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**FILED**

APR 06 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

FRANCO SORO, an individual; MYRA  
TAIGMAN-FARRELL, an individual;  
ISAAC FARRELL, an individual; KATHY  
ARRINGTON, an individual; and AUDIE  
EMBESTRO, an individual;

Case No: 72086

District Court Case No: A-13-  
679511-C

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
in and for the COUNTY OF CLARK, and  
the HONORABLE JERRY A. WIESE,  
District Court Judge,

Respondents,

And

AMERICA FIRST FEDERAL CREDIT  
UNION, a federally chartered credit union,

Real Party in Interest.

**REPLY IN SUPPORT OF MOTION TO STAY**

Petitioners, Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy  
Arrington, and Audie Embestro (“Petitioners”), by and through their attorneys of

1 record, Reid Rubinstein & Bogatz, hereby respectfully file this Reply in Support  
2 of their Motion to Stay District Court Proceedings. This Reply is made and based  
3 upon the following Memorandum of Points and Authorities, the papers and  
4 pleadings on file herein and such oral argument as the Court may permit.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. LEGAL ARGUMENT**

7 **A. PETITIONERS ARE ENTITLED TO A STAY GIVEN THIS**  
8 **COURT'S PRECEDENT OF ISSUING STAYS FOR WRITS**  
9 **INVOLVING DEFICIENCY STATUTES.**

10 As set forth in Petitioners' underlying Motion, this Court routinely grants  
11 stays when considering writs involving important issues that implicate anti-  
12 deficiency statutes and borrower/guarantor protections. See Walters v. Eighth  
13 Jud. Dist. Ct., 127 Nev. 723, 726, 263 P.3d 231, 233 (2011); Sandpointe Apts. v.  
14 Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 87, 313 P.3d 849, 852 (2013); Lavi v.  
15 Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 38, 325 P.3d 1265, 1266 (2014); Badger  
16 v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 39, 373 P.3d 89, 96 (2016); see also  
17 Nelson v. Heer, 121 Nev. 832, 836-37, 122 P.3d 1252, 1254-55 (2005).

18 Similar to this action, Walters, Sandpointe, Lavi, and Badger all involved  
19 facts and issues regarding statutory interpretation and public policy related to  
20 Nevada's anti-deficiency protections that entitled the borrowers/guarantors to a  
21 stay. See Walters, Docket No. 55912; Sandpointe, Docket No. 59507; Lavi,  
Docket No. 58968; Badger, Docket No. 67835. Specifically, in each of the

1    aforementioned cases<sup>1</sup> – as in this case – a creditor sought a deficiency judgment  
 2    against borrowers/guarantors and claimed to have followed all of the requirements  
 3    necessary to seek a deficiency judgment against the borrower/guarantor in  
 4    accordance with Nevada law. See id. In each case, as in this one, the  
 5    borrower/guarantor argued that contrary to the creditor’s assertions, the creditor  
 6    did not satisfy the requirements necessary to seek a deficiency judgment against  
 7    the borrowers/guarantors. See id. Accordingly, in each case, this Court granted  
 8    a stay while it considered the parties’ arguments regarding proper interpretation  
 9    and application of anti-deficiency judgment statutes. See id. In light of the  
 10   foregoing and given that the same public policy, statutory interpretation and  
 11   probability of irreparable harm to the borrowers/guarantors absent a stay are  
 12   present here as they were in Walters, Sandpointe, Lavi, and Badger, Petitioners  
 13   respectfully request a stay here as was issued in each of those cases.

14           **B.    PETITIONERS ARE ENTITLED TO A STAY GIVEN THAT**  
 15           **THE NRAP 8 FACTORS OVERALL WEIGH IN FAVOR OF**  
 16           **ISSUANCE OF A STAY.**

17                   **1.    The Writ Is Likely To Succeed On The Merits.**

18           The plain language of Utah Code Ann. § 57-1-32 and the precedent set by  
 19   Key Bank, Mardian, and Windhaven suggest Petitioners are in fact likely to

20           <sup>1</sup> AFCU incorrectly argues citation to these cases is not allowed and unhelpful. See  
 21   February 24, 2017 Opposition, on file herein, at p. 3 n.1. However, a full reading of  
 NRAP 36 reveals the unpublished decisions rule pertains to *final* decisions. See NRAP  
 36, entitled ‘Entry of Judgment.’ Further, a review of the dockets reveals similar  
 arguments for issuance of a stay, and this Court’s apparent agreement.

1 succeed on the merits of their Writ. Utah Code Ann. § 57-1-32, the pertinent  
2 statute under the Loan Documents, clearly denotes a three-month statute of  
3 limitations for deficiency actions. This Court has previously determined that out-  
4 of-state choice-of-law provisions apply to deficiency actions, including an outside  
5 state's deficiency action limitation period. See Mardian v. Greenberg Family  
6 Trust, 131 Nev. Adv. Op. 72, 359 P.3d 109 (2015); Key Bank of Alaska v.  
7 Donnels, 106 Nev. 49, 787 P.2d 382 (1990). There is no dispute that AFCU failed  
8 to apply for deficiency judgment within the three-month period, and therefore the  
9 District Court erred in failing to dismiss the underlying action.

10 Further, Petitioners may seek writ relief for denial of their motion to  
11 dismiss. AFCU claims, incorrectly, that said denial may not form the basis for a  
12 writ petition. While not routine, this Court does entertain motion to dismiss denial  
13 writs when "the issue is not fact-bound and involves an unsettled and potentially  
14 significant, recurring question of law." See, e.g., Badger, 132 Nev. Adv. Op. 39,  
15 373 P.3d at 93 (*citing* Buckwalter v. Eighth Jud. Dist. Ct., 126 Nev. 200, 201, 234  
16 P.3d 920, 921 (2010)).<sup>2</sup> In this matter, there are no factual disputes, and the issue  
17 is uncontrovertibly unsettled – indeed, AFCU admits this Court "has never  
18 revisited the central holding of Key Bank."<sup>3</sup> Moreover, as detailed in the Motion

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20 <sup>2</sup> AFCU also cites to Badger, purportedly in support of its argument, but apparently  
21 failed to note that Badger was also an appeal from a motion to dismiss and this Court  
granted the Badger petitioners a stay.

<sup>3</sup> See February 24, 2017 Opposition, on file herein, at p. 8.

1 and referenced in Section A, *supra*, this Court has held that matters impacting  
2 guarantor rights are of great significance and importance. As such, this Court may  
3 entertain Petitioners' Writ, upon which Petitioners are likely to succeed.

4 **2. Petitioners Will Lose The Object Of Their Writ –**  
5 **Protection From Statutorily-Impermissible Deficiency**  
6 **Actions – If A Stay Is Not Granted.**

7 Petitioners will lose the object of their writ – specifically, enforcement of  
8 the anti-deficiency protections afforded by Utah Code Ann. § 57-1-32 – if a stay  
9 is not granted. As has been standard throughout their entire belated attempt to  
10 seek a deficiency judgment, AFCU tries to ignore the serious nature of the anti-  
11 deficiency protections, mischaracterizing the object of Petitioners' writ as merely  
12 "establishing that AFCU's complaint is untimely."<sup>4</sup> On the contrary, the purpose  
13 of Petitioners' writ is much more significant. Statutes of limitation are crucial  
14 because they provide important protections "against the evidentiary problems  
15 associated with defending a stale claim" and "promote repose by giving security  
16 and stability to human affairs." See Nev. State Bank v. Jamison Family P'ship,  
17 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990); see also Badger, 132 Nev. Adv.  
18 Op. 39, 373 P.3d at 95 (stating failure to timely file for deficiency "is fatal" and  
19 disavowing methods that "allow creditors to bypass the deadline" as "inconsistent  
20 with Nevada's aim to protect borrowers and guarantors . . ."). Without a stay,  
21 Petitioners will irrefutably be denied the protections they are supposed to be

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<sup>4</sup> See *id.* at p. 3.

1 afforded under the statute, forced to continue defending themselves in litigation  
2 that should have been statutorily barred from proceeding in the first place.

3 **3. Denial Of Petitioners' Request For Stay Will Result In**  
4 **Irreparable Harm To Petitioners.**

5 Petitioners will be irreparably harmed in the event a stay is denied. AFCU  
6 misguidedly contends that the substantial inconvenience, effort, time and legal  
7 expenses Petitioners face (as well as the District Court's time, effort and  
8 resources) in being forced to unnecessarily defend themselves in the underlying  
9 litigation do not constitute irreparable harm.<sup>5</sup> AFCU mistakenly relies on Hansen,  
10 which is inapplicable as the district court proceedings in Hansen would have  
11 continued regardless of the decision on the writ since the issue of the motion to  
12 quash was deferred to trial. Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657-  
13 58, 6 P.3d 982, 986-87 (2000). Moreover, contrary to AFCU's position, "[t]he  
14 Legislature has shown a strong inclination towards protecting an obligor's rights  
15 under the anti[-]deficiency statutes." Lavi, 325 P.3d at 1268 (*citing* Lowe Enters.  
16 Residential Partners, L.P. v. Eighth Judicial Dist. Court, 118 Nev. 92, 103-04, 40  
17 P.3d 405, 412-13 (2002)). Indeed, forcing Petitioners to proceed with the  
18 unnecessary, pointless, time-consuming burden of litigation despite having no  
19 liability under Utah's anti-deficiency statutes, and then possibly being forced to  
20 post a supersedeas bond in order to stay execution pending an appeal, is *precisely*

21 <sup>5</sup> See id. at p. 3.

1 the type of irreparable harm this Court must prevent.

2 **4. A Stay Will Not Result In Irreparable Harm To AFCU.**

3 AFCU will not suffer irreparable harm if a stay is granted in this matter.  
 4 Ironically, AFCU claims that time is “not enough to show irreparable injury” to  
 5 Petitioners,<sup>6</sup> then in the next breath argues that it will be seriously harmed by a  
 6 delay from a stay.<sup>7</sup> As discussed *supra*, AFCU’s Hansen citation is misplaced  
 7 given the factually-inapposite scenario in that matter. Indeed, the Hansen Court  
 8 stated that “a mere delay in pursuing discovery in the litigation normally does not  
 9 constitute irreparable harm.” Hansen, 116 Nev. at 658, 6 P.3d at 987; see also  
 10 Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004)  
 11 (reaffirming mere delay is not irreparable harm). Moreover, as detailed in the  
 12 Writ, AFCU is statutorily prevented from seeking judgment against Petitioners.  
 13 Accordingly, AFCU cannot suffer any harm during a stay because it is not entitled  
 14 to proceed against Petitioners in the first place.

15 **II. CONCLUSION**

16 Based upon the foregoing, good cause exists for a stay of the lower court  
 17 proceedings. Accordingly, Petitioners respectfully request this Court grant the  
 18 underlying Motion To Stay District Court Proceedings.

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<sup>6</sup> See id. at p. 4.

21 <sup>7</sup> See id. at p. 5.

1 Dated this 9<sup>th</sup> day of March, 2017.

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