

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BANK OF AMERICA, N.A.,

VS.

THOMAS JESSUP, LLC SERIES VII,  
FOXFELD COMMUNITY ASSOCIATION,  
and NEVADA ASSOCIATION SERVICES

No. 73785

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Oct 02 2017 08:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department VII  
County Clark Judge Joseph Hardy  
District Ct. Case No. A-13-693205-C

**2. Attorney filing this docketing statement:**

Attorney William Habdas Telephone (702) 634-5000  
Firm Akerman, LLP  
Address 1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144

Client(s) Bank of America, N.A.; Bank of New York Mellon; Mortgage Electronic Registratio

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Richard Tobler Telephone 702-256-6000  
Firm Richard L. Tobler, Ltd.  
Address 3654 N. Rancho Drive  
Suite 102  
Las Vegas, Nevada 89130

Client(s) THOMAS JESSUP, LLC SERIES VII

Attorney Shane Cox Telephone 702.796.4000  
Firm GERRARD COX & LARSEN  
Address 9139 W. Russell Road  
Las Vegas Nevada 89148

Client(s) Absolute Collection Services LLC; Foxfield Community Association

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a quiet title and declaratory relief action brought by a purchaser at an HOA foreclosure sale against Bank of America, holder of a deed of trust on the property. Bank of America thereafter made cross-claims against the purchaser for quiet title, declaratory relief, unjust enrichment, tortious interference with contract and breach of the duty of good faith.

The district court denied BANA's motion for summary judgment. After a bench trial, the district court found in favor of the purchaser despite Bank of America's tender of the super-priority portion of the HOA's lien which was rejected by the HOA.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in finding that BANA's unjustly refused offer to pay the superpriority portion of the HOA's lien was not a tender; whether the district court erred in ruling that the sale was commercially reasonable.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

There are many cases currently before this Court involving the effects of HOA foreclosure sales where the holder of a deed of trust tendered the superpriority portion of the HOA's lien.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This matter presents as a principal issue the question of first impression of whether the Appellant Bank's tender was sufficient where it was wrongfully rejected by the HOA's agent.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(13), as it presents as a principal issue the question of first impression of whether the Appellant Bank's tender was valid, and therefore was wrongfully rejected by the HOA's agent.

Furthermore, this matter is presumptively retained by the Supreme Court as the action does not concern matters presumptively assigned to the Court of Appeals under NRAP 17(b).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
N/A

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** July 14, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** July 20, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** August 15, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
The order from which Appellant now appeals is a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

THOMAS JESSUP, LLC SERIES VII; BANK OF AMERICA, N.A.; MORTGAGE  
ELECTRONIC REGISTRATIONS SYSTEMS, INC.; LENA COOK; BNY  
MELLON, N.A.; HEIRS OF THE ESTATE OF LENA COOK; FOXFIELD  
COMMUNITY ASSOCIATION; ABSOLUTE COLLECTION SERVICES

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

LENA COOK - not served

HEIRS OF THE ESTATE OF LENA COOK - not served

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

THOMAS JESSUP, LLC SERIES VII - quiet title, declaratory relief - July 14, 2017  
BANK OF AMERICA, N.A., MORTGAGE ELECTRONIC REGISTRATIONS  
SYSTEMS, INC., and BNY MELLON, N.A - quiet title, declaratory relief, unjust  
enrichment, tortious interference with contract, breach of duty of good faith, and  
wrongful foreclosure.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Bank of America, N.A.

Name of appellant

William Habdas

Name of counsel of record

September 29, 2017

Date

/s/ William Habdas

Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 29th day of September, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard Tobler, Esq.  
3654 N. Rancho Drive  
Suite 102  
Las Vegas, Nevada 89130

Shane Cox, Esq.  
ABSOLUTE COLLECTION SERVICES, LLC,  
8440 W. Lake Mead Blvd.,  
Suite 210  
Las Vegas, Nevada 89128

Dated this 29th day of September, 2017

/s/ Carla Llarena

Signature

1 **ACOM**  
Michael V. Infuso, Esq., Nevada Bar No. 7388  
2 Zachary P. Takos, Esq., Nevada Bar No. 11293  
3 **GREENE INFUSO, LLP**  
3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146  
4 Telephone: (702) 570-6000  
Facsimile: (702) 463-8401  
5 E-mail: minfuso@greeneinfusolaw.com  
ztakos@greeneinfusolaw.com

6 Attorneys for Plaintiff

7  
8 **EIGHTH JUDICIAL DISTRICT COURT FOR**  
9 **CLARK COUNTY, NEVADA**

10 THOMAS JESSUP, LLC SERIES VII,

11 Plaintiff,

12 v.

13 LENA COOK, an individual; BNY  
MELLON, N.A.; SFG MORTGAGE, a  
14 revoked Arizona corporation; BANK OF  
AMERICA, N.A.; MORTGAGE  
15 ELECTRONIC REGISTRATION  
SYSTEMS, INC., a Delaware corporation;  
16 HEIRS OF THE ESTATE OF LENA COOK;  
and any and all other persons unknown  
17 claiming any right, title, estate, lien or interest  
in the Property adverse to the Plaintiff's  
18 ownership, or any cloud upon Plaintiff's title  
thereto (DOES 1 through 10, inclusive);

19 Defendants.  
20

Case No. A-13-693205-C

Dept. No. XIV

**VERIFIED AMENDED COMPLAINT  
FOR QUIET TITLE AND  
DECLARATORY RELIEF**

**Exempt from Arbitration: Concerns Title  
to Property**

21 Plaintiff Thomas Jessup, LLC Series VII, by and through its counsel of record, the law  
22 firm of Greene Infuso, LLP, hereby amends its Complaint against the above-named Defendants as  
23 follows:

24 **PARTIES, JURISDICTION AND VENUE**

25 1. Plaintiff Thomas Jessup, LLC Series VII ("Plaintiff") is a Nevada limited liability  
26 company formed under the laws of the state of Nevada and, at all relevant times, lawfully doing  
27 business in Clark County, Nevada.  
28

2. Upon information and belief, Defendant Lena Cook ("Cook") is an individual residing, at all relevant times, in Clark County, Nevada.

3. Upon information and belief, Defendant BNY Mellon, N.A. ("Mellon") is a National Association, at all relevant times, lawfully doing business in Clark County, Nevada.

4. Upon information and belief, Defendant SFG Mortgage ("SFG") is a revoked Arizona corporation, at all relevant times, lawfully doing business in Clark County, Nevada.

5. Upon information and belief, Defendant Bank of America, N.A. ("BOA") is a National Association, at all relevant times, lawfully doing business in Clark County, Nevada.

6. Upon information and belief, Mortgage Electronic Registration Systems, Inc. ("MERS").

7. Upon information and belief, Lena Cook may be deceased and as such Plaintiff is naming any Heirs to the Estate of Lena Cook as necessary parties to the action.

8. The true names and capacities of Does 1 through 10 ("Doe Defendants") are all other persons unknown claiming any right, title, estate, lien or interest in the Property adverse to the Plaintiff's ownership, or any cloud upon Plaintiff's title thereto. Plaintiff therefore sues such Doe Defendants by fictitious names Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of each of the Doe Defendants as and when such information is ascertained. (The above-identified defendants, including the Doe Defendants, are referred to collectively herein as "Defendants.")

9. This action relates to the ownership and title of certain real property located in Clark County, Nevada. Accordingly, jurisdiction and venue are appropriate in Clark County, Nevada.

#### GENERAL ALLEGATIONS

10. On or about June 12, 2012, CSC Investment Group, LLC purchased certain real property commonly known as 588 Bugle Bluff Drive, Henderson, Nevada 89015; APN 179-21-116-042 (the "Property") at a properly noticed foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.

11. On or about June 13, 2012, the Trustee's Deed Upon Sale conveying the Property was recorded with the Clark County Recorder's Office as instrument no. 201206130002720. See Deed at **Exhibit 1**.

12. On or about August 17, 2012, a Quitclaim Deed transferring the Property from CSC Investment Group, LLC to Thomas Jessup, LLC was recorded with the Clark County Recorder's Office as instrument no. 201208170001801. See Deed at **Exhibit 2**.

13. On or about May 31, 2013, a Quitclaim Deed transferring the Property from Thomas Jessup, LLC to Plaintiff was recorded with the Clark County Recorder's Office as instrument no. 201305310004710. See Deed at **Exhibit 3**.

14. Upon information and belief, Defendants may have had an interest in the Property at one time.

15. Upon information and belief, none of the Defendants had a valid interest in the Property subsequent to at the time of the foreclosure sale.

16. Through the foreclosure sale, Plaintiff acquired title to the Property free and clear of all liens and encumbrances.

**FIRST CLAIM FOR RELIEF**  
**(Quiet Title)**

17. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 16 of this Complaint, as though fully set forth herein.

18. Plaintiff is the rightful owner of the Property by virtue of the foreclosure sale and forthcoming Foreclosure Deed.

19. Upon information and belief, none of the Defendants had a valid interest in the Property subsequent to the foreclosure sale.

20. Plaintiff is entitled to a determination from this Court, pursuant to NRS 40.010, that Plaintiff is the rightful owner of the Property and that Defendants, and each of them, have no right, title, or interest in the Property.

**SECOND CLAIM FOR RELIEF  
(Declaratory Relief)**

21. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 20 of this Complaint, as though fully set forth herein.

22. Plaintiff seeks a declaration from this Court, pursuant to NRS 40.010, that title in the Property is vested in Plaintiff free and clear of all liens and encumbrances, that Defendants herein have no estate, right, title or interest in the Property, and that Defendants are forever enjoined from asserting any estate, title, right, or interest in the Property adverse to Plaintiff.

WHEREFORE, Plaintiff prays for the following relief:

1. For a determination and declaration that Plaintiff is the rightful holder of title to the Property, free and clear of all liens and encumbrances;

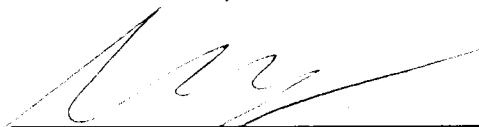
2. For a determination and declaration that Defendants have no estate, right, title or interest in the Property;

3. For a judgment forever enjoining Defendants from asserting any estate, right, title or interest in the Property; and

4. For such other and further relief as this Court may deem just and proper.

DATED this 7 day of April, 2014.

**GREENE INFUSO, LLP**



Michael V. Infuso, Esq., Nevada Bar No. 7388  
Zachary P. Takos, Esq., Nevada Bar No. 11293  
3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146

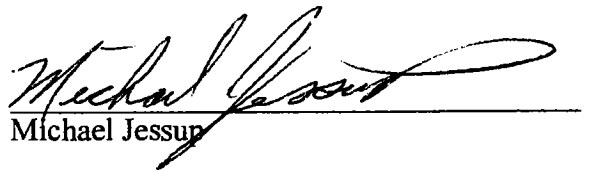
Attorneys for Plaintiff

VERIFICATION

I, Michael Jessup, am managing member for Plaintiff in the above-entitled action. I have read the foregoing document and am competent to testify that the contents thereof are true to the best of my knowledge, except for those matters stated therein on information and belief and, as to those matters, I believe them to be true.

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

Dated this 9 day of April, 2014.

  
Michael Jessup



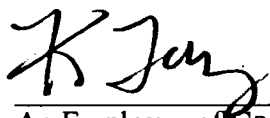
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Greene Infuso, LLP, and that on this 9  
day of April 2014, I caused to be served via United States Mail, postage prepaid, a true and  
correct copy of the above and foregoing AMENDED COMPLAINT properly addressed as  
follows:

Bank of New York Mellon, N.A.  
One Wall Street, 11<sup>th</sup> Floor  
New York, New York 10286

SFG Mortgage  
C/O Registered Agent  
CSC Services of Nevada Inc.  
2215-B Renaissance Drive  
Las Vegas, Nevada 89119

Darren Brenner, Esq.  
Akerman, LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144



\_\_\_\_\_  
An Employee of GREENE INFUSO, LLP

## EXHIBIT 1

Inst #: 201206130002720  
Fees: \$19.00 N/C Fee: \$25.00  
RPTT: \$28.05 Ex: #  
05/13/2012 02:03:55 PM  
Receipt #: 1195891  
Requestor:  
CAMCO  
Recorded By: STN Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN: 179-21-116-042

WHEN RECORDED MAIL DEED AND  
TAX STATEMENTS TO:

CSC Investment Group LLC  
2330 Paseo Del Prado #C-112  
Las Vegas NV 89102

Title No. A2216  
Account NO. 90137  
TS No. 11980018

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TRUSTEE'S DEED UPON SALE**

The undersigned declares:

- |    |   |             |
|----|---|-------------|
| 1) | The grantee herein <b>WAS NOT</b> the foreclosing beneficiary |             |
| 2) | The amount of the unpaid debt together with costs was         | \$ 5,401.00 |
| 3) | The amount paid by the grantee at the trustee sale was        | \$ 5,401.00 |
| 4) | The documentary transfer tax is                               | \$ 28.05    |
| 5) | City Judicial District of LAS VEGAS                           |             |

And **Absolute Collection Services, LLC.**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to: **CSC Investment Group LLC, 2330 Paseo Del Prado #C-112, Las Vegas NV 89102**

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

**588 Bugle Bluff Dr., Henderson NV 89015**

Legal Description-shown on the Subdivision map recorded in Book No. 78 Page(s) 19, Lot 9, Block 2 Inclusive, of Maps of the Country of Clark, State of Nevada; See Exhibit A Attached

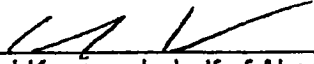
**AGENT STATES THAT:**

This conveyance is made pursuant to the powers granted to **Foxfield CA** and conferred upon appointed trustee by the provisions of the Nevada Revised Statutes, the **Foxfield CA** governing documents (CC&R's) recorded as instrument number **01673** Book **960405** on **APRIL 5, 1996** and that certain Notice of Delinquent Assessment Lien

recorded on **APRIL 12, 2011** instrument number **0001730** Book **20110412** Official Records of CLARK County; and pursuant to NRS 117.070 et Seq. or NRS 116.3115 et Seq and NRS 1163116 through 116.31168 et Seq. The name of the owner(s) of the property (trustor) was: **LENA COOK**

Default occurred as set forth in a Notice of Default and Election to Sell, recorded on **JULY 18, 2011** as instrument **0000815** Book **20110718** which was recorded in the office of the recorder of said county. Absolute Collection Services, LLC. Has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of **FOXFIELD CA** at public auction on **JUNE 12, 2012** at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid **\$5,401.00** in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: June 13, 2012

  
By Richard Kaye on behalf of Absolute Collection Services

STATE OF NEVADA       )  
COUNTY OF CLARK     )

On 6/13/12 before me, Kelly Mitchell, personally appeared Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

  
Kelly Mitchell, Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA,  
AND IS DESCRIBED AS FOLLOWS:

LOT NINE (9) IN BLOCK TWO (2), OF FOXFIELD ESTATES-PHASE THREE (3) AS SHOWN BY MAP  
THEREOF ON FILE IN BOOK 78 OF PLATS, PAGE 19 IN THE OFFICE OF THE COUNTY RECORDER  
OF CLARK COUNTY, NEVADA.

APN: 179-21-116-042

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 179-21-116-042  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property

\$ 5,401.00

b. Deed in Lieu of Foreclosure Only (value of property) (\_\_\_\_\_)

c. Transfer Tax Value:

\$ 5,401.00

d. Real Property Transfer Tax Due

\$ 28.05

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

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

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
(REQUIRED)

Print Name: Absolut Collection Services  
Address: 6440 Sky Point Dr 140-154  
City: Las Vegas  
State: NV Zip: 89131

**BUYER (GRANTEE) INFORMATION**  
(REQUIRED)

Print Name: CSC Investment Group LLC  
Address: 2330 Paseo del Prado C-112  
City: Las Vegas NV  
State: NV Zip: 89147

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

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

Escrow # \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

## EXHIBIT 2

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

APN# 179-21-116-042

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

**TITLE OF DOCUMENT**  
(DO NOT Abbreviate)

QUITCLAIM DEED

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

**RECORDING REQUESTED BY:**

CSC INVESTMENT GROUP, LLC

RETURN TO: Name CSC INVESTMENT GROUP, LLC

Address 2330 PASEO DEL PRADO, C-112

City/State/Zip LAS VEGAS, NV 89102

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name THOMAS JESSUP, LLC

Address 631 N. STEPHANIE ST. #396

City/State/Zip HENDERSON, NV 89014

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

An additional recording fee of \$1.00 will apply.

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

Inst #: 201208170001801

Fees: \$20.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #003

08/17/2012 12:23:42 PM

Receipt #: 1275764

Requestor:

CSC INVESTMENT GROUP LLC

Recorded By: SAO Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER



**APN: 179-21-116-042**

**WHEN RECORDED MAIL DEED AND  
TAX STATEMENTS TO:**

**THOMAS JESSUP, LLC  
631 N. STEPHANIE ST. #396  
HENDERSON, NV 89014**

---

### **QUITCLAIM DEED**

**THIS QUITCLAIM DEED made on July 31, 2012 between CSC Investment Group, LLC, 2330 Paseo Del Prado, Ste C-112, Las Vegas, NV 89102 and Thomas Jessup, LLC, 2330 Paseo Del Prado, Ste C-112, Las Vegas, NV 89102 .**

**That for and in consideration of the sum of ZERO DOLLARS AND 00/100 CENTS (\$0.00) the receipt of which is hereby acknowledged, CSC Investment Group, LLC does hereby release, remise and forever quitclaim unto Thomas Jessup, LLC Thomas Jessup, LLC all of his interest, if any, in that certain real property commonly known as:**

**588 BUGLE BLUFF, HENDERSON, NV 89015**

**Legally described as follows:**

**Lot 9, as per map recorded in Book 78, Page 19 as shown in the Office of the County Recorder of Clark County Nevada.**

**Together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof. To have and to hold, all and singular the premises, with the appurtenances, unto Thomas Jessup, LLC and his/her heirs and assigns forever.**

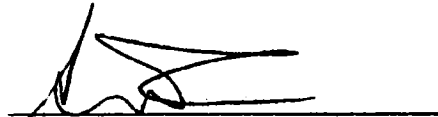
In witness whereof, **CSC Investment Group, LLC** has hereunto this **31<sup>ST</sup> day of July, 2012** as set forth above.

State of:     **NEVADA**

County of:   **CLARK**

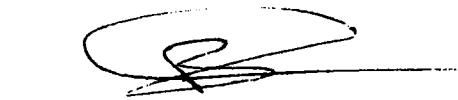
I **Shari Wong Culotta**, being duly sworn, depose and say:

That I am the authorized representative of **CSC Investment Group, LLC**, in the above-entitled action and that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and to those matters, I believe them to be true.

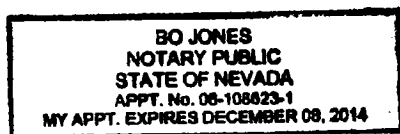


**Shari Wong Culotta,**  
**Agent of CSC Investment Group, LLC**

Subscribed and sworn to before me this **31<sup>st</sup> day of July, 2012**.



**Bo Jones, Notary Public**



Stamp

**EXHIBIT A**

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:**

**LOT NINE (9) IN BLOCK TWO (2), OF FOXFIELD ESTATES-PHASE THREE (3) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 78 OF PLATS, PAGE 19 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

**APN: 179-21-116-042**

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

a. 179-21-116-042  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
   ☐ Other

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property \$ 0.00  
b. Deed in Lieu of Foreclosure Only (value of property (\_\_\_\_\_) )  
c. Transfer Tax Value: \$ \_\_\_\_\_  
d. Real Property Transfer Tax Due \$ \_\_\_\_\_

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 3

b. Explain Reason for Exemption: Transfer pursuant to valid Agency Agreement per  
NAC 375.170 Sub Sec 5

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Managing Member

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: CSC INVESTMENT GROUP  
Address: 2330 PASEO DEL PRADO C-112  
City: LAS VEGAS  
State: NV      Zip: 89102

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: THOMAS JESSUP, LLC  
Address: 631 N. STEPHANIE ST. #396  
City: HENDERSON  
State: NV      Zip: 89014

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

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

Escrow # \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

## EXHIBIT 3

②1

Inst #: 201305310004710

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #001

05/31/2013 04:42:42 PM

Receipt #: 1638676

Requestor:

THOMAS JESSUP LLC

Recorded By: MGM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

## QUIT CLAIM DEED

Concerning Parcel Number: 179-21-116-042

WHEN RECORDED RETURN TO:  
MAIL TAX STATEMENT TO:

Thomas Jessup, LLC, a Nevada Limited Liability Company,  
Having an address at 631 Stephanie Street, #396, Henderson, NV 89014  
("Grantor(s)")

## QUIT CLAIMS TO

Thomas Jessup, LLC, Series VII a Nevada Series Limited Liability  
Company, having an address at 631 Stephanie Street, #396, Henderson,  
NV 89014, ("Grantee(s)")

The following described real estate located in Clark County,  
State of Nevada:

THE GRANTOR(S), Thomas Jessup, LLC, for good and valuable consideration the receipt of which is hereby  
acknowledged does hereby convey and quit claims to the GRANTEE(S), Thomas Jessup, LLC Series VII, the  
following described real estate, situated in the County of Clark, State of Nevada, together with all after  
acquired title of the Grantor(s) therein (legal description):

## Full Legal Description:

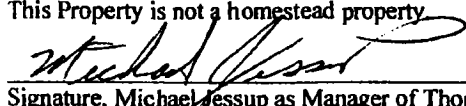
Parcel No: 179-21-116-042

Address: 588 BUGLE BLUFF DR  
HENDERSON, NV 89015

FOXFIELD EST-UNIT 3  
PLAT BOOK 78 PAGE 19  
LOT 9 BLOCK 2  
SEC 21 TWP 22 RNG 63

This transfer is exempt from the taxes imposed by NRS 375.020, 375.023 and 375.206 pursuant to Exemption  
No. 18 of NRS 375.090 as a transfer of real property to a business organization owned 100% by the persons  
making the transfer herein.

This Property is not a homestead property

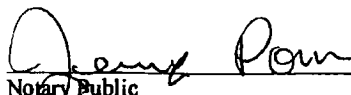
  
Signature, Michael Jessup as Manager of Thomas Jessup, LLC, Grantor

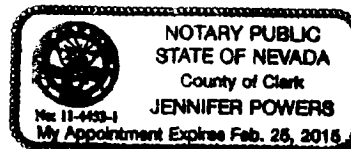
Date: 5/31/13

## ACKNOWLEDGMENT

Subscribed and sworn to before me this 31 day of May, 2013

BY MICHAEL JESSUP

  
Notary Public



STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 179-21-116-042  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 126,000

b. Deed in Lieu of Foreclosure Only (value of property) (\_\_\_\_\_)

c. Transfer Tax Value: \$ \_\_\_\_\_

d. Real Property Transfer Tax Due \$ 0

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section X my TRANSFER BETWEEN AFFILIATED

b. Explain Reason for Exemption BUSINESS ENTITIES WITH IDENTICAL COMMON OWNERSHIP  
MY TRANSFER TO A BUSINESS OF WHICH GRANTOR IS 100% OWNER.

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Michael Jessup Capacity: Owner

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
(REQUIRED)

Print Name: THOMAS JESSUP LLC  
Address: 631 N. STEPHANIE ST #396  
City: HENDERSON  
State: NV Zip: 89014

**BUYER (GRANTEE) INFORMATION**  
(REQUIRED)

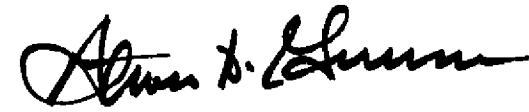
Print Name: THOMAS JESSUP LLC Series BII  
Address: 631 N. STEPHANIE ST #396  
City: HENDERSON  
State: NV Zip: 89014

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

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

Escrow # \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



CLERK OF THE COURT

1 AACC

Michael R. Brooks, Esq.

2 Nevada Bar No. 7287

Jessica Perlick, Esq.

3 Nevada Bar No. 13218

BROOKS HUBLEY, LLP

4 1645 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

5 Tel: (702) 851-1191

Fax: (702) 851-1198

6 Email: jperlick@brookshubley.com

*Attorneys for the Defendants, Mortgage Electronic Registration Systems, Inc.*

7 *and The Bank of New York Mellon fka The Bank of New York as Trustee for the*

*Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17,*

8 *incorrectly named as BNY Mellon, N.A.*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 THOMAS JESSUP, LLC SERIES VII,

12 Plaintiff,

v.

13 LENA COOK, an individual; BNY  
14 MELLON, N.A.; SFG MORTGAGE, a  
15 revoked Arizona corporation; BANK OF  
16 AMERICA, N.A.; MORTGAGE  
17 ELECTRONIC REGISTRATION  
18 SYSTEMS, INC., a Delaware  
19 corporation; HEIRS OF THE ESTATE  
20 OF LENA COOK; and any and all other  
21 persons unknown claiming any right, title,  
22 estate, lien or interest in the Property  
23 adverse to the Plaintiff's ownership, or  
any cloud upon Plaintiff's title thereto  
(DOES 1 through 10, inclusive);

Defendants.

Case No. A-13-693205-C

Dept. No. VII

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.  
AND THE BANK OF NEW YORK  
MELLON FKA THE BANK OF NEW  
YORK AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE  
CWABS, INC., ASSET-BACKED  
CERTIFICATES, SERIES 2005-17'S  
FIRST AMENDED ANSWER,  
COUNTER-CLAIMS, AND CROSS-  
CLAIMS AGAINST ABSOLUTE  
COLLECTION SERVICES, LLC AND  
FOXFIELD COMMUNITY  
ASSOCIATION**

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC; BNY  
MELLON, N.A.

BROOKS HUBLEY, LLP  
1645 VILLAGE CENTER CIRCLE, SUITE 200, LAS VEGAS, NV 89134  
TELEPHONE: (702) 851-1191 FAX: (702) 851-1198



1 Counterclaimants,  
2 vs.  
3 THOMAS JESSUP, LLC SERIES VII;  
4 FOXFIELD COMMUNITY  
5 ASSOCIATION; ABSOLUTE  
6 COLLECTION SERVICES, LLC, (ROES  
1 through 10, inclusive);  
Counterdefendants.

7 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND THE BANK  
8 OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR  
9 THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED  
10 CERTIFICATES, SERIES 2005-17'S FIRST AMENDED ANSWER

11 COMES NOW, Defendants MORTGAGE ELECTRONIC REGISTRATION  
12 SYSTEMS, INC. ("MERS") and The Bank of New York Mellon fka The Bank of New  
13 York as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates,  
14 Series 2005-17, incorrectly named as BNY Mellon, N.A. ("BNY") (collectively  
15 "Defendants") and hereby files its Amended Answer to Plaintiff THOMAS JESSUP, LLC  
16 SERIES VII's ("Plaintiff") Verified Amended Complaint for Quiet Title and Declaratory  
17 Relief ("Complaint"), and hereby admits, denies, and alleges as follows:

18 PARTIES, JURISDICTION, AND VENUE

19 1. Answering Paragraphs 1 and 2 of the Complaint, Defendants are without  
20 sufficient knowledge or information to form a belief as to the truth of the allegations  
21 contained therein and therefore deny the same.

22 2. Defendants admit the allegations in Paragraph 3 of the Complaint.  
23

1           3.     Answering Paragraphs 4 and 5 of the Complaint, Defendants are without  
2 sufficient knowledge or information to form a belief as to the truth of the allegations  
3 contained therein and therefore deny the same.

4           4.     Defendants are unable to admit or deny the allegations in Paragraph 6 of the  
5 Complaint as the allegations do not form a complete sentence.

6           5.     Answering Paragraphs 7 and 8 of the Complaint, Defendants are without  
7 sufficient knowledge or information to form a belief as to the truth of the allegations  
8 contained therein and therefore deny the same.

9           6.     Defendants admit the allegations in Paragraph 9 of the Complaint.

10          7.     Answering Paragraphs 10, 11, 12, and 13, of the Complaint, Defendants are  
11 without sufficient knowledge or information to form a belief as to the truth of the  
12 allegations contained therein and therefore deny the same.

13          8.     Answering Paragraph 14, Defendants admit that BNY has a valid interest in  
14 the Property and MERS had a valid interest in the Property.

15          9.     Defendants deny the allegations in Paragraphs 15 and 16 of the Complaint.

16                   **FIRST CLAIM FOR RELIEF**

17                   **(Quiet Title)**

18          10.    Answering Paragraph 17 of the Complaint, which incorporates other  
19 paragraphs by reference, Defendants incorporate their responses to those paragraphs by this  
20 reference as though set forth herein at length.

21          11.    Defendants deny the allegations in Paragraphs 18, 19, and 20 of the Complaint.

22    ///

23    ///

**SECOND CLAIM FOR RELIEF**

**(Declaratory Relief)**

12. Answering Paragraph 17 of the Complaint, which incorporates other paragraphs by reference, Defendants incorporate their responses to those paragraphs by this reference as though set forth herein at length.

13. Defendants deny the allegations in Paragraph 22 of the Complaint.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

The complaint, including each claim for relief, fails to state facts sufficient to state a valid claim against Defendants.

**Second Affirmative Defense**

The Plaintiff is barred from any recovery against Defendants because it has not been damaged by the conduct alleged in the Complaint.

**Third Affirmative Defense**

At all times, Defendants acted in accordance with reasonable standards, in good faith, and with ordinary care, and its conduct did not contribute to the alleged damages.

**Fourth Affirmative Defense**

The Plaintiff is precluded from recovery against Defendants because it failed to mitigate properly any damages they may have suffered as a result of the conduct alleged in the Complaint.

**Fifth Affirmative Defense**

Plaintiff's damages, if any, should be offset, in whole or in part, against any damages caused by Plaintiff to Defendants as a result of Plaintiff's conduct.

1 **Sixth Affirmative Defense**

2 Any damages Plaintiff may have sustained were proximately caused by the acts of  
3 persons other than Defendants and, therefore, Plaintiff is not entitled to any relief from  
4 Defendants.

5 **Seventh Affirmative Defense**

6 The Plaintiff's damages, if any, resulted from the acts or omissions of third parties  
7 over whom Defendants had no control. The acts of such third parties constitute intervening  
8 or superseding causes of the harm, if any, suffered by the Plaintiff.

9 **Eighth Affirmative Defense**

10 By reason of his own acts, Plaintiff has released and discharged Defendants from the  
11 claims alleged.

12 **Ninth Affirmative Defense**

13 The Plaintiff is barred from any recovery against Defendants by the principles of  
14 equity including waiver, laches, and estoppel, so as to preclude in whole or in part, the relief  
15 sought in the complaint.

16 **Tenth Affirmative Defense**

17 Plaintiff is barred from claiming its title extinguishes Defendants' interest because the  
18 HOA sale was not intended to be an exercise of super-priority lien rights and the HOA sale  
19 only conveyed a subordinate interest.

20 **Eleventh Affirmative Defense**

21 The homeowners' association sale by which Plaintiff claims title is void because it  
22 was not commercially reasonable and the facts and circumstances regarding the sale of the  
23 property to Plaintiff violated the homeowners association's obligation of good faith and

1 duty to act in a commercially reasonable manner. Thus, Plaintiff's claim of free and clear  
2 title to the property is barred.

3 **Twelfth Affirmative Defense**

4 The homeowners' association sale is void because the homeowners' association failed  
5 to comply with the requirements of NRS 116 *et seq.* and other applicable laws. Thus,  
6 Plaintiff's claim of free and clear title to the property is barred.

7 **Thirteenth Affirmative Defense**

8 The homeowners' association sale is void because the provisions of NRS 116.31162-  
9 116.31168 fail to provide notice of satisfaction of the conditions precedent required for the  
10 existence of super-priority lien rights and, as such, violate the Due Process Clause of the  
11 United States Constitution and the Nevada Constitution.

12 **Fourteenth Affirmative Defense**

13 The homeowners' association sale is void because the "opt-in" notice provisions of  
14 NRS 116.3116 *et seq.* do not require that reasonable and affirmative steps be taken to give  
15 actual notice to lenders and other holders of recorded security interests prior to deprivation  
16 of their property rights and, as such, violate the Due Process Clauses of the Fifth and  
17 Fourteenth Amendments of the United States Constitution and the Due Process Clause of  
18 the Nevada Constitution.

19 **Fifteenth Affirmative Defense**

20 Defendants have been required to retain the services of an attorney to defend this  
21 claim and have been damaged as a result of this action, in the amount of its attorneys' fees  
22 and costs incurred and to be incurred. Defendants are entitled to recover those fees and costs  
23 from the Plaintiff.

**Sixteenth Affirmative Defense**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure. In the event subsequent investigation or discovery reveals the applicability of such defenses, Defendants hereby, reserve their right to seek leave of this Court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference with the specific purpose of not waiving the same.

**Seventeenth Affirmative Defense**

Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon filing of this answer and, therefore, Defendants reserve their right to amend their answer to allege additional affirmative defenses if subsequent investigation warrants their assertion.

**Eighteenth Affirmative Defense**

The Deed of Trust cannot be extinguished by the HOA foreclosure sale because the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) cannot be applied retroactively.

WHEREFORE, Defendants respectfully requests that this Court:

1. Deny each contemplated relief against Defendants;
2. Dismiss the claims against Defendants with prejudice;
3. Award Defendants the reasonable costs of this litigation, including reasonable attorneys' fees; and,
4. Grant Defendants such other and further relief as this Court deems just and

proper.

DATED: May 4, 2016

BROOKS HUBLEY, LLP

By:

Michael R. Brooks, Esq.

Nevada Bar No. 7287

Jessica Perlick, Esq.

Nevada Bar No. 13218

*Attorneys for the Defendants, Mortgage*

*Electronic Registration Systems, Inc.*

*and The Bank of New York Mellon fka The*

*Bank of New York as Trustee for the*

*Certificateholders of the CWABS, Inc.,*

*Asset-Backed Certificates, Series 2005-17,*

*incorrectly named as BNY Mellon, N.A.*

**COUNTERCLAIMS AND CROSS-CLAIMS**

Pursuant to NRCP 13(a) and (h), BNY, by and through its attorneys of record, Brooks Hubley, LLP, hereby files these counterclaims against Plaintiff THOMAS JESSUP, LLC SERIES VII ("Plaintiff"), FOXFIELD COMMUNITY ASSOCIATION (the "HOA"), and ABSOLUTE COLLECTION SERVICES, LLC ("Absolute") and cross-claims against the HOA and Absolute as follows:

**PARTIES**

1. BNY is the beneficiary of a First Deed of Trust on real property located at 588 Bugle Bluff Road, Henderson, Nevada 89015, APN No. 179-21-116-042 ("Property") by way of an Assignment of Deed of Trust which was recorded as document number 201107210002264 in the Clark County Recorder's Office.

2. Upon information and belief, Plaintiff is, and at all relevant times to this Counterclaim, was a domestic limited liability company doing business in Clark County, Nevada.

3. Upon information and belief, the HOA is a domestic non-profit cooperative corporation doing business in Clark County, Nevada.

4. Upon information and belief, Absolute is a domestic limited-liability company doing business in Clark County, Nevada.

5. ROE Defendants 1-10 corporations are fictitious names of individuals, partnerships, and anyone claiming any interest to the Property are fictitious names of individuals, partnerships, and other business entities. Such persons' names and capacities are not presently known to BNY. Upon information and belief, such third-party defendants may claim an interest in the Property that is adverse to BNY. When their true names and capacities



1 are ascertained, BNY will seek leave to amend this complaint to allege their true names and  
2 capacities and will further ask leave to join such defendants in this action.

3 **BNY'S INTEREST IN THE PROPERTY**

4 6. BNY incorporates paragraphs 1 through 5, inclusive above, as if the same were  
5 set forth at length herein.

6 7. On October 31, 2005, LENA COOK ("Cook") borrowed \$235,000.00 from  
7 SFG Mortgage to purchase the Property. As part of the same transaction, Cook signed a  
8 Note secured by a Deed of Trust recorded against the property on November 7, 2005, as  
9 document number 20051107-0004168 in the Official Records of Clark County, Nevada.

10 8. The Deed of Trust and Note was assigned to BNY on July 21, 2011, through  
11 an Assignment of Deed of Trust recorded as document number 201107210002264 in the  
12 Official Records of Clark County, Nevada.

13 **PLAINTIFF'S INTEREST IN THE PROPERTY**

14 9. The HOA is a homeowner's association that oversees a common-interest  
15 community ("Community") that includes the Property.

16 10. The Community is subject to HOA's covenants, conditions, and restrictions,  
17 which requires the payment of periodic assessments.

18 11. Absolute is a collection agency authorized by HOA to pursue collections of  
19 assessments and foreclosures involving properties in the Community on HOA's behalf.

20 12. On April 12, 2011, the HOA, through Absolute, recorded a purported lien  
21 against the Property by way of a Notice of Delinquent Assessment Lien as document  
22 number 201104120001730 in the Official Records of Clark County, Nevada.

23 13. On July 18, 2011, the HOA, through Absolute, recorded a Notice of Default

1 and Election to Sell Under Homeowner's Association Lien as document number  
2 201107180000815. The Notice of Default and Election to Sell Under Homeowner's  
3 Association Lien did not comply with NRS 116.31162.

4 14. On or about August 18, 2011, in response to the Notice of Default, the  
5 servicer of the Deed of Trust, through counsel at Miles, Bauer, Bergstrom & Winters,  
6 LLP, contacted Absolute in an attempt to obtain a payoff ledger detailing the super-  
7 priority amount of the HOA's lien.

8 15. Absolute, however, did not respond to Miles Bauer's payoff request.

9 16. After failing to provide Miles Bauer with payoff information, on October 26,  
10 2011, the HOA, through Absolute, recorded a Notice of Trustee's Sale against the  
11 Property as document number 201110260002684.

12 17. None of the aforementioned notices identified above state that the HOA lien  
13 was for common expenses based on the periodic budget adopted by the association  
14 pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
15 during the 9 months immediately preceding institution of an action to enforce the lien.

16 18. None of the aforementioned notices identified above identified what  
17 proportion of the claimed lien were for alleged late fees, interest, fines/violations, or  
18 collection fees/costs.

19 19. None of the aforementioned notices identified above specified what  
20 proportion of the lien, if any, that the HOA claimed constituted a super-priority lien.

21 20. None of the aforementioned notices identified above specified whether the  
22 HOA was foreclosing on a super-priority portion of its lien, if any, or on the sub-priority  
23 portion of the lien.

1           21. None of the aforementioned notices identified above provided any notice of a  
2 right to cure.

3           22. None of the aforementioned notices identified above provided notice that  
4 BNY's first secured interest on the Property would be foreclosed or extinguished.

5           23. CSC Investment Group, LLC purportedly purchased the Property for  
6 \$5,401.00, at a sale held by the HOA and Absolute on June 12, 2012, eight months after  
7 the Notice of Sale was recorded. A Trustee's Deed Upon Sale was recorded on June 13,  
8 2012, as document number 201206130002720.

9           24. ON August 17, 2012, CSC Investment Group, LLC subsequently transferred  
10 the Property to Thomas Jessup, LLC through a Quitclaim Deed recorded as document  
11 number 201208170001801 for \$0.00.

12           25. On May 31, 2013, Thomas Jessup, LLC transferred the Property to Plaintiff  
13 through a Quit Claim Deed recorded as document number 201305310004710.

14           26. Upon information and belief, the Property was worth at least \$165,000.00 at  
15 the time of the HOA sale.

16           27. The sale price of \$5,401.00 at the HOA Sale was not commercially  
17 reasonable when compared to the fair market value of the Property.

18           28. Upon information and belief, prior to the completion of the HOA Sale, HOA  
19 or Absolute received payment for the HOA Lien and/or entered into an agreement for such  
20 payment.

21           29. BNY is informed and believes and thereon alleges that the HOA was without  
22 legal authority to proceed with a foreclosure of the Property.

23           30. Plaintiff filed the instant lawsuit to quiet title to the Property.

**FIRST CLAIM FOR RELIEF**

**(Declaratory Relief – Sale Limited to Subordinate Lien Rights)**

31. BNY incorporates paragraphs 1 through 30, inclusive above, as though the same were set forth at length herein.

32. An actual controversy has arisen between BNY and Counter-defendants with respect to the propriety of the HOA Sale.

33. NRS 116.3102 authorizes the HOA to exercise discretion in enforcing certain rights under Nev. Rev. Stat. Ch. 116.

34. Upon information and belief, the HOA and its agents did not comply with the requirements of establishing a budget pursuant to the provisions of NRS 116.3115 on an annual basis as required by law.

35. As a result of the HOA's failure to comply with the budgetary requirements of NRS 116.3115, there was no super-priority lien upon which to foreclose.

36. Upon information and belief, Counterdefendants did not confirm whether the valid conditions for super-priority had been met prior to foreclosure.

37. Upon information and belief, the HOA Sale was not intended to be an exercise of super-priority lien rights and as such, the sale only conveyed the subordinate lien interest.

38. The Notice of Default failed to describe the deficiency in payment as required by NRS 116.31162, including without limitation, the failure to recite compliance with the provisions of NRS 116.3115.

39. The Notice of Sale failed to state that the HOA's lien was for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, which

1 would have become due in the absence of acceleration during the 9 months immediately  
2 preceding institution of an action to enforce the lien.

3 40. The Notice of Sale failed to identify "the amount necessary to satisfy the lien as  
4 of the date of the proposed sale" as required by NRS 116.311635 and NRS 116.3116.

5 41. Upon information and belief, Absolute, as purported agent for the HOA, could  
6 not confirm or verify the presence of a super-priority lien, and did not confirm or verify the  
7 HOA's intent to exercise such rights.

8 42. BNY contends that the HOA did not intend to enforce super-priority lien rights.  
9 As such, BNY contends that the HOA only foreclosed on a subordinate lien and the Deed of  
10 Trust remains valid and enforceable.

11 43. A judicial determination of the above contentions is necessary to resolve the  
12 validity of the HOA Sale and the status of the ownership of the Property.

13 44. BNY does not have a plain, speedy, or adequate remedy at law.

14 45. A declaration of rights and duties of the parties is necessary and appropriate  
15 at this time, so the parties may ascertain their rights and avoid the multiplicity of actions  
16 that would otherwise ensue.

17 **SECOND CLAIM FOR RELIEF**

18 **(Declaratory Relief – Insufficient Notices Under NRS 116.31162-116.31168)**

19 46. BNY incorporates paragraphs 1 through 45, inclusive above, as if the same  
20 were set forth at length herein.

21 47. An actual controversy has arisen between BNY and Counter-defendants with  
22 respect to the propriety of the HOA Sale.  
23

1           48. Counter-defendants contend that the HOA Lien was a super-priority lien under  
2 Chapter 116 of the Nevada Revised Statutes.

3           49. Counter-defendants contend that the HOA Sale eliminated the Deed of Trust  
4 and therefore resulted in the transfer of clear title to the Property to CSC Investment Group,  
5 LLC.

6           50. BNY alleges that the HOA has the exclusive right to enforce the super-priority  
7 lien and only upon the satisfaction of certain conditions precedent to the creation of the  
8 super-priority lien including the annual adoption a budget as required by section 116.3115  
9 of the Nevada Revised Statutes.

10          51. The HOA and its agents did not comply with the requirements of establishing a  
11 budget pursuant to the provisions of NRS 116.3115 on an annual basis as required by law.

12          52. As a result of the HOA's failure to comply with the budgetary requirements of  
13 NRS 116.3115, there was no super-priority lien upon which to foreclose.

14          53. Second, prior to the completion of the HOA Sale, HOA or Absolute received  
15 payment for the HOA Lien and/or entered into an agreement for such payment.

16          54. Upon information and belief, BNY contends that the purported HOA Sale was  
17 conducted by someone other than the HOA and/or its agents without legal authority to do  
18 so.

19          55. Upon information and belief, BNY alleges that the Notice of Default failed to  
20 describe the deficiency in payment as required by section 116.31162 of the Nevada Revised  
21 Statutes, including without limitation, the failure to recite compliance with the provisions of  
22 section 116.3115 of the Nevada Revised Statutes.

1           56. BNY contends that the Notice of Sale failed to state that the HOA Lien was for  
2 common expenses based on the periodic budget adopted by the association pursuant to  
3 section 116.3115 of the Nevada Revised Statutes which would have become due in the  
4 absence of acceleration during the 9 months immediately preceding institution of an action  
5 to enforce the lien.

6           57. BNY further contends that the Notice of Sale failed to identify "the amount  
7 necessary to satisfy the lien as of the date of the proposed sale" as required by sections  
8 116.311635 and 116.3116 of the Nevada Revised Statutes.

9           58. BNY contends that HOA lacked authority to conduct the HOA Sale on the  
10 super-priority lien due to HOA's failure to comply with the provisions of section 116.3115  
11 during the relevant period of delinquency.

12           59. BNY contends that, as a direct result of HOA and Absolute's failure to comply  
13 with the requirements of Chapter 116 of the Nevada Revised Statutes, CSC Investment  
14 Group, LLC was allegedly the highest bidder and purchased the Property well below fair  
15 market value at the HOA Sale in a commercially unreasonable manner.

16           60. In light of the aforementioned allegations, BNY contends that the HOA Sale  
17 had no effect on the Deed of Trust by operation of law.

18           61. BNY is entitled to an order declaring (a) the HOA Sale void as a matter of law  
19 and therefore having no affect on BNY's interest in the Property or (2) Plaintiff's purchase  
20 of the Property subject to the Deed of Trust.

21           62. A judicial determination of the above contentions is necessary to resolve the  
22 validity of the HOA Sale and the status of the ownership of the Property.

23           63. BNY does not have a plain, speedy, or adequate remedy at law.

64. A declaration of the rights and duties of the parties is necessary and appropriate at this time, so the parties may ascertain their rights and avoid the multiplicity of actions that would otherwise ensue.

#### FOURTH CLAIM FOR RELIEF

**(Declaratory Relief – Constitutionality of NRS 116.31162-116.31168)**

65. BNY incorporates paragraphs 1 through 64, inclusive above, as if the same were set forth at length herein.

66. An actual controversy has arisen between BNY and Counter-defendants with respect to the propriety of the HOA Sale.

67. BNY contends that the provisions of NRS 116.31162-116.31168 are unconstitutional for the purposes of providing notice of the conditions precedent to the existence of super-priority lien rights and are unconstitutionally vague.

68. BNY contends that the "opt-in" notice provisions of NRS 1163116 *et seq.* do not mandate that reasonable and affirmative steps be taken to give actual notice to lenders and other holders of recorded security interests prior to a deprivation of their property rights and, as such, violate the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the Due Process Clause of the Nevada Constitution.

69. In light of the aforementioned allegations, the HOA Sale had no effect on the Deed of Trust by operation of law.

70. BNY is entitled to an order declaring (a) the HOA Sale void as a matter of law and therefore having no effect on the Deed of Trust or (b) Plaintiff's purchase of the Property is subject to the Deed of Trust.



1 71. BNY therefore contends that Plaintiff's interest in the Property is either (a) void  
2 or (b) subject to the Deed of Trust.

3 72. A judicial determination of the above contentions is necessary to resolve the  
4 validity of the HOA Sale and the status of the ownership of the Property.

5 73. BNY does not have a plain, speedy, or adequate remedy at law.

6 74. A declaration of the rights and duties of the parties is necessary and appropriate  
7 at this time, so the parties may ascertain their rights and avoid the multiplicity of actions that  
8 would otherwise ensue.

9 **FIFTH CLAIM FOR RELIEF**

10 **(Quiet Title)**

11 75. BNY incorporates paragraphs 1 through 74, inclusive above, as if the same  
12 were set forth at length herein.

13 76. Plaintiff contends that it owns the Property, free and clear of BNY's Deed of  
14 Trust by virtue of the HOA sale.

15 77. Plaintiff has asserted a claim to the Property adverse to the interest of BNY.

16 78. As the current beneficiary of record under the Deed of Trust, BNY retained its  
17 interest in the Property after the HOA sale.

18 79. BNY seeks judgment-quieting title, such that BNY remains fully vested of all  
19 rights, title, and interest in the Property by way of its Deed of Trust.

20 **SIXTH CLAIM FOR RELIEF**

21 **(Unjust Enrichment Against the HOA)**

22 80. BNY incorporates paragraphs 1 through 79, inclusive above, as if the same  
23 were set forth at length herein.

1           81. Under NRS 116.3116(2), a homeowner's association's lien is split into two  
2 pieces: one which has super-priority, and another which is subordinate to the first deed of  
3 trust.

4           82. The portion of the lien with super-priority consists of only the last nine months  
5 of assessments for common expenses incurred prior to the institution of an action to enforce  
6 the lien. The remainder of a homeowner's association's lien is subordinate to a first deed of  
7 trust.

8           83. Prior to the foreclosure sale, Miles Bauer attempted to obtain the super-priority  
9 amount from Absolute in an effort to tender payment of this amount to protect its interest in  
10 the Property.

11           84. Absolute, as agent for the HOA, failed to provide Miles Bauer with the super-  
12 priority amount or to otherwise respond to Miles Bauer's payoff request.

13           85. Instead, Absolute foreclosed on the Property. This allowed the HOA to sell the  
14 property at the foreclosure sale for \$5,401.00, less than 3% of the original amount of the  
15 Deed of Trust.

16           86. By foreclosing on the Property rather than providing Miles Bauer with the  
17 super-priority amount, the HOA was unjustly enriched in an amount at least equal to the  
18 difference between the true super-priority portion of its lien and the amount the HOA  
19 actually recovered from the foreclosure proceeds.

20           87. BNY is entitled to a reasonable amount of the benefits obtained by the HOA  
21 based on a theory of unjust enrichment.

22           88. BNY was required to retain an attorney to prosecute this action, and is  
23 therefore entitled to collect its reasonable attorneys' fees and costs.

**SEVENTH CLAIM FOR RELIEF**

**(Unjust Enrichment Against Absolute, the HOA Trustee)**

89. BNY incorporates paragraphs 1 through 88, inclusive above, as if the same were set forth at length herein.

90. By refusing to provide Miles Bauer with the super-priority amount necessary to prevent foreclosure, Absolute provided itself with the opportunity to perform many additional services relating to the foreclosure on behalf of the HOA.

91. Consequently, Absolute has been unjustly enriched by refusing in bad faith to provide Miles Bauer with the super-priority amount. Absolute has been unjustly enriched in an amount at least equal to Absolute's charges for services rendered after the attempted tender; services that would have been unnecessary if Absolute had provided Miles Bauer with the super-priority amount and accepted the tender.

92. BNY is entitled to a reasonable amount of the benefits obtained by Absolute based on a theory of unjust enrichment.

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

**EIGHTH CLAIM FOR RELIEF**

**(Tortious Interference with Contractual Relations Against the HOA and Absolute)**

94. BNY incorporates paragraphs 1 through 93, inclusive above, as if the same were set forth at length herein.

95. On or about October 31, 2005, the borrower executed a Deed of Trust of trust in favor of SFG Mortgage. This Deed of Trust was subsequently assigned to BNY via an Assignment of Deed of Trust, recorded on July 21, 2011.

1           96. On July 18, 2011, Absolute, as agent for the HOA, recorded a Notice of  
2 Default and Election to Sell.

3           97. On or about August 18, 2011, in an effort to protect the first Deed of Trust,  
4 Miles Bauer reached out to Absolute to obtain a payoff ledger, seeking to determine the  
5 portion of the HOA's lien which had super-priority over the first Deed of Trust.

6           98. Rather than provide the pay-off ledger, the HOA, through Absolute, foreclosed  
7 on the Property. The HOA sold the Property for \$5,401.00, less than 3% of the original  
8 amount of BNY's first Deed of Trust.

9           99. The HOA and Absolute's decision to foreclose on the Property rather than  
10 provide Miles Bauer with the super-priority amount—which would have prevented  
11 foreclosure—was designed to disrupt the contractual relationship between BNY and the  
12 Borrower by extinguishing BNY's first Deed of Trust.

13           100. The HOA and Absolute's purported super-priority foreclosure allowed the  
14 HOA to recover the full value of its delinquent assessment lien rather than just the amount  
15 of the lien with super-priority over BNY's first Deed of Trust.

16           101. While Absolute's failure to provide the super-priority amount and subsequent  
17 foreclosure sale allowed the HOA to recover the full value of its lien, it has put the first  
18 priority position of BNY's Deed of Trust with an original amount of \$235,000.00 in dispute.

19           102. BNY is entitled to an order establishing that its Deed of Trust is the senior lien  
20 encumbering the Property or, in the alternative, monetary damages equal to the value  
21 secured by its first Deed of Trust that was purportedly extinguished as a direct result of the  
22 HOA and Absolute's intentional acts.

23

1 103. BNY was required to retain an attorney to prosecute this action, and is  
2 therefore entitled to collect its reasonable attorneys' fees and costs.

3 **NINTH CLAIM FOR RELIEF**

4 **(Breach of the Duty of Good Faith Against the HOA and Absolute)**

5 104. BNY incorporates paragraphs 1 through 103, inclusive above, as if the same  
6 were set forth at length herein.

7 105. NRS 116.1113 provides that every duty governed by NRS 116, the Common-  
8 Interest Ownership Uniform Act, must be performed in good faith.

9 106. Prior to the foreclosure of the Property, and in an attempt to prevent  
10 foreclosure, Miles Bauer, counsel for the servicer of the first Deed of Trust, attempted to  
11 obtain the full super-priority amount from Absolute on or about August 18, 2011. Absolute,  
12 acting on behalf of the HOA, refused to provide this information.

13 107. Rather than provide the super-priority amount and accept a payment that would  
14 satisfy its super-priority lien, the HOA and Absolute determined in bad faith to foreclose on  
15 the Property pursuant to NRS 116.

16 108. This bad-faith foreclosure allowed the HOA to recover the full value of its lien  
17 for delinquent assessments, rather than the portion of the lien with priority over BNY's first  
18 Deed of Trust. As a result, the first priority position of BNY's Deed of Trust with an  
19 original amount of \$235,000.00 in dispute.

20 109. BNY is entitled to an order establishing that its Deed of Trust is the senior lien  
21 encumbering the Property or, in the alternative, monetary damages equal to the value  
22 secured by its first Deed of Trust that was purportedly extinguished as a direct result of the  
23 HOA and Absolute's bad-faith foreclosure.

1 110. BNY was required to retain an attorney to prosecute this action, and is  
2 therefore entitled to collect its reasonable attorneys' fees and costs.

3 **TENTH CLAIM FOR RELIEF**

4 **(Wrongful Foreclosure Against the HOA and ACS)**

5 111. BNY incorporates paragraphs 1 through 110, inclusive above, as if the same  
6 were set forth at length herein.

7 112. Prior to the HOA's foreclosure sale, Miles Bauer attempted to obtain the super-  
8 priority amount of the HOA's lien from Absolute so that it could tender the super-priority  
9 amount. Absolute, acting on behalf of the HOA, refused to provide this information.

10 113. Miles Bauer's tender attempt extinguished the super-priority portion of the  
11 HOA's lien. Consequently, Absolute's foreclosure of the super-priority portion of its lien  
12 was wrongful, as the Borrower would not have been in default for that portion of the lien if  
13 Absolute would have given Miles Bauer the opportunity to tender the super-priority amount  
14 prior to the foreclosure sale.

15 114. The HOA and Absolute's wrongful foreclosure has put the first priority  
16 position of BNY's first Deed of Trust with an original amount of \$235,000.00 in dispute.

17 115. BNY is entitled to an order establishing that its Deed of Trust is the senior lien  
18 encumbering the Property or, in the alternative, monetary damages equal to the value  
19 secured by its first Deed of Trust that was purportedly extinguished as a direct result of the  
20 HOA and Absolute's wrongful foreclosure.

21 116. BNY was required to retain an attorney to prosecute this action, and is  
22 therefore entitled to collect its reasonable attorneys' fees and costs.

23 ///

PRAYER

WHEREFORE, BNY respectfully prays for judgment as follows:

1. That Plaintiff takes nothing by way of the Complaint on file herein;
2. A declaration of the invalidity of the HOA Sale;
3. A declaration that BNY is the beneficiary of record of a first position Deed of Trust on the Property as against all other claimants;
4. For an adjudication quieting title, declaring that all rights, claims, ownership, liens, titles and demands of Plaintiff are subject to the Deed of Trust;
5. For a preliminary and permanent injunction that the HOA and its purported agents are prohibited from initiating or continuing foreclosure proceedings on the Property;
6. A declaration that the provisions of Nev. Rev. Stat. 116.31162-116.31168 are unconstitutional for the purposes of providing notice of the conditions precedent to the existence of super-priority lien rights and are unconstitutionally vague;
7. A declaration that the "opt-in" notice provisions of NRS 1163116 *et seq.* violate the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the Due Process Clause of the Nevada Constitution;
8. For actual damages for any losses suffered by BNY as a result of the conduct of Counter-defendants;
9. Judgment in BNY's favor against the HOA for the damages it caused BNY in excess of \$10,000;
10. Judgment in BNY's favor against Absolute for the damages it caused

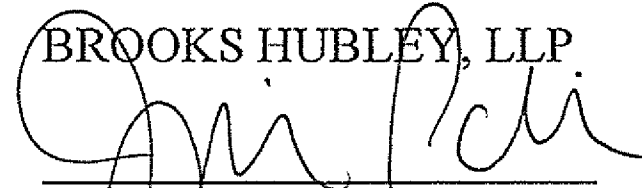
1 BNY in excess of \$10,000;

2 11. That BNY be awarded a reasonable sum as and for its attorneys' fees  
3 and costs incurred in defending this claim; and

4 12. Any other relief that this Court may deem just and proper.

5 DATED: May 4, 2016

7 By:

6 BROOKS HUBLEY, LLP  


8 Michael R. Brooks, Esq.

9 Nevada Bar No. 7287

10 Jessica Perlick, Esq.

11 Nevada Bar No. 13218

12 *Attorneys for the Defendants, Mortgage*

13 *Electronic Registration Systems, Inc.*

14 *and The Bank of New York Mellon fka The*

15 *Bank of New York as Trustee for the*

16 *Certificateholders of the CWABS, Inc.,*

17 *Asset-Backed Certificates, Series 2005-17,*

18 *incorrectly named as BNY Mellon, N.A.*



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Brooks Hubley LLP, 1645 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

I HEREBY CERTIFY that on this day, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court electronic filing system and in place of service by mail, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-17'S, FIRST AMENDED ANSWER, COUNTER-CLAIMS, AND CROSS-CLAIMS AGAINST ABSOLUTE COLLECTION SERVICES, LLC AND FOXFIELD COMMUNITY ASSOCIATION** on the following parties and those parties listed on the Court's Master List in said action: **(NOTE: All parties not registered pursuant to Administrative Order 14-2 have been served by mail.):**

**Akerman LLP**

**Contact**

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I also certify that the attached document was served via U.S. Mail, First Class, on the following parties who is not a registered user of the Electronic Filing System:

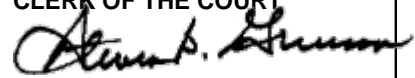
**State of Nevada Attorney General's Office**

Grant Sawyer Building  
555 East Washington Avenue  
Suite #3900  
Las Vegas, Nevada 89101

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

Executed this 4th day of May, 2016 at Las Vegas, Nevada.

  
An Employee of BROOKS HUBLEY, LLP



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 THOMAS JESSUP, LLC SERIES VII,

5 Plaintiff,

6 vs.

7 LENA COOK, an individual; BNY MELLON, N.A.;  
8 SFG MORTGAGE ELECTRONIC REGISTRATION  
9 SYSTEMS, INC., a Delaware corporation; Heirs of  
10 the Estate of LENA COOK; and any and all other  
11 persons unknown claiming any right, title, estate, lien  
12 or interest in the Property adverse to the Plaintiff's  
ownership or any cloud upon Plaintiff's title thereto,  
DOES 1 through 10, inclusive,

12 Defendants.

Case No. A-13-693205-C

Dep't No. VII

13 MORTGAGE ELECTRONIC REGISTRATION  
14 SYSTEMS, INC.; BNY MELON, N.A.,

15 Counterclaimant,

16 vs.

17 THOMAS JESSUP, LLC SERIES VII; FOXFEILD  
18 COMMUNITY ASSOCAITION; ABSOLUTE  
COLLECTION SERVICES, LLC,

19 Cross/Counter-defendants.

20  
21 **DECISION AND ORDER**

22 This case involves a dispute concerning title priority to the real property located at 558 Bugle  
23 Bluff Road, Henderson, Nevada, under a non-judicial homeowners association foreclosure. Plaintiff  
24 Thomas Jessup, LLC ("Jessup LLC") filed a complaint asserting quiet title, declaratory relief, and  
25 injunctive relief claims. Defendants Bank of New York Mellon ("BONY") and Mortgage Electronic  
26 Registration Systems, Inc. ("MERS") brought counterclaims for quiet title, declatory relief, unjust  
27 enrichment, tortious interference with contract and breach of the duty of good faith against the  
28

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 Foxfield Community Homeowner's Association ("Foxfield HOA") and Absolute Collection  
2 Services ("ACS"). This matter came before the Court for a bench trial on April 3, 2017. The Court  
3 finds that Bank of America failed to tender the superpriority lien amount to Foxfield HOA to  
4 preserve Bank of America's interest in the property. Accordingly, the NRS 116 foreclosure sale  
5 extinguished Bank of America's interest in the property. The Court finds in favor of Plaintiff  
6 Thomas Jessup, LLC.

7 **I. Findings of Fact**

8 On October 31, 2005, Lena Cook purchased the property at 588 Bugle Bluff Road,  
9 Henderson, Nevada 89015. Ms. Cook obtained a mortgage through SFG Mortgage for \$235,000.  
10 The First Deed of Trust securing the mortgage was recorded on November 7, 2005. On August 16,  
11 2006, Ms. Cook entered into a second deed of trust with Bank of America. The Second Deed of  
12 Trust was recorded on October 6, 2006. The First Deed of Trust was assigned to the Bank of New  
13 York Mellon via an assignment of Deed of Trust, recorded on July 21, 2011.

14 On April 12, 2011, Absolute Collection Services, as an agent for the Homeowner's  
15 Association, recorded a Notice of Delinquent Assessment Lien against the property. Foxfield HOA  
16 stated in the lien that the total amount due was \$793.63. On July 18, 2011, ACS recorded a Notice of  
17 Default and Election to Sell Under Homeowners Association Lien against the property. Foxfield  
18 HOA now represented the amount due had increased to \$1,642.66.

19 In response to the Notice of Default, on August 18, 2011, Bank of America hired Miles  
20 Bauer as counsel. Miles Bauer sent correspondence to ACS requesting calculation of the  
21 superpriority amount. In that request, the Miles Bauer representative, Rock Jung, stated, "It is  
22 unclear, based upon the information known to date, what amount the nine months' of common  
23 assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount Bank of  
24 America should be required to rightful pay to discharge its obligations to the HOA per NRS  
25 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the  
26 same by the HOA."

27 ACS received Miles Bauer's August 18, 2011 letter. ACS claims to have submitted a  
28 response letter to Miles Bauer dated September 13, 2011. ACS's records show the letter was faxed

1 on September 14, 2011. It is not clear, however, that Miles Bauer received the response sent by  
2 ACS. The response by ACS explained ACS's position at the time on the issues raised about the  
3 superpriority amount in the Miles Bauer letter. ACS stated that Miles Bauer could order a "statement  
4 of account" if the firm submitted a fifty dollar fee for furnishing the statement. Miles Bauer nor  
5 Bank of America paid the fifty dollar fee and ACS did not provide Miles Bauer with a nine-month  
6 superpriority calculation.

7 ACS subsequently recorded a Notice of Trustee's Sale against the property on October 26,  
8 2011. The notice stated the total amount due was \$3,097.60 and set a sale date for December 6,  
9 2011. On April 25, 2012, ACS recorded a second Notice of Trustee's Sale against the property,  
10 stating the sale would be held on June 12, 2012. The notice stated the total amount due was now  
11 \$4,783.29.

12 ACS non-judicially foreclosed on the property and recorded and recorded a Trustee's Deed  
13 Upon Sale on June 13, 2012. The Deed Upon Sale states that ACS sold Foxfield HOA's interest in  
14 the property to CSC Investment Group for \$5,401.00. On August 17, 2012, CSC Investment Group  
15 conveyed its interest via quitclaim deed to Thomas Jessup LLC.

## 16 II. Conclusions of Law

17 Jessup LLC brought claims for quiet title and declaratory relief. BONY, Bank of America, and  
18 MERS brought counterclaims against Jessup LLC, Absolute Collection Services, and Foxfield HOA  
19 for relief. Each party's claims center on the Court's determination of whether Foxfield HOA's  
20 foreclosure sale was validly conducted, and whether BONY, Bank of America, and MERS's deed of  
21 trust survived the foreclosure sale.

22 BONY, Bank of America, and MERS's deed of trust did not survive foreclosure sale. Bank  
23 of America failed to protect its interest in the property by failing to tender the superpriority lien  
24 amount on the property to Foxfield HOA. Moreover, Foxfield HOA lawfully exercised its right to  
25 foreclose on the property under NRS 116 and properly conducted the sale to extinguish the bank's  
26 interest in the property. As a result, Thomas Jessup LLC lawfully purchased the property at the  
27 foreclosure sale subject to no prior interest. Thus, the Court quiets title in Jessup LLC's favor.

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**A. Bank of America Did Not Make a Valid Tender of the Superpriority Lien Amount**

Nevada Revised Statute Chapter 116 provides the procedural requirements for HOAs seeking to secure a lien for unpaid assessments and fees. “NRS 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a sub priority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is ‘prior to’ a first deed of trust.” SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014). That superpriority portion of the lien was held by the Nevada Supreme Court to be a true superpriority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116’s requirements. (*Id.* at 419.) Specifically, “[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.” NRS 116.31166(3); *see also SFR v. U.S. Bank*, 334 P.3d at 412.

A junior lienholder can pay off an HOA’s lien to avoid the loss of its security. SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 414 (2014). The common law definition of tender is “an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist.” Fresk v. Kraemer, 99 P.3d 282, 286-7 (Or. 2004). Tender is satisfied where there is “an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied.” 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972). The Nevada Supreme Court has recently held that such tender extinguishes the superpriority lien, even if the tender is unjustifiably rejected, and results in a sale of the property subject to a prior-recorded deed of trust. Stone Hollow Avenue Trust v. Bank of America Nat’l Ass’n, No 64955, 2016 WL 4542303 (Nev. Aug. 11, 2016). “[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure.” Horizons at Seven Hills v. Ikon Holdings, 132 Nev. Adv. Op. 35 at \*6 (2016).

The Court finds Bank of America failed to tender the superpriority portion of the lien amount to Foxfield HOA. Miles Bauer, counsel for Bank of America, sent correspondence to ACS vaguely

1 requesting a superpriority amount. Mr. Jung, on behalf of Miles Bauer, stated in his request, "It is  
2 unclear, based upon the information known to date, what amount the nine months' of common  
3 assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount Bank of  
4 America should be required to rightful pay to discharge its obligations to the HOA per NRS  
5 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the  
6 same by the HOA." Although Mr. Jung understood that failure to pay the superpriority portion of the  
7 lien would result in the loss of his client's interest in the property, nothing further was done to  
8 pursue a resolution after the fact. Bank of America did not go back to the notice of lien and look at  
9 minimum amounts. If Bank of America consulted the notice of lien to assess the minimum amounts,  
10 and then paid that amount, that tender would have rescinded sale. Moreover, Bank of America  
11 failed to pay a fifty dollar fee to obtain the association statement ledger Mr. Jung needed to assess  
12 the amount due under the lien. Ultimately, fifty dollars became the impediment to Bank of America  
13 losing its priority interest on its first deed of trust. As such, the Court cannot implement an equitable  
14 remedy to a party that sat on their rights. Accordingly, Foxfield HOA's foreclosure sale extinguished  
15 Bank of America's interest due to Bank of America's inaction.

16 Alternatively, Bank of America seeks to void the foreclosure sale based on Foxfield HOA's  
17 failure to abide by the commercial reasonableness standard each foreclosure must adhere to. Bank of  
18 America cannot establish the required elements of a commercially unreasonable sale. Thus, the sale,  
19 which extinguished Bank of America's interest, was lawfully conducted. Accordingly, Bank of  
20 America is unable to reclaim its interest by voiding the sale.

21 **B. Commercial Unreasonableness**

22 BONY, Bank of America, and MERS argue that the foreclosure sale for the property was  
23 commercially unreasonable because the property was only sold for \$5,400. Inadequacy of price  
24 alone however, cannot justify the court to set aside a sale. Price inadequacy alone falls short of  
25 "showing of fraud, unfairness, or oppression," required by law to set aside a foreclosure sale.  
26 Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at \*6 (2016). Thus, Bank of  
27 America's reliance on price inadequacy alone falls short of this standard. Absent any allegations of  
28 fraud, oppression or unfairness, Bank of America's arguments as to the sale being commercially

1 unreasonable fail. No evidence of fraud, unfairness or oppression have been produced and any  
2 evidence of collusion on price is nonexistent. Evidence established that there were nearly eighteen  
3 foreclosures that day. Some particular sales had bidders while other particular sales did not. This  
4 particular sale was a customary sale in accordance with the statute. As such, the sale conducted  
5 fairly and properly. Consequently, the foreclosure sale extinguished Bank of America's interest in  
6 the property.

7 **C. MERS and BONY's Counterclaim of Wrongful Foreclosure**

8 By properly conducting a sale pursuant to a valid statute, Foxfield HOA and ACS are free  
9 from inability under a wrongful foreclosure theory. The foreclosure sale extinguished Bank of  
10 America's interest in the property because the sale was conducted fairly and properly. Consequently,  
11 MERS and BONY's Counterclaims for wrongful foreclosure do not survive.

12 **D. MERS and BONY's Counterclaim for Unjust Enrichment**

13 MERS and BONY bring claims against Foxfield HOA and ACS separately for unjust  
14 enrichment. Unjust enrichment is the "unjust retention of money or property of another against the  
15 fundamental principle of justice or equity and good conscience." Topaz Mutual Co. v. Marsh, 839  
16 P.2d 606, 613 (Nev. 1992). MERS and BONY argue that ACS and Foxfield HOA were unjustly  
17 enriched because the amount Foxfield HOA actually recovered from the foreclosure proceeds  
18 exceeded the amount of the true super-priority portion of Foxfield HOA's lien.

19 This cause of action fails because Foxfield HOA foreclosed on its lien under its authority  
20 pursuant to NRS 116. Pursuant to statute, the property did not belong to another lienholder.  
21 Consequently, Foxfield HOA's statutory right to foreclose on the property did not unjustly take a  
22 benefit from MERS or BONY. Therefore, MERS and BONY's claim that Foxfield HOA and ACS  
23 were unjustly enriched by the sale fail.

24 **E. MERS and BONY's Counterclaim of Tortious Interference with Contractual Relations**

25 MERS and BONY assert that ACS and Foxfield HOA are liable for the tort of intentional  
26 interference with contract. In an action for intentional interference with contractual relations, a party  
27 must establish: 1) a valid and existing contract; 2) the defendant's knowledge of the contract; 3)  
28 intentional acts intended or designed to disrupt the contractual relationship; 4) actual disruption of



1 the contract; and 5) resulting damage. J.J Industries, LLC, v. Bennett, 71 P.3d 1264, 1267 (Nev.  
2 2003). A party must establish that the tortfeasor had a motive to induce breach of the contract worth  
3 the third party. Id.

4 Here MERS and BONY cannot establish that neither Foxfield HOA nor ACS had any motive  
5 to disrupt the contract under the Deed of Trust with the former homeowner. Foxfield HOA and  
6 ACS's actions were to solely initiated to recover assessments the two entities had a legal right to  
7 collect under the statute. Thus, MERS and BONY have failed to prove the required element of  
8 intentional acts designed to disrupt the contractual relationship. Id. As such, MERS and BONY's  
9 claim for tortious interference with contractual relations fails.

10 **F. MERS and BONY's Counterclaims for Breach of the Duty of Good Faith**

11 Section 116.1113 of the Nevada Revised Statutes states: "Every contract or duty governed by  
12 this chapter imposes an obligation of good faith in its performance or enforcement." MERS and  
13 BONY assert that ACS violated this duty of good faith by refusing to provide information regarding  
14 the lien without payment of a fifty dollar fee for the information. This claim fails because Nevada  
15 statute allows a fee to be charged to prepare and furnish a statement of demand. Under section  
16 107.310 of the Nevada Revised Statutes, a beneficiary "may charge a fee of not more than \$60 for  
17 each statement furnished pursuant to NRS 107.200 or 107.210." Bank of America knew about the  
18 fee and failed to pay the fifty-dollar fee to obtain the association statement ledger Mr. Jung needed  
19 to assess the amount due under the lien. Notably, the fee charged in this instance was lower than the  
20 statutory minimum prescribed in section 107.310 of the Nevada Revised Statutes. Consequently,  
21 MERS and BONY cannot point to any duty or contract that Foxfield HOA or ACS violated. As  
22 such, MERS and BONY'S counterclaims for breach of the duty of good faith fail.

23 In sum, Bank of America failed to tender the superpriority lien amount to Foxfield HOA to  
24 discharge Foxfield HOA's superpriority lien. Foxfield HOA lawfully exercised its right to foreclose  
25 on the property under NRS 116 and properly conducted the sale to extinguish the bank's interest in  
26 the property. By properly conducting a sale pursuant to a valid statute, Foxfield HOA and ACS are  
27 free from liability under a wrongful foreclosure theory. As a result, Thomas Jessup LLC lawfully  
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1 purchased the property at the foreclosure sale subject to no prior interest. Therefore, the Court quiets  
2 title in Jessup LLC's favor.

3       Additionally, MERS and BONY's counterclaims for relief fail as well. MERS and BONY's  
4 claim that Foxfield HOA and ACS were unjustly enriched by the sale fails because the property did  
5 not did not belong to another lienholder under the statute. Thus, Foxfield HOA's exercise of its'  
6 statutory right to foreclose on the property did not unjustly take a benefit from MERS or BONY.  
7 MERS and BONY's claim for tortious interference fails because Foxfield HOA and ACS conducted  
8 the foreclosure only to recover assessments the two entities had a legal right to collect under the  
9 statute. As such, MERS and BONY cannot establish that neither Foxfield HOA nor ACS had any  
10 motive to intentionally disrupt as the Deed of Trust with the former homeowner. Lastly, MERS and  
11 BONY cannot point to any duty or contract that Foxfield HOA or ACS violated to establish their  
12 breach of the duty of good faith claim.

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**III. Conclusion**

The Court finds that Bank of America failed to tender the superpriority lien amount to Foxfield HOA to preserve Bank of America's interest in the property. Accordingly, the NRS 116 foreclosure sale extinguished Bank of America's interest in the property. The Court finds in favor of Plaintiff Thomas Jessup, LLC. Thomas Jessup LLC lawfully purchased the property at the foreclosure sale subject to no prior interest. Thus, the Court quiets title in Jessup LLC's favor.

DATED this 11th day of July 2017.



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LINDA MARIE BELL  
DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Richard L. Tobler, Esq. Richard L. Tobler, Ltd.	Counsel for Plaintiff
Darren T. Brenner, Esq. Akerman LLP	Counsel for Defendants Bank of America
Shane D. Cox, Esq. Absolute Collection Services	Counsel for Absolute Collection Services

  
TINA HURD  
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

**AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A693205 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 7/11/2017  
District Court Judge