") in place of CRC via Instrument No. 20121011-0001602. NDSC immediately filed a Notice of Trustee's Sale Under Deed of Trust as Instrument No. 20121011-0001603.

The Lawsuit and Arguments of the Parties

18. On December 4, 2012, SFR filed its complaint for quiet title and declaratory relief against Chase, Harned, Venta, Republic Silver State Disposal, Inc., and the Association, alleging that the Association Foreclosure Sale extinguished the defendants' interest in the Property. SFR also sought injunctive relief against Venta, Chase, CRC and NDSC to prevent them from taking any action to foreclose on, sell, convey, or otherwise enforce any interest against the Property.

19. Chase answered SFR's complaint on January 25, 2013. SFR voluntarily dismissed the Association, CRC, Republic Silver State Disposal, and NDSC by notice or stipulations entered on February 5, 2013, July 15, 2013, July 18, 2013, and February 6, 2014 respectively.

20. Default was entered against Venta on May 14, 2015.

21. On September 18, 2014, the Nevada Supreme Court issued its decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014)("*SFR*

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Decision"), holding that a properly conducted association foreclosure sale will extinguish a first deed of trust.

22. On October 19, 2015, Chase filed an amended answer and counterclaim, asserting a claim for unjust enrichment against SFR.

23. SFR filed its answer to the counterclaim on November 6, 2015.

24. SFR filed its motion for summary judgment on August 11, 2016, seeking judgment on all claims against Chase.

25. Chase filed its motion for summary judgment on September 13, 2016.

26. In SFR's motion for summary judgment

27. In its motion for summary judgment, SFR argued, *inter alia*, that (1) the Association Foreclosure Sale extinguished the First DOT and Chase's interest in the Property, and that the conclusive proof in the Association Foreclosure Deed and presumptions under NRS 47.250 shift the burden to Chase to show that the Association Foreclosure Sale was somehow improper; (2) Chase, as a lienholder, is not entitled to an equitable remedy; (3) the Association Foreclosure Sale vested title in SFR without equity or right of redemption; (4) the Association Foreclosure Sale was commercially reasonable; (4) even if there were irregularities with the sale, they could not be imputed to SFR because SFR is a bona fide purchaser for value; (5) any claims by Chase against the sale are barred by laches; d (6) Chase's unjust enrichment claim failed under the voluntary payment doctrine; and (7) Chase lacks standing to raise either the Supremacy Clause or Property Clause based on the loan allegedly being FHA insured to challenge the Association Foreclosure Sale and that even if able to raise it, there is no preemption, express or implied.

28. In opposition, Chase argued, *inter alia*, that (1) the Association's CC&Rs mortgage protection clause precluded extinguishment and there were material questions of fact as to SFR's BFP status; (2) NRS 116 (the "Statute") is unconstitutional on its face as it does not require homeowner's associations to provide known lienholders with actual notice prior to extinguishing their liens, in violation of the minimum requirements for due process under the United States and Nevada constitutions, relying heavily on the analysis in the recent Ninth Circuit decision in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 15-15233, 2016

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WL 4254983 (9th Cir. Aug. 12, 2016); (3) because the loan was FHA insured, the supremacy clause and property clauses preempt NRS 116; (4) the *SFR Decision* does not apply to this case because the Association Foreclosure Sale took place on September 21, 2012 and the *SFR Decision* does not apply retroactively; (5) the Association Foreclosure sale was "tainted" by unfairness and Chase is entitled to equitable relief; (6) the price paid at the Association Foreclosure sale was "grossly inadequate" and that is enough to void the sale; (7) laches does not apply; and (8) the voluntary payment doctrine does not apply or equity requires payment to Chase on its unjust enrichment claim.

29. SFR's reply addressed its arguments regarding Bourne Valley and constitutionality, the supremacy and property clauses as relating to FHA insurance, commercial reasonableness, retroactively, applying equities pursuant to *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132 Nev. ___, 366 P.3d 1105 (2016), and unjust enrichment.

30. At the hearing, Chase requested that the hearing be continued until its motion for summary judgment could be heard. The Court finds that this was not necessary as all claims were addressed in SFR's motion and therefore denied Chase's oral motion to continue.

CONCLUSIONS OF LAW

Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Declaratory or equitable relief may be adjudicated on summary judgment. *Shadow Wood*, 366 P.3d at 1111. "The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Wood*, 121 Nev. at 731, 121 P.3d at 1031. "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the non-moving party." *Id.* While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden "to do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. *Matsushita Electric Industrial Co. v.*

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Zenith Radio, 475 U.S. 574, 586 (1986), *cited in Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110, 828 P.2d 588, 591 (1992), *cited in Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-moving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Bulbman*, 108 Nev. at 110, 825 P.2d 591, *quoting Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

While the moving party generally bears the burden of proving there is no genuine issue of material fact, in this case there are a number of presumptions that this Court must consider in deciding the issues, including:

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

2. That a foreclosure deed issued pursuant to NRS 116.31164 that includes recitals of "(a) [d]efault, the mailing of the notice of delinquent assessment, and the recoding of the notice of default and election to sell; (b) [t]he elapsing of the 90 days; and (c) [t]he giving of notice of sale, are conclusive proof of the matters recited." NRS 116.31166(1)(a)-(c). Furthermore, "[s]uch a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. NRS 116.31166(2); *SFR Decision*, 334 P.3d at 411-412; *Shadow Wood*, 366 P.3d at 1110.

"A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995)(*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)). "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.* (*citing* NRS

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47.180.). Thus, the Bank bore the burden of proving it was more probable than not that the Association Foreclosure Sale and the Foreclosure Deed were invalid. Furthermore, the Bank bore the burden to overcome the conclusive proof in the Foreclosure Deed recitals, to even be entitled to equity.

Foreclosure Under NRS 116

In 1991, Nevada adopted the Uniform Common Interest Act (1982 version) ("UCIOA"), as NRS Chapter 116, effective January 1, 1992. *SFR Decision*, 334 P.3d at 410. Pursuant to NRS 116.3116(2) and the CC&Rs, an association has a lien for assessments, a portion of which has priority over a first security interest. *SFR Decision*, 334 P.3d at 411. NRS 116.31162 - 116.31168 provides the means for an association to foreclose on its lien non-judicially.[2] Id. When an association properly forecloses on its lien by sale it will extinguish all junior liens on the property, including a first deed of trust. Id. at 419.

Constitutionality of the Statute

Chase argues that the Statute is unconstitutional on its face as it violates the due process clauses of the Fourteenth Amendment of the United States Constitution as well as the Nevada Constitution. It also relies heavily on the analysis in the *Bourne Valley* decision by the 9th Circuit. It claims that the Statute does not require a homeowner's association to provide actual notice of its foreclosure efforts to lenders and other secured parties with a recorded interest in a property before the association extinguishes its lien at an association foreclosure sale. Instead, the Bank argues that the Statute places the burden on the lender to affirmatively "opt in" and request notice. SFR argues that the Bank lacks standing to assert a due process challenge in this case because it received actual notice of the Association Foreclosure Sale as required by NRS 116. Even if it had standing to assert such a challenge, SFR argues that the Nevada Supreme Court already rejected the constitutional challenge of the Statute, facially and as applied, in the *SFR Decision*. SFR also argues that the Statute does not violate due process as it does not

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[2] All references to NRS 116 are to the statutes as they existed at the time of the Association Foreclosure Sale in 2012.

involve a state action and a state actor. Finally, SFR argues that the Statute is constitutional as it requires notice to be sent to all junior lienholders before their interests are extinguished.

This Court recognizes the Bourne Valley opinion but rejects the analysis and notes that the Bourne Valley decision is not binding on this Court. Further, the Court rejects the construction offered by Chase. This Court concludes that the Statute is constitutional, as it requires notice to be sent to all junior lienholders prior to the extinguishment of their interests in the subject property based on the express incorporation of NRS 107.090 by NRS 116.31168.

Furthermore, here, the Bank provided no evidence to contradict the evidence that it received the Association's foreclosure notices.

Retroactive Application of the SFR Decision

This Court rejects Chase's argument that the SFR Decision should not be applied retroactively. First, the Court finds that Chase failed to raise this retroactively argument as an affirmative defenseThe Nevada Supreme Court, in the *SFR Decision*, did not announce a new rule of law. It interpreted existing statutes and law. Retroactivity concerns are removed from the statutory construction context because, "'[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.'" Morales-Izquierdo v. Dept. of Homeland Sec., 600 F.3d 1076, 1087-88 (2010) (quoting Rivers v. Roadway Express, Inc., 511 U.S. 298, 312–13 (1994)) (overruled in part on other grounds by Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (2012)). When a court interprets a statute, "'it is explaining its understanding of what the statute has meant continuously since the date when it became law.'" Morales-Izquierdo, 600 F.3d at 1088 (quoting Rivers, 511 U.S. at 313 n.12). Consequently, judicial interpretations are given "[f]ull retroactive effect[.]" Morales-Izquierdo, 600 F.3d at 1008 (quoting Harper, 509 U.S. at 97).

FHA Insurance

Chase argues that the First DOT is protected by the Supremacy and Property Clauses of the United States Constitution and, therefore, NRS 116 is preempted. This Court rejects these arguments. The Court finds persuasive and adopts the analysis set forth by the Hon. Jennifer Dorsey in *Freedom Mortgage Corp. v. Las Vegas Development Grp., LLC*, 106 F.Supp.3d 1174

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(D.Nev. 2015). As discussed therein, HUD is not a party to this litigation and nothing provides that Chase has standing to raise the Property Clause to protect HUD's alleged interest in the Property, and further, this Court deems the insurance interest to be too attenuated to implicate the Property clause. Additionally, the Court finds there is neither express nor conflict preemption, as Chase could have complied with both NRS 116 and HUD's policies and procedures. Finally, pursuant to *Armstrong v. Exceptional Child Care Ctr, Inc.*, 135 S.Ct. 1378 (2015), this Court concludes that Chase, as a private litigant, cannot rely on the Supremacy Clause in any case to challenge NRS 116.

Price Paid for the Property

The Bank argues that the price SFR paid for the Property, $5,100.00, was grossly inadequate as a matter of law. The Bank argues that, under the Restatement, a sale price is "grossly inadequate" if it is less than 20 percent of the property's fair market value. The Bank claims that the Association Foreclosure Sale should be invalidated as SFR paid only 7.4% of what it deemed the Property's value.[3] SFR argues that the Nevada Supreme Court has not adopted the Restatement and that price alone is not enough to set aside the Association Foreclosure Sale. For that to be accomplished, there must also be evidence of fraud, oppression, or unfairness. Furthermore SFR contested the value placed by Chase on the Property.[4]

With regards to the price paid for the Property, this Court does not believe the Nevada Supreme Court has adopted a 20 percent absolute threshold. Price alone is not enough to void an association foreclosure sale. In addition to a low price, there would have to be to be evidence of fraud, oppression, or unfairness in the conduct of the sales process itself, which is the important event. Without such evidence, this Court need not determine the actual value of the Property at the time of the sale. *See Oller v. Sonoma County Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955) ("Since inadequacy of price is not alone ground for setting aside the sale, the failure of the court to find upon the value of the property is immaterial."), cited with approval in

[3] Chase relied on an expert report that purported to do a retroactive analysis of the Property's fair market value

[4] Chase relied on an

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Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 994 (1963).

Sale Process

The Bank argues that in addition to the low price paid for the Property, the Association Foreclosure Sale should be declared void as it contained the following irregularities. First Chase argues that there was a mortgage savings clause in the CC&Rs. But it presents no evidence that it relied on the clause or that anyone else relied on that clause such that it caused the allegedly inadequate price paid at the sale. And the *SFR Decision* made it clear that the mortgage savings clause has been unenforceable since inception. Second, the Bank argues that no competitive bidding took place at the Association Foreclosure Sale. The Bank argues there were only two bidders at the sale. Chase goes on to argue that while the Association Foreclosure Sale was noticed in accordance with the law, as commercially required, NAS did not make any additional efforts to maximize the publicity of the sale. However, Chase provides no evidence that the sale was not properly noticed pursuant to statute. It had actual notice of the sale and, in fact, contacted its own borrower regarding the delinquency. The Bank knew how much it needed to pay to stop the sale because the amounts were clearly stated in the notices Chase admits it received. The Bank could have paid that amount, even under protest, to protect its interest in the Property but failed to do so. Chase could have attended the sale itself and did not. Third, Chase argues that there is evidence that the proceeds of the sale were not properly distributed. However, pursuant to statute, SFR has no responsibility for proper distribution. NRS 116.31166(2). Additionally, this goes only to post-sale actions, not pre-sale. Finally, Chase argues that SFR's purchasing agent, Robert Diamond, may have believed SFR was taking title subject to the First DOT. However, Mr. Diamond's personal beliefs are irrelevant to the actual conduct of the sale. None of the facts on which Chase relies are enough to overcome the presumption and evidence of the validity of the sale.

This Court does not find any evidence of fraud, oppression, or unfairness that would justify setting aside the Association Foreclosure Sale in this case. There is no evidence to suggest the Association Foreclosure Sale was not conducted properly in this case. All statutorily required notices were provided to all relevant parties, including Chase, and the price

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SFR paid for the Property is not proof of any fraud, oppression, or unfairness. Thus, this Court concludes the Association Foreclosure Sale was properly held and, pursuant to the SFR Decision, extinguished the First DOT.

Equitable Analysis

While this Court does not believe an equitable analysis is required as the Bank failed to set forth any evidence of fraud, oppression, or unfairness that would justify setting aside the Association Foreclosure Sale, if it were to consider equity in this case, the weight supports judgment in favor of SFR. Here, the Bank admits it received the NOD and NOS. The Bank also admits that it did not make a tender to the Association or its agent, NAS, to protect its interest in the Property but merely requested a payoff amount. Despite knowing when the Association Foreclosure Sale was scheduled to take place, the Bank did not make any attempt to stop the sale by filing a lawsuit to seek injunctive relief. The Bank had numerous options available to protect its interest in the Property, including, among other things, attending the Association Foreclosure Sale itself, but did not pursue them.

Given this, equity favors SFR in this case.

Unjust Enrichment

Chase claimed that if title was quieted in SFR's name, SFR was unjustly enriched by Chase's payment of property taxes and for insurance on the Property. SFR argues that Chase's claim is barred by the voluntary payment doctrine, which precludes reimbursement for voluntarily paid expenses that do not meet an exception, such as business compulsion or defense of property. SFR argues specifically that "money voluntarily paid, with full knowledge of all the facts, although no obligation to make such payment existed, cannot be recovered back." *Nevada Ass'n Services, Inc. v. Eighth Judicial Dist. Ct.*, 130 Nev. ___, 338 P.3d 1250, 1253 (2014). Further, SFR argues that any insurance on the Property that Chase paid was for its own benefit unless it admitted and showed that Chase named SFR as an additional insured. Chase argues the doctrine does not apply, that it did not have full knowledge of the facts or, in the alterative, that equity demands reimbursement.

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The Court is persuaded by *Nevada Ass'n Services, Inc. v. Eighth Judicial Dist. Ct.*, 130 Nev. ____, 338 P.3d 1250 (2014), in which the Nevada Supreme Court recognized that voluntary payment of expenses without meeting an exception precludes recovery for unjust enrichment. SFR had the burden to show the alleged payments were voluntary, and then Chase had the burden to show an exception existed to the voluntary payment doctrine. *Id.* at 1254. The two exceptions are (1) coercion or duress caused by a business necessity and (2) payment in defense of property.

Here, Chase knew that SFR had title to the Property and, as such, had an obligation to maintain the Property, by paying assessments, taxes, and insurance. Chase never demonstrated that it paid the property taxes in order to stop an imminent foreclosure by the taxing authority, or that SFR would not have paid the property taxes if Chase had not done so. Furthermore, Chase never argued that SFR would somehow benefit from whatever insurance Chase maintained on the Property. Thus, Chase cannot claim that it was either coerced or paid in defense of property. Accordingly, the payments made by Chase, which was aware that the title would pass from its borrower if the Association foreclosed, were made voluntarily and with full knowledge of the facts, even if it allegedly misapprehended the law at the time of the sale. SFR is entitled to summary judgment on Chase's unjust enrichment claim.

For the reasons stated above and good cause appearing,

IT IS HEREBY ORDERED that SFR's motion for summary judgment is GRANTED in its entirety.

IT IS FURTHER ORDERED that the Bank's motion for summary judgment is moot and shall be denied as such and the hearing vacated.

IT IS FURTHER ORDERED that the First DOT recorded against the Property commonly known as 1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236 was extinguished by the Association Foreclosure Sale.

IT IS FURTHER ORDERED that Chase had no interest in the Property after the Association Foreclosure Sale on September 21, 2012 and is hereby permanently enjoined from taking any action to enforce the First DOT recorded on May 14, 2008 as Instrument No.

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20080514-0005041. This order does not preclude, limit, or in any way restrict any remedies available under the promissory note that was secured by the First DOT.

IT IS FURTHER ORDERED that title to the Property commonly known as 1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236 is hereby quieted in favor of SFR Investments Pool 1, LLC.

IT IS SO ORDERED.

DATED this 25 day of October, 2016.

DISTRICT COURT JUDGE

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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, JPMORGAN CHASE BANK, N.A., a national association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL.,

Defendants.

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

Counterclaimant,

vs.

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

Counter-defendant.

Case No. A-12-672963-C

Dept. No. XXVII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PLEASE TAKE NOTICE that on October 26, 2016 this Court entered a **Findings of**

///

Fact, Conclusions of Law, and Order. A copy of said Findings of Fact, Conclusions of Law, and Order is attached hereto.

DATED this 27th day of October, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** to the following parties:

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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, JPMORGAN CHASE BANK, N.A., a national association, successor by merger to CHASE HOME FINANCE LLC, a foreign limited liability corporation, ET AL., Defendants.	Case No. A-12-672963-C Dept. No. XXVII **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
JPMORGAN CHASE BANK, N.A., as successor by merger to Chase Home Finance LLC, Counterclaimant, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-defendant.	

This matter came before the Court for hearing on September 15, 2016 at 9:30 a.m. on SFR Investments Pool 1, LLC's ("SFR") motion for summary judgment on SFR's claims against

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)

☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

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JPMorgan Chase Bank, N.A., successor by merger to Chase Home Finance LLC ("Chase" or the "Bank") and on Chase's counterclaims against SFR. Jacqueline A. Gilbert of the law firm of Kim Gilbert Ebron appeared on behalf of SFR. Lindsay C. Demaree of the law firm of Ballard Spahr, LLP appeared on behalf of Chase.

The Court, having considered the briefing on the motions, the pleadings and papers on file herein, and argument of counsel, hereby finds and concludes as follows:[1]

FINDINGS OF UNDISPUTED FACT

The Property and Corresponding Foreclosure Sale

1. Delaine L. Harned ("Harned") obtained title to real property commonly known as **1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236** (the "Property") by way of a Grant, Bargain, Sale Deed ("GBS Deed") from U.S. Bank National Association, as Trustee, on behalf of the holders of the Home Equity asset Trust 2006-3 Home Equity Pass Through Certificates, Series 2006-3 by Select Portfolio Servicing, its Attorney in Fact. The GBS Deed was recorded in the Official Records of the Clark County Recorder on May 14, 2008 as Instrument No. 20080514-0005040.

2. Hamed appears to have taken out a loan against the Property, executing a promissory note, and the Deed of Trust ("First DOT") that secured the note in favor of was recorded in the Official Records of the Clark County Recorder on May 14, 2008 as Instrument No. 20080514-0005041. The First DOT named Mortgage Electronic Registration Systems ("MERS") as the beneficiary on behalf of Venta Realty Group, dba Venta Home Loans, a Nevada Corporation ("Venta"), the lender. The First DOT also included a Planned Unit Development Rider that allowed the Lender to pay the Borrower's Association Assessment and add that amount to the Borrower's debt to Lender.

3. The Property is located within the common interest community of Paradise Court ("Association") as referenced in the First DOT. The Association recorded its Declaration of Covenants, Conditions and Restrictions ("CC&Rs") in the Official Records of the Clark County

[1] Any finding of fact that is more properly deemed a conclusion of law shall be so deemed.

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Recorder on May 18, 2004 as Instrument No. 20040518-0001999. The CC&Rs include, *inter alia*, the requirement that homeowners or members of the Association pay periodic assessments to benefit the common-interest community. The CC&Rs also incorporate the provisions of NRS 116.3116 et seq. for non-payment of assessments. The First DOT also included a Planned Unit Development Rider that allowed the Lender to pay the Borrower's Association Assessment and add that amount to the Borrower's debt to Lender.

4. On February 5, 2010, Nevada Association Services ("NAS") on behalf of the Association, recorded a Notice of Delinquent Assessment Lien against the Property. That notice was recorded in the Official Records of the Clark County Recorder as Instrument No. 20100205-0001923 (the operative NODA). The Operative NODA was mailed to Hamed.

5. MERS executed an Assignment of Deed of Trust ("Assignment") transferring all beneficial interest in the First DOT and the underlying note to Chase. The Assignment was recorded in the Official Records of the Clark County Recorder on December 6, 2010, as Instrument No. 20101206000315.

6. The same day Chase recorded a Substitution of Trustee, naming California Reconveyance Company ("CRC"), as Instrument No. 20101206000316. Immediately thereafter, CRC recorded a Notice of Default and Election to Sell Under Deed of Trust ("Bank NOD"), as Instrument No. 20101206000317.

7. CRC recorded a Foreclosure Mediation Certificate on April 12, 2011, as Instrument No. 20110412000199O, stating that Chase could proceed with the foreclosure process.

8. CRC recorded a Notice of Trustee's sale on June 1, 2011, as Instrument No. 20110601000326 9, giving a sale date of June 21, 2011. The sale apparently did not take place that day, and on September 29, 2011, CRC recorded another Notice of Trustee's Sale as Instrument No. 20110929000345 7, giving a sale date of October 20, 2011. The sale apparently did not take place that day.

9. On March 7, 2012, NAS recorded on behalf of the Association, a Notice of Default and Election to Sell Under Homeowners Association Lien ("Association NOD"), as

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Instrument No. 20120307000441. The Association NOD was mailed to Hamed, Venta, Chase, CRC, and MERS. The Bank does not dispute receiving the Association NOD.

10. Chase did not attempt to pay the Association after receiving the Association NOD.

11. On May 25, 2012, Chase sent a letter to Hamed advising her that she should correct the situation or Chase may initiate appropriate actions to bring the account current per the terms of the mortgage.

12. On August 30, 2012, more than ninety days after recording of the Association NOD, NAS recorded a Notice of Trustee's Sale ("Association NOS"), as Instrument No. 20120830-0003067, giving September 21, 2012 as the sale date. This Association NOS was mailed to Hamed, Venta, Chase, CRC and MERS. Chase received the Association NOS and does not dispute this. The NOS included the following language in larger font than the remainder of the notice: "WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE." The NOS included the contact information for NAS, as agent for the Association. The NOS stated that the sale would take place on November 30, 2012 at 10:00 a.m. and provided the location of the sale. The NOS also stated in all capital letters: "UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE." Chase appears to have taken no action after receipt of the Association NOS.

13. The Association NOS was properly posted and published pursuant to NRS 116.311635.

14. The Association auction took place on September 21, 2012 ("Association Foreclosure Sale"). At that sale, SFR placed a winning bid of $6,100.00. There were multiple bidders in attendance at the sale. No one acting on behalf of the Bank attended the Association Foreclosure Sale.

15. The Foreclosure Deed vesting title in SFR was recorded in the Official Records of

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the Clark County Recorder on September 25, 2012 as Instrument No. 20120925-0001230 ("Foreclosure Deed"). The Foreclosure Deed included the following recitals:

> This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Paradise Court governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein [recorded February 5, 2010]. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 3/7/2012 as instrument # 0000441 Book 10120307 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Paradise Court at public auction on 9/21/2012, at the place indicated on the Notice of Sale.

16. The Bank did not make any payments to the Association or its agent, NAS, prior to the Association Foreclosure Sale nor did the Bank challenge the Association Foreclosure Sale in any administrative or civil proceeding prior to filing its complaint in this case.

Chase Attempts to Foreclose Yet Again

17. On October 11, 2012, Chase substituted National Default Servicing Corporation ("NDSC") in place of CRC via Instrument No. 20121011-0001602. NDSC immediately filed a Notice of Trustee's Sale Under Deed of Trust as Instrument No. 20121011-0001603.

The Lawsuit and Arguments of the Parties

18. On December 4, 2012, SFR filed its complaint for quiet title and declaratory relief against Chase, Harned, Venta, Republic Silver State Disposal, Inc., and the Association, alleging that the Association Foreclosure Sale extinguished the defendants' interest in the Property. SFR also sought injunctive relief against Venta, Chase, CRC and NDSC to prevent them from taking any action to foreclose on, sell, convey, or otherwise enforce any interest against the Property.

19. Chase answered SFR's complaint on January 25, 2013. SFR voluntarily dismissed the Association, CRC, Republic Silver State Disposal, and NDSC by notice or stipulations entered on February 5, 2013, July 15, 2013, July 18, 2013, and February 6, 2014 respectively.

20. Default was entered against Venta on May 14, 2015.

21. On September 18, 2014, the Nevada Supreme Court issued its decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014)("*SFR*

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Decision"), holding that a properly conducted association foreclosure sale will extinguish a first deed of trust.

22. On October 19, 2015, Chase filed an amended answer and counterclaim, asserting a claim for unjust enrichment against SFR.

23. SFR filed its answer to the counterclaim on November 6, 2015.

24. SFR filed its motion for summary judgment on August 11, 2016, seeking judgment on all claims against Chase.

25. Chase filed its motion for summary judgment on September 13, 2016.

26. In SFR's motion for summary judgment

27. In its motion for summary judgment, SFR argued, *inter alia*, that (1) the Association Foreclosure Sale extinguished the First DOT and Chase's interest in the Property, and that the conclusive proof in the Association Foreclosure Deed and presumptions under NRS 47.250 shift the burden to Chase to show that the Association Foreclosure Sale was somehow improper; (2) Chase, as a lienholder, is not entitled to an equitable remedy; (3) the Association Foreclosure Sale vested title in SFR without equity or right of redemption; (4) the Association Foreclosure Sale was commercially reasonable; (4) even if there were irregularities with the sale, they could not be imputed to SFR because SFR is a bona fide purchaser for value; (5) any claims by Chase against the sale are barred by laches; d (6) Chase's unjust enrichment claim failed under the voluntary payment doctrine; and (7) Chase lacks standing to raise either the Supremacy Clause or Property Clause based on the loan allegedly being FHA insured to challenge the Association Foreclosure Sale and that even if able to raise it, there is no preemption, express or implied.

28. In opposition, Chase argued, *inter alia*, that (1) the Association's CC&Rs mortgage protection clause precluded extinguishment and there were material questions of fact as to SFR's BFP status; (2) NRS 116 (the "Statute") is unconstitutional on its face as it does not require homeowner's associations to provide known lienholders with actual notice prior to extinguishing their liens, in violation of the minimum requirements for due process under the United States and Nevada constitutions, relying heavily on the analysis in the recent Ninth Circuit decision in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 15-15233, 2016

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WL 4254983 (9th Cir. Aug. 12, 2016); (3) because the loan was FHA insured, the supremacy clause and property clauses preempt NRS 116; (4) the *SFR Decision* does not apply to this case because the Association Foreclosure Sale took place on September 21, 2012 and the *SFR Decision* does not apply retroactively; (5) the Association Foreclosure sale was "tainted" by unfairness and Chase is entitled to equitable relief; (6) the price paid at the Association Foreclosure sale was "grossly inadequate" and that is enough to void the sale; (7) laches does not apply; and (8) the voluntary payment doctrine does not apply or equity requires payment to Chase on its unjust enrichment claim.

29. SFR's reply addressed its arguments regarding Bourne Valley and constitutionality, the supremacy and property clauses as relating to FHA insurance, commercial reasonableness, retroactively, applying equities pursuant to *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132 Nev. ___, 366 P.3d 1105 (2016), and unjust enrichment.

30. At the hearing, Chase requested that the hearing be continued until its motion for summary judgment could be heard. The Court finds that this was not necessary as all claims were addressed in SFR's motion and therefore denied Chase's oral motion to continue.

CONCLUSIONS OF LAW

Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Declaratory or equitable relief may be adjudicated on summary judgment. *Shadow Wood*, 366 P.3d at 1111. "The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Wood*, 121 Nev. at 731, 121 P.3d at 1031. "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the non-moving party." *Id.* While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden "to do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. *Matsushita Electric Industrial Co. v.*

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Zenith Radio, 475 U.S. 574, 586 (1986), *cited in Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110, 828 P.2d 588, 591 (1992), *cited in Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-moving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Bulbman*, 108 Nev. at 110, 825 P.2d 591, *quoting Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

While the moving party generally bears the burden of proving there is no genuine issue of material fact, in this case there are a number of presumptions that this Court must consider in deciding the issues, including:

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

2. That a foreclosure deed issued pursuant to NRS 116.31164 that includes recitals of "(a) [d]efault, the mailing of the notice of delinquent assessment, and the recoding of the notice of default and election to sell; (b) [t]he elapsing of the 90 days; and (c) [t]he giving of notice of sale, are conclusive proof of the matters recited." NRS 116.31166(1)(a)-(c). Furthermore, "[s]uch a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. NRS 116.31166(2); *SFR Decision*, 334 P.3d at 411-412; *Shadow Wood*, 366 P.3d at 1110.

"A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995)(*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)). "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.* (*citing* NRS

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47.180.). Thus, the Bank bore the burden of proving it was more probable than not that the Association Foreclosure Sale and the Foreclosure Deed were invalid. Furthermore, the Bank bore the burden to overcome the conclusive proof in the Foreclosure Deed recitals, to even be entitled to equity.

Foreclosure Under NRS 116

In 1991, Nevada adopted the Uniform Common Interest Act (1982 version) ("UCIOA"), as NRS Chapter 116, effective January 1, 1992. *SFR Decision*, 334 P.3d at 410. Pursuant to NRS 116.3116(2) and the CC&Rs, an association has a lien for assessments, a portion of which has priority over a first security interest. *SFR Decision*, 334 P.3d at 411. NRS 116.31162 - 116.31168 provides the means for an association to foreclose on its lien non-judicially.[2] Id. When an association properly forecloses on its lien by sale it will extinguish all junior liens on the property, including a first deed of trust. Id. at 419.

Constitutionality of the Statute

Chase argues that the Statute is unconstitutional on its face as it violates the due process clauses of the Fourteenth Amendment of the United States Constitution as well as the Nevada Constitution. It also relies heavily on the analysis in the *Bourne Valley* decision by the 9th Circuit. It claims that the Statute does not require a homeowner's association to provide actual notice of its foreclosure efforts to lenders and other secured parties with a recorded interest in a property before the association extinguishes its lien at an association foreclosure sale. Instead, the Bank argues that the Statute places the burden on the lender to affirmatively "opt in" and request notice. SFR argues that the Bank lacks standing to assert a due process challenge in this case because it received actual notice of the Association Foreclosure Sale as required by NRS 116. Even if it had standing to assert such a challenge, SFR argues that the Nevada Supreme Court already rejected the constitutional challenge of the Statute, facially and as applied, in the *SFR Decision*. SFR also argues that the Statute does not violate due process as it does not

[2] All references to NRS 116 are to the statutes as they existed at the time of the Association Foreclosure Sale in 2012.

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involve a state action and a state actor. Finally, SFR argues that the Statute is constitutional as it requires notice to be sent to all junior lienholders before their interests are extinguished.

This Court recognizes the Bourne Valley opinion but rejects the analysis and notes that the Bourne Valley decision is not binding on this Court. Further, the Court rejects the construction offered by Chase. This Court concludes that the Statute is constitutional, as it requires notice to be sent to all junior lienholders prior to the extinguishment of their interests in the subject property based on the express incorporation of NRS 107.090 by NRS 116.31168.

Furthermore, here, the Bank provided no evidence to contradict the evidence that it received the Association's foreclosure notices.

Retroactive Application of the SFR Decision

This Court rejects Chase's argument that the SFR Decision should not be applied retroactively. First, the Court finds that Chase failed to raise this retroactively argument as an affirmative defenseThe Nevada Supreme Court, in the *SFR Decision*, did not announce a new rule of law. It interpreted existing statutes and law. Retroactivity concerns are removed from the statutory construction context because, "'[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.'" Morales-Izquierdo v. Dept. of Homeland Sec., 600 F.3d 1076, 1087-88 (2010) (quoting Rivers v. Roadway Express, Inc., 511 U.S. 298, 312–13 (1994)) (overruled in part on other grounds by Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (2012)). When a court interprets a statute, "'it is explaining its understanding of what the statute has meant continuously since the date when it became law.'" Morales-Izquierdo, 600 F.3d at 1088 (quoting Rivers, 511 U.S. at 313 n.12). Consequently, judicial interpretations are given "[f]ull retroactive effect[.]" Morales-Izquierdo, 600 F.3d at 1008 (quoting Harper, 509 U.S. at 97).

FHA Insurance

Chase argues that the First DOT is protected by the Supremacy and Property Clauses of the United States Constitution and, therefore, NRS 116 is preempted. This Court rejects these arguments. The Court finds persuasive and adopts the analysis set forth by the Hon. Jennifer Dorsey in *Freedom Mortgage Corp. v. Las Vegas Development Grp., LLC*, 106 F.Supp.3d 1174

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(D.Nev. 2015). As discussed therein, HUD is not a party to this litigation and nothing provides that Chase has standing to raise the Property Clause to protect HUD's alleged interest in the Property, and further, this Court deems the insurance interest to be too attenuated to implicate the Property clause. Additionally, the Court finds there is neither express nor conflict preemption, as Chase could have complied with both NRS 116 and HUD's policies and procedures. Finally, pursuant to *Armstrong v. Exceptional Child Care Ctr, Inc.*, 135 S.Ct. 1378 (2015), this Court concludes that Chase, as a private litigant, cannot rely on the Supremacy Clause in any case to challenge NRS 116.

Price Paid for the Property

The Bank argues that the price SFR paid for the Property, $5,100.00, was grossly inadequate as a matter of law. The Bank argues that, under the Restatement, a sale price is "grossly inadequate" if it is less than 20 percent of the property's fair market value. The Bank claims that the Association Foreclosure Sale should be invalidated as SFR paid only 7.4% of what it deemed the Property's value.[3] SFR argues that the Nevada Supreme Court has not adopted the Restatement and that price alone is not enough to set aside the Association Foreclosure Sale. For that to be accomplished, there must also be evidence of fraud, oppression, or unfairness. Furthermore SFR contested the value placed by Chase on the Property.[4]

With regards to the price paid for the Property, this Court does not believe the Nevada Supreme Court has adopted a 20 percent absolute threshold. Price alone is not enough to void an association foreclosure sale. In addition to a low price, there would have to be to be evidence of fraud, oppression, or unfairness in the conduct of the sales process itself, which is the important event. Without such evidence, this Court need not determine the actual value of the Property at the time of the sale. *See Oller v. Sonoma County Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955) ("Since inadequacy of price is not alone ground for setting aside the sale, the failure of the court to find upon the value of the property is immaterial."), cited with approval in

[3] Chase relied on an expert report that purported to do a retroactive analysis of the Property's fair market value

[4] Chase relied on an

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Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 994 (1963).

Sale Process

The Bank argues that in addition to the low price paid for the Property, the Association Foreclosure Sale should be declared void as it contained the following irregularities. First Chase argues that there was a mortgage savings clause in the CC&Rs. But it presents no evidence that it relied on the clause or that anyone else relied on that clause such that it caused the allegedly inadequate price paid at the sale. And the *SFR Decision* made it clear that the mortgage savings clause has been unenforceable since inception. Second, the Bank argues that no competitive bidding took place at the Association Foreclosure Sale. The Bank argues there were only two bidders at the sale. Chase goes on to argue that while the Association Foreclosure Sale was noticed in accordance with the law, as commercially required, NAS did not make any additional efforts to maximize the publicity of the sale. However, Chase provides no evidence that the sale was not properly noticed pursuant to statute. It had actual notice of the sale and, in fact, contacted its own borrower regarding the delinquency. The Bank knew how much it needed to pay to stop the sale because the amounts were clearly stated in the notices Chase admits it received. The Bank could have paid that amount, even under protest, to protect its interest in the Property but failed to do so. Chase could have attended the sale itself and did not. Third, Chase argues that there is evidence that the proceeds of the sale were not properly distributed. However, pursuant to statute, SFR has no responsibility for proper distribution. NRS 116.31166(2). Additionally, this goes only to post-sale actions, not pre-sale. Finally, Chase argues that SFR's purchasing agent, Robert Diamond, may have believed SFR was taking title subject to the First DOT. However, Mr. Diamond's personal beliefs are irrelevant to the actual conduct of the sale. None of the facts on which Chase relies are enough to overcome the presumption and evidence of the validity of the sale.

This Court does not find any evidence of fraud, oppression, or unfairness that would justify setting aside the Association Foreclosure Sale in this case. There is no evidence to suggest the Association Foreclosure Sale was not conducted properly in this case. All statutorily required notices were provided to all relevant parties, including Chase, and the price

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SFR paid for the Property is not proof of any fraud, oppression, or unfairness. Thus, this Court concludes the Association Foreclosure Sale was properly held and, pursuant to the SFR Decision, extinguished the First DOT.

Equitable Analysis

While this Court does not believe an equitable analysis is required as the Bank failed to set forth any evidence of fraud, oppression, or unfairness that would justify setting aside the Association Foreclosure Sale, if it were to consider equity in this case, the weight supports judgment in favor of SFR. Here, the Bank admits it received the NOD and NOS. The Bank also admits that it did not make a tender to the Association or its agent, NAS, to protect its interest in the Property but merely requested a payoff amount. Despite knowing when the Association Foreclosure Sale was scheduled to take place, the Bank did not make any attempt to stop the sale by filing a lawsuit to seek injunctive relief. The Bank had numerous options available to protect its interest in the Property, including, among other things, attending the Association Foreclosure Sale itself, but did not pursue them.

Given this, equity favors SFR in this case.

Unjust Enrichment

Chase claimed that if title was quieted in SFR's name, SFR was unjustly enriched by Chase's payment of property taxes and for insurance on the Property. SFR argues that Chase's claim is barred by the voluntary payment doctrine, which precludes reimbursement for voluntarily paid expenses that do not meet an exception, such as business compulsion or defense of property. SFR argues specifically that "money voluntarily paid, with full knowledge of all the facts, although no obligation to make such payment existed, cannot be recovered back." *Nevada Ass'n Services, Inc. v. Eighth Judicial Dist. Ct.*, 130 Nev. ___, 338 P.3d 1250, 1253 (2014). Further, SFR argues that any insurance on the Property that Chase paid was for its own benefit unless it admitted and showed that Chase named SFR as an additional insured. Chase argues the doctrine does not apply, that it did not have full knowledge of the facts or, in the alterative, that equity demands reimbursement.

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The Court is persuaded by *Nevada Ass'n Services, Inc. v. Eighth Judicial Dist. Ct.*, 130 Nev. ____, 338 P.3d 1250 (2014), in which the Nevada Supreme Court recognized that voluntary payment of expenses without meeting an exception precludes recovery for unjust enrichment. SFR had the burden to show the alleged payments were voluntary, and then Chase had the burden to show an exception existed to the voluntary payment doctrine. *Id.* at 1254. The two exceptions are (1) coercion or duress caused by a business necessity and (2) payment in defense of property.

Here, Chase knew that SFR had title to the Property and, as such, had an obligation to maintain the Property, by paying assessments, taxes, and insurance. Chase never demonstrated that it paid the property taxes in order to stop an imminent foreclosure by the taxing authority, or that SFR would not have paid the property taxes if Chase had not done so. Furthermore, Chase never argued that SFR would somehow benefit from whatever insurance Chase maintained on the Property. Thus, Chase cannot claim that it was either coerced or paid in defense of property. Accordingly, the payments made by Chase, which was aware that the title would pass from its borrower if the Association foreclosed, were made voluntarily and with full knowledge of the facts, even if it allegedly misapprehended the law at the time of the sale. SFR is entitled to summary judgment on Chase's unjust enrichment claim.

For the reasons stated above and good cause appearing,

IT IS HEREBY ORDERED that SFR's motion for summary judgment is GRANTED in its entirety.

IT IS FURTHER ORDERED that the Bank's motion for summary judgment is moot and shall be denied as such and the hearing vacated.

IT IS FURTHER ORDERED that the First DOT recorded against the Property commonly known as 1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236 was extinguished by the Association Foreclosure Sale.

IT IS FURTHER ORDERED that Chase had no interest in the Property after the Association Foreclosure Sale on September 21, 2012 and is hereby permanently enjoined from taking any action to enforce the First DOT recorded on May 14, 2008 as Instrument No.

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20080514-0005041. This order does not preclude, limit, or in any way restrict any remedies available under the promissory note that was secured by the First DOT.

IT IS FURTHER ORDERED that title to the Property commonly known as 1076 Slate Crossing #2, Henderson, Nevada 89002; Parcel No. 179-34-713-236 is hereby quieted in favor of SFR Investments Pool 1, LLC.

IT IS SO ORDERED.

DATED this 25 day of October, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted By:	Approved as to Form Only:
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

VENTA REALTY GROUP, a Nevada corporation, JP MORGAN CHASE BANK, N.A., a national association, successor by merge 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, ROE CORPORATIONS I through X, inclusive,

Defendants.

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

Counter-Claimant,

CASE NO. A-12-672963-C

DEPT. NO. XXVII

BALLARD SPAHR LLP
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v.

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

Counter-Defendant.

NOTICE OF APPEAL

Defendant/Counter-Claimant JPMorgan Chase Bank, National Association, as successor by merger to Chase Home Finance LLC, appeals to the Nevada Supreme Court from the *Findings of Fact, Conclusions of Law, and Order* entered October 26, 2016 and from all interlocutory judgments and orders made appealable thereby.

Dated: November 22, 2016.

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By: /s/ Matthew D. Lamb
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2016, I filed a copy of the foregoing NOTICE OF APPEAL. The following individuals will be served by the Eighth Judicial District Court's E-Filing system:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, v. 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, ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-12-672963-C DEPT. NO. XXVII
JPMORGAN CHASE BANK, N.A., as successor by merger to Chase Home Finance LLC,	

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Counter-Claimant,

v.

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

Counter-Defendant.

STIPULATION AND ORDER DIRECTING ENTRY OF FINAL JUDGMENT AS BETWEEN SFR INVESTMENTS POOL 1, LLC AND JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Plaintiff/Counter-Defendant SFR Investments Pool 1, LLC ("SFR") and Defendant/Counter-Claimant JPMorgan Chase Bank, National Association, as successor by merger to Chase Home Finance LLC ("Chase") hereby stipulate as follows:

1. This is a quiet title action arising from a foreclosure sale under NRS Chapter 116.

2. SFR's complaint filed December 4, 2012 named Chase, Venta Realty Group ("Venta"), California Reconveyance Company ("CRC"), National Default Servicing Corporation ("NDSC"), Paradise Court Homeowners Association ("HOA"), Republic Silver State Disposal, Inc. ("Republic"), and Delanie L. Harned as defendants.

3. The Court entered summary judgment for SFR on its claims against Chase in its *Findings of Fact, Conclusions of Law, and Order* filed October 26, 2016 (the "Summary Judgment Order").

4. SFR dismissed CRC in a stipulation filed July 15, 2013.

5. SFR voluntarily dismissed NDSC on February 6, 2014.

6. SFR voluntarily dismissed HOA on February 5, 2013.

7. SFR voluntarily dismissed Republic on July 18, 2013.

8. SFR voluntarily dismissed Harned on February 6, 2014.

9. Chase's amended answer and counterclaim filed October 19, 2015 names SFR as a defendant.

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10. The Court entered summary judgment for SFR on Chase's counterclaim in the Summary Judgment Order.

11. Thus, the Summary Judgment Order resolves all claims between SFR and Chase.

12. To permit Chase to immediately pursue an appeal, SFR and Chase agree that the Court should direct the entry of a final judgment as between SFR and Chase pursuant to N.R.C.P. 54(b).

13. All the claims in this case have been resolved except for SFR's claims against defendant Venta.

14. SFR has obtained a default against Venta but has not yet obtained a default judgment.

15. Venta was the original lender under the deed of trust serviced by Chase, but it appears to have no ongoing interest in the subject property.

16. In any event, if the Nevada Supreme Court upholds this Court's holding that the deed of trust was extinguished, then neither Chase nor Venta will have any ongoing interest in the subject property.

17. Accordingly, there is no just reason for delay and the Court should certify the Summary Judgment Order as a final judgment.

Dated December 15, 2016

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Dated December 15, 2016

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ORDER

Based on the foregoing stipulation and the papers on file herein, the Court finds there is no just reason for delay in entering a final judgment as between Plaintiff/Counter-Defendant SFR and Defendant/Counter-Claimant Chase. Accordingly:

IT IS HEREBY ORDERED that the *Findings of Fact, Conclusions of Law, and Order* filed October 26, 2016 constitute a final judgment as between SFR and Chase.

IT IS HEREBY FURTHER ORDERED that Chase may immediately pursue an appeal pursuant to N.R.C.P. 54(b).

Dated: December 16, 2016.

Nancy L Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

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