

**Case No. 72931**

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC;  
and STAR HILL HOMEOWNERS  
ASSOCIATION,

Appellants

vs.

THE BANK OF NEW YORK  
MELLON F/K/A/ THE BANK OF  
NEW YORK, AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE  
CWABS, INC., ASSET-BACKED  
CERTIFICATES, SERIES 2006-6,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

Certified Question From the United States District Court, District of  
Nevada The Honorable Richard F. Boulware, II, United States  
District Judge Case No. 2:16-cv-02561-RFB-PAL.

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**JOINT APPENDIX VOLUME 1**

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1	5	04/21/2017	Order Granting or Motion to Certify a Question of Law to Nevada's Supreme Court	JA_0062

# **TAB 1**

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Certificates, Series 2006-6*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWABS,  
INC. ASSET-BACKED CERTIFICATES,  
SERIES 2006-6,

Plaintiff,

vs.

STAR HILL HOMEOWNERS ASSOCIATION;  
SBW INVESTMENT, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; and SFR  
INVESTMENTS POOL 1, LLC,

Defendants.

Case No.: 2:16 cv 02561

**COMPLAINT**

Plaintiff The Bank of New York Mellon fka The Bank of New York, as Trustee for the  
Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-6 (**BNY Mellon**) complains  
as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. BNY Mellon  
is a citizen of New York and on information and belief none of the defendants is a citizen of New  
York. The amount in controversy exceeds \$75,000.

2. BNY Mellon is New York Corporation. Its principal office is in New York. BNY Mellon is a citizen of the state of New York for purposes of diversity of citizenship. The diversity of citizenship requirement is met. *See Carolina Casualty Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082 (9th Cir. 2014). Defendants Star Hill Homeowners Association (**Star Hill**), SBW Investment, LLC (**SBW**), Nevada Association Services, Inc. (**NAS**), and SFR Investments Pool 1, LLC (**SFR**) are, on information and belief, not citizens of New York. The amount in controversy requirement is met. BNY Mellon seeks a declaration its deed of trust, which secures a loan with a principal balance of \$347,534.11, was not extinguished by a homeowners' association non-judicial foreclosure sale that is the basis for SFR's claim to title to the real property sub judice.

3. Defendant Star Hill is, on information and belief, a Nevada non-profit corporation with its principal place of business in Nevada. BNY Mellon is informed and believes and therefore alleges Star Hill is the purported beneficiary under an alleged homeowners' association lien recorded February 5, 2010. BNY Mellon is informed and believes and therefore alleges Star Hill foreclosed on the lien on September 14, 2012.

4. Defendant SBW is a dissolved Nevada limited liability company. On information and belief, Serge B. Woodruff, managing member of SBW, is a citizen of Utah. After a reasonable search, BNY Mellon cannot determine the citizenship of the other members, if any, of SBW. BNY Mellon is informed and believes and therefore alleges SBW purchased the property at the HOA foreclosure sale, acquiring title via a foreclosure deed recorded September 20, 2012.

5. Defendant NAS is a Nevada corporation with its principal place of business in Nevada. BNY Mellon is informed and believes and therefore alleges NAS conducted the foreclosure at issue in this case on behalf of Star Hill.

6. Defendant SFR is, on information and belief, a Nevada limited liability company. SFR's sole member is SFR Investments, LLC, also a Nevada limited liability company. SFR Investment's LLC's sole member is SFR Funding, LLC, a Delaware limited liability company. SFR Funding, LLC's sole member is Xiemen Limited Partnership, a Canadian limited partnership. Xiemen Limited Partnership is comprised of two partners: Xiemen Investments, Ltd. and John

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Gibson. Xiemen Investments, Ltd. is a Canadian corporation. John Gibson is domiciled in South Africa. BNY Mellon is informed and believes and therefore alleges SBW deeded the property to SFR via a grant, bargain, sale deed recorded April 5, 2013.

7. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 for reasons stated above.

8. Venue is proper in this court under 28 U.S.C. §1391. The property that is the subject of this action is located at 5020 Piney Summit Ave, Las Vegas, Nevada 89141 (the **property**). Venue is proper in this court under 28 U.S.C. § 1391(1) and (2) because this action seeks to determine an interest in property located within Clark County, Nevada and because this lawsuit arises out of a foreclosure of real property located within Nevada.

9. The pre-litigation dispute resolution process set forth in NRS 38.300 *et seq.* is not applicable to this action and cannot restrict the jurisdiction of this court. To the extent any requirement of the statute is applicable to any portion of the claims asserted herein, that requirement has been constructively exhausted and further resort to administrative remedies would be futile because a demand for mediation to Nevada Real Estate Division (**NRED**) was submitted on or about March 31, 2016, but NRED has failed to schedule the mediation in the time period required by NRS 38.330(1).

### **GENERAL ALLEGATIONS**

10. Under Nevada state law, homeowners' associations have the right to charge property owners residing within the community assessments to cover the homeowners' associations' expenses for maintaining or improving the community, among other things.

11. When these assessments go unpaid, the homeowners' association may impose a lien and then foreclose on a lien if the assessments remain unpaid.

12. NRS Chapter 116 generally provides a non-judicial foreclosure scheme for a homeowners' association to conduct a non-judicial foreclosure where the unit owner fails to pay his or her monthly assessments.

13. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2)(c).

The Deed of Trust and Assignment

14. On or about January 30, 2006, Richard A. Perez, Sr. and Rosemarie Perez (the **Perezes**) purchased the property. The Perezes financed ownership of the property by way of a loan in the amount of \$315,412.00 from Countrywide Home Loans, Inc. evidenced by a note and secured by a deed of trust (the **senior deed of trust**) recorded January 31, 2006. A true and correct copy of the senior deed of trust is recorded with the Clark County Recorder as **Instrument No. 20060131-0003398**.

15. The senior deed of trust was assigned to The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-6 via a corporation assignment of deed of trust. A true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument No. 201108260002837**.

16. The senior deed of trust was assigned to Green Tree Servicing LLC via an assignment of deed of trust. A true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument No. 20151002-0004092**.

17. The senior deed of trust was assigned to The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-6 via a corporation assignment of deed of trust. A true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument No. 20160706-0001626**.

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The HOA Lien and Foreclosure

18. On February 5, 2010, Star Hill, through its agent NAS, recorded a notice of delinquent assessment lien. Per the notice, the amount due Star Hill was \$888.96, which includes late fees, collection fees and interest in the amount of \$643.90. A true and correct copy of the notice of lien is recorded with the Clark County Recorder as **Instrument No. 201002050001882**.

19. On May 5, 2010, Star Hill, through its agent NAS, recorded a notice of default and election to sell to satisfy the delinquent assessment lien. The notice states the amount due Star Hill was \$2,142.11, but does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. A true and correct copy of the notice of default is recorded with the Clark County Recorder as **Instrument No. 201005050001519**. The notice of default does not specify the super-priority amount claimed by Star Hill and fails to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

20. On January 19, 2011, Star Hill, through its agent NAS, recorded a notice of foreclosure sale. The trustee's sale was scheduled for February 11, 2011. The notice states the amount due Star Hill was \$3,299.68, including "reasonable estimated costs, expenses and advances." A true and correct copy of the notice of sale is recorded with the Clark County Recorder as **Instrument No. 201101190003426**. The notice of sale does not identify the super-priority amount claimed by Star Hill and fails to describe the amount necessary to satisfy the lien required by NRS 116.311635(3)(a).

21. On May 15, 2012, Star Hill, through its agent NAS, recorded another notice of foreclosure sale. The trustee's sale was scheduled for June 8, 2012. The notice states the amount due Star Hill was \$5,784.29, including "reasonable estimated costs, expenses and advances." A true and correct copy of the notice of sale is recorded with the Clark County Recorder as **Instrument No. 201205150002381**. The notice of sale does not identify the super-priority amount claimed by Star Hill and fails to describe the amount necessary to satisfy the lien required by NRS 116.311635(3)(a).

1           22.     In none of the recorded documents nor in any notice did Star Hill or its agent NAS  
2 provide notice of the purported super-priority lien amount, where to pay the amount, how to pay the  
3 amount, or the consequences for failure to do so.

4           23.     In none of the recorded documents nor in any notice did Star Hill or its agent NAS  
5 specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-  
6 priority portion of its lien.

7           24.     In none of the recorded documents nor in any notice did Star Hill or its agent NAS  
8 specify the senior deed of trust would be extinguished by Star Hill's foreclosure.

9           25.     In none of the recorded documents nor in any notice did Star Hill or its agent NAS  
10 identify any way by which the beneficiary under the senior deed of trust could satisfy the super-  
11 priority portion of Star Hill's claimed lien.

12           26.     The deficiencies in the notices notwithstanding, on or about August 26, 2010, after  
13 Star Hill recorded its notice of default, BAC Home Loans Servicing, LP (**BAC**), as then-servicer of  
14 the loan, remitted payment to Star Hill, through its agent NAS, to satisfy the super-priority amount  
15 owed to Star Hill.

16           27.     On June 30, 2010, BAC requested a ledger from Star Hill, through its agent NAS,  
17 identifying the super-priority amount allegedly owed to Star Hill. Star Hill refused to identify the  
18 super-priority amount and instead provided a ledger dated July 30, 2010 identifying the total amount  
19 allegedly due.

20           28.     BAC and its counsel were forced to calculate the super-priority amount claimed by  
21 Star Hill by reference to the July 30, 2010 ledger. Based on the monthly assessment amount  
22 identified in the July 30, 2010 ledger, BAC accurately calculated the super-priority amount as  
23 \$295.65, the sum of nine-months of common assessments as identified in Star Hill's ledger, and  
24 tendered that amount to Star Hill through its agent NAS on August 26, 2010. A true and correct  
25 copy of the statement of account and BAC's tender letter and check are attached as **Exhibit 1**. Star  
26 Hill refused BAC's tender.

29. Despite the tender, Star Hill foreclosed on the property on or about September 14, 2012. A trustee's deed upon sale in favor of SBW was recorded September 20, 2012. A true and correct copy of the trustee's deed is recorded with the Clark County Recorder as **Instrument No. 201209200001817**.

30. According to the foreclosure deed, the sale price at the September 14, 2012 foreclosure sale was \$6,750.00. Star Hill's sale of the property to SBW for less than 2% of the value of the unpaid principal balance on the senior deed of trust, and, on information and belief, for a similarly diminutive percentage of the property's fair market value, is commercially unreasonable and not in good faith as required by NRS 116.1113.

31. On April 5, 2013, SBW deeded the property to SFR pursuant to a grant, bargain, sale deed recorded with the Clark County Recorder as **Instrument No. 201304050001725**. Upon information and belief, SFR purports to own the property free and clear of the senior deed of trust.

### **FIRST CAUSE OF ACTION**

#### **(Quiet Title/Declaratory Judgment Against All Defendants)**

32. BNY Mellon repeats and re-allege the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

33. Pursuant to 28 U.S.C. § 2201 and NRS 30.040 *et seq.*, this court is empowered to declare the rights of parties and other legal relations of parties regarding the property.

34. An actual controversy has arisen between BNY Mellon and defendants regarding the property. The senior deed of trust is a first secured interest on the property. As a result of the September 14, 2012 HOA foreclosure sale, SBW purchased the property and subsequently transferred its interest in the property to SFR, who, on information and belief, asserts it owns the property free and clear of the senior deed of trust.

35. BNY Mellon's interest in the senior deed of trust encumbering the property constitutes an interest in real property.

36. BNY Mellon is entitled to a declaration Star Hill's foreclosure did not extinguish the Senior Deed of Trust, or alternatively, Star Hill's foreclosure is void.

NRS Chapter 116 Violates BNY Mellon's Right to Procedural Due Process

37. BNY Mellon asserts Chapter 116 of the Nevada Revised Statutes' scheme of HOA super priority non-judicial foreclosure violates BNY Mellon's procedural due process rights under the state and federal constitutions.

38. The Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8 of the Nevada Constitution protect BNY Mellon from being deprived of its interest in the senior deed of trust in violation of procedural due process guarantees of notice and an opportunity to be heard.

39. BNY Mellon asserts there is no way to apply Nevada's scheme of non-judicial HOA super priority foreclosure that complies with Nevada and the United States' respective guarantees of procedural due process.

40. The Nevada Constitution does not expressly set forth a state action requirement. Even if it did, and consistent with the state action requirements of the Federal Constitution, the State of Nevada has become sufficiently intertwined with HOA foreclosure such that state and federal procedural due process protections for the Senior Deed of Trust apply, to wit:

a) The super priority lien did not exist at common law, but rather is imposed by statute.

b) In order to conserve governmental resources and fund the quasi-governmental HOA, Nevada's legislature made super priority mandatory, expanded the super-priority duration from six to nine months, and declared it could not contractually subordinate its lien by provisions within a HOA's covenants, conditions, and restrictions.

c) The super priority lien has no nexus whatsoever to a private agreement between Star Hill and BNY Mellon, but, again, is imposed by legislative enactment.

d) Nevada and Clark County mandated the creation of Star Hill as a quasi-governmental entity to perform governmental functions including maintaining the common open spaces and private streets within the Star Hill community.

41. Since the state of Nevada is responsible for the creation of the super priority lien and has made it mandatory, then the state of Nevada's HOA super priority foreclosure scheme is the result of state action subject to procedural due process safeguards.

42. On its face, Nevada's scheme of non-judicial HOA super-priority foreclosure lacks any pre-deprivation notice requirements or post-deprivation redemption options that are necessary components of due process:

a) NRS 116.31162 and NRS 116.311635 do not require an HOA provide BAC or BNY Mellon with written notice of the sum that constitutes the super-priority portion of the assessment lien.

b) Chapter 116 of NRS seeks to insulate its scheme of super priority non-judicial foreclosure by failing to provide any post-sale right of equity or redemption.

c) Chapter 116 of NRS fails to provide BNY Mellon with a statutorily enforceable mechanism to compel an HOA to inform BAC or BNY Mellon of the sum of the HOA super priority amount.

43. As applied, Star Hill's non-judicial foreclosure violated state and federal procedural due process protections since BAC was not provided with any notice its physical delivery of a check for 9 months of assessments did not redeem the senior deed of trust's priority prior to the HOA foreclosure.

44. BNY Mellon requests this court void the HOA foreclosure sale or declare SFR's title was acquired subject to the senior deed of trust because NRS 116's scheme of HOA super-priority foreclosure violates the procedural process clauses of the Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8 of the Nevada Constitution.

*Additional Reasons the HOA Foreclosure Sale Did Not Extinguish the Senior Deed of Trust*

45. The HOA sale is void or did not extinguish the senior deed of trust for additional reasons stated below.

46. The foreclosure sale did not extinguish the senior deed of trust because the recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required

1 by Nevada law, including, without limitation: whether the deficiency included a "super-priority"  
2 component, the amount of the super-priority component, how the super-priority component was  
3 calculated, when payment on the super-priority component was required, where payment was to be  
4 made or the consequences for failure to pay the super-priority component. Alternatively, the  
5 foreclosure sale is void.

6 47. The foreclosure sale did not extinguish the senior deed of trust because BAC tendered  
7 and satisfied the super-priority amount and Star Hill, through its agent NAS, wrongfully rejected the  
8 tender. Alternatively, the foreclosure sale is void.

9 48. The foreclosure sale did not extinguish the senior deed of trust because the sale was  
10 commercially unreasonable or otherwise failed to comply with the good faith requirement of  
11 NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, Star  
12 Hill's wrongful rejection of BAC's tender, the sale of the property for a fraction of the loan balance  
13 or actual market value of the property, a foreclosure that was not calculated to promote an equitable  
14 sales prices for the property or to attract proper perspective purchasers, and a foreclosure sale that  
15 was designed and/or intended to result in maximum profit for Star Hill, NAS, and SBW at the sale  
16 without regard to the rights and interest of those who have an interest in the loan and made the  
17 purchase of the property possible in the first place. Alternatively, the foreclosure sale is void.

18 49. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
19 sale would violate BNY Mellon's rights to due process, as a result of Star Hill's failure to provide  
20 sufficient notice of the super-priority component of Star Hill's lien, the manner and method to satisfy  
21 it, and the consequences for failing to do so. Alternatively, the foreclosure sale is void.

22 50. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
23 sale would violate BNY Mellon's rights to due process, as a result of Star Hill's improper calculation  
24 of the super-priority component, its inclusion of charges that are not part of the super-priority lien  
25 under Nevada law, and its rejection of BAC's tender of the super-priority component of the lien.  
26 Alternatively, the foreclosure sale is void.

51. The foreclosure sale did not extinguish the senior deed of trust because SBW does not qualify as a bona fide purchaser for value, because it was aware of, or should have been aware of, the existence of the senior deed of trust, BAC's satisfaction of the super-priority component of Star Hill's lien, and the commercial unreasonableness of the HOA sale. Alternatively, the foreclosure sale is void.

52. BNY Mellon is entitled to a declaration, pursuant to 28 U.S.C. § 2201, NRS 30.040, and NRS 40.010, that the HOA sale did not extinguish the senior deed of trust.

53. BNY Mellon was required to retain an attorney to prosecute this action, and are therefore entitled to collect their reasonable attorneys' fees and costs.

## **SECOND CAUSE OF ACTION**

### **(Breach of NRS 116.1113 Against Star Hill and NAS)**

54. BNY Mellon repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

55. NRS § 116.1113 and common law provide that every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

56. Star Hill's recorded CC&Rs contain a priority of assessment lien clause which represents Star Hill's entire lien will be subordinate to the senior deed of trust. Star Hill's recorded CC&Rs also contain a mortgagee protection clause which represents "no lien created under this [article], 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." These provisions make BNY Mellon a direct beneficiary of the protections afforded under the CC&Rs, with all accompanying duties implied and existing under Chapter 116 and common law.

57. NRS Chapter 116 requires Star Hill and its agent NAS to comply with the obligations of the CC&Rs, including the mortgagee protection and priority of assessment lien clauses.

58. After making the representations in the CC&Rs that any HOA lien would be subordinate to the senior deed of trust and no enforcement of any provision of the declaration would defeat the senior deed of trust, Star Hill and its agent NAS are charged with a duty to inform lenders



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and loan servicers like BNY Mellon and BAC that Star Hill's representations regarding the unequivocal protection of security interests in the CC&Rs was false, to notify BNY Mellon or BAC that the senior deed of trust was at risk, and to give BNY Mellon or BAC a reasonable opportunity to protect their interests in the property.

59. After making the representations in the CC&Rs that any HOA lien would be subordinate to the senior deed of trust and no enforcement of any provision of the declaration would defeat the senior deed of trust, Star Hill and its agent NAS are charged with the duty to either not foreclose or to specifically foreclose on only the sub-priority portion of the HOA's lien.

60. As a senior lienholder, Star Hill and its agent NAS also owe all junior lienholders a duty of good faith to treat it fairly with regard to decisions regarding the disposal of the collateral securing the respective liens.

61. Star Hill and its agent NAS breached their duties of good faith by not identifying the super-priority amount of Star Hill's lien for BNY Mellon or BAC, by not notifying BNY Mellon or BAC that Star Hill's representation regarding the protection of security interests was false, by not notifying BNY Mellon or BAC BNY Mellon's security interest was at risk, by not providing any reasonable opportunity for BNY Mellon or BAC to protect BNY Mellon's interest, by purporting to foreclose on the super-priority portion of Star Hill's lien, and by unfairly disposing of the collateral in a commercially unreasonable fashion.

62. If it is determined Star Hill's sale extinguished the senior deed of trust notwithstanding the deficiencies, violations, and improper actions described herein, Star Hill and NAS's breach of their obligations of good faith will cause BNY Mellon to suffer general and special damages in the amount equal to the fair market value of the property or the unpaid principal balance of the loan at issue, plus interest, at the time of the HOA sale, whichever is greater.

63. BNY Mellon was required to retain an attorney to prosecute this action, and are therefore entitled to collect its reasonable attorneys' fees and costs.

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**THIRD CAUSE OF ACTION****(Wrongful Foreclosure Against Star Hill and NAS)**

64. BNY Mellon repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

65. To the extent defendants contend or the court concludes Star Hill's foreclosure sale extinguished the senior deed of trust, the foreclosure was wrongful.

66. Because Star Hill and NAS failed to give adequate notice and an opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

67. Because BAC satisfied the super-priority portion of Star Hill's lien prior to the foreclosure sale there was no default in the super-priority component of Star Hill's lien at the time of the foreclosure sale and the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

68. Because Star Hill and NAS sold the property for a grossly inadequate amount, compared to the value of the property and amount of outstanding liens defendants contend were extinguished by the foreclosure sale, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

69. Because Star Hill and its agent NAS violated the representations in the CC&Rs that that any HOA lien would be subordinate to the senior deed of trust and no enforcement of any provision of the declaration would defeat the senior deed of trust, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

70. Because Star Hill's unequivocal representations in its CC&Rs that the rights of the beneficiary under the senior deed of trust would not be jeopardized caused the sales price to be grossly inadequate, the foreclosure was commercially unreasonable and wrongful to the extent Star Hill contends it extinguished the senior deed of trust.

71. Because Star Hill and its agent NAS violated the good faith requirements of NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

72. If it is determined Star Hill's foreclosure sale extinguished the senior deed of trust notwithstanding the deficiencies, violations, and improper actions described herein, Star Hill's and its agent NAS's actions will cause BNY Mellon to suffer general and special damages in the amount equal to the fair market value of the property or the unpaid principal balance of the loan at issue, plus interest, at the time of the sale, whichever is greater.

73. BNY Mellon was required to retain an attorney to prosecute this action, and are therefore entitled to collect its reasonable attorneys' fees and costs.

#### **FOURTH CAUSE OF ACTION**

##### **(Injunctive Relief Against SFR)**

74. BNY Mellon repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

75. BNY Mellon disputes SFR's claim it owns the property free and clear of the senior deed of trust.

76. Any sale or transfer of the property by SFR, prior to a judicial determination concerning the respective rights and interests of the parties to this case, may be rendered invalid if the senior deed of trust still encumbers the property in first position and was not extinguished by the HOA sale.

77. BNY Mellon has a substantial likelihood of success on the merits of the complaint, and damages would not adequately compensate for the irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority status secured by the property.

78. BNY Mellon has no adequate remedy at law due to the uniqueness of the property involved in this case and the risk of the loss of the senior security interest.

1 79. BNY Mellon is entitled to a preliminary injunction prohibiting SFR, or its successors,  
2 assigns, or agents, from conducting any sale, transfer, or encumbrance of the property that is claimed  
3 to be superior to the senior deed of trust or not subject to the senior deed of trust.

4 80. BNY Mellon is entitled to a preliminary injunction requiring SFR to pay all taxes,  
5 insurance and homeowners' association dues during the pendency of this action.

6 **PRAYER FOR RELIEF**

7 BNY Mellon requests the court grant the following relief:

8 1. An order declaring SFR purchased the property subject to BNY Mellon's senior deed  
9 of trust;

10 2. In the alternative, an order that the HOA foreclosure sale, and any resulting  
11 foreclosure deed, was void ab initio;

12 3. In the alternative, an order requiring Star Hill and NAS to pay BNY Mellon all  
13 amounts by which it was damaged as a result of Star Hill's and NAS' wrongful foreclosure and/or  
14 violation of the good faith provisions of NRS 116.1113;

15 4. A preliminary injunction prohibiting SFR, its successors, assigns, or agents from  
16 conducting any sale, transfer, or encumbrance of the property that is claimed to be superior to the  
17 senior deed of trust or not subject to the senior deed of trust;

18 5. A preliminary injunction requiring SFR to pay all taxes, insurance, and homeowners'  
19 association dues during the pendency of this action;

20 6. Reasonable attorneys' fees as special damages and the costs of suit; and

21 7. For such other and further relief the court deems proper.  
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AKERMAN LLP  
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LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 DATED November 4, 2016.

2 **AKERMAN LLP**

3 */s/ Rex D. Garner*

4 Ariel E. Stern, Esq.  
5 Nevada Bar No. 8276  
6 Rex D. Garner, Esq.  
7 Nevada Bar No. 9401  
8 1160 Town Center Drive, Suite 330  
9 Las Vegas, Nevada 89144

10 *Attorneys for Plaintiff Attorneys for Plaintiff The Bank*  
11 *of New York fka The Bank of New York, as Trustee for*  
12 *the Certificateholders CWABS, Inc. Asset-Backed*  
13 *Certificates, Series 2006-6*

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**INDEX OF EXHIBITS TO COMPLAINT**

**CASE NO.**

Exhibit 1                      Star Hill Homeowners Association's Ledger and BAC's Tender Letter and Check

**AKERMAN LLP**

1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

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# **EXHIBIT 1**

## **Star Hill Homeowners Association's Ledger and Tender Letter and Check**

**Perez Sr., Richard A. & Rosemarie****Star Hill**

5020 Piney Summit Ave.

Account No.:

52101

**TS# N 55500**

<b>Attorneys Fees &amp; Collection Costs</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>
<i>Dates of Delinquency: 09/09-08/10</i>	Present rate	Reserve	Prior rate	Prior rate	Prior rate
<i>Full Amount</i>					
Balance forward	-2.04	0.00	0.00	0.00	0.00
No. of Months Subject to Interest	0	0	0	0	0
Interest due on Balance Forward	0.00	0.00	0.00	0.00	0.00
Monthly Assessment Amount	32.85	0.00	0.00	0.00	0.00
No. of Months Delinquent	12	0	0	0	0
No. of Months Subject to Interest	0	0	0	0	0
Total Monthly Assessments due	394.20	0.00	0.00	0.00	0.00
Late fee amount	0.00	0.00	0.00	0.00	0.00
No. of Months Late Fees Incurred	0	0	0	0	0
Total Late Fees due	218.49	0.00	0.00	0.00	0.00
Interest Rate	0.12	0.12	0.12	0.12	0.12
Interest due	6.76	0.00	0.00	0.00	0.00
Special Assessment Due	0.00	0.00	0.00	0.00	0.00
Special Assessment Late Fee	0.00	0.00	0.00	0.00	0.00
Special Assessment Months Late	0	0	0	0	0
Special Assessment Interest Due	0.00	0.00	0.00	0.00	0.00
Misc.	0.00	0.00	0.00	0.00	0.00
Mgmt. Co. Intent to Lien	50.00	0.00	0.00	0.00	0.00
Return check charge	0.00	0.00	0.00	0.00	0.00
Management Co. Fee	50.00	0.00	0.00	0.00	0.00
Demand Letter	135.00	0.00	0.00	0.00	0.00
Lien Fees	325.00	0.00	0.00	0.00	0.00
Prepare Lien Release	30.00	0.00	0.00	0.00	0.00
Certified Mailing	72.00	0.00	0.00	0.00	0.00
Recording Costs	57.00	0.00	0.00	0.00	0.00
Pre NOD Ltr	75.00	0.00	0.00	0.00	0.00
Payment Plan Fee	300.00	0.00	0.00	0.00	0.00
Breach letters	50.00	0.00	0.00	0.00	0.00
Personal check returns	0.00	0.00	0.00	0.00	0.00
Escrow demand fee	0.00	0.00	0.00	0.00	0.00
<b>Collection Costs on Violations</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
Subtotals	\$1,761.41	\$0.00	\$0.00	\$0.00	\$0.00
<b>Credit</b>	<b>Date</b>				
Payment to HOA/NAS	6/22/2010	(154.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
		(0.00)			
NAS Fee Payments		(300.00)			

**HOA TOTAL****\$2,107.41**

PH

<u>Trustee Fees &amp; Costs</u>	<u>Amount</u>	<u>Attorneys Cre</u>	<u>Date</u>	
				(0.00)
Trustee's Fees	400.00			(0.00)
Trustee's Sale Guarantee	400.00	<u>Collection Cre</u>	<u>Date</u>	
Posting/Publication	0.00			(0.00)
Courier	0.00			(0.00)
Postponement of Sale	0.00			(0.00)
Conduct Sale	0.00			(0.00)
Prepare/Record Deed	0.00			(0.00)
(other)	0.00			(0.00)
(other)	0.00			(0.00)
(other)	0.00			(0.00)
				(0.00)
<b>TRUSTEE'S SUBTOTAL</b>	<b>\$800.00</b>			(0.00)
				(0.00)
				(0.00)
				(0.00)
		<b><u>\$2,107.41</u></b>		
<b><u>TRUSTEE'S TOTAL</u></b>		<b><u>Collection Credits SubTotal</u></b>		<b>\$0.00</b>



DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR. \*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS \*  
KEENAN E. McCLENAHAN \*  
MARK T. DOMEYER \*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY \*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI \*  
ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAJAR \*



\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

August 26, 2010

Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

Re: *Property Address:* 5020 Piney Summit Ave.  
*Account No:* 52101  
*LOAN #:* [REDACTED] 2768  
*MBBW File No.* 10-H1172

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$2,107.41. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...  
*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

JA\_0022

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

**The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$295.65 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to NEVADA ASSOCIATION SERVICES in the sum of \$295.65, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5020 Piney Summit Ave. have now been "paid in full".


Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.





## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

The Bank of New York fka The Bank of New York, as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-6,

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ariel E. Stern, Esq., Rex D. Garner, Esq., Akerman LLP  
1160 Town Center Drive, Suite 330, Las Vegas, NV 89144  
(702) 634-5000

**DEFENDANTS**

Star Hill Homeowners Association; SBW Investment, LLC; Nevada Association Services, Inc.; and SFR Investments Pool 1, LLC,

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Quiet Title / Declaratory Relief

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/04/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Rex D. Garner

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JA\_0025

## District of Nevada

Defendant(s)

Civil Action No. 2:16 cv 02561

JA 0026

Civil Action No. 2:16 cv 02561

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JA\_0027



AO 440 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Nevada

The Bank of New York fka The Bank of New York, as  
Trustee for the Certificateholders CWABS, Inc.  
Asset-Backed Certificates, Series 2006-6,

*Plaintiff(s)*

v.

Star Hill Homeowners Association; SBW Investment,  
LLC; Nevada Association Services, Inc.; and SFR  
Investments Pool 1, LLC,

*Defendant(s)*

Civil Action No. 2:16 cv 02561

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* SFR INVESTMENTS POOL 1, LLC  
c/o PARACORP INCORPORATED, Registered Agent  
318 N CARSON ST #208  
CARSON CITY, NV 89701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ariel E. Stern, Esq.,  
Rex D. Garner, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89119

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

JA\_0028

Civil Action No. 2:16 cv 02561

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JA\_0029



## District of Nevada

JA 0030

Civil Action No. 2:16 cv 02561

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JA\_0031

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

he Bank of New York fka The Bank of New York, as  
Trustee for the Certificateholders CWABS, Inc.  
Asset-Backed Certificates, Series 2006-6,

*Plaintiff(s)*

v.

Star Hill Homeowners Association; SBW Investment,  
LLC; Nevada Association Services, Inc.; and SFR  
Investments Pool 1, LLC,

*Defendant(s)*

Civil Action No. 2:16 cv 02561

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Nevada Association Services, Inc.  
c/o Chris Yergensen, Esq., Registered Agent  
6224 West Desert Inn Road  
Las Vegas, Nevada 89146

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ariel E. Stern, Esq.,  
Rex D. Garner, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89119

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

JA\_0032

Civil Action No. 2:16 cv 02561

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JA\_0033

# **TAB 2**

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON  
F/K/A/ THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS, INC.,  
ASSET BACKED CERTIFICATES, SERIES  
2006-6,

Plaintiff,

vs.

STAR HILL HOMEOWNERS  
ASSOCIATION; SBW INVESTMENT, LLC;  
NEVADA ASSOCIATION SERVICES, INC.;  
and SFR INVESTMENTS POOL 1, LLC,

Defendant.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross-claimant,

vs.

THE BANK OF NEW YORK MELLON  
F/K/A/ THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS, INC.,  
ASSET BACKED CERTIFICATES, SERIES  
2006-6, RICHARD A. PEREZ, SR., an  
individual, and ROSEMARIE PEREZ, an  
individual;

Counter/Cross-Defendants.

Case No. 2:16-cv-02561-RFB-PAL

**SFR INVESTMENTS POOL 1, LLC’S  
ANSWER TO COMPLAINT,  
COUNTERCLAIM AND CROSS-CLAIM**

SFR INVESTMENTS POOL 1, LLC (“SFR”) answers THE BANK OF NEW YORK

1 MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE  
 2 CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES  
 3 2006-6 (“BNY Mellon” or “Bank”) Complaint as follows:

4 **PARTIES AND JURISDICTION**

5 1. The allegations in paragraph 1 of the Complaint call for a legal conclusion to which no  
 6 response is required. SFR admits that it is not a citizen of New York.

7 2. The allegations in paragraph 2 of the Complaint call for a legal conclusion to which no  
 8 response is required. To the extent a response is required, upon information and belief, SFR admits  
 9 BNY Mellon is not a citizen of Nevada, but rather is a Delaware corporation with its corporate  
 10 headquarters in New York. SFR admits it is not a citizen of Delaware or New York, and on  
 11 information and belief, admits that Star Hill Homeowners Association, SBW Investment, and  
 12 Nevada Association Services, Inc., are not citizens of Delaware or New York. SFR specifically  
 13 denies the deed of trust at issue was not extinguished as a matter of law by the HOA foreclosure  
 14 sale. Additionally, SFR specifically denies that the Bank has an interest which still encumbers the  
 15 real property at issue.

16 3. The allegations in paragraph 3 of the Complaint call for a legal conclusion to which no  
 17 response is required. SFR admits upon information and belief that, Star Hill Homeowners  
 18 Association, (“Association”), is a Nevada registered non-profit corporation. Upon information and  
 19 belief, SFR further admits a non-judicial publicly-held Association foreclosure auction sale  
 20 occurred on September 14, 2012, at which time SBW Investment was the highest bidder and  
 21 purchased the property for \$6,750.00.

22 4. The allegations in paragraph 4 of the Complaint call for a legal conclusion to which no  
 23 response is required. To the extent a response is required, SFR is without sufficient knowledge or  
 24 information regarding SBW Investment, LLC (“SBW”) to form a belief as to the truth of the factual  
 25 allegations contained in paragraph 4, and therefore denies said allegations. SFR further admits a  
 26 non-judicial publicly-held Association foreclosure auction sale occurred on September 14, 2012,  
 27 at which time SBW Investment was the highest bidder and purchased the property for \$6,750.00.  
 28 SFR further admits it now owns the property free and clear of the Bank’s purported deed of trust

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1 which was extinguished as a matter of law on September 14, 2012 as a result of the Association  
 2 foreclosure sale.

3 5. The allegations in paragraph 5 of the Complaint call for a legal conclusion to which no  
 4 response is required. To the extent a response is required, SFR admits upon information and belief  
 5 that, Nevada Association Services, Inc., (“NAS”), is a Nevada corporation. SFR further admits  
 6 that NAS conducted the non-judicial publicly-held Association foreclosure sale on September 14,  
 7 2012, at which time SBW was the highest bidder and purchased the property for \$6,750.00.

8 6. The recorded grant, bargain sale deed referenced in paragraph 6 of the Complaint speaks  
 9 for itself, and SFR denies any allegations inconsistent with said document. SFR admits it is wholly  
 10 owned by SFR Investments, LLC, a Nevada LLC, which is wholly owned by SFR Funding, LLC, a  
 11 Delaware LLC, which is wholly owned by a Canadian Entity, Xiemen LP. Xiemen LP’s partners  
 12 consist of Xiemen Investments Ltd., a Canadian corporation and an individual, John Gibson. Xiemen  
 13 Investments Ltd. is formed under and has its principal place of business in Canada. The individual  
 14 partner, John Gibson is a citizen of South Africa who is domiciled in South Africa. SFR further admits  
 15 the property was deeded to SFR from SBW via a grant bargain sale deed recorded April 5, 2013.

16 7. Answering paragraph 7, SFR is without sufficient knowledge or information to form a  
 17 belief as to the truth of the factual allegations contained in paragraph 7, and therefore denies said  
 18 allegations.

19 8. The statutes referenced in paragraphs 8 and 9 of the Complaint speak for themselves. The  
 20 allegations in paragraphs 8 and 9 of the Complaint concerning jurisdiction and venue call for a  
 21 legal conclusion to which no response is required. To the extent a response is required, upon  
 22 information and belief, SFR admits that the property located at **5020 Piney Summit Avenue, Las**  
 23 **Vegas, NV 89141; Parcel No. 176-36-814-041** (the “Property”), located within Clark County,  
 24 Nevada, is the subject property of this litigation.

### 25 **GENERAL ALLEGATIONS**

26 9. The allegations in paragraphs 10, 11, 12, and 13 of the Complaint call for a legal  
 27 conclusion to which no response is required. To the extent a response is required, the statutes  
 28 referenced in paragraphs 12 and 13 speak for themselves and SFR denies any allegations



1 inconsistent therewith.

2 The Deed of Trust and Assignment

3 10. The recorded Deed of Trust referenced in paragraph 14 of the Complaint speaks for itself,  
4 and SFR denies any allegations inconsistent with said document. To the extent paragraph 14  
5 alleges that Richard A. Perez, Sr. and Rosemarie Perez (“Perezes”) were the title owners of record  
6 of the Property at times prior to the Association foreclosure sale, SFR, upon information and  
7 belief, admits the allegations in paragraph 14. SFR denies the allegation in paragraph 14 that the  
8 deed of trust can be characterized as “senior.”

9 11. The recorded Assignments of the Deed of Trust referenced in paragraphs 15, 16, and 17  
10 of the Complaint speaks for themselves, and SFR denies any allegations inconsistent with said  
11 documents. SFR denies any additional factual allegations contained in paragraphs 15, 16, and 17  
12 of the Complaint.

13 The HOA Lien and Foreclosure

14 12. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 18 of the  
15 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.  
16 Upon information and belief, SFR admits Perezes failed to pay the Association all amounts due.

17 13. The recorded Notice of Default and Election to Sell referenced in paragraph 19 of the  
18 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.  
19 Further, the allegations in paragraph 19 call for a legal conclusion to which no response is  
20 required. To the extent a response is required, SFR denies any remaining allegations contained in  
21 paragraph 19 of the Complaint.

22 14. The recorded Notices of Foreclosure Sale referenced in paragraphs 20 and 21 of the  
23 Complaint speaks for themselves, and SFR denies any allegations inconsistent with said  
24 documents. Further, the allegations in paragraphs 20 and 21 call for legal conclusions to which  
25 no response is required. To the extent a response is required, SFR denies any remaining  
26 allegations contained in paragraphs 20 and 21 of the Complaint.

27 15. The documents referenced in paragraphs 22, 23, 24, and 25 of the Complaint speak for  
28 themselves and SFR denies any allegation inconsistent there with. Further, the allegations in

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1 paragraphs 22, 23, 24, and 25 call for a legal conclusion to which no response is required. To the  
 2 extent a response is required, SFR denies any remaining allegations contained in paragraphs 22,  
 3 23, 24, and 25 of the Complaint.

4 16. Answering paragraphs 26, 27, and 28, SFR is without sufficient knowledge or information  
 5 regarding interactions between the Association, NAS, and Bank to form a belief as to the truth of  
 6 the allegations contained in paragraph 26, 27, and 28, and therefore denies said allegations. SFR  
 7 denies the remaining allegations in paragraphs 26, 27, and 28.

8 17. The recorded Foreclosure Deed referenced in paragraphs 29 and 30 of the Complaint  
 9 speaks for itself, and SFR denies any allegations inconsistent with said document. The statute  
 10 referenced in paragraph 30 of the Complaint speak for itself, and SFR denies any allegations  
 11 inconsistent with said statute. The allegations in paragraph 30 of the Complaint call for a legal  
 12 conclusion to which no response is required. To the extent a response is required, SFR specifically  
 13 denies the sale price of \$6,750.00 is [was] “commercially unreasonable and not in good faith.”  
 14 SFR denies the remaining factual allegations in paragraphs 29 and 30 of the Complaint.

15 18. The recorded Grant, Bargain, Sale Deed to SFR referenced in paragraph 31 of the  
 16 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document. SFR  
 17 admits that it owns the property free and clear of the Bank’s deed of trust.

18 **FIRST CAUSE OF ACTION**  
 19 **(Quiet Title/Declaratory Judgment Against All Defendants)**

20 19. SFR repeats and realleges its answers to paragraphs 1 through 31 of the Complaint as  
 21 though fully set forth herein.

22 20. The statutes referenced in paragraph 33 of the Complaint speak for themselves and SFR  
 23 denies any allegations inconsistent with said statutes.

24 21. Answering paragraph 34 of the Complaint, SFR admits that it claims an interest in the  
 25 Property that is adverse to the Bank’s interest. SFR admits a non-judicial publicly-held  
 26 Association foreclosure sale occurred on September 14, 2012, at which time SBW was the highest  
 27 bidder and purchased the Property for \$6,750.00. Further, SFR admits it owns the Property free  
 28 and clear of the Bank’s purported deed of trust because the Bank’s interest was extinguished as a

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1 matter of law on September 14, 2012 as a result of the Association foreclosure sale. SFR  
 2 specifically denies the deed of trust at issue was not extinguished as a matter of law on September  
 3 14, 2012, and remains a “first secured interest on the Property.”

4 22. The allegations contained in paragraphs 35 and 36 of the Complaint call for a legal  
 5 conclusion, therefore, no answer is required. To the extent a response is required, SFR specifically  
 6 denies the allegations of paragraphs 35 and 36.

7 NRS Chapter 116 Violates BNY Mellon’s Right to Procedural Due Process

8 23. The allegations contained in paragraphs 37, 38, 39, 40, 41, 42, 43, and 44 of the Complaint  
 9 call for a legal conclusion, therefore, no answer is required. The statutes referenced in paragraphs  
 10 37, 38, 42, and 44 of the Complaint speak for themselves and SFR denies any allegations  
 11 inconsistent with said statutes. SFR denies any remaining factual allegations in paragraphs 37,  
 12 38, 39, 40, 41, 42, 43, and 44 of the Complaint.

13 Additional Reasons the HOA Foreclosure Sale Did Not Extinguish the Senior Deed of Trust

14 24. The allegations contained in paragraphs 45, 46, 47, 48, 49, 50, 51, and 52 of the Complaint  
 15 call for a legal conclusion, therefore, no answer is required. To the extent a response is required,  
 16 SFR specifically denies that the deed of trust at issue was not extinguished as a matter of law on  
 17 September 14, 2012, as a result of the Association non-judicial foreclosure sale. SFR specifically  
 18 denies that the Bank has an interest which still encumbers the Property. The statutes referenced  
 19 in paragraphs 48 and 52 of the Complaint speak for themselves and SFR denies any allegations  
 20 inconsistent with said statutes.

21 25. SFR denies the allegations contained in paragraph 53 of the Complaint.

22 **SECOND CAUSE OF ACTION**  
 23 **(Breach of NRS 116.1113 against the HOA and NAS)**

24 26. SFR repeats and realleges its answers to paragraphs 1 through 53 of the Complaint as  
 25 though fully set forth herein.

26 27. As the allegations in paragraphs 55, 56, 57, 58, 59, 60, 61, and 62 of the Complaint,  
 27 relating to the Second Cause of Action, are not directed to SFR, but rather are directed to the  
 28 Association and NAS only, no answer is required by SFR. To the extent a response is required,

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the allegations in paragraphs 55, 56, 57, 58, 59, 60, 61, and 62 of the Complaint call for a legal conclusion to which no response is required. SFR denies any factual allegations in paragraphs 56, 57, 58, 59, 60, 61, and 62 of the Complaint.

28. SFR denies the allegations contained in paragraph 63 of the Complaint.

**THIRD CAUSE OF ACTION**  
**(Wrongful Foreclosure against the HOA and NAS)**

29. SFR repeats and realleges its answers to paragraphs 1 through 63 of the Complaint as though fully set forth herein.

30. As the allegations in paragraphs 65, 66, 66, 67, 68, 69, 69, 70, 71, and 72 of the Complaint, relating to the Third Cause of Action, are not directed to SFR, but rather are directed to the Association and NAS only, no answer is required by SFR. To the extent a response is required from SFR, upon information and belief, SFR denies the allegations in paragraphs 65, 66, 66, 67, 68, 69, 69, 70, 71, and 72 of the Complaint.

31. SFR denies the allegations contained in paragraph 73 of the Complaint.

**FOURTH CAUSE OF ACTION**  
**(Injunctive Relief against SFR)**

32. SFR repeats and realleges its answers to paragraphs 1-73 of the Complaint as though fully set forth herein.

33. In answering paragraph 74, SFR admits that it is the current title owner of the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed of trust which was extinguished as a matter of law on September 14, 2012 as a result of the HOA foreclosure sale. SFR specifically denies any allegation that said deed of trust is currently a senior interest in the property, or a valid instrument which currently encumbers the Property.

34. The allegations in paragraphs 76, 77, 78, 79, and 80 call for a legal conclusion, therefore no answer is required. To the extent a response is required, SFR specifically denies deed of trust still encumbers the Property. SFR specifically denies deed of trust was not extinguished as a matter of law on September 14, 2012 as a result of the HOA foreclosure sale. SFR also specifically denies that the Bank "has no adequate remedy at law."

///

1 ///

2 **PRAYER FOR RELIEF**

3 35. SFR denies that the Bank is entitled to any of the relief sought against SFR in paragraphs  
4 1, 2, 4, 5 or 6 of the Prayer for Relief.

5 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

15 6. The Bank failed to mitigate its damages, if any.

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

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

20 9. The Bank's claims are barred because the Association and its agents at all relevant times  
21 acted in good faith.

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

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

26 12. The Bank has no standing to enforce the first deed of trust and/or the underlying  
27 promissory note.

28 13. The Bank has no standing to enforce the statutes and regulations identified in the

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1 Counterclaim.

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

4 15. The Bank has no standing to challenge the constitutionality of NRS 116.

5 16. The Bank's claims are barred because the Association and its agents complied with the  
 6 foreclosure noticing requirements outlined in the CC&Rs.

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

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

11 19. The Bank has no remedy against SFR because the amounts owed under the first deed of  
 12 trust have been satisfied.

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

17 **COUNTERCLAIM AND CROSS-CLAIM**  
 18 **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

19 SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests  
 20 injunctive relief against Counter-Defendants THE BANK OF NEW YORK MELLON, F/K/A  
 21 THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF  
 22 CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2006-6; and Cross-Defendants  
 23 RICHARD A. PEREZ, SR. and ROSEMARIE PEREZ, as individuals; as follows:

24 **I. PARTIES**

25 1. SFR is a Nevada limited liability company with its principal place of business in Clark  
 26 County, Nevada, and the current title owner of the property located at **5020 Piney Summit**  
 27 **Avenue, Las Vegas, NV 89141; Parcel No. 176-36-814-041** (the "Property").

28 2. Upon information and belief, Counter-defendant, THE BANK OF NEW YORK

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MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2006-6, (“BNY Mellon” or “the Bank”), is a Delaware corporation with its corporate headquarters in New York, that claims an interest in the Property via a Deed of Trust originated by Countrywide Home Loans, Inc., in 2006.

3. Upon information and belief, Cross-Defendants RICHARD A. PEREZ, SR. and ROSEMARIE PEREZ (“Perezes”), are Nevada residents who may claim an interest in the Property as a former title owners. SFR does not seek any money damages against the Perezes

## **II. GENERAL ALLEGATIONS**

### ***Property after the Foreclosure of an Association Lien containing Super Priority Amounts***

4. SFR acquired title to the Property on March 28, 2013 through a grant bargain sale deed from SBW Investment, LLC (“SBW”) who had purchased the Property at a non-judicial foreclosure of a homeowners association lien containing super priority amounts.

5. The publicly-held foreclosure auction was on September 14, 2012, in accordance with NRS 116.3116, *et. seq.* (“Association foreclosure sale”).

6. On or about September 20, 2012, a Foreclosure Deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201209200001817 (“Foreclosure Deed”), showing the buyer at the foreclosure sale was SBW.

7. SBW recorded a grant bargain sale deed transferring title to SFR on April 5, 2013 in the Official Records of the Clark County Recorder as Instrument Number 201304050001725.

8. SBW re-recorded said grant bargain sale deed to SFR on June 26, 2013 in the Official Records of the Clark County Recorder for to correct the “capacity” of signer as Instrument Number 201306260004741.

9. In addition to valuable consideration for the property, SFR was required to spend money and resources litigating the interpretation of NRS 116.3116.

10. The Association had a lien pursuant to NRS 116.3116(1) and the CC&R’s (“Association Lien”) that was perfected at the time the Association recorded its declaration of CC&Rs in the



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1 Official Records of the Clark County Recorder on October 14, 2004 as Instrument Number  
 2 200410140000678.

3 11. The foreclosure sale was conducted by Nevada Association Services, Inc., (“NAS”), agent  
 4 for the Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,  
 5 116.31162-116.31168, the Association’s governing documents (CC&R’s) and a Notice of  
 6 Delinquent Assessments, recorded on February 5, 2010 in the Official Records of the Clark County  
 7 Recorder as Instrument Number 201002050001882.

8 12. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied  
 9 with “all requirements of law including, but not limited to, the elapsing of 90 days, mailing of  
 10 copies of Notice of Delinquent and Notice of Default and the posting and publication of the Notice  
 11 of Sale.”

12 13. Upon information and belief, the Association foreclosure proceedings complied with the  
 13 noticing requirements outlined in the CC&Rs and NRS 116.

14 14. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and  
 15 encumbrances of unit except:

- 16 (a) Liens and encumbrances recorded before the recordation of the declaration and,  
 17 in a cooperative, liens and encumbrances which the association creates, assumes or  
 takes subject to;
- 18 (b) A first security interest on the unit recorded before the date on which the  
 assessment sought to be enforced became delinquent or, in a cooperative, the first  
 19 security interest encumbering only the unit’s owner’s interest and perfected before  
 the date on which the assessment sought to be enforced became delinquent; and
- 20 (c) Liens for real estate taxes and other governmental assessments or charges  
 against the unit or cooperative.

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

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

27 16. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot be  
 28 waived by agreement or contract, including any subordination clause in the CC&Rs.



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1        17. According to NRS 116.1108, real Property law principles supplement the provisions of  
2        NRS 116.

3        18. Upon information and belief, the Association took the necessary action to trigger the super-  
4        priority portion of the Association Lien.

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

7        20. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
8        constructive notice of the requirement to pay assessments to the Association and of the Association  
9        Lien.

10       21. Upon information and belief, the Bank and Cross-Defendants had actual and constructive  
11       notice of the requirement to pay assessments to the Association and of the Association Lien.

12       22. Upon information and belief, the Bank and Cross-Defendants received the notice of default  
13       and notice of sale from the Association before the Association foreclosure sale.

14       23. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
15       constructive notice of the Association's Foreclosure Proceedings before the Association  
16       foreclosure sale.

17       24. Upon information and belief, the Bank and Cross-Defendants received the notice of  
18       default and notice of sale from the Association before the Association foreclosure sale.

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

21       26. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
22       constructive notice of the super-priority portion of the Association Lien.

23       27. Upon information and belief, at all relevant times, the Bank had internal policies and  
24       procedures relating to super-priority liens.

25       28. Upon information and belief, the Bank knew or should have known that its interest in the  
26       Property could be extinguished through foreclosure if it failed to cure the super-priority portion of  
27       the Association Lien.

28       29. Upon information and belief, prior to the Association foreclosure sale, no individual or

1 entity paid the super-priority portion of the Association Lien.

2 30. Pursuant to NRS 116.31166, the foreclosure sale vested title in SBW “without equity or  
3 right of redemption,” and the Association Foreclosure Deed is conclusive against the Property’s  
4 “former owner, his or her heirs and assigns, and **all other persons.**”

5 31. When SFR purchased the Property, no release of the super priority portion of the  
6 Association lien was recorded against the Property.

7 32. In addition, no lis pendens was recorded against the Property indicating a challenge to the  
8 Association lien and/or foreclosure.

9 33. Before SFR purchased the Property, SFR was not on notice of any purported irregularities  
10 with the Association foreclosure sale process.

11 34. SFR is entitled to rely on the recitals contained in the Association foreclosure deed as  
12 conclusive proof of the matters asserted.

13 ***Interests, Liens and Encumbrances Extinguished by the Association Foreclosure Sale***

14 35. Upon information and belief, Perezes obtained title to the Property in January of 2006  
15 through a Grant, Bargain, Sale Deed from the developer, Star Hill, LLC, which was recorded in  
16 Official Records of the Clark County Recorder as Instrument No. 200601310003397.

17 36. On or about January 31, 2006, Countrywide Home Loans, Inc. recorded a deed of trust  
18 against the Property in the Official Records of the Clark County Recorder as Instrument No.  
19 200601310003398 (“First Deed of Trust”) naming Mortgage Electronic Registration Systems  
20 (“MERS”) as the beneficiary under the First Deed of Trust and Recontrust Company as the Trustee.

21 37. The First Deed of Trust contains a Planned Unit Development Rider recognizing the  
22 applicability of Association’s declaration of CC&Rs that were recorded.

23 38. Upon information and belief, the Bank had actual and/or constructive notice of the  
24 Association Lien, NRS 116.3116 and the amount of periodic assessments owed to the Association  
25 before it originated the First Deed of Trust.

26 39. Upon information and belief, on or about August 26, 2011, Bank of America, N.A.  
27 recorded a Corporation Assignment of Deed of Trust from Alicia Turner as Assistant Secretary for  
28 MERS to The Bank of New York Mellon FKA the Bank of New York, As Trustee for the

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1 Certificateholders of CWABS, Inc., Asset-Backed certificates, Series 2006-6 as Instrument No.  
2 201108260002837.

3 40. Upon Information and belief, on or about August 26, 2011, Recontrust Company caused  
4 to be recorded a Substitution of Trustee identifying the new trustee as The Bank of New York  
5 Mellon FKA the Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-  
6 Backed certificates, Series 2006-6, Bank of America, N.A., Successor by Merger to BAC Home  
7 Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP as Attorney in Fact as  
8 Instrument No. 201108260002838.

9 41. Also on August 26, 2011, and despite the recorded Substitution of Trustee, Recontrust  
10 Company caused to be recorded a Notice of Default and Election to sell under the Deed of Trust  
11 as Instrument No. 201108260002839.

12 42. Upon information and belief, on or about December 30, 2011, Recontrust Company  
13 recorded a Certificate State of Nevada Foreclosure Mediation Program, which provided that the  
14 Beneficiary may proceed with the foreclosure process, in Official Records of the Clark County  
15 Recorder as Instrument No. 201112300003077.

16 43. On December 30, 2011, Recontrust caused to be recorded a Notice of Trustee Sale as  
17 Instrument No. 201112300003078.

18 44. Upon information and belief, despite notice of the HOA Foreclosure Sale, the Foreclosure  
19 Deed to SBW, on or about March 23, 2013, Recontrust Company caused to be a recorded a  
20 Substitution of Trustee executed by Sue Foley as "AVP" executed a Substitution of Trustee  
21 identifying the new trustee as The Bank of New York Mellon FKA the Bank of New York, As  
22 Trustee for the Certificateholders of CWABS, Inc., Asset-Backed certificates, Series 2006-6, By  
23 its Attorney in Fact, Bank of America, N.A. as Instrument No. 201303250000098.

24 45. On February 26, 2014, despite notice of the HOA Foreclosure Sale to SBW, the  
25 Foreclosure Deed to SBW, and the subsequent Grant, Bargain, Sale Deed to SFR, National Default  
26 Servicing Corporation caused to be recorded a Substitution of Trustee executed by Michelle Reese,  
27 Assistant vice President, on behalf of The Bank of New York Mellon FKA the Bank of New York,  
28 As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed certificates, Series 2006-6,

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1 Bank of America, N.A., as Attorney in Fact as Instrument No. 201402260000879.

2 46. On September 18, 2014, the Nevada Supreme Court issued its opinion in *SFR Investments*  
3 *Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 419 (2014), *reh'g denied* (Oct. 16, 2014), ruling that  
4 a non-judicial foreclosure of an associations' lien containing super-priority amounts extinguishes  
5 a first deed of trust.

6 47. Upon information and belief, despite knowledge of the Foreclosure Sale, the Foreclosure  
7 Deed, and the *SFR* ruling, on or about October 2, 2015, Greentree Servicing LLC caused to be  
8 recorded an Assignment of the Deed of Trust executed by Edward Born, Assistant vice President,  
9 on behalf of The Bank of New York Mellon FKA the Bank of New York, As Trustee for the  
10 Certificateholders of CWABS, Inc., Asset-Backed certificates, Series 2006-6, by its purported  
11 Attorney in Fact Green Tree Servicing, LLC as Instrument No. 201510020004092. The assignment  
12 purported to transfer the First Deed of Trust to Green Tree Servicing LLC.

13 48. Upon information and belief, despite knowledge of the Foreclosure Sale, the Foreclosure  
14 Deed, and the *SFR* ruling, on or about July 6, 2016, Ditech Financial, LLC caused to be recorded  
15 an Assignment of the Deed of Trust executed by Edward Born, Assistant vice President,  
16 purporting to transfer the First Deed of Trust to The Bank of New York Mellon FKA the Bank of  
17 New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed certificates,  
18 Series 2006-6 as Instrument No. 201607060001626.

19 49. Upon information and belief, despite knowledge of the Foreclosure Sale, the Foreclosure  
20 Deed, and the *SFR* ruling, on or about August 16, 2016, Ditech Financial. LLC caused to be a  
21 recorded a Substitution of Trustee executed by Robert Coleman as Assistant Vice President of  
22 Ditech Financial, LLC as attorney in fact for The Bank of New York Mellon FKA the Bank of  
23 New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed certificates,  
24 Series 2006-6, as Instrument No. 201608160002197.

25 50. On or about November 4, 2016, the Bank filed a Complaint for quiet title, declaratory  
26 relief, and injunctive relief against SFR.

27 51. Perezes ownership interest in the Property, if any, was extinguished by the foreclosure of  
28 the Association Lien.

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52. The Bank's security interest in the Property, if any, was extinguished as a matter of law by the foreclosure of the Association Lien, which contained super-priority amounts.

### III.

#### **FIRST CLAIM FOR RELIEF**

**(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.*, NRS 40.010 & NRS 116.3116)**

53. SFR repeats and realleges the allegations of paragraphs 1-52 as though fully set forth herein and incorporates the same by reference.

54. Pursuant to NRS 30.010, *et. seq.* and NRS 40.010, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Bank's adverse claims in the Property.

55. Upon information and belief, the Bank claims and cross-defendants may claim an interest in the Property, even after the Association foreclosure sale.

56. A foreclosure sale conducted pursuant to NRS 116.31162-116.31168 and the Association's CC&Rs, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

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

58. Bank and cross-defendants were duly notified of the Association foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

59. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; and (3) SFR's rights and interest in the Property are superior to any adverse interest claimed by the Bank and cross-defendant.

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

### IV.

#### **SECOND CLAIM FOR RELIEF**

**(Preliminary and Permanent Injunction)**

61. SFR repeats and realleges the allegations of paragraphs 1-60 as though fully set forth herein and incorporate the same by reference.

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62. As set forth above, the Bank now claims and cross-defendants may claim an interest in the Property.

63. A foreclosure sale based on the First Deed of Trust would be invalid as the Bank lost its interests in the Property, if any, at the Association foreclosure sale.

64. Any attempt to take or maintain possession of the Property by the Bank or cross-defendants, would be invalid because their interests in the Property, if any, were extinguished by the Association foreclosure sale.

65. Any attempt to sell, transfer, encumber or otherwise convey the Property would be invalid because the Bank and cross-defendants' interests in the Property, if any, were extinguished by the Association foreclosure sale.

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

67. SFR is entitled to a preliminary injunction and permanent injunction prohibiting the Bank and/or cross-defendants from any sale or transfer that would affect the title to the Property.

### **PRAYER FOR RELIEF**

SFR requests judgment against the Bank and Cross-Defendants as follows:

1. For a declaration and determination that the Association foreclosure sale and the resulting foreclosure deed are valid; that SFR Investments Pool 1, LLC is the rightful owner of title to the Property; and that the Bank and Cross-defendants have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that the Bank, cross-defendants and their successors, assigns and agents are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property.

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

///

///

///

///

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

DATED January 3rd, 2017.

**KIM GILBERT EBRON**

*/s/ Diana Cline Ebron*  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
JACQUELINE A. GILBERT, ESQ.  
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KAREN L. HANKS, ESQ.  
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7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of January 2017, pursuant to FRCP 5, I served via the CM-ECF electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM**, to the following parties:

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Rex Garner  
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Fax: 702-380-8572  
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*Counsel for THE BANK OF NEW YORK MELLON F/K/A/ THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2006-6*

*/s/ Diana Cline Ebron*  
An employee of KIM GILBERT EBRON

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# **TAB 3**



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*Attorneys for SFR Investments Pool 1, LLC*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON  
F/K/A/ THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS, INC.,  
ASSET BACKED CERTIFICATES, SERIES  
2006-6,

Plaintiff,

vs.

STAR HILL HOMEOWNERS  
ASSOCIATION; SBW INVESTMENT, LLC;  
NEVADA ASSOCIATION SERVICES, INC.;  
and SFR INVESTMENTS POOL 1, LLC,

Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

vs.

THE BANK OF NEW YORK MELLON  
F/K/A/ THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS, INC.,  
ASSET BACKED CERTIFICATES, SERIES  
2006-6, RICHARD A. PEREZ, SR., an  
individual, and ROSEMARIE PEREZ, an  
individual,

Counter/Cross Defendants.

Case No. 2:16-cv-02561-RFB-PAL

**MOTION TO CERTIFY A QUESTION OF  
LAW TO NEVADA'S SUPREME COURT**

Pursuant to NRAP 5, SFR Investments Pool 1, LLC (“SFR”) files this Motion to Certify a Question of Law to Nevada’s Supreme Court. It is based upon the attached memorandum of points and authorities and the filed pleadings and papers.

## **MEMORANDUM OF POINTS & AUTHORITIES**

### **I. INTRODUCTION**

This Court should certify the following question to Nevada’s Supreme Court: **Whether NRS § 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners’ associations to provide notices of default to banks even when a bank does not request notice?**

Certification is appropriate because: (i) the certified question’s answer “may ‘be determinative of’ part” of this case, (ii) *Bourne Valley*’s interpretation of 116.31168(1) acted as though “there is no controlling” Nevada precedent, and (iii) the answer “will help settle important questions of law.” *Volvo Cars of N. Am., Inc. v. Ricci*, 137 P.3d 1161, 1164 (Nev. 2006) (internal citation omitted).

This motion does not ask this court to certify the constitutionality of the statute. Instead, SFR requests that this Court take the opportunity not afforded the *Bourne Valley* court—where the issue of facial unconstitutionality was raised for the first time on appeal—to clarify the Nevada Supreme Court’s interpretation of NRS 116.31168.

### **II. LEGAL ARGUMENT**

#### **A. Legal Standard**

Under NRAP 5(b), SFR can file a motion for an order that certifies a question to Nevada’s Supreme Court. If this Court issues such an order, then Nevada’s Supreme Court will have discretion over whether to answer the certified question. 5(a); *Fed. Ins. Co. v. Am. Hardware Mut. Ins.*, 184 P.3d 390, 392 (Nev. 2008). Nevada’s Supreme Court will answer a certified question when: (i) the question’s answer may be determinative of part of the federal suit, (ii) no controlling Nevada precedent exists, and (iii) the question’s answer will help settle important questions of law. *Volvo*, 137 P.3d at 1164. As is explained below, these factors are satisfied, warranting certification.

#### **B. The Certified Question’s Answer will be Determinative of Part of this Case**

The first factor is whether SFR’s question is a “question[] of law of this state which may

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be determinative of” part of this case. 5(a); *Volvo*, 137 P.3d at 1164. Here, SFR’s question focuses on the interpretation of 116.31168(1), which is a “law of this state.” 5(a). As such, SFR’s question is a “question[] of law of this state . . . .” Additionally, the answer to SFR’s question “may be determinative of part of” this case because it will definitively resolve 116.31168(1)’s meaning. *Fed. Ins. Co.*, 184 P.3d at 392. On the one hand, *Bourne Valley* construed 116.31168(1)’s incorporation of 107.090 as not requiring associations “to provide notice of default to mortgage lenders even absent a request . . . .” *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159 (9th Cir. 2016). On the other hand, *Bourne Valley*’s interpretation of 116.31168(1) is “only binding in the absence of any subsequent indication from the [Nevada] courts that our interpretation was incorrect.” *Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir.1983).

Importantly, Nevada’s Supreme Court has the final say over 116.31168(1)’s meaning. *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1146 (9th Cir. 2001) (“It is solely within the province of the state courts to authoritatively construe state legislation.”). If Nevada’s Supreme Court rejects *Bourne Valley*’s construction of 116.31168(1), then the Ninth Circuit must follow Nevada’s highest court; *Bourne Valley* would not be binding. *United States v. Swisher*, 771 F.3d 514, 524 (9th Cir. 2014); *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1106 n.6 (9th Cir. 2007); *Rotec Indus., Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1122 n.3 (9th Cir. 2003); *Pershing Park Villas Homeowners Ass’n v. United Pac. Ins. Co.*, 219 F.3d 895, 903 (9th Cir. 2000); *Owen*, 713 F.2d at 1464. To put it even more bluntly, “a state supreme court can overrule us on a question of state law,” *Henderson v. Pfizer, Inc.*, 285 F. App’x 370, 373 (9th Cir. 2008) (emphasis added), and “we are required to follow intervening decisions of the [Nevada] Supreme Court that interpret state law in a way that contradicts our earlier interpretation of that law.” *Bonilla v. Adams*, 423 F. App’x 738, 740 (9th Cir. 2011). Essentially, 116.31168(1)’s meaning is an issue of state law that Nevada’s Supreme Court “can overrule” *Bourne Valley* on. *Id.* As a result, this Court should certify SFR’s question because it is a “question[] of law of this state which may be determinative of” part of this case. 5(a); *Volvo*, 137 P.3d at 1164.

**C. Bourne Valley Acted as Though there is No Controlling Nevada Precedent**

The second factor is whether “controlling Nevada precedent exists[.]” *Fed. Ins. Co.*, 184

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P.3d at 392. Certification is appropriate when there is no controlling Nevada precedent. *Volvo*, 137 P.3d at 1164. Here, *Bourne Valley* acted as though “there is no controlling” Nevada precedent on 116.31168(1)’s meaning.<sup>1</sup> Perhaps because facial unconstitutionality was raised for the first time on appeal, *Bourne Valley* did not address the portion of the Nevada Supreme Court’s 2014 *SFR* decision that construed 116.31168(1). *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411, 417, 418, 422 (Nev. 2014).

As Judge Dorsey noted, *Bourne Valley* “makes no mention of the Nevada Supreme Court’s own interpretation of Chapter 116’s notice provisions in the *SFR* opinion . . . .” *U.S. Bank, N.A. v. Ascente Homeowners Ass’n*, No. 2:15-cv-00302-JAD-VCF, 2016 WL 4402807, at \*1 (D. Nev. Aug. 17, 2016). Similarly, Judge Gordon observed that “the *Bourne Valley* majority opinion does not address the fact that the Supreme Court of Nevada has already construed this Nevada state statute to require notice to the mortgage lenders. Even the dissenting justices in *SFR* agreed this was the proper interpretation of Nevada’s statutory scheme.” *Deutsche Bank Nat’l Trust Co. v. SFR Investments Pool 1, LLC*, No. 2:14-cv-001131-APG-VCF, 2016 WL 4419285, at \*1 (D. Nev. Aug. 18, 2016) (internal citation omitted).

This Court should certify SFR’s question because *Bourne Valley* acted as though there is no controlling Nevada precedent on 116.31168(1)’s meaning.

**D. The Certified Question’s Answer will Settle Important Questions of Law**

The third factor is whether an answer to SFR’s question “will help settle important questions of law.” *Volvo*, 137 P.3d at 1164. Here, the meaning of 116.31168(1) is an important question of Nevada law, which “is solely within the province of [Nevada’s Supreme Court] to authoritatively construe . . . .” *Cal. Teachers Ass’n*, 271 F.3d at 1146.<sup>2</sup> Again, SFR’s question is: Whether NRS § 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners’

<sup>1</sup> Compare *Bourne Valley*, 832 F.3d at 1159 (116.31168(1)’s incorporation of 107.090 did not require associations to provide banks with notice absent a request for notice), with *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411, 417, 418, 422 (Nev. 2014) (116.31168(1)’s incorporation of 107.090 required associations to provide notice to banks that recorded their security interest).

<sup>2</sup> See also *O’Brien v. Skinner*, 414 U.S. 524, 531 (1974) (“It is not our function to construe a state statute contrary to the construction given it by the highest court of a State.”); *High v. Ignacio*, 408 F.3d 585, 590 (9th Cir. 2005) (“This court accepts a state court ruling on questions of state law.”).

associations to provide notices of default to banks even when a bank does not request notice? If Nevada's Supreme Court answers this question with a "Yes,"—as it did in *SFR*—then *Bourne Valley*'s contrary construction is not binding. *Swisher*, 771 F.3d at 524; *Bonilla*, 423 F. App'x at 740; *Henderson*, 285 F. App'x at 373; *CRST*, 479 F.3d at 1106 n.6; *Rotec Indus., Inc.*, 348 F.3d at 1122 n.3; *Cal. Teachers Ass'n*, 271 F.3d at 1146; *Pershing Park*, 219 F.3d at 903; *Owen*, 713 F.2d at 1464. *Bourne Valley* turned on the meaning of 116.31168(1), an issue of Nevada law that Nevada's Supreme Court should resolve. After all, core principles of Federalism dictate that state law is the province of state courts. *O'Brien v. Skinner*, 414 U.S. 524, 531 (1974); *High v. Ignacio*, 408 F.3d 585, 590 (9th Cir. 2005). It is these principles of Federalism that NRAP 5 is designed to promote. *Volvo*, 137 P.3d at 1164 (NRAP 5's purposes are federalism, comity, and judicial efficiency). Ultimately, the certified question's answer will settle important questions of law.

### III. CONCLUSION

For the foregoing reasons, this Court should grant SFR's Motion to Certify a Question of Law to Nevada's Supreme Court. Certification is appropriate because: (i) the certified question's answer "may 'be determinative of' part" of this case, (ii) *Bourne Valley*'s interpretation of 116.31168(1) acted as though "there is no controlling" Nevada precedent, and (iii) the answer "will help settle important questions of law." *Volvo*, 137 P.3d at 1164.

DATED this 4th day of January, 2017.

**KIM GILBERT EBRON**

/s/Diana Cline Ebron

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4th day of January, 2017, pursuant to FRCP 5, I served via the CM-ECF electronic filing system the foregoing **MOTION TO CERTIFY A QUESTION OF LAW TO NEVADA'S SUPREME COURT** to the following parties:

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Ariel E. Stern  
Rex Garner  
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702-634-5000  
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*Counsel for THE BANK OF NEW YORK MELLON F/K/A/ THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2006-6*

/s/ Andrew M. David  
An Employee of Kim Gilbert Ebron

# **TAB 4**

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**United States District Court**

**District of Nevada**

**Notice of Electronic Filing**

The following transaction was entered on 3/16/2017 at 9:53 AM PDT and filed on 3/10/2017

**Case Name:** The Bank of New York Mellon v. Star Hill Homeowners Association et al

**Case Number:** [2:16-cv-02561-RFB-PAL](#)

**Filer:**

**Document Number:** 36(No document attached)

**Docket Text:**

**MINUTES OF PROCEEDINGS - Motion Hearing held on 3/10/2017 before the Honorable Richard F. Boulware, II. Crtrm Administrator: *Blanca Lenzi*; Pla Counsel: *Rex Garner, Esq., Darren Brenner, Esq.*; Def Counsel: *Diana Cline Ebron, Esq., Jacqueline Gilbert, Esq.*; Court Reporter/Recorder: *Patty Ganci*; Time of Hearing: *2:31 PM - 3:33 PM*; Courtroom: *7D*.**

**The Court makes preliminary statements and hears representation of counsel regarding the [21] Motion to Certify a Question of Law to Nevada Supreme Court. For the reasons stated on the record at the hearing,**

**IT IS ORDERED that Defendant SFR Investments Pool 1, LLC's [21] Motion to Certify a Question of Law to Nevadas Supreme Court is GRANTED.**

**IT IS FURTHER ORDERED that Defense counsel submit a draft of the proposed to plaintiff's counsel by March 16, 2017 by 9:00 AM. FURTHER, Defense counsel shall file a statement of facts to the Question to be Certified due by the close of business on March 17, 2017. Plaintiff's response/opposition is due by March 19, 2017.**

**IT IS FURUTHER ORDERED that the transcript of the hearing shall serve as the written Opinion and Order of the Court.**

**(Copies have been distributed pursuant to the NEF - BEL)**



# **TAB 5**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS  
CWABS, INC. ASSET-BACKED  
CERTIFICATES, SERIES 2006-6

Plaintiff,

v.

STAR HILL HOMEOWNERS  
ASSOCIATION; SBW INVESTMENT, LLC;  
NEVADA ASSOCIATION SERVICES, INC.;  
and SFR INVESTMENT POOL 1, LLC,

Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

v.

THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
CWABS, INC., 2006-6, RICHARD A. PEREZ,  
SR. an individual, and ROSEMARIE PEREZ,  
an individual,

Counter/Cross Defendants.

Case No. 2:16-cv-02561-RFB-PAL

**ORDER**

**I. INTRODUCTION**

Before the Court is Counter / Cross Claimant SFR Investment Pool 1, LLC's Motion to Certify a Question of Law to Nevada's Supreme Court. ECF No. 21. For the reasons stated below, the Motion is granted. SFR seeks certification of the following question:

JA\_0063

1 “Whether NRS § 116.31168(1)’s incorporation of NRS § 107.090 requires homeowner’s  
2 association to provide notices of default to banks even when a bank does not request notice?”  
3

## 4 **II. BACKGROUND**

5 This case arises out of the foreclosure sale by Star Hills Homeowners Association  
6 (“Association”) of its lien for delinquent assessments against the real property commonly known  
7 as 5020 Piney Summit Ave, Las Vegas, Nevada 89141 (the “Property”). See Complaint  
8 (“Compl.”) ECF 1 at p.3, ¶ 8; see also SFR’s Answer, Counterclaim, Cross-claim (“SFRACC”),  
9 ECF 20 at p.9, ¶1. The complaint alleges Star Hill Homeowners Association's sale did not  
10 extinguish the deed of trust because BACK Home Loans Servicing, LP’s (“BAC”) tender satisfied  
11 the super-priority lien and NRS chapter 116 violates the Fourteenth Amendment's Due Process  
12 clause. Id. ¶¶ 37–44, 48. The complaint asserts both a facial and an as-applied constitutional due  
13 process challenge to the super-priority lien foreclosure statutes. SFR filed a counterclaim for quiet  
14 title and injunctive relief. ECF No. 20 at 9-17.  
15

16 The Parties’ pleadings, including BNY Melon’s Complaint, ECF No. 1, and SFR’s Answer,  
17 Counterclaim and Cross-Claim, ECF No. 20, set forth the following facts:

18 In 1991, Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including  
19 NRS 116.3116(2). In 1993, Nevada amended NRS 116, repealing a portion of NRS 116.31168,  
20 and enacting NRS 116.31163 and 116.31165. In October of 2004, the Association recorded its  
21 declaration of Covenants, Conditions, and Restrictions (CC&Rs) in the Official Records of the  
22 Clark County Recorder as Instrument Number 20041014000678.

23 On January 31, 2006, a Grant, Bargain, and Sale Deed was recorded transferring the  
24 Property to Richard A. Perez, Sr. and Rosemarie Perez. On the same day, a Deed of Trust naming  
25 Countrywide Home Loans, Inc. as lender, and Mortgage Electronic Registration Systems, Inc.  
26 (“MERS”) as beneficiary, and Recontrust Company (“Recontrust”) as trustee, was recorded. On  
27 February 5, 2010, the Perezes became delinquent on their Association dues and the Association,  
28 through its agent Nevada Association Services, Inc. (“NAS”), recorded a Notice of Delinquent

1 Assessments. On May 5, 2010, the Association, through NAS, recorded a Notice of Default and  
2 Election to Sell. On January 19, 2011, the Association, through NAS, recorded a Notice of Sale.

3 On August 26, 2011, an assignment was recorded by Bank of America N.A. (“BANA”),  
4 stating that MERS transferred its interest in the Deed of Trust to BNY Mellon. On August 26,  
5 2011, Recontrust recorded a Substitution of Trustee, identifying BNY Mellon as the new trustee.  
6 Recontrust also recorded a Notice of Default and Election to Sell under the Deed of Trust. On  
7 December 30, 2011, Recontrust recorded a Certificate State of Nevada Foreclosure Mediation  
8 Program allowing the Beneficiary of the Deed of Trust to proceed with foreclosure. Recontrust  
9 also recorded a Notice of Trustee’s Sale.

10 On May 15, 2012, the Association, through NAS, recorded a second Notice of Sale. On  
11 September 15, 2012, the Association’s foreclosure sale was held, and SBW Investment, Inc.  
12 (“SBW”) purchased the property. On September 20, 2012, the Association, through NAS, recorded  
13 a Foreclosure Deed vesting title in SBW. The Foreclosure Deed stated that the Association  
14 foreclosure sale complied with “all requirements of law including, but not limited to, the elapsing  
15 of 90 days, mailing of copies of Notice of Delinquent Assessments and Notice of default and the  
16 posting and publication of the Notice of Sale.” On April 5, 2013, SBW recorded a Grant, Bargain,  
17 Sale Deed transferring title to SFR.

18 On October 1, 2015, Nevada amended NRS 116 to explicitly require homeowners’  
19 associations to provide parties with recorded interests with notice of default and notice of sale even  
20 when notice has not been requested.

21 On November 4, 2016, BNY Mellon filed its Complaint, naming the Association, SBW,  
22 NAS, and SFR as defendants. BNY Mellon requests, *inter alia*, a declaration from the Court that  
23 the Association Foreclosure Sale did not extinguish the Deed of Trust (and its associated priority  
24 interest) and that the Deed of Trust maintains its priority interest encumbering the Property.  
25 Alternatively, BNY Mellon seeks a declaration that the Association Foreclosure Sale is void.  
26 BNY Mellon alleged that the foreclosure procedures were unconstitutional in that they denied  
27 due process.  
28

1 On January 3, 2017, SFR filed its answer and brought counter-claims against BNY  
2 Mellon and the Perezes asking, *inter alia*, for declaratory relief and quiet title. SFR alleges that  
3 BNY Mellon had actual notice and received the Association's Notice of Default and Notice of  
4 Sale. Therefore, SFR requests a declaration that the Deed of Trust was extinguished by the sale  
5 pursuant to the Nevada Supreme Court decision in SFR Investments Pool 1, LLC v. U.S. Bank,  
6 N.A., 334 P.3d 408, 419 (Nev. 2014), and SFR has title free and clear of the deed of trust.

7  
8 On August 12, the Ninth Circuit held NRS chapter 116's "opt-in" notice scheme violates  
9 the Fourteenth Amendment's due process clause because it allows a lender to be stripped of its  
10 deed of trust without requiring actual notice of the intent to foreclose. Bourne Valley Court Tr. v.  
11 Wells Fargo Bank, N.A., 832 F.3d 1154, 1157–58 (9th Cir. 2016), reh'ng denied (9th Cir. Nov. 4,  
12 2016). The Court in Bourne Valley, in interpreting the then-applicable notice provision in NRS  
13 116.31163, held that Nevada law did not mandate actual notice to mortgage lenders whose rights  
14 are subordinate to a homeowner's association super priority lien. See id. at 1159. Importantly, the  
15 Court did not and could not rely upon any controlling state law as to the requirements of notice  
16 under state law as to NRS 116.31163. Relying upon its own analysis of Nevada's statutory  
17 foreclosure statutes, the Court found that although NRS 116.31168(1) incorporated NRS 107.090,  
18 which mandated actual notice to subordinate lien holders, the notice provision in NRS  
19 116.31163(2), requiring notice only to those who "notified the association, 30 days before  
20 recordation of the notice of default, of the security interest," controlled, and because full  
21 incorporation of the NRS 107.090 would "render superfluous" the notice provision of NRS  
22 116.31163(2), the statute could not be read to require the notice relevant to the constitutional  
23 challenge.

24 The Nevada Supreme Court, on January 26, 2017, issued its opinion in Saticoy Bay LLC  
25 Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A., 388  
26 P.3d 970 (Nev. 2017). In the opinion, the Nevada Supreme Court disagreed with the *Bourne*  
27 *Valley Court* on the issue of whether due process was implicated, holding that due process was  
28 not implicated in an association non-judicial foreclosure sale for lack of state action. Id. at 974,

1 n.5. Because the Nevada Supreme Court concluded due process was not implicated, it stated that  
2 it “need not determine whether NRS 116.3116 et seq. incorporates the notice requirements set  
3 forth in NRS 107.090.” Id.  
4

### 5 **III. LEGAL STANDARD**

6 Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure ("Rule 5"), a United States  
7 District Court may certify a question of law to the Nevada Supreme Court "upon the court's own  
8 motion or upon the motion of any party to the cause." Nev. R. App. P. 5(a)—(b). Under Rule 5,  
9 the Nevada Supreme Court has the power to answer such a question that “may be determinative of  
10 the cause then pending in the certifying court and . . . [where] it appears to the certifying court  
11 there is no controlling precedent in the decisions of the Supreme Court of this state." Nev. R. App.  
12 P. 5(a). Rule 5 also provides that a certification order must specifically address each of six  
13 requirements:  
14

- 15 (1) The questions of law to be answered;
- 16 (2) A statement of all facts relevant to the questions certified;
- 17 (3) The nature of the controversy in which the questions arose;
- 18 (4) A designation of the party or parties who will be the appellant(s) and the party or parties  
19 who will be the respondent(s) in the Supreme Court;
- 20 (5) The names and addresses of counsel for the appellant and respondent; and
- 21 (6) Any other matters that the certifying court deems relevant to a determination of the  
22 questions certified.

23 Nev. R. App. P. 5(c).  
24

### 25 **IV. DISCUSSION**

26 The Court finds that certification to the Nevada Supreme Court is warranted in this case  
27 because the pending claims and counterclaims may be resolved, in part, by a determination of  
28 whether NRS 116.31163-116.31168 and, by incorporation, NRS 107.090 required associations to  
provide notice to the recorded beneficiary of a deed of trust, which is subordinate to the super-

1 priority portion of an association lien for assessments under NRS 116.3116(2), and what notice  
 2 must be provided. See SFR, 334 P.3d at 419. While the Ninth Circuit has construed the statute  
 3 and determined that it is unconstitutional as “opt-in” only, this Court is cognizant that it did so in  
 4 the absence of controlling precedent or construction from the Nevada Supreme Court. And, where  
 5 there is no controlling precedent from the state, and the interpretation of state law is controlling,  
 6 then the federal court’s determination is controlling. See Huddleston v. Dwyer, 322 U.S. 232, 236  
 7 (1944). However, if the state court disapproves of the interpretation given by the federal court,  
 8 then the federal courts must follow the interpretation by the state court. See id.; see also Owen v.  
 9 United States, 713 F.2d 1461, 1464 (9th Cir.1983) (a federal court’s construction of state law is  
 10 “only binding in the absence of any subsequent indication from the [state appellate] courts that our  
 11 interpretation was incorrect.”). As recognized by the Ninth Circuit, “[i]t is solely within the  
 12 province of the state courts to authoritatively construe state legislation.” Cal. Teachers Ass’n v.  
 13 State Bd. Of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). This is why questions of state law should  
 14 be resolved in the first instance by the state’s highest court. Huddleston, 322 U.S. at 237. Because  
 15 the Nevada Supreme Court declined to reach the issue of notice in Saticoy Bay, there is no  
 16 controlling precedent from that Court. A decision by the Nevada Supreme Court on the instant  
 17 issue would provide this Court with guidance as to how to address the issue of notice, including  
 18 actual notice, and how to apply Bourne Valley in this case. Additionally, disputes over the scope  
 19 of discovery may be impacted by the answer to the question.

20 Because the relevant facts are set forth above, the Court addresses whether the issue “may  
 21 be determinative of the cause” as well as the remaining five requirements.

### 22 **(1) May Be Determinative of the Cause**

23 Among other claims, the Complaint seeks quiet title on the ground that NRS 116’s “scheme  
 24 of HOA superpriority non-judicial foreclosure violates BNY Mellon’s procedural due process  
 25 rights.” If the statute was facially unconstitutional, the sale pursuant to the statute was invalid, and  
 26 the central dispute in this matter—the validity of the foreclosure sale and title to the property—  
 27 would probably be resolved in favor of the Plaintiff.

### 28 **(1) The Question of Law to be Answered**

1 The Court certifies the following question: “*Whether NRS § 116.31168(1)’s incorporation*  
 2 *of NRS § 107.090 required a homeowner’s association to provide notices of default and/or sale to*  
 3 *persons or entities holding a subordinate interest even when such persons or entities did not*  
 4 *request notice, prior to the amendments that took effect on Oct 1, 2015?”*

5 **(3) The Nature of the Controversy in which the Question Arose**

6 As stated above, this case is a dispute as to the validity of a homeowners’ association  
 7 foreclosure sale made pursuant to the foreclosure statute found facially unconstitutional in Bourne  
 8 Valley Court Tr. v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1157–58 (9th Cir. 2016), reh’g denied  
 9 (9th Cir. Nov. 4, 2016). That ruling relied on the federal circuit panel’s own interpretation of the  
 10 notice requirement under Nevada law. The complaint, filed after the Boerne Valley decision,  
 11 alleges that the statute is facially unconstitutional, and unconstitutional as applied.

12 **(4) A Designation of the Party or Parties who will be the Appellant(s) and the Party or**  
 13 **Parties who will be the Respondent(s) in the Supreme Court;**

14 The moving defendants / cross-claimants SFR Investment Pool 1, LLC, and Star Hill  
 15 Homeowners Association are designated as Appellants, and plaintiff The Bank of New York  
 16 Mellon is designated as Respondent.

17 **(5) The names and addresses of counsel for the appellant and respondent; and**

18 **Counsel for Appellant SFR Investments Pool 1, LLC**

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 20 Nevada Bar No. 10593  
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14 **Counsel for Respondent The Bank of New York Mellon f/k/a The Bank of New York,**  
15 **As Trustee for the Certificate holders of CWABS, Inc., Asset backed Certificates,**  
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<sup>1</sup> The Court notes that Star Hill Homeowners Association did not appear in the case until February 10, 2017, after full briefing on SFR's motion to certify. See Answer to Complaint [ECF 32.] No one appeared at the hearing on behalf of the association

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8 **(6) Any other matter that the certifying court deems relevant**

9 The Court has fully laid out the relevant facts and legal questions.

10 **V. CONCLUSION**

11 **IT IS THEREFORE ORDERED** that the following question is CERTIFIED to the  
12 Nevada Supreme Court pursuant to Rule 5 of the Nevada Rules of Appellate Procedure:

13 The Court will certify the following question, “Whether NRS § 116.31168(1)’s  
14 incorporation of NRS § 107.090 required a homeowner’s association to provide notices of  
15 default and/or sale to persons or entities holding a subordinate interest even when such  
16 persons or entities did not request notice, prior to the amendments that took effect on Oct  
17 1, 2015?”

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall forward a copy of this Order  
19 to the Clerk of the Nevada Supreme Court under the official seal of the United States District Court  
20 for the District of Nevada. See Nev. R. App. P. 5(d).

21 **DATED** this 21st day of April, 2017.

22  
23 

24 \_\_\_\_\_  
25 **RICHARD F. BOULWARE, II**  
26 **UNITED STATES DISTRICT JUDGE**  
27  
28