


CLERK OF THE COURT

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THOMAS JESSUP, LLC SERIES VII,
Plaintiff,

Case No.: A-13-693205-C
Dept. No.: VII

v.

LENA COOK, an individual; BNY MELLON,
N.A.; SFG MORTGAGE, a revoked Arizona
corporation; BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
HEIRS OF THE ESTATE OF LENA COOK;
and any and 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 (DOES 1
through 10, inclusive);

**DEFENDANT BANK OF AMERICA,
N.A.'S AMENDED ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendants.

Defendant Bank of America, N.A. amends its answer to Plaintiff Thomas Jessup, LLC Series
VII's Amended Complaint as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendant lacks sufficient information to admit or deny the allegations in Paragraph
1, and therefore denies the same and demands strict proof thereof.

2. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 2,
and therefore denies the same and demands strict proof thereof.

1 3. Defendant lacks sufficient information to admit or deny the allegations in Paragraph
2 3, and therefore denies the same and demands strict proof thereof.

3 4. Defendant lacks sufficient information to admit or deny the allegations in Paragraph
4 4, and therefore denies the same and demands strict proof thereof.

5 5. Defendant states that Plaintiff's assertion that Bank of America, N.A. was doing
6 business in Nevada "at all relevant times" is too vague to permit a response. To the extent a further
7 response is required, Defendant admits that it has conducted business in Nevada.
8

9 6. Defendant lacks sufficient information to admit or deny the allegations in Paragraph
10 6, which appears to be incomplete, and therefore denies the same and demands strict proof thereof.

11 7. Defendant lacks sufficient information to admit or deny the allegations in Paragraph 7
12 regarding Ms. Cook, and therefore denies the same and demands strict proof thereof.

13 8. The allegations in Paragraph 8 relate to alleged fictitious parties, and Defendant is
14 without sufficient information to admit or deny allegations related to unknown fictitious parties, and
15 therefore denies the same and demands strict proof thereof.
16

17 9. Defendant admits that this action relates to the ownership and title of real property
18 located in Clark County, Nevada and further states that Plaintiff's assertions regarding venue and
19 jurisdiction are Plaintiff's own legal conclusions, of which Defendant demands strict proof.
20

21 GENERAL ALLEGATIONS

22 10. Defendant admits that a Trustee's Deed Upon Sale recorded on June 13, 2012, states
23 that CSC Investment Group, LLC purchased real property located at 588 Bugle Bluff Dr.,
24 Henderson, Nevada 89015, APN 179-21-116-042, and states that the referenced document speaks
25 for itself. Defendant is without sufficient information to admit or deny the remaining allegations in
26 Paragraph 10 and therefore denies the same and demands strict proof thereof.
27 ...
28

1 11. Defendant admits that a Trustee's Deed Upon Sale was recorded on June 13, 2012 as
2 Instrument Number 201206130002720 and states that the referenced document speaks for itself. To
3 the extent that further response is required, Defendant is without sufficient knowledge to admit or
4 deny the remaining allegations and therefore denies those allegations and demands strict proof
5 thereof.

6 12. Defendant admits that a Quitclaim Deed was recorded on August 17, 2012 as
7 Instrument Number 201208170001801 purporting to transfer the property from CSC Investment
8 Group, LLC to Thomas Jessup, LLC and states that the referenced document speaks for itself. To
9 the extent that further response is required, Defendant is without sufficient knowledge to admit or
10 deny the remaining allegations and therefore denies those allegations and demands strict proof
11 thereof.

12 13. Defendant admits that a Quitclaim Deed was recorded on May 31, 2013 as Instrument
13 Number 201305310004710 purporting to transfer the property from Thomas Jessup, LLC to Plaintiff
14 and states that the referenced document speaks for itself. To the extent that further response is
15 required, Defendant is without sufficient knowledge to admit or deny the remaining allegations and
16 therefore denies those allegations and demands strict proof thereof.

17 14. Defendant admits that it maintains an interest in the property via an assignment of a
18 Deed of Trust recorded on October 6, 2006 as Instrument Number 20061006-0002073. Defendant is
19 without sufficient knowledge to admit or deny the remaining allegations of Paragraph 14 and
20 therefore denies those allegations and demands strict proof thereof.

21 15. Defendant denies the allegations in Paragraph 15 and demands strict proof thereof.

22 16. Defendant denies the allegation in Paragraph 16 and demands strict proof thereof.

23 ...

24 ...

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

17. Defendant adopts and incorporates by reference all the preceding paragraphs as though fully set forth herein.

18. Defendant denies the allegation in Paragraph 18 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraph 19 and demands strict proof thereof.

20. Defendant denies that Plaintiff is entitled to the determination it seeks in Paragraph 20 and specifically states that Defendant maintains its interest in the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 20 and therefore denies those allegations and demands strict proof thereof.

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

21. Defendant adopts and incorporates by reference all the preceding paragraphs as though fully set forth herein.

22. Defendant admits that Plaintiff seeks a declaration in Paragraph 22 but denies that Plaintiff is entitled to the requested declaration and specifically states that Defendant maintains its interest in the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 22 and therefore denies those allegations and demands strict proof thereof.

PRAYER FOR RELIEF

1. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the Prayer of the Complaint.

2. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the Prayer of the Complaint.

3. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 3 of the Prayer of the Complaint.

1 4. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 4 of the
2 Prayer of the Complaint.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**
5 **(Failure to State a Claim)**

6 Plaintiff has failed to state facts sufficient to constitute any cause of action against
7 Defendant.

8 **SECOND AFFIRMATIVE DEFENSE**
9 **(Void for Vagueness)**

10 To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and
Chapter 116, are void for vagueness as applied to this matter.

11 **THIRD AFFIRMATIVE DEFENSE**
12 **(Due Process Violations)**

13 A deed of trust beneficiary cannot be deprived of its property interest in violation of the
14 Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article
15 1, Sec. 8, of the Nevada Constitution.

16 **FOURTH AFFIRMATIVE DEFENSE**
17 **(Assumption of Risk)**

18 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
19 situations, actions, omissions and transactions upon which it now bases its various claims for relief,
20 and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently
21 barred from all recovery by such assumption of risk.

22 **FIFTH AFFIRMATIVE DEFENSE**
23 **(Tender, Estoppel, Laches, or Waiver)**

24 The super-priority lien was satisfied prior to the homeowner's association foreclosure under
the doctrines of tender, estoppel, laches, or waiver.

25 ...

26 ...

27 ...

28 ...

SIXTH AFFIRMATIVE DEFENSE**(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

The homeowner's association foreclosure sale was not commercially reasonable, and the circumstances of sale of the property violated the homeowner's association's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

SEVENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate Damages)**

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

EIGHTH AFFIRMATIVE DEFENSE**(Third Party Fault)**

The damages complained of, if there were any, were proximately contributed to or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other persons unknown to Defendant at this time, and were not caused in any way by Defendant or by persons for whom Defendant is legally responsible.

NINTH AFFIRMATIVE DEFENSE**(Reduction of Damages Based on Third Party Fault)**

Defendant is entitled to have any award against it reduced or eliminated to the extent that the negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of other persons that contributed to Plaintiff's damages, if any.

TENTH AFFIRMATIVE DEFENSE**(No Standing)**

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

ELEVENTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

Defendant avers the affirmative defense of unclean hands.

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TWELFTH AFFIRMATIVE DEFENSE
(Failure to Provide Notice)

Defendant was not provided proper notice of the “super-priority” assessment amounts and the homeowner’s association foreclosure sale, and any such notice provided to Defendant failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

THIRTEENTH AFFIRMATIVE DEFENSE
(Plaintiff is Not Entitled to Relief)

Defendant denies that the Plaintiff is entitled to any relief for which it prays.

FOURTEENTH AFFIRMATIVE DEFENSE
(Failure to Do Equity)

Defendant avers the affirmative defense of failure to do equity.

FIFTEENTH AFFIRMATIVE DEFENSE
(Plaintiff is not a Bona Fide Purchaser for Value)

Plaintiff purchased the property with record notice of the interest of the deeds of trust recorded against the property.

SIXTEENTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Violations of Constitutional and Federal Law)

The homeowners’ association sale is void or otherwise fails to extinguish the applicable deed of trust because it violates provisions of the United States Constitution and federal law.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Pursuant to NRCPC 11, Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

...

...

...

NINETEENTH AFFIRMATIVE DEFENSE
(Due Process — Facially Unconstitutional Provisions)

Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in” notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice to a record lien holder before depriving that lien holder of its property rights, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States and Nevada Constitutions.

TWENTIETH AFFIRMATIVE DEFENSE
(SFR Investments Cannot be Applied Retroactively)

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.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the following:

1. That Plaintiff’s complaint be dismissed in its entirety with prejudice and that Plaintiff take nothing by way of its complaint;
2. For attorneys’ fees and costs of defending this action; and
3. For such other and further relief as this Court deems just and proper.

DATED: January 29, 2016.

AKERMAN LLP

/s/ William S. Haldas, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 29th day of January, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S AMENDED ANSWER TO PLAINTIFF'S COMPLAINT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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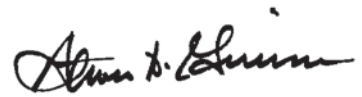
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An employee of AKERMAN LLP



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THOMAS JESSUP, LLC SERIES VII,
Plaintiff,

v.

LENA COOK, an individual; BNY MELLON,
N.A.; SFG MORTGAGE, a revoked Arizona
corporation; BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
HEIRS OF THE ESTATE OF LENA COOK;
and any and 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 (DOES 1
through 10, inclusive);

Defendants.

AND ALL RELATED MATTERS.

Case No.: A-13-693205-C

Dept. No.: VII

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF THOMAS JESSUP, LLC
SERIES VII**

Defendants 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 (**BONY**), Bank of America N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (**Bank of America**), and Mortgage Electronic Registration Systems, Inc. (collectively, **Defendants**) hereby file this Motion for Summary Judgment against Plaintiff Thomas Jessup, LLC Series VII (**Plaintiff**). This Motion is

made and based upon the Memorandum of Points and Authorities attached hereto, all exhibits attached hereto, and such oral argument as may be entertained by the Court at the time and place of the hearing of this matter.

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendants will bring the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF THOMAS JESSUP, LLC SERIES VII** for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 14 day of MARCH, 2017, at the hour of 9:00:00 o'clock A.m.

DATED February 6, 2017.

AKERMAN LLP

/s/ William S. Habdas

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

First, Defendants are entitled to summary judgment because Bank of America satisfied the tender doctrine by offering to pay the super-priority portion of Foxfield Community Association's (HOA) lien prior to the HOA's foreclosure sale to the HOA through its trustee, Absolute Collection Services, LLC (ACS or HOA Trustee). See **Exhibit A**. Accordingly, under *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) and *Horizon at Seven Hills Homeowners*

1 *Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Opinion 35 (Nev. April 28, 2016), Defendants'
2 interests in the property were not extinguished by the sale.

3 **Second**, Defendants are entitled to summary judgment because the sale was commercially
4 unreasonable as a matter of law. The property was worth \$127,000.00 but sold at the HOA's
5 foreclosure sale for \$5,401.00, a mere 4% of the subject property's fair market value. As recently
6 confirmed by the Nevada Supreme Court in *Shadow Wood Homeowners Ass'n, Inc. v. New York*
7 *Cnty. Bancorp, Inc.*, 132 Nev. Ad. Op. 5, at 11 (Jan. 28, 2016), a sale for less than 20% of a
8 property's fair market value is per se commercially unreasonable, and an additional showing of
9 fraud, oppression, or unfairness is not required.

10 **Third**, the senior deed of trust cannot be extinguished by the homeowners' association's
11 foreclosure sale because the *SFR Investments* decision cannot be applied retroactively.

12 For these reasons, summary judgment should be entered in favor of Defendants.¹

13 II.

14 REQUEST FOR JUDICIAL NOTICE

15 Defendants request that the Court take judicial notice of the following exhibits pursuant to
16 NRS §47.130: Exhibits B-F, I-K, and N-O. These are publicly recorded documents concerning the
17 property's title history. *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

18 III.

19 STATEMENT OF UNDISPUTED FACTS

20 1. On or about October 31, 2005, Lena Cook entered into the senior deed of trust with
21 SFG Mortgage (the **First Deed of Trust**) for the property located at 588 Bugle Bluff Road,
22 Henderson, Nevada 89015 (the **Property**). **Exhibit B**. The original value of the First Deed of Trust
23 was \$235,000.00, and the First Deed of Trust was recorded on November 7, 2005. *Id.*

24
25
26 ¹ For the reasons stated in the Ninth Circuit's decision in *Bourne Valley v. Wells Fargo Bank, N.A.*, 832 F.3d
27 1154 (9th Cir. Aug. 12, 2016), Defendants also contend that the HOA Lien Statute violates the Due Process
28 Clause. Defendants recognize that the Nevada Supreme Court rejected this argument in *Saticoy Bay LLC*
Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev. Adv. Op. 5 (Nev. Jan. 26, 2017), but
preserves the issue in case the United States Supreme Court decides differently.

2. On or about August 16, 2006, Lena Cook entered into a second deed of trust in favor of Bank of America (the **Second Deed of Trust**) for the Property. **Exhibit C**. The Second Deed of Trust was recorded on October 6, 2006, and the Second Deed of Trust provided a \$40,000.00 credit limit to Lena Cook. *Id.*

3. The First Deed of Trust was assigned to 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, via an Assignment of Deed of Trust, recorded on July 21, 2011. **Exhibit D**.

4. On April 12, 2011, ACS, as agent for the HOA, recorded a Notice of Delinquent Assessment Lien against the Property. **Exhibit E**. The HOA stated in the Lien that the total amount due was \$793.63. *Id.* The Lien did not identify the super-priority amount of the HOA's lien. *Id.*

5. On July 18, 2011, ACS, as agent for the HOA, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien against the Property. **Exhibit F**. The HOA now represented the amount due had increased to \$1,642.66. *Id.* The Notice of Default did not distinguish between the assessment amount and any collection costs, late fees, service charges, interest or other amounts. *Id.*

6. In response to the Notice of Default, on or about August 18, 2011, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted ACS and offered to pay the super-priority amount claimed by the HOA. **Exhibit A-1**. ACS received Miles Bauer's August 18, 2011 letter. *See Exhibit G*, Dep. of HOA Trustee, at 26:16-19.

7. On September 13, 2011, ACS refused Miles Bauer's offer of payment, claiming that Bank of America was not entitled to a payoff statement until it foreclosed on the Property. **Exhibit H**. In its letter, ACS recognized that the First Deed of Trust was in the senior lien position. *Id.* ACS believed that the super-priority portion of the HOA's lien included late fees and collection costs. **Exhibit G** at 28:22-29:1.

8. After refusing to provide Miles Bauer with a payoff statement, ACS, as agent for the HOA, recorded a Notice of Trustee's Sale against the Property on October 26, 2011. **Exhibit I**. The notice stated the total amount due was now \$3,097.60 and set a sale for December 6, 2011. *Id.*

V.

LEGAL DISCUSSIONA. Bank of America extinguished the super-priority portion of the HOA's lien prior to the foreclosure sale, which redeemed the first priority of the First Deed of Trust.

The HOA foreclosure sale did not extinguish the senior Deed of Trust because Bank of America's super-priority tender satisfied that portion of the HOA's lien before the HOA's foreclosure sale. A valid tender extinguishes the super-priority lien, even if the tender is unjustifiably rejected, and any subsequent foreclosure by the HOA would be subject to the prior-recorded deed of trust. *See Hohn v. Morrison*, 870 P.2d 513, 516–17 (Colo. App. 1993) (“[J]urisdictions which have adopted the lien theory of real estate mortgages have also adopted the rule that an unconditional tender of the amount due by the debtor releases the lien of the mortgage unless the creditor establishes a justifiable and good faith reason for rejection of the tender.”). Tender is effective when the tenderer is “at all times ready, willing, and able to pay” the amounts owed, even if payment is unjustifiably refused. *See Ebert v. W. States Refining Co.*, 337 P.2d 1075, 1077 (Nev. 1959) (enforcing option contract where corporation offered to pay full amount to exercise option). Consequently, to the extent Plaintiff received any interest in the Property through the foreclosure sale, that interest is subject to the First Deed of Trust.

In the context of an HOA's super-priority lien under NRS Chapter 116, *SFR Investments* confirms the right of a lender to preserve its lien by tendering the super-priority amount to the HOA. Quoting from the comments to the Uniform Common Interest Ownership Act adopted by Nevada, the *SFR Investments* court noted that:

“As a practical matter, secured lenders will most likely pay the [nine] months' assessments demanded by the Association *rather than having the association foreclose on the unit.*”

SFR Investments, 334 P.3d at 413 (quoting UCIOA § 3-116 cmt. 2, emphasis original). The Nevada Real Estate Division has likewise concluded that satisfaction of the super-priority portion of the HOA's lien results in a discharge of the lien. *See* December 12, 2012 NRED Advisory Opinion No. 13-01, at 11 (stating that payment of super-priority abatement charges “relieves their super priority

1 lien status.”). The Nevada Supreme Court has confirmed that prior to October 1, 2015 amendments
2 to NRS Chapter 116, the “super-priority” lien was limited to nine months of common assessments
3 and did not include collection costs and charges. *See Horizon at Seven Hills Homeowners Ass’n v.*
4 *Ikon Holdings, LLC*, 373 P.3d 66, 72 (Nev. 2016). In *Ikon Holdings*, the court specifically held that
5 the “super-priority” lien granted by NRS 116.31162(2) “is limited to an amount equal to the
6 common expense assessments due during the nine months before foreclosure.” *Id.*

7 On August 11, 2016 in *Stone Hollow Ave. Trust v. Bank of Am. Nat’l Ass’n*, the Nevada
8 Supreme Court acknowledged that an offer to pay the super-priority amount prior to an HOA
9 foreclosure sale preserves the lender’s deed of trust, even if the HOA refuses to accept payment.
10 382 P.3d 911 (Table), 2016 WL 4543202 (Nev. 2016). Following reconsideration *en banc*, the
11 August 11, 2016 order has been vacated on separate grounds, but the Supreme Court has not
12 retreated from the principle that a valid tender of funds by a lender, though rejected, extinguishes the
13 super-priority lien.

14 In *Stone Hollow*, the plaintiff purchased the property at issue in an HOA sale and then filed
15 suit against the mortgagee to quiet title. The trial court entered summary judgment in favor of the
16 mortgagee, and the plaintiff appealed. *Stone Hollow Ave. Trust v. Bank of Am., Nat. Ass’n*, No.
17 64955, 2016 WL 1109167, at *1 (Nev. Mar. 18, 2016). On appeal, the Supreme Court initially
18 reversed the trial court, finding that the trial court failed to consider the plaintiff’s bona fide
19 purchaser status. *Id.* The lender moved for rehearing on the grounds that its tender of the super-
20 priority amount discharged the super-priority lien, rendering equitable doctrines inapplicable. The
21 three-judge panel agreed—reversing its prior ruling and affirming the trial court’s grant of summary
22 judgment. *Stone Hollow*, 382 P.3d 911 (Table), 2016 WL 4543202 at *1. In its August 11, 2016
23 decision, the court found that the HOA’s rejection of the proffer of the full super-priority lien
24 amount was “unjustified” and “[w]hen rejection of a tender is unjustified, the tender is effective to
25 discharge the lien.” *Id.*

26 Following the August 11, 2016 order, the plaintiff filed a petition for reconsideration *en*
27 *banc*. The Supreme Court vacated its order and again decided to reverse the trial court, this time on
28 the grounds that there was a sufficient factual dispute over the legal adequacy of the mortgagee’s

1 tender to preclude summary judgment. *See* Nevada Supreme Court Case No. 64955, Slip Op. at 1-2
2 (Dec. 21, 2016). Notably, however, the court did not abandon the three-judge panel’s conclusion
3 that a legally adequate tender discharges the lien without regard to bona fide purchaser status.²

4 Bank of America did what Nevada law requires to protect the priority of the First Deed of
5 Trust, as it is undisputed that Bank of America offered to pay nine months of assessments to the
6 HOA’s agent prior to the foreclosure sale. Bank of America, through counsel at Miles Bauer, sent a
7 letter to the HOA Trustee on August 18, 2011, requesting a payoff ledger showing the super-priority
8 amount of the HOA’s lien, and offering to pay this amount upon adequate proof. *See Exhibit A-1*.
9 ACS, the HOA Trustee, received Miles Bauer’s letter. *See Exhibit G*, at 26:16-19. ACS, however,
10 refused to provide Miles Bauer with the requested information because its position was that a nine
11 month payoff statement was not valid until Bank of America foreclosed on the Property. *See*
12 **Exhibit H**. Even if Bank of America could have deduced the statutory super-priority amount and
13 sent a check for that amount to the HOA Trustee, the HOA Trustee would have erroneously deemed
14 that amount insufficient to discharge the super-priority lien, as the HOA Trustee believed the super-
15 priority amount included late fees and collection costs. *See Exhibit G* at 28:22-29:1. The actual
16 super-priority amount is far less—it is “is limited to an amount equal to the common expense
17 assessments due during the nine months before foreclosure.” *Ikon Holdings, LLC*, 373 P.3d at 72.

18 Bank of America’s offer to pay, was, in itself, a valid and sufficient tender of the amounts
19 secured by the super-priority lien. *See Ebert*, 337 P.2d at 1077 (finding that offer to pay amount
20 specified in option contract was sufficient to exercise option where the offeror was at all times ready,
21 willing, and able to provide payment). Tender is complete when “**the money is offered** to a creditor
22 who is entitled to receive it.” *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (Nev. 1952)
23 (emphasis added). After the money owed is offered to the creditor, “nothing further remains to be
24 done, and the transaction is completed and ended.” *Id.* Other jurisdictions agree that tender is
25 defined as “**an offer of payment** that is coupled either with no conditions or only with conditions
26

27 ² As Justice Pickering pointed out in her dissent, the Court’s holding that being a bona fide purchaser is not a defense to
28 an adequate tender was not disturbed by the *en banc* decision. *See id.* at 2-3 (Pickering, J., dissenting) (citing Grant S.
Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6th ed. 2014)).

1 upon which the tendering party has a right to insist.” *Fresk v. Kramer*, 99 P.3d 282, 286-87 (Or.
2 2004) (emphasis added); *see also* 74 Am. Jur. 2d *Tender* § 22 (2014).

3 Though Nevada has not clearly defined the parameters of a proper tender, other jurisdictions
4 have found that a tender is not rendered ineffective by the tendering party’s demand for matters to
5 which it is entitled. “[The definition of tender] is more precisely is stated as an offer of payment that
6 is coupled either with no conditions or only *with conditions upon which the tendering party has a*
7 *right to insist.*” *Fresk*, 99 P.3d at 287 (emphasis added). Thus, “[a] tender of payment may be
8 conditional as long as the attached condition is one on which the tenderer has the right to insist.”
9 *Millhollin v. Conveyor Co.*, 287 Mont. 377, 383, 954 P.2d 1163, 1166 (1998); *Dull v. Dull*, 138 Ariz.
10 357, 359, 674 P.2d 911, 913 (Ct. App. 1983) (“A tender is not conditional, however, if the condition
11 is one which the person making the tender has a legal right to insist upon.”). For example,
12 conditioning tender on release from further liability on the recipient’s claim does not prevent an
13 effective tender. *See Fresk*, 337 Or. at 523, 99 P.3d at 287 (finding that under a statute precluding an
14 attorney’s fee award to a party to whom full damages were tendered prior to litigation, tender was
15 not invalidated by conditioning payment upon a release of liability).

16 In its correspondence to the HOA Trustee on August 18, 2011, Miles Bauer made clear that
17 Bank of America sought to pay the amount needed to discharge the super-priority lien:

18 Based on [NRS 116.3116(2)(b)], a portion of your HOA lien is arguably senior to
19 BANA’s first deed of trust, specifically the nine months of assessments for common
20 expenses incurred before the date of your notice of delinquent assessment That
21 amount, whatever it is, is the amount BANA should be required to rightfully pay to
22 fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby
23 offers to pay that sum upon presentation of adequate proof of the same by the HOA.

24 **Exhibit A-1.**

25 The language contained in the Miles Bauer tender letter does not affect the validity of tender
26 because it does not impose “an unwarranted condition.” It does not impose any condition. *See*
27 *Unconditional*, Black’s Law Dictionary (10th ed. 2014) (“Not limited by a condition; not depending
28 on an uncertain event or contingency; absolute.”). It simply states that Bank of America will
interpret endorsement of the check to represent the HOA’s acceptance that it has fulfilled its

1 obligations. It does not require the HOA to take any action or waive any rights, and it does not
2 depend on an uncertain event or contingency.

3 Even if this language can be construed as a condition, it was a condition upon which Bank of
4 America had a right to insist. Under *SFR Investments* and *Ikon Holdings*, Bank of America was
5 clearly entitled to assert that its obligations to the HOA were paid in full upon tender of more than 9
6 months of assessments, and the HOA had no legitimate grounds to refuse payment. Thus, any
7 conditions stated in the August 18, 2011 letter were those “upon which [Bank of America] ha[d] a
8 right to insist” and do not defeat or diminish Bank of America’s full super-priority tender.

9 Accordingly, Plaintiff’s interest in the Property is subject to the First Deed of Trust because
10 Bank of America’s tender was sufficient to discharge the HOA’s super-priority lien.

11 **B. The HOA’s foreclosure sale should be set aside because the sales price was grossly**
12 **inadequate and thus commercially unreasonable as a matter of law.**

13 The Court should grant Defendants’ motion for summary judgment because the sale of the
14 Property for approximately 4% of its fair market value was grossly inadequate as a matter of law.
15 The *Shadow Wood* court cited the analysis of Restatement (Third) of Property: Mortgages §8.3
16 (1997). *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15. Section 8.3 provides:

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

21 (Emphasis added). Finally, the Restatement authors expressly embraced Defendants’ formula and
22 method of proving gross inadequacy:

23 This section articulates the traditional and widely held view that a
24 foreclosure proceeding that otherwise complies with state law may not
25 be invalidated because of the sale price unless that price is grossly
26 inadequate. **The standard by which “gross inadequacy” is**
27 **measured is the fair market value of the real estate.** For this
28 purpose the latter means, not the fair “forced sale” value of the real
estate, but the price which would result from negotiation and mutual
agreement, after ample time to find a purchaser, between a vendor who
is willing, but not compelled to sell, and a purchaser who is willing to
buy, but not compelled to take a particular piece of real estate.

1 *Id.* (Emphasis added). The point of the Restatement approach analyzed by the *Shadow Wood* court
2 is to compare the fair market value of the property versus what it actually sold for at the foreclosure
3 sale. *Id.* at cmt. b, Illustration 2. If the foreclosure sale price is less than 20% of the fair market
4 value, then the court should set aside the foreclosure sale as "grossly inadequate." *Id.*; *see also*
5 *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15.

6 Here, the HOA sold the Property for approximately 4% of its fair market value at the time of
7 the foreclosure sale, well below the 20% of fair market value threshold the *Shadow Wood* Court
8 explained would be "grossly inadequate as a matter of law." *Id.*; **Exhibit K**; **Exhibit M**.
9 Defendants have produced expert testimony showing the value of the Property at the time of the
10 foreclosure sale was \$127,000.00. **Exhibit M**. The HOA sale price was \$5,401.00. **Exhibit K**.
11 Dividing the sales price by the fair market value of the Property at the time of the sale shows the
12 Property was sold for approximately 4% of its fair market value. Defendants have produced clear
13 evidence proving that the sale was grossly inadequate as a matter of law under *Shadow Wood*, and is
14 thus invalid.

15 If the *Shadow Wood* decision still requires evidence of unfairness beyond the grossly
16 inadequate price, the HOA's sale of the Property after Bank of America's offer to pay the full super-
17 priority portion of the HOA's lien is sufficient evidence of unfairness. Prior to the foreclosure sale,
18 Bank of America, through Miles Bauer, offered to pay the HOA an amount equal to the last nine
19 months of delinquent assessments—the full amount the HOA could claim had super-priority over the
20 First Deed of Trust. *See Exhibit A*. ACS, however, refused to provide a payoff statement and allow
21 Bank of America to pay the super-priority amount. *See Exhibit H*. Pursuant to the tender doctrine,
22 the super-priority portion of the lien was extinguished prior to the HOA's sale, thus redeeming the
23 first-priority position of the First Deed of Trust. Additionally, the HOA Trustee plainly told Miles
24 Bauer that First Deed of Trust was in the senior lien position. *See Exhibit H*. Bank of America was
25 entitled to rely on ACS's position that the First Deed of Trust was in the senior lien position. A
26 super-priority foreclosure sale that purportedly extinguished the First Deed of Trust would be
27 patently unfair because ACS explicitly stated that the First Deed of Trust was in the senior lien
28 position. Accordingly, to the extent the sale was a super-priority foreclosure sale, it was

commercially unreasonable. Defendants are entitled to summary judgment against Plaintiff on this basis.

C. SFR Investments Should Not be Applied Retroactively to Extinguish the First Deed of Trust.

When *SFR Investments* was decided on September 18, 2014, it displaced more than 20 years of practice regarding the priority between first deeds of trust and HOA assessment liens. The decision should not be applied retroactively to permit extinguishment of the Deed of Trust. Recently, Judge Jones held that retroactive application of *SFR Investments* was improper. In *Christina Trust v. S&P Homes, et al.*, Case No. 2:15-cv-01534, Judge Jones explained:

It is not disputed that both the state and federal trial courts were in sharp disagreement as to whether an HOA Sale under NRS 116.3116 extinguished a prior-recorded first mortgage, and that the practice in the real estate industry prior to the announcement of the Nevada Supreme Court’s controversial decision was to treat such sale as not extinguishing first mortgages . . . At best, the [*SFR Investments* decision] decided an issue of first impression whose resolution was not clearly foreshadowed.

Exhibit P. Judge Jones also held that retroactive application of *SFR Investments* did not further the purpose of the HOA super-priority rule and that the extinguishment of a first deed of trust through an HOA Sale “where the extinguishment rule was not only unclear but presumed within the relevant industry at the time of the foreclosure sale to be to the contrary, would be an extremely, not just a substantially, inequitable result.” *Id.* at 10.³ This Court should do the same.

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³ The court also noted that the *Chevron Oil Co.* court “cited ten of its own cases dating as far back as the Civil War for the rule limiting the retroactivity of ‘judicial decisions’ not only in criminal cases but also ‘in cases of nonconstitutional, noncriminal state law.’” *Id.*, 8:21-23.

VI.

CONCLUSION

For these reasons, the Court should grant Defendants' motion for summary judgment against Plaintiff and enter a declaration that Plaintiff's interest in the Property, if any, is subject to the First Deed of Trust.

DATED February 6, 2017.

AKERMAN LLP

/s/ William S. Habdas

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

WILLIAM S. HABDAS, ESQ.

Nevada Bar No. 13138

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Defendants Bank of America, N.A., 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, and Mortgage Electronic Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2017, and pursuant to NRCP 5(b), I served via this Court's electronic filing system (Wiznet) a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF THOMAS JESSUP, LLC SERIES VII** to:

| | | |
|--|--|--|
| Absolute Collection Services, LLC | | |
| Contact | Email | |
| Shane D. Cox, Esq. | Shane@absolute-collection.com | |
| Brooks Hubley LLP | | |
| Contact | Email | |
| Efile desk at Brooks Hubley | efile@brookshubley.com | |
| Brooks Hubley, LLP | | |
| Contact | Email | |
| Jessica Perlick | jperlick@brookshubley.com | |
| Michael R. Brooks, Esq. | mbrooks@brookshubley.com | |
| GERRARD COX & LARSEN | | |
| Contact | Email | |
| Douglas D. Gerrard, Esq. | dgerrard@gerrard-cox.com | |
| John Langeveld | JLangeveld@Gerrard-cox.com | |
| Kanani Gonzales | KGonzales@Gerrard-cox.com | |
| Richard L. Tobler, Ltd. | | |
| Contact | Email | |
| Richard Tobler | ritldck@hotmail.com | |

/s/ Jill Sallade

An employee of AKERMAN LLP

EXHIBIT A

MILES BAUER AFFIDAVIT

State of California }
 }ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number:

REDACTED

Borrower(s):

Estate of Lena Cook

Property Address: 588 Bugle Bluff Road, Henderson, Nevada 89015

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a correct copy of the Microsoft Word version of an August 18, 2011 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, mailed to Foxfield Community Association, care of Absolute Collections Services LLC. Although the attached letter is incorrectly dated December 2, 2014 due to the "Automatic Date Change" function in Microsoft Word, based on my review of the communications with the client, the letter was sent on or about August 18, 2011.

7. Based on Miles Bauer's business records, I've located no response to the above correspondence.

FURTHER DECLARANT SAYETH NOT.

Date: 12/10/14 AK

Declarant Adam Kendis

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 10th day of December, 2014,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)
(Signature of Notary Public)

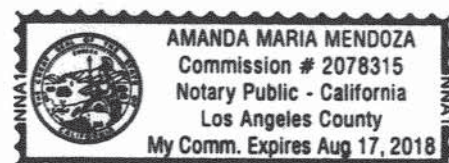


EXHIBIT 1

DOUGLAS E. MILES *
Also Admitted in California and
Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
GINA M. CORENA
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
KRISTA J. NIELSON
HADI R. SEYED-ALI *
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
BRIAN H. TRAN *
ANNA A. GHAJAR *
CORI B. JONES *
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona and
California
CATHERINE K. MASON *
CHRISTINE A. CHUNG *
HANH T. NGUYEN *
THOMAS B. SONG *



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

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

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

December 2, 2014

Foxfield Community Association
Absolute Collections Services, LLC
PO Box 12117
Las Vegas, NV 89112

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 588 Bugle Bluff Road, Henderson, NV 89015*
MBBW File No. 11-H1277

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

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

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

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

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

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

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 15, 2011. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

EXHIBIT B

20051107-0004168

Fee: \$35.00
N/C Fee: \$0.00

11/07/2005 14:20:34
T20050203139

Requestor:
LAND TITLE OF NEVADA

Frances Deane RMS
Clark County Recorder Pgs: 22

Assessor's Parcel Number: 179-21-116-042
When recorded mail to: *Mar Hay Stmt:*
SFG MORTGAGE
7047 E. GREENWAY PKWY, SUITE #400
SCOTTSDALE, ARIZONA 85254

~~Mail/NA Statements to:~~ 31
LENA COOK
588 BUGLE BLUFF DRIVE
HENDERSON, NEVADA 89015-6941
Prepared By:

Recording Requested By:

13051784-TG

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN REDACTED

MERS TELEPHONE: (888) 679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **October 31, 2005**, together with all Riders to this document.

(B) "Borrower" is **LENA COOK, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY**. Borrower is the trustor under this Security Instrument.

(C) "Lender" is **SFG MORTGAGE**. Lender is a corporation organized and existing under the laws of the State of **ARIZONA**. Lender's address is **7047 E. GREENWAY PKWY, SUITE #400, SCOTTSDALE, ARIZONA 85254**.

(D) "Trustee" is **LAND TITLE OF NEVADA, INC.**

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument**. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **October 31, 2005**. The Note states that Borrower owes Lender **Two Hundred Thirty Five Thousand And 00/100 Dollars (U.S. \$**

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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nvcmertd

235,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 1, 2035**.

(G) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(H) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

| | | |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) **"Escrow Items"** means those items that are described in Section 3.

(N) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of **CLARK** [Name of Recording Jurisdiction]:

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, PGE 19 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel ID Number: 179-21-116-042

EX

which currently has the address of

588 BUGLE BLUFF ROAD 89015

[Street]

HENDERSON [City], Nevada ~~89075/69A1~~ [Zip Code] ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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Initials:

LC

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

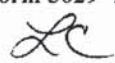
5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to

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purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation

to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

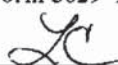
Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for

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Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in

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CLERK OF THE COURT

1 **XCAN**
2 SHANE D. COX, ESQ.
3 Nevada Bar No. 13852
4 Absolute Collection Services, LLC
5 8440 W. Lake Mead Blvd., Ste. 210
6 Las Vegas, Nevada 89128
7 (702) 531-3394
8 (702) 531-3396 - Facsimile
9 shane@absolute-collection.com
10 Attorney for ABSOLUTE COLLECTION
11 SERVICES, LLC and FOXFIELD
12 HOMEOWNERS ASSOCIATION

13
14
15 **EIGHTH JUDICIAL DISTRICT COURT**

16
17 **CLARK COUNTY, NEVADA**

18 THOMAS JESSUP, LLC SERIES VII,
19
20 Plaintiff,

21 v.

22 LENA COOK, an individual; BNY
23 MELLON, N.A.; SFG MORTGAGE, a
24 revoked Arizona corporation; BANK OF
25 AMERICA, N.A.; MORTGAGE
26 ELECTRONIC REGISTRATION
27 SYSTEMS, INC., a Delaware corporation;
28 Heirs of the Estate of LENA COOK; and
any and 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,
(Does 1 through 10, inclusive),

Defendants.

CASE NO.: A-13-693205-C
DEPT. NO.: XIV

CROSS-DEFENDANT, ABSOLUTE
COLLECTION SERVICES, LLC'S
ANSWER TO CROSSCLAIM

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

Counterclaimant,

v.

THOMAS JESSUP, LLC SERIES VII;
FOXFIELD COMMUNITY
ASSOCIATION; ABSOLUTE

1 COLLECTION SERVICES, LLC,)
2 Cross/Counter-defendants.)
3 _____)

4 COMES NOW, Cross-Defendant, FOXFIELD COMMUNITY ASSOCIATION, “HOA”, and
5 ABSOLUTE COLLECTION SERVICES, LLC, “ACS”, by and through their attorneys of record,
6 SHANE D. COX ESQ., and hereby submits its Answer to Defendant MORTGAGE ELECTRONIC
7 REGISTRATION SYSTEMS, INC. and THE BANK OF NEW YORK MELLON’s Amended
8 Crossclaim.
9

10 These Cross-Defendants were previously characterized as Counter-Defendants. HOA and
11 ACS argue that this was not a proper characterization. HOA and ACS now believe that are
12 exclusively complained against as Cross-Defendants.
13

14 Cross-Defendant HOA and ACS answers MORTGAGE ELECTRONIC REGISTRATION
15 SYSTEM, INC. and THE BANK OF NEW YORK MELLON (“Cross-Claimants”)’s Amended
16 Crossclaim as follows:
17

18 **PARTIES**

19 1. Answering paragraphs 1, 2, and 5 of Cross-Claimant’s Complaint, Cross-Defendants
20 are without sufficient information and knowledge to answer this claim, and therefore deny them.

21 2. Answering paragraphs 3 and 4 of Cross-Claimant’s Complaint, Cross-Defendants
22 answer and admit these allegations.
23

24 **BNY’S INTEREST IN THE PROPERTY**

25 3. Answering paragraph 6 of Cross-Claimant’s Complaint, Cross-Defendants specifically
26 admit, deny, or answer all previous paragraphs as if set forth herein.
27
28

1 4. Answering paragraphs 7-8 of Cross-Claimant's Complaint, Cross-Defendants are
2 without sufficient information and knowledge to answer these claims, and therefore deny them.

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

4 5. Answering paragraphs 9, 10, 11, 12, 14, and 30 of Cross-Claimant's Complaint,
5 Cross-Defendants answer and admit these allegations.
6

7 6. Answering paragraph 13 of Cross-Claimant's Complaint, Cross-Defendants answer
8 and admit that it recorded a Notice of Default. Cross-Defendants deny that the Notice did not comply
9 with NRS 116.31162. Cross-Defendants deny all other allegations of this paragraph.
10

11 7. Answering paragraphs 15, 17, 18, 19, 20, 21, 22, 26, 27, 28, and 29 of Cross-
12 Claimant's Complaint, Cross-Defendants answer and deny these allegations.

13 8. Answering paragraph 16 of Cross-Claimant's Complaint, Cross-Defendants admit that
14 they recorded a Notice of Trustee's Sale. Cross-Defendants deny the remainder of the allegations
15 contained in this paragraph.

16 9. Answering paragraphs 23 of Cross-Claimant's Complaint, Cross-Defendants admit
17 that CSC Investment Group, LLC purchased the property for \$5,401.00 on or around June 12, 2012.
18 Cross-Defendants admit that they recorded a Trustee's Deed Upon Sale on or around June 13, 2012.
19 Cross-Defendants deny all other allegations contained in this paragraph.
20

21 10. Answering paragraphs 24-25 of Cross-Claimant's Complaint, Cross-Defendants are
22 without sufficient information and knowledge to answer these allegations, and therefore deny them.
23

24 **FIRST CLAIM FOR RELIEF – DECLARATORY RELIEF – SALE LIMITED TO**

25 **SUBORDINATE LIEN RIGHTS**

26 11. Answering paragraph 31 of Cross-Claimant's Complaint, Cross-Defendants
27 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
28

12. Answering paragraphs 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of Cross-Claimant's Complaint, Cross-Defendants answer and deny this allegation.

13. Answering paragraphs 33 and 45 of Cross-Claimant's Complaint, Cross-Defendants state that this is a legal conclusion that does not require an answer. Notwithstanding, Cross-Defendants deny any allegations that appear in this paragraph.

SECOND CLAIM FOR RELIEF – DECLARATORY RELIEF – INSUFFICIENT NOTICES

UNDER NRS 116.31162-116.31168

14. Answering paragraph 46 of Cross-Claimant's Complaint, Cross-Defendants specifically admit, deny, or answer all previous paragraphs as if set forth herein.

15. Answering paragraphs 47, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 of Cross-Claimant's Complaint, Cross-Defendants answer and deny this allegation.

16. Answering paragraphs 48 and 49 of Cross-Claimant's Complaint, Cross-Defendants answer and state that Cross-Claimant makes allegations against "Counter-Defendants," and these answering parties have no knowledge to whom Cross-Claimant refers, and therefore are without sufficient information and knowledge to answer this claim, and therefore denies same.

17. Answering paragraph 50 of Cross-Claimant's Complaint, Cross-Defendants state that this is a legal conclusion that does not require an answer. Notwithstanding, Cross-Defendants deny any allegations that appear in this paragraph.

FOURTH [SIC] CLAIM FOR RELIEF – DECLARATORY RELIEF –

CONSTITUTIONALITY OF NRS 116.31162-116.31168

18. Answering paragraph 65 of Cross-Claimant's Complaint, Cross-Defendants specifically admit, deny, or answer all previous paragraphs as if set forth herein.

1 19. Answering paragraphs 66, 69, 70, 71, 72, 73, and 74 of Cross-Claimant's Complaint,
2 Cross-Defendants answer and deny these allegations.

3 20. Answering paragraphs 67, 68 of Cross-Claimant's Complaint, Cross-Defendants state
4 that this is a legal conclusion which does not require an answer. Notwithstanding, Cross-Defendants
5 deny any allegations in this paragraph.
6

7 **FIFTH CLAIM FOR RELIEF – QUIET TITLE**

8 21. Answering paragraph 75 of Cross-Claimant's Complaint, Cross-Defendants
9 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
10

11 22. Answering paragraphs 76, 77, 78, and 79 of Cross-Claimant's Complaint, Cross-
12 Defendants answer and deny these allegations.

13 **SIXTH CLAIM FOR RELIEF - UNJUST ENRICHMENT AGAINST HOA**

14 23. Answering paragraph 80 of Cross-Claimant's Complaint, Cross-Defendants
15 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
16

17 24. Answering paragraphs 81, 82, 83, 84, 85, 86, 87, and 88 of Cross-Claimant's
18 Complaint, Cross-Defendants answer and deny this allegation.

19 **SEVENTH CLAIM FOR RELIEF – UNJUST ENRICHMENT AGAINST ABSOLUTE, THE**
20 **HOA TRUSTEE**

21 25. Answering paragraph 89 of Cross-Claimant's Complaint, Cross-Defendants
22 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
23

24 26. Answering paragraphs 90, 91, 92, and 93 of Cross-Claimant's Complaint, Cross-
25 Defendants answer and deny this allegation.

26 ///

27 ///

1 **EIGHTH CLAIM FOR RELIEF – TORTIOUS INTERFERENCE WITH CONTRACTUAL**
2 **RELATIONS AGAINST THE HOA AND ABSOLUTE**

3 27. Answering paragraph 95 of Cross-Claimant's Complaint, Cross-Defendants
4 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
5

6 28. Answering paragraph 96 of Cross-Claimant's Complaint, Cross-Defendants answer
7 and admit this allegation.

8 29. Answering paragraph 97 of Cross-Claimant's Complaint, Cross-Defendants answer
9 and admit that Miles Bauer reached out to Absolute. Cross-Defendants deny all other allegations
10 contained in this paragraph.
11

12 30. Answering paragraph 98 of Cross-Claimant's Complaint, Cross-Defendants answer
13 and admit that they sold the Property for \$5,401.00. Cross-Defendants deny all other allegations
14 contained in this paragraph.

15 31. Answering paragraph 99, 100, 101, 102, and 103 of Cross-Claimant's Complaint,
16 Cross-Defendants answer and deny this allegation.
17

18 **NINTH CLAIM FOR RELIEF – BREACH OF THE DUTY OF GOOD FAITH AGAINST**
19 **THE HOA AND ABSOLUTE**

20 32. Answering paragraph 104 of Cross-Claimant's Complaint, Cross-Defendants
21 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
22

23 33. Answering paragraph 105 of Cross-Claimant's Complaint, Cross-Defendants answer
24 and admit this allegation.

25 34. Answering paragraph 106, 107, 108, 109, and 110 of Cross-Claimant's Complaint,
26 Cross-Defendants answer and deny this allegation.
27

28 ///

1 **TENTH CLAIM FOR RELIEF – WRONGFUL FORECLOSURE AGAINST THE HOA AND**

2 **ACS**

3 35. Answering paragraph 111 of Cross-Claimant's Complaint, Cross-Defendants
4 specifically admit, deny, or answer all previous paragraphs as if set forth herein.
5

6 36. Answering paragraphs 112, 113, 114, 115, 116 of Cross-Claimant's Complaint, Cross-
7 Defendants answer and deny this allegation.

8 **AFFIRMATIVE DEFENSES**

9 1. Cross-claimant fails to state a claim upon which relief may be granted.

10 2. The foreclosure sale at issue can eliminate a first deed of mortgage, pursuant to *SFR*
11 *Investments Pool I v. U.S. Bank*, 334 P.3d 408 (Nev. 2014).
12

13 3. The foreclosure sale was commercially reasonable.

14 4. ACS acted in good faith at all times.

15 5. Due to Cross-claimant's actions, Cross-claimant is estopped from asserting the claims
16 in the cross-claim.

17 6. Cross-claimant's claims may be barred by applicable limitations, including a statute of
18 limitations.
19

20 7. Cross-claimant's claims are barred by the doctrine of laches.

21 8. Cross-claimant's claims are barred by the doctrine of waiver.

22 9. The damages allegedly occurred by Cross-claimant, if any, were caused in whole or in
23 part by Cross-claimant's own acts and omissions.
24

25 10. The liability, if any, of Cross-claimant must be reduced by the percentage of fault of
26 Cross-claimant and others.
27
28

1 11. Cross-claimant's claims and causes of action are barred, in whole or in part, due to
2 Cross-claimant's failure to mitigate, minimize, or otherwise avoid its alleged damages.

3 12. Cross-claimant's damages, if any, were not caused by ACS, but rather by another third
4 party, over which, ACS had no control.

5 13. ACS and HOA owed no duty to Cross-claimant.

6 14. ACS and HOA are not a party of the Deed of Trust between Cross-claimant and its
7 mortgagee.
8

9 15. ACS and HOA had a higher priority lien against the property at 588 Bugle Bluff Road,
10 Henderson, Nevada 89015 than Cross-claimant, and extinguished Cross-Claimant's Deed of Trust by
11 performing a foreclosure sale.
12

13 16. ACS and HOA did not owe a duty to Cross-claimant related to the property at issue

14 17. Cross-claimant did not exercise ordinary care, caution, or prudence for the protection
15 of itself and any damages complained of by Cross-claimant in it Cross-claim were directly or
16 proximately caused or contributed to by the fault, failure to act, carelessness, and negligence of Bank
17 of America.
18

19 18. Cross-claimant assumed the risk of the transaction upon entering into, and therefore its
20 claims are unenforceable.

21 19. Cross-claimant's damages were the result of unrelated, pre-existing, and/or subsequent
22 conditions unrelated to ACS and HOA 's conduct.

23 20. Any and all damages Cross-claimant may have suffered or will suffer were
24 proximately caused by its failure to mitigate damages.
25

26 21. ACS is informed and believes, and therefore alleges, that Cross-claimant's claims are
27 barred in that Cross-claimant is "in pari delicto" with ACS and HOA.
28

1 22. The claims of cross-claimant should be reduced, modified, and/or barred due to the
2 failure of consideration.

3 23. There is no privity of contract between Cross-claimant and ACS and HOA and the
4 allegations in the Cross-claim are based on an expressed or implied contract with ACS and HOA, are
5 barred because of a lack of privity of contract.
6

7 24. Cross-claimant's claims are barred, in whole or in part, by the doctrines of unilateral
8 and/or mutual mistake.

9 25. No special, confidential, or fiduciary relationship existed between the parties.

10 26. Cross-claimant did not rely upon any statement, representation, advice, or conduct of
11 ACS, and did not act upon any statement, advise, or conduct to its damage.
12

13 27. No actual justiciable controversy exists between ACS and HOA and Cross-claimant
14 and therefore, the Cross-Claim must be dismissed as to ACS and HOA.

15 28. There is no basis for recovery of costs or attorney's fees by Cross-claimant from ACS
16 and HOA.
17

18 29. Cross-claimant is barred from recovering special damages herein for failure to
19 specifically allege the types of special damages claimed, pursuant to NRCP Rule 9(g).

20 30. Cross-claimant failed to file and pursue a claim with the responsible governmental
21 agency before filing this lawsuit.

22 31. ACS and HOA complied with all notice and other requirements for non-judicial
23 foreclosure as required by Nevada law.
24

25 32. ACS performed no acts or omissions that would warrant the imposition of any
26 damages, including exemplary or punitive damages.
27
28

1 33. Any damages claimed by Cross-claimant are speculative, and are not supported by
2 proof and are not compensable as a matter of law.

3 34. ACS and HOA acted properly and in good faith, and in accordance with all duties
4 imposed by law, without malice, either expressed or implied and without oppression.

5 35. ACS and HOA denies each and every allegation of the Cross-claim not specifically
6 admitted or otherwise plead herein.

7 36. Cross-claimant was on notice that the property at 588 Bugle Bluff Road, Henderson,
8 Nevada 89015 operated under an HOA, specifically that of Foxfield Community Association, and
9 that the HOA possesses a higher priority lien than the First Deed of Trust.

10 37. Chapter 116 of the Nevada Revised Statutes is not unconstitutional, as homeowners
11 and mortgage lenders are on notice that HOAs have an interest in the property that is greater than that
12 of the lenders, and therefore they assume the risk when creating the mortgage.

13 38. ACS hereby incorporated by reference those affirmative defenses enumerated in Rule
14 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation
15 or discovery reveals the applicability of any such defenses, ACS reserves the right to seek leave of
16 court to amend this Answer to specifically assert any such defenses. Such defenses are herein
17 incorporated by reference for the specific purpose of not waiving any such defenses.

18 39. Pursuant to NRCP 11, ACS states that all necessary affirmative defenses and possible
19 claims have not been asserted at the present time in this Answer to Cross-claim, and, therefore, ACS
20 reserves the right to amend its Answer as discovery proceeds in this matter.

21 **WHEREFORE,** ACS and HOA prays for the following:
22

- 23 1. That Cross-claimant take nothing by way of its cross-claim;
24 2. For attorney's fees and costs of defending this action; and
25
26
27
28

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

3 DATED this 25th day of May, 2016.
4

5 SHANE D. COX
6

7 /s/ Shane D. Cox
8 SHANE D. COX, ESQ.
9 Nevada Bar No. 13852
10 8440 W. Lake Mead Blvd., Suite 210
11 Las Vegas, Nevada 89128
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of May, 2016, I served a correct copy of the foregoing CROSS-DEFENDANT, ABSOLUTE COLLECTION SERVICES, LLC'S ANSWER TO CROSSCLAIM via electronic means in the Eighth Judicial District Court pursuant to Administrative Order 14-2.

/s/ Shane D. Cox
Authorized by SHANE D. COX, ESQ.


CLERK OF THE COURT

1 ANS
2 CHARLES L. GEISENDORF, LTD.
3 Charles L. Geisendorf, Esq. (6985)
4 2520 St. Rose Parkway, Suite 311
5 Henderson, Nevada 89074
6 Tel: (702) 873-5868
7 Email: charles@clgltd.com
8 Attorney for Counterdefendants,
9 Absolute Collection Services, LLC and
10 Foxfield Homeowners Association
11

DISTRICT COURT

CLARK COUNTY, NEVADA

12 Thomas Jessup, LLC Series VII,
13 Plaintiff,

Case No.: A-13-693205-C
Dept. No.: XIV

14 vs.

15 Lena Cook; an individual; BNY Mellon, N.A.;
16 SFG Mortgage, a revoked Arizona corporation;
17 Bank of America, N.A.; Mortgage Electronic
18 Registration Systems, Inc., a Delaware
19 corporation; Heirs of the Estate of Lena Cook;
20 and any and all other persons unknown claiming
21 any right, title, estate, lien or interest in the
22 Property adverse to the Plaintiff's ownership, or
23 any cloud upon Plaintiff's title thereto
(DOES 1 through 10, inclusive),

Defendants.

24 Mortgage Electronic Registration Systems, Inc;
25 BNY Mellon, N.A.,

Counterclaimants,

26 vs.
27

28 Thomas Jessup, LLC Series VII; Foxfield

1 Community Association; Absolute Collection
2 Services, LLC; (ROES 1 through 10, inclusive),

3 Counterdefendants.
4 _____/

5 **ABSOLUTE COLLECTION SERVICES, LLC**

6 **AND FOXFIELD COMMUNITY ASSOCIATION'S ANSWER TO COUNTER-CLAIM**

7 Counterdefendants Absolute Collection, Services, LLC., ("Counterdefendants" or
8 "Absolute") and Foxfield Community Association ("Counterdefendants" or "Association") by
9 and through their attorney of record, Charles L. Geisendorf, Esq., hereby answers
10

11 Counterclaimant's Counter-Claim on file herein and admit, deny, and allege as follows:

12 **PARTIES**

13 1. Counterdefendants in answer to paragraph 1, are without sufficient knowledge or
14 information to form a belief as to the truth or falsity of the allegations contained therein, and
15 therefore deny same.
16

17 2. Counterdefendants in answer to paragraph 2, are without sufficient knowledge or
18 information to form a belief as to the truth or falsity of the allegations contained therein, and
19 therefore deny same.
20

21 3. Counterdefendants admit the allegations contained in paragraph 3 of Counter-
22 Claim.
23

24 4. Counterdefendants admit the allegations contained in paragraph 4 of Counter-
25 Claim.
26

27 5. Counterdefendants in answer to paragraph 5, are without sufficient knowledge or
28 information to form a belief as to the truth or falsity of the allegations contained therein, and

1 therefore deny same.

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

3 6. Counterdefendants specifically admit, deny, and respond to the allegations as
4 plead above of Counterclaimant's Counter-Claim as set forth in the aforementioned paragraphs.

5
6 7. Counterdefendants in answer to paragraph 7, are without sufficient knowledge or
7 information to form a belief as to the truth or falsity of the allegations contained therein, and
8 therefore deny same.

9
10 8. Counterdefendants in answer to paragraph 8, are without sufficient knowledge or
11 information to form a belief as to the truth or falsity of the allegations contained therein, and
12 therefore deny same.

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

14
15 9. Counterdefendants admit the allegations contained in paragraph 9 of Counter-
16 Claim.

17
18 10. Counterdefendants admit the allegations contained in paragraph 10 of Counter-
19 Claim.

20
21 11. Counterdefendants admit the allegations contained in paragraph 11 of Counter-
22 Claim.

23
24 12. Counterdefendants admit the allegations contained in paragraph 12 of Counter-
25 Claim.

26
27 13. Counterdefendants in answer to paragraph 13 admit that on July 18, 2011, the
28 HOA, through Absolute, recorded a notice of Default and Election to Sell Under Homeowner's
Association Lien as Document number 201107180000815. Counterdefendants deny the

1 remaining allegations contained in paragraph 13 of Counterclaim.

2 14. Counterdefendants admit the allegations contained in paragraph 14 of Counter-
3 Claim.

4 15. Counterdefendants deny the allegations contained in paragraph 15 of Counter-
5 Claim.

6 16. Counterdefendants deny the allegations contained in paragraph 16 of Counter-
7 Claim.

8 17. Counterdefendants deny the allegations contained in paragraph 17 of Counter-
9 Claim.

10 18. Counterdefendants deny the allegations contained in paragraph 18 of Counter-
11 Claim.

12 19. Counterdefendants deny the allegations contained in paragraph 19 of Counter-
13 Claim.

14 20. Counterdefendants deny the allegations contained in paragraph 20 of Counter-
15 Claim.

16 21. Counterdefendants admit the allegations contained in paragraph 21 of Counter-
17 Claim.

18 22. Counterdefendants in answer to paragraph 22, are without sufficient knowledge or
19 information to form a belief as to the truth or falsity of the allegations contained therein, and
20 therefore deny same.

21 23. Counterdefendants in answer to paragraph 23, are without sufficient knowledge or
22 information to form a belief as to the truth or falsity of the allegations contained therein, and
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1 therefore deny same.

2 24. Counterdefendants in answer to paragraph 24, are without sufficient knowledge or
3 information to form a belief as to the truth or falsity of the allegations contained therein, and
4 therefore deny same.

5
6 25. Counterdefendants deny the allegations contained in paragraph 25 of Counter-
7 Claim.

8 26. Counterdefendants deny the allegations contained in paragraph 26 of Counter-
9 Claim.

10
11 27. Counterdefendants deny the allegations contained in paragraph 27 of Counter-
12 Claim.

13 28. Counterdefendants in answer to paragraph 28, are without sufficient knowledge or
14 information to form a belief as to the truth or falsity of the allegations contained therein, and
15 therefore deny same.

16
17 **FIRST CLAIM FOR RELIEF**
18 **(Declaratory Relief Against the Plaintiff, the HOA, and Absolute)**

19 29. Counterdefendants specifically admit, deny, and respond to the allegations as
20 plead above of Counterclaimant's Counter-Claim as set forth in the aforementioned paragraphs.

21 30. Counterdefendants deny the allegations contained in paragraph 30 of Counter-
22 Claim.

23
24 31. Counterdefendants in answer to paragraph 31 of the Counter-Claim, state that the
25 allegations contained therein speak to a legal conclusion and therefore no answer is required. To
26 the extent that an answer is required, Counterdefendants deny each and every allegation
27 contained therein in its entirety.
28

1 32. Counterdefendants in answer to paragraph 32 of the Counter-Claim, state that the
2 allegations contained therein speak to a legal conclusion and therefore no answer is required. To
3 the extent that an answer is required, Counterdefendants deny each and every allegation
4 contained therein in its entirety.

5
6 33. Counterdefendants deny the allegations contained in paragraph 33 of Counter-
7 Claim.

8 34. Counterdefendants deny the allegations contained in paragraph 34 of Counter-
9 Claim.

10
11 35. Counterdefendants deny the allegations contained in paragraph 35 of Counter-
12 Claim.

13 36. Counterdefendants deny the allegations contained in paragraph 36 of Counter-
14 Claim.

15
16 37. Counterdefendants deny the allegations contained in paragraph 37 of Counter-
17 Claim.

18 38. Counterdefendants deny the allegations contained in paragraph 38 of Counter-
19 Claim.

20
21 39. Counterdefendants deny the allegations contained in paragraph 39 of Counter-
22 Claim.

23 40. Counterdefendants deny the allegations contained in paragraph 40 of Counter-
24 Claim.

25
26 41. Counterdefendants deny the allegations contained in paragraph 41 of Counter-
27 Claim.

42. Counterdefendants deny the allegations contained in paragraph 42 of Counter-Claim.

43. Counterdefendants deny the allegations contained in paragraph 43 of Counter-Claim.

44. Counterdefendants deny the allegations contained in paragraph 44 of Counter-Claim.

45. Counterdefendants deny the allegations contained in paragraph 45 of Counter-Claim.

46. Counterdefendants deny the allegations contained in paragraph 46 of Plaintiff's Complaint.

47. Counterdefendants deny the allegations contained in paragraph 47 of Counter-Claim.

SECOND CLAIM FOR RELIEF
(Quiet Title Against Plaintiff)

48. Counterdefendants specifically admit, deny, and respond to the allegations as plead above of Counterclaimant's Counter-Claim as set forth in the aforementioned paragraphs.

49. Counterdefendants in answer to paragraph 49, are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and therefore deny same.

50. Counterdefendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Counterclaimant's Counter-Claim fails to state a claim against these answering

1 Counterdefendants upon which relief can be granted.

2 2. Counterclaimant's claims against these answering Counterdefendants are barred
3 by the Doctrine of Unclean Hands.

4 3. Counterclaimant's claims against these answering Counterdefendants are barred
5 by the Doctrine of Laches.

6 4. Counterclaimant's claims against these answering Counterdefendants are barred
7 by the Doctrine of Estoppel.

8 5. Counterclaimant's claims against these answering Counterdefendants are barred
9 by the Doctrine of Waiver.

10 6. Counterclaimant's claims against these answering Counterdefendants are barred
11 by the statute of limitations.

12 7. The damages allegedly suffered by Counterclaimant, if any, were caused in whole
13 or in part by Counterclaimant's own acts and omissions.

14 8. The damages allegedly suffered by Counterclaimant, if any, were caused in whole
15 or in part by the acts and omissions of parties over whom Counterdefendants have, and had, no
16 control.

17 9. The damages allegedly suffered by Counterclaimant, if any, were caused in whole
18 or in part by the intervening and superseding conduct of others.

19 10. Counterclaimant did not exercise ordinary care, caution, or prudence to avoid the
20 loss it complains about in its Counter-Claim and therefore it directly and proximately caused said
21 losses.

22 11. Counterdefendants are informed and believe and thereon allege that if there
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1 presently exists or ever existed, any or all of the alleged rights, claims or obligations which
2 Counterclaimant by way of its Counter-Claim alleges, said claims or obligations are
3 unenforceable because Counterclaimant assumed the risk involved in the transaction.

4 12. Counterclaimant's damages were the result of unrelated, pre-existing, or
5 subsequent conditions unrelated to Counterdefendant's conduct.
6

7 13. Counterclaimant did not exercise ordinary care, caution, or prudence to avoid the
8 loss he complains about in his Counter-Claim and therefore he directly and proximately caused
9 said losses.
10

11 14. Counterclaimant's claims and allegations are barred by the Doctrine of
12 Assumption of Risk.

13 15. Counterclaimant was at fault in how it conducted its affairs relative to the incident
14 described in Counterclaimant's Counter-Claim. Such fault caused or contributed to the damages
15 complained of in this case.
16

17 16. Counterdefendants owed no duty to Counterclaimant related to the property at
18 issue which is the subject of its Counter-Claim.

19 17. Any and all damages Counterclaimant may have suffered or will suffer were
20 proximately caused by Counterclaimant's failure to mitigate damages.
21

22 18. Counterclaimant is bound to exercise reasonable care and diligence to avoid loss
23 and to minimize their damages, if there were any, and that Counterclaimant may not recover for
24 losses which could have been prevented by reasonable efforts on their part or by expenditures
25 that they might reasonably have made.
26

27 19. Counterclaimant, with full knowledge of all the facts connected with or relating to
28

1 the causes of action alleged in its Counter-Claim, ratified, authorized and confirmed in all
2 respects the acts of these answering Counterdefendants.

3 20. These answering Counterdefendants allege that Counterclaimant failed to perform
4 its conditions precedent.

5 21. That Counterdefendants are informed and believe, and therefore allege, that
6 Counterclaimant's claims are barred in that Counterclaimant is "in pari delicto" with these
7 answering Counterdefendants.

8 22. Counterclaimant's claims are barred by the statute of frauds.

9 23. In the event there is any recovery by Counterclaimant, the recovery must be offset
10 or reduced, abated or apportioned to the extent that any other party's actions caused or
11 contributed to damages awarded to Counterclaimant.

12 24. Counterdefendants are informed and believe and thereon allege that the claims of
13 Counterclaimant are reduced, modified and/or barred due to the failure of consideration.

14 25. There existed no privity of contract between Counterclaimant and these
15 Counterdefendants and the allegations in the Counter-Claim which are based on an expressed or
16 implied contract or a contract with Counterclaimant as a third-party beneficiary are, therefore,
17 barred because of said lack of privity of contract.

18 26. Counterclaimant's claims against these answering Counterdefendants are barred,
19 in whole or in part, by the doctrines of unilateral and/or mutual mistake.

20 27. Counterdefendants are excused from any and all liability under the facts alleged in
21 Counterclaimant's claims for relief because at all material times, Counterdefendants acted in
22 good faith and conducted all material transactions in good faith.

1 28. That no special, confidential, or fiduciary relation existed between the parties.

2 29. No actual justiciable controversy exists between Counterdefendants and
3 Counterclaimant and thus, Counterclaimant's Counter-Claim must be dismissed as to these
4 Counterdefendants.

5 30. There is no basis for recovery of costs or attorney's fees by Counterclaimant from
6 Counterdefendants.

7 31. Counterclaimant is barred from recovering any special damages herein for failure
8 to specifically allege the types of special damages claimed, pursuant to NRCP Rule 9(g).

9 32. Counterclaimant failed to file and pursue a claim with the responsible
10 governmental agency before filing this lawsuit.

11 33. Counterdefendants performed no acts or omissions that would warrant the
12 imposition of any damages, including exemplary or punitive damages.

13 34. Any damages claimed by Counterclaimant are speculative, are not support by
14 proof and are not compensable as a matter of law.

15 35. Counterdefendants acted properly and in good faith, and in accordance with all
16 duties imposed by law, without malice, either expressed or implied and without oppression.

17 36. Counterdefendants deny each and every allegation of Counterclaimant's Counter-
18 Claim not specifically admitted or otherwise plead herein.

19 37. Counterdefendants hereby incorporate by reference those affirmative defenses
20 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the
21 event further investigation or discovery reveals the applicability of any such defenses, these
22 Counterdefendants reserve the right to seek leave of court to amend this Answer to specifically
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1 assert any such defenses. Such defenses are herein incorporated by reference for the specific
2 purpose of not waiving any such defenses.

3 38. Pursuant to NRCP 11, these answering Counterdefendants state that all necessary
4 affirmative defenses and possible claims have not been asserted at the present time in this
5 Answer to Counter-Claim, and, therefore, these answering Counterdefendants reserve the right to
6 amend their Answer as discovery proceeds in this matter.
7

8 WHEREFORE, Counterdefendants pray for judgment as follows:

- 9 1. That Counterclaimant take nothing by way of its Counter-Claim on file herein;
10 2. That Counterdefendants recover attorney's fees and costs of suit reasonably
11 incurred herein, and;
12 3. For such other and further relief as the Court deems just and proper.
13

14 Dated: April 8, 2015

15 CHARLES L. GEISENDORF, LTD.

16 /s/Charles Geisendorf
17 Charles L. Geisendorf, Esq. (6985)
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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

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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
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
16 corporation; HEIRS OF THE ESTATE
OF LENA COOK; and any and all other
17 persons unknown claiming any right, title,
estate, lien or interest in the Property
18 adverse to the Plaintiff's ownership, or
any cloud upon Plaintiff's title thereto
19 (DOES 1 through 10, inclusive);

20 Defendants.

21 MORTGAGE ELECTRONIC
22 REGISTRATION SYSTEMS, INC; BNY
MELLON, N.A.
23

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

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);
7 Counterdefendants.

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

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

19 PARTIES, JURISDICTION, AND VENUE

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

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

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 to 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

1 proper.

2 DATED: May 4, 2016

3
4 By:

BROOKS HUBLEY, LLP

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.

23

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.

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

4 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

13 68. BNY contends that the "opt-in" notice provisions of NRS 116.3116 *et seq.* do not
14 mandate that reasonable and affirmative steps be taken to give actual notice to lenders and
15 other holders of recorded security interests prior to a deprivation of their property rights and,
16 as such, violate the Due Process Clauses of the Fifth and Fourteenth Amendments of the
17 United States Constitution and the Due Process Clause of the Nevada Constitution.

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

20 70. BNY is entitled to an order declaring (a) the HOA Sale void as a matter of law
21 and therefore having no effect on the Deed of Trust or (b) Plaintiff's purchase of the Property
22 is subject to the Deed of Trust.
23

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

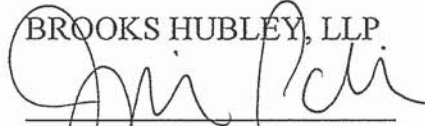
1 BNY in excess of \$10,000;

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

6
7 By:

BROOKS HUBLEY, LLP


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.*

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.):**

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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



CLERK OF THE COURT

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7 *and BNY Mellon, N.A.*

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 THOMAS JESSUP, LLC SERIES VII,

12 Plaintiff,

13 v.

Case No. A-13-693205-C

Dept. No. XIV

14 LENA COOK, an individual; BNY
MELLON, N.A.; SFG MORTGAGE, a
15 revoked Arizona corporation; BANK OF
AMERICA, N.A.; MORTGAGE
16 ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
17 HEIRS OF THE ESTATE OF LENA COOK;
and any and all other persons unknown
18 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 (DOES 1 through 10, inclusive);

19 Defendants.

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND
BNY MELLON, N.A.'S ANSWER TO
VERIFIED AMENDED COMPLAINT
FOR QUIET TITLE AND
DECLARATORY RELIEF AND
COUNTER-CLAIM**

20
21 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC; BNY
22 MELLON, N.A.

23 Counterclaimants,

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

1 vs.

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

6 Counterdefendants.

7 **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND BNY MELLON,**

8 **N.A.'S ANSWER TO VERIFIED AMENDED COMPLAINT FOR QUIET TITLE AND**

9 **DECLARATORY RELIEF**

10 COMES NOW, Defendants MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
11 INC. ("MERS") and BNY MELLON, N.A. ("BNY") (collectively "Defendants") and hereby files its
12 Answer to Plaintiff THOMAS JESSUP, LLC SERIES VII's ("Plaintiff") Verified Amended
13 Complaint for Quiet Title and Declaratory Relief ("Complaint"), and hereby admits, denies, and
14 alleges as follows:

15 **PARTIES, JURISDICTION, AND VENUE**

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

19 2. Defendants admit the allegations in Paragraph 3 of the Complaint.

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

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

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

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

(Quiet Title)

10. 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.

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

(Declaratory Relief)

9 12. Answering Paragraph 17 of the Complaint, which incorporates other paragraphs by
0 reference, Defendants incorporate their responses to those paragraphs by this reference as though set
1 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 harmed 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 harm.

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

Seventh Affirmative Defense

The sale where Plaintiff acquired the Property is commercially unreasonable.

Eighth Affirmative Defense

Defendant has been required to retain the services of an attorney to defend this claim and has been damaged as a result of this action, in the amount of its attorneys' fees and costs incurred and to be incurred. Defendant is entitled to recover those fees and costs from the Plaintiff.

Ninth 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.

Tenth 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.

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: February 19, 2015

BROOKS HUBLEY, LLP

By:


Michael R. Brooks, Esq.

Nevada Bar No. 7287

Christopher A.J. Swift, Esq.

Nevada Bar No. 11291

Attorneys for the Defendants, Mortgage

Electronic Registration Systems, Inc.

and BNY Mellon, N.A.

COUNTERCLAIM

Pursuant to NRCP 13(a) and (h), BNY MELLON, N.A. ("BNY"), by and through its attorneys of record, Brooks Hubley, LLP, hereby demands declaratory relief against Plaintiff THOMAS JESSUP, LLC SERIES VII ("Plaintiff"), FOXFIELD COMMUNITY ASSOCIATION (the "HOA"), and ABSOLUTE COLLECTION SERVICES, LLC ("Absolute"), and quiet title against Plaintiff, 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 are ascertained, BNY will seek leave to amend this complaint to allege their true names and capacities and will further ask leave to join such defendants in this action.

BNY'S INTEREST IN THE PROPERTY

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

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

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

PLAINTIFF'S INTEREST IN THE PROPERTY

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

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

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

3 12. On April 12, 2011, the HOA, through Absolute, recorded a purported lien against
4 the Property by way of a Notice of Delinquent Assessment Lien as document number
5 201104120001730 in the Official Records of Clark County, Nevada.

6 13. On July 18, 2011, the HOA, through Absolute, recorded a Notice of Default and
7 Election to Sell Under Homeowner's Association Lien as document number 201107180000815.
8 The Notice of Default and Election to Sell Under Homeowner's Association Lien did not comply
9 with NRS 116.31162.

10 14. On October 26, 2011, the HOA, through Absolute, recorded a Notice of Trustee's
11 Sale against the Property as document number 201110260002684.

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

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

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

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

23 19. None of the aforementioned notices identified above provided any notice of a right

1 to cure.

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

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

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

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

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

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

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

19 27. BNY is informed and believes and thereon alleges that the HOA was without legal
20 authority to proceed with a foreclosure of the Property.

21 28. Plaintiff filed the instant lawsuit to quiet title to the Property.

22 ///

23 ///

FIRST CLAIM FOR RELIEF

(Declaratory Relief Against the Plaintiff, the HOA, and Absolute)

29. BNY incorporates paragraphs 1 through 28, inclusive above, as if the same were set forth at length herein.

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

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

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

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

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

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

1 38. Upon information and belief, BNY alleges that the Notice of Default failed to
2 describe the deficiency in payment as required by section 116.31162 of Nevada Revised Statutes,
3 including without limitation, the failure to recite compliance with the provisions of section
4 116.3115 of the Nevada Revised Statutes.

5 39. BNY contends that the Notice of Sale failed to state that the HOA Lien was for
6 common expenses based on the periodic budget adopted by the association pursuant to section
7 116.3115 of the Nevada Revised Statutes which would have become due in the absence of
8 acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

9 40. BNY further contends that the Notice of Sale failed to identify "the amount necessary
10 to satisfy the lien as of the date of the proposed sale" as required by sections 116.311635 and
11 116.3116 of the Nevada Revised Statutes.

12 41. BNY contends that HOA lacked authority to conduct the HOA Sale on the super-
13 priority lien due to HOA's failure to comply with the provisions of section 116.3115 during the
14 relevant period of delinquency.

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

19 43. In light of the aforementioned allegations, BNY contends that the HOA Sale had no
20 effect on the Deed of Trust by operation of law.

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

1 45. A judicial determination of the above contentions is necessary to resolve the validity
2 of the HOA Sale and the status of the ownership of the Property.

3 46. BNY does not have a plain, speedy, or adequate remedy at law.

4 47. A declaration of the rights and duties of the parties is necessary and appropriate at
5 this time, so the parties may ascertain their rights and avoid the multiplicity of actions that would
6 otherwise ensure.

7 **SECOND CLAIM FOR RELIEF**

8 **(Quiet Title Against Plaintiff)**

9 48. BNY incorporates paragraphs 1 through 47, inclusive above, as if the same were set
10 forth at length herein.

11 49. Plaintiff claims ownership of the Property, free and clear of BNY's Deed of Trust.

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

14 **PRAYER**

15 WHEREFORE, BNY respectfully prays for judgment as follows:

- 16 1. That Plaintiff takes nothing by way of the Complaint on file herein;
17 2. A declaration of the invalidity of the HOA Sale;
18 3. A declaration of the rights and duties of the parties as to their competing claims to
19 the Property;
20 4. Reasonable attorneys' fees;
21 5. Costs of suit; and,
22
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1 6. Any other relief that this Court may deem just and proper.

2 DATED: February 19, 2015

3 BROOKS HUBLEY, LLP

4
5 By:

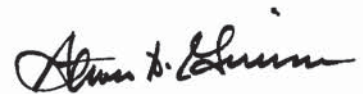

Michael R. Brooks, Esq.

Nevada Bar No. 7287

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*Attorneys for the Defendants, Mortgage
Electronic Registration Systems, Inc.
and BNY Mellon, N.A.*



CLERK OF THE COURT

RCCM

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*Attorney for Plaintiff/Counter-Defendant,
Thomas Jessup, LLC Series VII*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THOMAS JESSUP, LLC SERIES VII, a
Nevada limited liability company,

Plaintiff,

vs.

LENA COOK, an individual; BNY
MELLON, N.A.; SFG MORTGAGE, a
revoked Arizona corporation; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
HEIRS OF THE ESTATE OF LENA
COOK; and any and 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 (DOES 1 through 10,
inclusive),

Defendants.

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

Counter-Claimants,

v.

THOMAS JESSUP, LLC SERIES VII;
FOXFIELD COMMUNITY ASSOCIATION;
ABSOLUTE COLLECTION SERVICES,
LLC (ROES 1 through 10 inclusive),

Counter-Defendants.

Case No.: A-13-693205 -C

Dept. No.: VII

**PLAINTIFF/COUNTER-DEFENDANT'S
REPLY TO MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND BNY
MELLON, N.A.'S COUNTERCLAIM**

Plaintiff/Counter-Defendant, THOMAS JESSUP, LLC SERIES VII, ("**Jessup**"), hereby

1 pleads and replies to Defendant/Counter-claimant MORTGAGE ELECTRONIC
2 REGISTRATION SYSTEMS, INC., and BNY MELLON BANK, N.A.'s (collectively "MERS")
3 Counter-claim as follows:

4 1. This answering Defendant is without sufficient information or knowledge upon which
5 to base a belief as to the truth or falsity of paragraphs 1, 3 through 5, 7 through 14, 16 through
6 19, 21 through 26, 31, 33, 34, 36 through 40 and 42 of MERS Counterclaim, and therefore
7 denies said allegations in their entirety.

8 2. Jessup denies the allegations set forth in paragraphs 15, 20, 27, 30, 35, 41, 43 through
9 47 and 50 of MERS' Counterclaim.

10 3. Jessup admits the allegations within paragraphs 2, 28, 32 and 49 of MERS'
11 Counterclaim.

12 4. In answering paragraph 6 of MERS' Counterclaim, Jessup incorporates its responses
13 to paragraphs 1 through 6 of MERS' Counterclaim as though fully set forth herein.

14 5. In answering paragraph 29 of MERS' Counterclaim, Jessup incorporates its responses
15 to paragraphs 1 through 28 of MERS' Counterclaim as though fully set forth herein.

16 6. In answering paragraph 48 of MERS' Counterclaim, Jessup incorporates its responses
17 to paragraphs 1 through 47 of MERS' Counterclaim as though fully set forth herein.

18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 MERS' Counterclaims fail to state claims upon which relief may be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 MERS' Counterclaims are barred by the doctrine of laches.

23 **THIRD AFFIRMATIVE DEFENSE**

24 MERS has waived, by conduct or otherwise any claims against Jessup.

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FOURTH AFFIRMATIVE DEFENSE

MERS' claims are barred by reason of its unclean hands.

FIFTH AFFIRMATIVE DEFENSE

MERS' damages, if any, were caused in whole or in part, or were contributed to, by reason of the acts, omissions, negligence and/or intentional misconduct of MERS and its agents.

SIXTH AFFIRMATIVE DEFENSE

At all times, Jessup and other Counter-defendants (Third Party Defendants) acted in accordance with applicable law and in good faith at all times material herein, based upon all relevant facts and circumstances known by it at the time it so acted and, accordingly, MERS is barred from any recovery in this action.

SEVENTH AFFIRMATIVE DEFENSE

MERS has failed to timely set aside the foreclosure sale conducted by HOA's trustee.

EIGHTH AFFIRMATIVE DEFENSE

MERS failed to mitigate its damages by not (a) inquiring with the foreclosing trustee of the amount required to cure the super-priority lien, and (b) paying said amount.

NINTH AFFIRMATIVE DEFENSE

The HOA sold the subject property in accordance with applicable law, and any claim of MERS arising because of discrepancies between the bid price and fair value have no application to the Counterclaims.

TENTH AFFIRMATIVE DEFENSE

At all times relevant to the Counterclaim, Counter-defendants acted in a reasonable manner, dealing fairly and in good faith, and acted without intent to inflict harm or damage.

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ELEVENTH AFFIRMATIVE DEFENSE

MERS's claims are barred as a result of MERS's own actions and inactions, or the actions or inactions of third party agents of MERS.

TWELFTH AFFIRMATIVE DEFENSE

Any and all damages sustained by MERS, if any, are the result of negligence, breach of contract and breach of warranty, express or implied of third-parties over whom Jessup and other Counter-defendants have no control.

THIRTEENTH AFFIRMATIVE DEFENSE

The loss, damages, costs and attorneys fees suffered by MERS was the result of its own acts, negligence, omissions or wrongdoing in failing to act after receipt of foreclosure notices.

FOURTEENTH AFFIRMATIVE DEFENSE

MERS' failure to respond to the legal notices provided to it resulted in the Property being sold under a super-priority lien which extinguished any mortgage interest previously held by MERS.

FIFTEENTH AFFIRMATIVE DEFENSE

There are no requirements of the applicable statutes to set forth the detail in foreclosure notices averred to by MERS in its Counterclaims.

SIXTEENTH AFFIRMATIVE DEFENSE

Because of equity and good conscience, MERS is estopped from asserting its claims legal rights under the purchase agreement.

SEVENTEENTH AFFIRMATIVE DEFENSE

MERS has suffered no legal, cognizable harm or damages as a result of any wrongful conduct of the Counter-defendants.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 All affirmative defenses set forth in NRCP 8(c) are incorporated herein by reference.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 At all times relevant to the Counterclaim, Counter-defendants acted pursuant to all of
5 its obligations, and was justified or privileged in its actions.
6

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Any conduct on the part of Counter-defendants was not the cause of Plaintiff's alleged
9 losses or damages, the existence of which is denied, relieving Counter-defendants from any
10 liability.

11 **TWENTY FIRST AFFIRMATIVE DEFENSE**

12 Recovery against Jessup would unjustly enrich MERS in that the losses, if any at all,
13 and each and every wrong of which MERS complains, occurred by virtue of its or third parties'
14 conduct.
15

16 **TWENTY SECOND AFFIRMATIVE DEFENSE**

17 The conduct of the Counter-defendants conformed to the law.

18 **TWENTY THIRD AFFIRMATIVE DEFENSE**

19 By virtue of the acts, deeds, conduct and/or the failure or omission to act under the
20 circumstances, MERS waived its rights, if any existed, to assert the claims against the replying
21 replying Counter-defendants.
22

23 **TWENTY FOURTH AFFIRMATIVE DEFENSE**

24 Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
25 herein, insofar as sufficient facts were not available after reasonable inquiry upon filing of this
26

27 *///*

1 Reply to Counterclaim, therefore, Jessup reserves the right to amend its Reply to add
2 affirmative defenses should the necessity arise.

3 WHEREFORE, Counter-Defendant prays as follows:

- 4 a. That MERS take nothing by reason of its Counterclaim on file herein;
5
6 b. That the Court order MERS to pay Jessup's attorneys fees and costs of suit;
7
8 c. For such other relief as the Court deems just and proper.

9 DATED this 23rd day of March, 2015.

10 RICHARD L. TOBLER, LTD.
11

12 By: 

13 Richard L. Tobler, Esq.
14 Nevada Bar No. 4070
15 3654 N. Rancho Drive, Suite 102
16 Las Vegas, Nevada 89130-3179
17 Telephone: (702) 256-6000
18 Attorney for Counter-defendant,
19 Thomas Jessup, LLC Series VII
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 23rd day of March, 2015 and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing **PLAINTIFF/COUNTER-DEFENDANT'S REPLY TO MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND BNY MELLON, N.A.'S COUNTERCLAIM**, upon the parties listed below in the following manner:

☐ Hand Delivery

☐ Facsimile Transmission

☐ U.S. Mail, Postage Pre-Paid

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

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Attorneys for Defendants, BNY Mellon, N.A. and
Mortgage Electronic Registration Systems, Inc.



Cheri L. Kremenek, an employee of
RICHARD L. TOBLER, LTD.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC.;
and THE BANK OF NEW YORK
MELLON;

Appellants,

vs.

THOMAS JESSUP, LLC SERIES
VII,

Respondent.

Electronically Filed
Jan 16 2018 12:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73785

APPEAL

from the Eighth Judicial District Court, Department VII
The Honorable Linda Marie Bell, District Judge
District Court Case No. A-13-693205-C

APPELLANT'S INDEX TO APPENDIX - VOLUME I

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| Defendants’ Reply in Support of Motion for Summary Judgment and Opposition to Plaintiff’s Countermotion for Summary Judgment | 391 |
| Joint Pretrial Memorandum | 505 |
| Order Denying Motions for Summary Judgment | 528 |
| Recorder’s Transcript of Bench Trial | 531 |

| | |
|---|-----|
| Decision and Order | 765 |
| Notice of Entry of Decision and Order | 775 |
| Case Appeal Statement | 789 |
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| Amended Case Appeal Statement..... | 853 |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 3rd day of January, 2018, I caused to be served a true and correct copy of the foregoing **APPELLANT'S INDEX TO APPENDIX**, in the following manner:

(ELECTRONIC SERVICE) The above referenced document was electronically filed on the date hereof with the Clerk of the Court for the Supreme Court of the State of Nevada by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List.

RICHARD TOBLER, ESQ.
Nevada Bar No. 4070
3654 N. Rancho Drive, Suite 102
Las Vegas, NV 89130

*Attorney for Respondent
Michael Jessup, LLC Series VII*

/s/ Carla Llarena

An employee of AKERMAN LLP

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REGISTER OF ACTIONS

CASE NO. A-13-693205-C

| | | | |
|--|---|------------------------------|-------------------|
| Thomas Jessup LLC Series VII, Plaintiff(s) vs. Lena Cook, Defendant(s) | § | Case Type: | Title to Property |
| | § | Subtype: | Quiet Title |
| | § | Date Filed: | 12/16/2013 |
| | § | Location: | Department 7 |
| | § | Cross-Reference Case Number: | A693205 |
| | § | Supreme Court No.: | 73785 |
| | § | | |

PARTY INFORMATION

| | | |
|-------------------|--|---|
| Counter Claimant | BNY Mellon | Lead Attorneys William S. Habdas <i>Retained</i> 702-671-4354(W) |
| Counter Claimant | Mortgage Electronic Registration Systems Inc | William S. Habdas <i>Retained</i> 702-671-4354(W) |
| Counter Defendant | Absolute Collection Services LLC | Shane Cox <i>Retained</i> 702-531-3394(W) |
| Counter Defendant | Foxfield Community Association | Shane Cox <i>Retained</i> 702-531-3394(W) |
| Counter Defendant | Thomas Jessup LLC Series VII | Richard L Tobler <i>Retained</i> 702-256-6000(W) |
| Defendant | Bank of America | Darren Brenner <i>Retained</i> 702-634-5000(W) |
| Defendant | BNY Mellon | William S. Habdas <i>Retained</i> 702-671-4354(W) |
| Defendant | Cook, Lena | |
| Defendant | Heirs of the Estate of Lena Cook | |
| Defendant | Mortgage Electronic Registration Systems Inc | William S. Habdas <i>Retained</i> 702-671-4354(W) |
| Defendant | SFG Mortgage Corp | |
| Plaintiff | Thomas Jessup LLC Series VII | Richard L Tobler <i>Retained</i> 702-256-6000(W) |

EVENTS & ORDERS OF THE COURT

| | |
|------------|--|
| | OTHER EVENTS AND HEARINGS |
| 12/16/2013 | Case Opened |
| 12/16/2013 | Complaint <i>Complaint for Quiet Title and Declaratory Relief</i> |
| 12/16/2013 | Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i> |
| 12/17/2013 | Notice of Lis Pendens <i>Notice of Lis Pendens</i> |
| 12/23/2013 | Affidavit in Support <i>Affidavit of Michael V. Infuso, Esq. in Support of Request for Temporary Restraining Order Without Notice</i> |

12/23/2013 **Temporary Restraining Order**
Temporary Restraining Order

12/23/2013 **Application**
Plaintiff's Application for Temporary Restraining Order and Application for Preliminary Injunction; Ex Parte Motion for Order Shortening Time

12/26/2013 **Affidavit of Service**
Affidavit of Service - Bank of New York Mellon N A

12/26/2013 **Affidavit of Service**
Affidavit of Service - Bank of America N A

12/26/2013 **Affidavit of Service**
Affidavit of Service - SFG Mortgage

12/26/2013 **Notice of Entry of Order**
Notice of Entry of Temporary Restraining Order

12/30/2013 **Affidavit of Attempted Service**
Affidavit of Attempts - Lena Cook

12/31/2013 **Affidavit of Service**
Affidavit of Service - Mortgage Electronic Registration Systems Inc

01/02/2014 **Affidavit of Service**
Affidavit of Process Server - Mortgage Electronic Registration Systems Inc

01/06/2014 **Affidavit of Service**
Affidavit of Service - Bank of New York Mellon N A

01/07/2014 **Motion for Temporary Restraining Order** (10:00 AM) (Judicial Officer Escobar, Adriana)
Plaintiff's Application for Temporary Restraining Order and Application for Preliminary Injunction; Ex Parte Motion for OST
[Parties Present](#)
[Minutes](#)
Result: Granted

01/08/2014 **Affidavit of Service**
Affidavit of Process Server - Mortgage Electronic Registration Systems Inc

01/08/2014 **Affidavit of Service**
Affidavit of Service - Bank of New York Mellon N A

01/08/2014 **Affidavit of Service**
Affidavit of Service - Bank of America N A

01/08/2014 **Affidavit of Service**
Affidavit of Service - SFG Mortgage

01/10/2014 **Order Granting**
Order Granting Plaintiff's Application for Preliminary Injunction

01/13/2014 **Notice of Entry of Order**
Notice of Entry of Order Granting Plaintiff's Application for Preliminary Injunction

01/13/2014 **Application**
Application for Order Authorizing Plaintiff to Serve Summons and Complaint on All Unknown Claimants by Publication

01/16/2014 **Notice of Posting Bond**
Notice of Posting Cash Bond in Compliance with the Order Granting Plaintiff's Application for Preliminary Injunction

01/22/2014 **Affidavit of Attempted Service**
Affidavit of Attempted Service - Lena Cook

01/23/2014 **Order**
Order Authorizing Plaintiff to Serve Summons and Complaint on All Unknown Claimants by Publication

01/28/2014 **Notice of Entry of Order**
Notice of Entry of Order Authorizing Plaintiff to Serve the Summons and Complaint on all Unknown Claimants by Publication

02/28/2014 **Stipulation and Order**
Stipulation and Order to Partially Stay Case

02/28/2014 **Notice of Entry of Order**
Notice of Entry of Order to Partially Stay Case

03/03/2014 **Affidavit of Publication of Summons**
Affidavit of Publication of Summons

03/28/2014 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

03/28/2014 **Notice of Association of Counsel**
Notice of Association of Counsel

04/09/2014 **Amended Complaint**
Verified Amended Complaint for Quiet Title and Declaratory Relief

04/10/2014 **Affidavit of Due Diligence**
Affidavit of Due Diligence - Lena Cook

04/10/2014 **Affidavit of Service**
Affidavit of Service - SFG Mortgage

04/10/2014 **Affidavit of Service**
Affidavit of Service - SFG Mortgage

04/11/2014 **Ex Parte Application to Extend Time for Service**
Ex Parte Application for an Order Extending Time to Serve Summons and Complaint and Allowing Service by Publication

04/29/2014 **Certificate of Service**
Certificate of Service

04/29/2014 **Order Extending Time to Serve**
Order Extending Time to Serve Summons and Complaint and Authorizing Plaintiff to Serve Summons and Complaint by Publication

04/30/2014 **Notice of Entry of Order**
Notice of Entry of Order Extending Time to Serve Summons and Complaint and Authorizing Plaintiff to Serve the Summons and Complaint by Publication

06/05/2014 **Affidavit of Publication of Summons**
Affidavit of Publication of Summons

06/05/2014 **Affidavit of Publication of Summons**
Affidavit of Publication of Summons

08/05/2014 **Substitution of Attorney**
Substitution of Counsel

08/27/2014 **Substitution of Attorney**
Substitution of Counsel

11/13/2014 **Status Check: Status of Case** (9:00 AM) (Judicial Officer Escobar, Adriana)

Per Stipulation and Order to Partially Stay Case signed 2/25/14
[Parties Present](#)
[Minutes](#)
 08/28/2014 Reset by Court to 11/13/2014
 Result: Matter Heard
 12/12/2014 **Answer to Amended Complaint**
Defendant Bank of America, N.A.'s Answer to Plaintiff's Amended Complaint
 12/17/2014 **Order**
Order Lifting Stay of Case and Setting Deadline For Defendant Bank of America, N.A.'s Response To Plaintiff's Complaint
 12/18/2014 **Notice of Entry of Order**
Notice of Entry of Order
 01/06/2015 **Three Day Notice of Intent to Default**
Three Day Notice of Intent to Take Default
 02/17/2015 **Joint Case Conference Report**
Joint Case Conference Report
 02/20/2015 **Answer to Amended Complaint**
Mortgage Electronic Systems, Inc. and BNY Mellon, N.A.'s Answer to Verified Amended Complaint for Quiet Title and Declaratory Relief and Counter-Claim
 02/20/2015 **Initial Appearance Fee Disclosure**
Initial Appearance fee Disclosure
 02/20/2015 **Certificate of Service**
Certificate of Service
 02/25/2015 **Scheduling Order**
Scheduling Order
 03/02/2015 **Case Reassigned to Department 7**
District Court Case Reassignment 2015
 03/06/2015 **Substitution of Attorney**
Substitution of Attorney
 03/23/2015 **Affidavit of Service**
Affidavit of Service
 03/23/2015 **Summons**
Summons (FoxField Community Association)
 03/23/2015 **Reply to Counterclaim**
Plaintiff/Counterdefendants Reply to Mortgage Electronic Registration Systems Inc and BNY Mellon NAs Counterclaim
 04/01/2015 **Affidavit of Service**
Affidavit of Service
 04/01/2015 **Summons**
Summons (Absolute Collections Services, LLC)
 04/08/2015 **Answer**
Absolute Collection Services, LLC and Foxfield Community Association's Answer to Counter-Claim
 04/08/2015 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure
 05/28/2015 **Order Setting Civil Bench Trial**
Order Setting Civil Bench Trial
 09/10/2015 **Demand**
Absolute Collection Services, LLC and Foxfield Community Association's Demand for Prior Discovery
 09/28/2015 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Discovery Deadline Dates and Trial (First Request)
 10/08/2015 **Order Setting Civil Bench Trial**
Second Order Setting Civil Bench Trial
 10/20/2015 **CANCELED Status Conference (9:00 AM)** (Judicial Officer Bell, Linda Marie)
Vacated - per Commissioner
 10/22/2015 **Affidavit of Service**
Affidavit of Service
 12/11/2015 **Motion for Leave to File**
Defendant Bank of America, N.A.'s Motion For Leave To Amend Answer To Add Affirmative Defenses
 12/11/2015 **Motion to Amend**
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.'S Motion For Leave To Amend Pleadings (First Request)
 12/29/2015 **CANCELED Calendar Call (9:00 AM)** (Judicial Officer Bell, Linda Marie)
Vacated - per Commissioner
 01/04/2016 **CANCELED Bench Trial (9:00 AM)** (Judicial Officer Bell, Linda Marie)
Vacated - per Commissioner
 01/12/2016 **Motion for Leave (9:00 AM)** (Judicial Officer Bell, Linda Marie)
Defendant Bank of America, N.A.'s Motion For Leave To Amend Answer To Add Affirmative Defenses
 Result: Granted
 01/12/2016 **Motion for Leave (9:00 AM)** (Judicial Officer Bell, Linda Marie)
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.'S Motion For Leave To Amend Pleadings (First Request)
 Result: Granted
 01/12/2016 **All Pending Motions (9:00 AM)** (Judicial Officer Bell, Linda Marie)
[Minutes](#)
 Result: Matter Heard
 01/15/2016 **Order Granting Motion**
Order Granting 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.'S Motion for Leave to Amend Pleadings (First Request)
 01/15/2016 **Notice of Entry of Order**

Notice of Entry of Order Granting 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.'S Motion for Leave to Amend Pleadings (First Request)

01/25/2016 **Substitution of Attorney**
Substitution of Counsel

01/29/2016 **Amended Answer**
Defendant Bank Of America, N.A.'s Amended Answer To Plaintiff's Amended Complaint

02/09/2016 **Substitution of Attorney**
Foxfield Community Association and Absolute Collection Services, LLC's Substitution of Attorney

02/29/2016 **Order Granting**
Order Granting Defendant Bank of America, N.A.'s Motion For Leave To Amend Answer To Add Affirmative Defenses

03/01/2016 **Stipulation and Order**
Stipulation and Order To Extend Discovery Deadlines (Second Request)

03/05/2016 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order

03/15/2016 **CANCELED Status Conference** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Vacated - per Stipulation and Order

03/16/2016 **Order Setting Civil Bench Trial**
Third Order Setting Civil Bench Trial

05/04/2016 **Notice of Association of Counsel**
Notice of Association of Counsel

05/04/2016 **Answer and Counterclaim**
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

05/04/2016 **Notice**
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.'s Notice to Attorney General of Constitutional Challenge to State Statute NRS 116.31162-116.31168

05/17/2016 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Vacated - per Stipulation and Order

05/23/2016 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Vacated - per Stipulation and Order

05/25/2016 **Answer to Crossclaim**
Absolute Collection Services, LLC's Answer to First Amended Crossclaim

06/02/2016 **Association of Counsel**
Notice of Association of Counsel with Brooks Hubley, LLP

12/13/2016 **Status Conference** (9:00 AM) (Judicial Officer Bell, Linda Marie)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

01/13/2017 **Motion to Withdraw As Counsel**
Motion to Withdraw as Counsel on Order Shortening Time

01/26/2017 **Motion to Withdraw as Counsel** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Gerrard, Cox & Larsen's Motion to Withdraw as Counsel on Order Shortening Time
[Parties Present](#)
[Minutes](#)
Result: Granted

02/06/2017 **Motion for Summary Judgment**
Defendants' Motion For Summary Judgment Against Plaintiff Thomas Jessup, LLC Series VII

02/15/2017 **Stipulation and Order**
Stipulation and Order to Continue Calendar Call and Trial

02/16/2017 **Affidavit of Service**
Affidavit Of Service-Attorney General

02/16/2017 **Notice of Entry**
Notice Of Entry Of Stipulation And Order To Continue Calendar Call And Trial

02/21/2017 **Opposition and Countermotion**
Plaintiff Thomas Jessup LLC Series VII's Opposition to Bank of New York Mellons Motion for Summary Judgment and Countermotion for Summary Judgment

02/22/2017 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

02/24/2017 **Reply in Support**
Defendants' Reply in Support of Its Motion for Summary Judgment Against Plaintiff Thomas Jessup, LLC Series VII and Opposition to Plaintiff's Countermotion for Summary Judgment

02/24/2017 **Stipulation and Order**
Stipulation and Order to Continue Hearing on Defendants Motion for Summary Judgment

02/27/2017 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Continue Hearing on Defendants Motion for Summary Judgment

03/07/2017 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Result: Matter Heard

03/07/2017 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Defendants' Motion For Summary Judgment Against Plaintiff Thomas Jessup, LLC Series VII
02/28/2017 Reset by Court to 03/07/2017
03/14/2017 Reset by Court to 02/28/2017
Result: Denied

03/07/2017 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Plaintiff Thomas Jessup LLC Series VII's Opposition to Bank of New York Mellons Motion for Summary Judgment and Countermotion for Summary Judgment
02/28/2017 Reset by Court to 03/07/2017
Result: Denied

03/07/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Bell, Linda Marie)

| | |
|------------|---|
| | Parties Present |
| | Minutes |
| | Result: Matter Heard |
| 03/08/2017 | Order Granting Motion <i>Order granting Motion to Withdraw as Counsel</i> |
| 03/13/2017 | CANCELED Bench Trial (9:00 AM) (Judicial Officer Bell, Linda Marie) <i>Vacated</i> |
| 03/13/2017 | Notice of Entry of Order <i>Notice of Entry of Order Granting Motion to Withdraw as Counsel</i> |
| 03/17/2017 | Pre-Trial Disclosure <i>Defendants Bank of America, N.A., The Bank of New York Mellon fka The Bank of New York as Trustees for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17, and Mortgage Electronic Systems, Inc.'s Second Supplemental Pretrial Disclosures</i> |
| 03/20/2017 | Joint Pre-Trial Memorandum <i>Joint Pretrial Memorandum</i> |
| 03/28/2017 | Order Denying Motion <i>Order Denying Defendants the Bank of New York Mellon fka the Bank of New York as Trustee for the Certificateholders of the CWAB, Inc., Asset-Backed Certificates, Series 2005-17, Bank of America, N.A., and Mortgage Electronic Registration Systems, Inc.'s and Plaintiff Thomas Jessup, LLC Series VII's Motions for Summary Judgment</i> |
| 03/29/2017 | Notice of Entry <i>Notice of Entry of Order Denying Defendants the Bank of New York Mellon FKA the Bank of New York as Trustee for the Certificate Holders of the CWABS, Inc, Asset-Backed Certificates, Series 2005-17, Bank of America NA, and Mortgage Electronic Registration Systems, Inc'S and Plaintiff Thomas Jessup, LLC Series VII's Motions for Summary Judgment</i> |
| 04/01/2017 | Trial Memorandum <i>Foxfield Community Association and Absolute Collection Services, LLC's Civil Trial Memorandum</i> |
| 04/03/2017 | Bench Trial (9:00 AM) (Judicial Officer Bell, Linda Marie) Parties Present Minutes |
| | Result: Set Status Check |
| 04/03/2017 | Proof of Service <i>Proof of Service</i> |
| 05/02/2017 | Status Check (9:00 AM) (Judicial Officer Hardy, Joe) 05/02/2017, 05/30/2017, 06/27/2017, 07/11/2017 <i>Status Check: Decision</i> Parties Present Minutes |
| | Result: Continued |
| 07/14/2017 | Decision and Order <i>Decision and Order</i> |
| 07/20/2017 | Notice of Entry of Order <i>Notice of Entry of Decision and Order</i> |
| 07/20/2017 | Reporters Transcript <i>Recorder's Transcript of Bench Trial April 3, 2017</i> |
| 08/15/2017 | Notice of Appeal <i>Defendants 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, Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.'s Notice of Appeal</i> |
| 08/15/2017 | Case Appeal Statement <i>Defendants 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, Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.'s Case Appeal Statement</i> |
| 08/21/2017 | Notice of Posting Bond <i>Notice of Posting and Acceptance of Appeal Bond</i> |
| 08/23/2017 | Notice of Association of Counsel <i>Notice of Association of Counsel</i> |
| 08/24/2017 | Notice of Withdrawal of Attorney <i>Notice of Withdrawal of Co-Counsel</i> |
| 09/29/2017 | Case Appeal Statement <i>Defendants 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, Bank of America, N.A., and Mortgage Electronic Systems, Inc.'s Amended Case Appeal Statement</i> |

FINANCIAL INFORMATION

| | | | |
|------------|--|----------------------------|-------------------------|
| | Counter Claimant BNY Mellon | | |
| | Total Financial Assessment | | 259.00 |
| | Total Payments and Credits | | 259.00 |
| | Balance Due as of 12/14/2017 | | 0.00 |
| 02/20/2015 | Transaction Assessment | | 30.00 |
| 02/20/2015 | Efile Payment | Receipt # 2015-18179-CCCLK | BNY Mellon (30.00) |
| 02/06/2017 | Transaction Assessment | | 200.00 |
| 02/06/2017 | Efile Payment | Receipt # 2017-11854-CCCLK | BNY Mellon (200.00) |
| 08/15/2017 | Transaction Assessment | | 24.00 |
| 08/15/2017 | Efile Payment | Receipt # 2017-64595-CCCLK | BNY Mellon (24.00) |
| 08/23/2017 | Transaction Assessment | | 5.00 |
| 08/23/2017 | Payment (Window) | Receipt # 2017-66685-CCCLK | Nationwide Legal (5.00) |
| | Counter Claimant Mortgage Electronic Registration Systems Inc | | |
| | Total Financial Assessment | | 223.00 |
| | Total Payments and Credits | | 223.00 |

| | | | |
|------------|---|--------------------------------|-------------|
| | Balance Due as of 12/14/2017 | | 0.00 |
| 02/20/2015 | Transaction Assessment | | 223.00 |
| 02/20/2015 | Efile Payment | Receipt # 2015-18178-CCCLK | (223.00) |
| | | Mortgage Electronic Registrati | |
| | Counter Defendant Absolute Collection Services LLC | | |
| | Total Financial Assessment | | 223.00 |
| | Total Payments and Credits | | 223.00 |
| | Balance Due as of 12/14/2017 | | 0.00 |
| 04/09/2015 | Transaction Assessment | | 223.00 |
| 04/09/2015 | Efile Payment | Receipt # 2015-36668-CCCLK | (223.00) |
| | | Absolute Collection Services L | |
| | Counter Defendant Foxfield Community Association | | |
| | Total Financial Assessment | | 30.00 |
| | Total Payments and Credits | | 30.00 |
| | Balance Due as of 12/14/2017 | | 0.00 |
| 04/09/2015 | Transaction Assessment | | 30.00 |
| 04/09/2015 | Efile Payment | Receipt # 2015-36669-CCCLK | (30.00) |
| | | Foxfield Community Association | |
| | Counter Defendant Thomas Jessup LLC Series VII | | |
| | Total Financial Assessment | | 475.00 |
| | Total Payments and Credits | | 475.00 |
| | Balance Due as of 12/14/2017 | | 0.00 |
| 12/16/2013 | Transaction Assessment | | 270.00 |
| 12/16/2013 | Efile Payment | Receipt # 2013-151019-CCCLK | (270.00) |
| 12/19/2013 | Transaction Assessment | | 5.00 |
| 12/19/2013 | Payment (Window) | Receipt # 2013-152747-CCCLK | (5.00) |
| 02/22/2017 | Transaction Assessment | | 200.00 |
| 02/22/2017 | Efile Payment | Receipt # 2017-17475-CCCLK | (200.00) |
| | | Thomas Jessup LLC Series VII | |
| | Defendant Bank of America | | |
| | Total Financial Assessment | | 223.00 |
| | Total Payments and Credits | | 223.00 |
| | Balance Due as of 12/14/2017 | | 0.00 |
| 03/28/2014 | Transaction Assessment | | 223.00 |
| 03/28/2014 | Efile Payment | Receipt # 2014-37441-CCCLK | (223.00) |
| | | Bank of America | |

CIVIL COVER SHEET

CLARK County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A-13-693205-C
Xi V**I. Party Information**

Plaintiff(s) (name/address/phone): THOMAS JESSUP, LLC,
SERIES VII
c/o Michael V. Infuso, Esq.
Greene Infuso, LLP
Attorney (name/address/phone): 3030 S. Jones Blvd., #101
Las Vegas, Nevada 89146
(702) 570-6000

Defendant(s) (name/address/phone): LENA COOK, et al.
Attorney (name/address/phone): UNKNOWN

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

| Real Property | Torts | |
|---|---|--|
| <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning | <input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other | <input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition |

Probate**Other Civil Filing Types**

| | | |
|--|---|---|
| Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate | <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal | <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters |
|--|---|---|

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

| | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

12/16/13
Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

COMP

Michael V. Infuso, Esq., Nevada Bar No. 7388
Zachary P. Takos, Esq., Nevada Bar No. 11293

GREENE INFUSO, LLP

3030 South Jones Boulevard, Suite 101

Las Vegas, Nevada 89146

Telephone: (702) 570-6000

Facsimile: (702) 463-8401

E-mail: minfuso@greeneinfusolaw.com

ztakos@greeneinfusolaw.com

Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

THOMAS JESSUP, LLC SERIES VII,

Plaintiff,

v.

LENA COOK, an individual; BNY
MELLON, N.A.; SFG MORTGAGE, a
revoked Arizona corporation; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
and any and 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 (DOES 1 through 10, inclusive);

Defendants.

Case No. **A- 13- 693205- C**

Dept. No.

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

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

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

PARTIES, JURISDICTION AND VENUE

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

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

12. 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**.

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

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

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

FIRST CLAIM FOR RELIEF
(Quiet Title)

16. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 15 of this Complaint, as though fully set forth herein.

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

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

19. 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)

20. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 19 of this Complaint, as though fully set forth herein.

21. 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

1 herein have no estate, right, title or interest in the Property, and that Defendants are forever
2 enjoined from asserting any estate, title, right, or interest in the Property adverse to Plaintiff.

3 WHEREFORE, Plaintiff prays for the following relief:

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

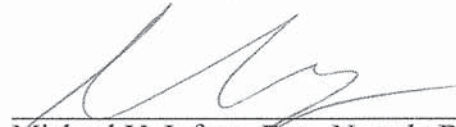
6 2. For a determination and declaration that Defendants have no estate, right, title or
7 interest in the Property;

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

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

11 DATED this 16 day of December, 2013.

12 **GREENE INFUSO, LLP**

13 
14 Michael V. Infuso, Esq., Nevada Bar No. 7388
15 Zachary P. Takos, Esq., Nevada Bar No. 11293
16 3030 South Jones Boulevard, Suite 101
17 Las Vegas, Nevada 89146

18 Attorneys for Plaintiff
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VERIFICATION

I, ^{Michael} Thomas 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 16 day of December, 2013.


Thomas Jessup
Michael

GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

EXHIBIT 1

Inst #: 201206130002720
Fees: \$19.00 N/C Fee: \$25.00
RPTT: \$28.05 Ex: #
06/13/2012 02:03:55 PM
Receipt #: 1196891
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 WAS NOT 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 [Signature]

Capacity: President

Signature _____

Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Absolute 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/assrrealprop/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 31ST 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.

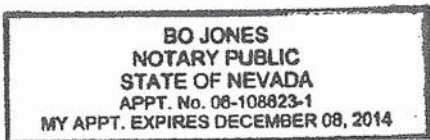


Shari Wong Culotta,
Agent of CSC Investment Group, LLC

Subscribed and sworn to before me this 31st 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: _____ Escrow # _____
Address: _____
City: _____ 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:

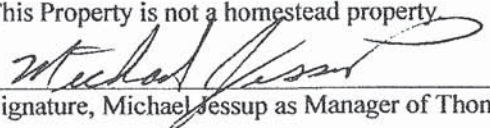
Parcel No: 179-21-116-042

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. 1 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

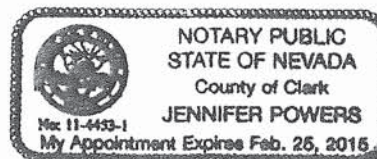
Date: 5/31/13

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 1 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 VII
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

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.

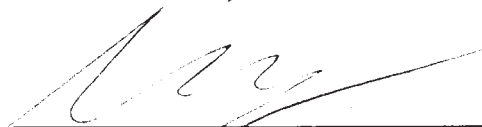
22. Plaintiff seeks a declaration from this Court, pursuant to NRS 40.010, that title in the Property is vested in Plaintiff free and clear of all liens and encumbrances, that Defendants herein have no estate, right, title or interest in the Property, and that Defendants are forever enjoined from asserting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

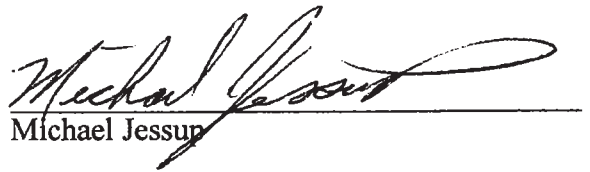
Attorneys for Plaintiff

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, 11th 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: #

06/13/2012 02:03:55 PM

Receipt #: 1196891

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 WAS NOT 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
i. ☐ 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.

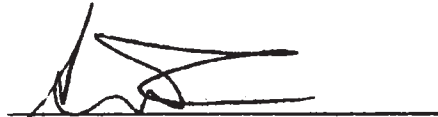
In witness whereof, **CSC Investment Group, LLC** has hereunto this **31ST day of July, 2012** as set forth above.

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.

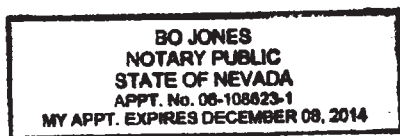


Shari Wong Culotta,
Agent of CSC Investment Group, LLC

Subscribed and sworn to before me this **31st 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 \$ _____

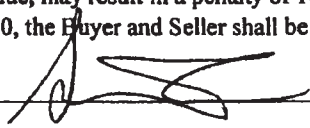
4. **If Exemption Claimed:**

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

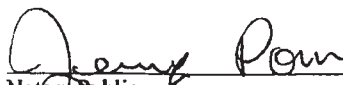

Signature, Michael Jessup as Manager of Thomas Jessup, LLC, Grantor

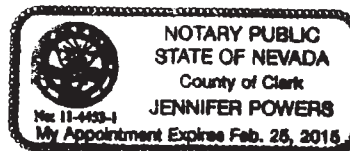
Date: 5/31/13

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 Grant 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

ANS
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
WILLIAM S. HABDAS, ESQ.
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: william.habdas@akerman.com

Attorneys for Bank of America, N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

THOMAS JESSUP, LLC SERIES VII,
Plaintiff,

v.

LENA COOK, an individual; BNY MELLON,
N.A.; SFG MORTGAGE, a revoked Arizona
corporation; BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation;
HEIRS OF THE ESTATE OF LENA COOK;
and any and 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 (DOES 1
through 10, inclusive);

Defendants.

Case No.: A-13-693205-C

Dept. No.: XIV

**DEFENDANT BANK OF AMERICA,
N.A.'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

Defendant Bank of America, N.A. answers Plaintiff Thomas Jessup, LLC Series VII's
Amended Complaint as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendant lacks sufficient information to admit or deny the allegations in Paragraph
1, and therefore denies the same and demands strict proof thereof.

2. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 2,
and therefore denies the same and demands strict proof thereof.

9. Defendant admits that this action relates to the ownership and title of real property located in Clark County, Nevada and further states that Plaintiff's assertions regarding venue and jurisdiction are Plaintiff's own legal conclusions, of which Defendant demands strict proof.

10. Defendant admits that a Trustee's Deed Upon Sale recorded on June 13, 2012, states that CSC Investment Group, LLC purchased real property located at 588 Bugle Bluff Dr., Henderson, Nevada 89015, APN 179-21-116-042, and states that the referenced document speaks for itself. Defendant is without sufficient information to admit or deny the remaining allegations in Paragraph 10 and therefore denies the same and demands strict proof thereof.

1 11. Defendant admits that a Trustee's Deed Upon Sale was recorded on June 13, 2012 as
2 Instrument Number 201206130002720 and states that the referenced document speaks for itself. To
3 the extent that further response is required, Defendant is without sufficient knowledge to admit or
4 deny the remaining allegations and therefore denies those allegations and demands strict proof
5 thereof.

6 12. Defendant admits that a Quitclaim Deed was recorded on August 17, 2012 as
7 Instrument Number 201208170001801 purporting to transfer the property from CSC Investment
8 Group, LLC to Thomas Jessup, LLC and states that the referenced document speaks for itself. To the
9 extent that further response is required, Defendant is without sufficient knowledge to admit or deny
10 the remaining allegations and therefore denies those allegations and demands strict proof thereof.

11 13. Defendant admits that a Quitclaim Deed was recorded on May 31, 2013 as Instrument
12 Number 201305310004710 purporting to transfer the property from Thomas Jessup, LLC to Plaintiff
13 and states that the referenced document speaks for itself. To the extent that further response is
14 required, Defendant is without sufficient knowledge to admit or deny the remaining allegations and
15 therefore denies those allegations and demands strict proof thereof.

16 14. Defendant admits that it maintains an interest in the property via an assignment of a
17 Deed of Trust recorded on October 6, 2006 as Instrument Number 20061006-0002073. Defendant is
18 without sufficient knowledge to admit or deny the remaining allegations of Paragraph 14 and
19 therefore denies those allegations and demands strict proof thereof.

20 15. Defendant denies the allegations in Paragraph 15 and demands strict proof thereof.

21 16. Defendant denies the allegation in Paragraph 16 and demands strict proof thereof.

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

24 17. Defendant adopts and incorporates by reference all the preceding paragraphs as
25 though fully set forth herein.
26
27
28

1 18. Defendant denies the allegation in Paragraph 18 and demands strict proof thereof.

2 19. Defendant denies the allegations in Paragraph 19 and demands strict proof thereof.

3 20. Defendant denies that Plaintiff is entitled to the determination it seeks in Paragraph
4 20 and specifically states that Defendant maintains its interest in the property. Defendant is without
5 sufficient knowledge to admit or deny the remaining allegations of Paragraph 20 and therefore
6 denies those allegations and demands strict proof thereof.

7
8 **SECOND CLAIM FOR RELIEF**
9 **(Declaratory Relief)**

10 21. Defendant adopts and incorporates by reference all the preceding paragraphs as
11 though fully set forth herein.

12 22. Defendant admits that Plaintiff seeks a declaration in Paragraph 22 but denies that
13 Plaintiff is entitled to the requested declaration and specifically states that Defendant maintains its
14 interest in the property. Defendant is without sufficient knowledge to admit or deny the remaining
15 allegations of Paragraph 22 and therefore denies those allegations and demands strict proof thereof.

16 **PRAYER FOR RELIEF**

17 1. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the
18 Prayer of the Complaint.

19 2. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the
20 Prayer of the Complaint.

21 3. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 3 of the
22 Prayer of the Complaint.

23 4. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 4 of the
24 Prayer of the Complaint.

25 ...

26 ...

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**
3 **(Failure to State a Claim)**

4 Plaintiff has failed to state facts sufficient to constitute any cause of action against
5 Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**
7 **(Void for Vagueness)**

8 To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and
9 Chapter 116, are void for vagueness as applied to this matter.

10 **THIRD AFFIRMATIVE DEFENSE**
11 **(Due Process Violations)**

12 A deed of trust beneficiary cannot be deprived of its property interest in violation of the
13 Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article
14 1, Sec. 8, of the Nevada Constitution.

15 **FOURTH AFFIRMATIVE DEFENSE**
16 **(Assumption of Risk)**

17 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
18 situations, actions, omissions and transactions upon which it now bases its various claims for relief,
19 and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently
20 barred from all recovery by such assumption of risk.

21 **FIFTH AFFIRMATIVE DEFENSE**
22 **(Violation of Procedural Due Process)**

23 The super-priority lien was satisfied prior to the homeowner's association foreclosure under
24 the doctrines of tender, estoppel, laches, or waiver.

25 **SIXTH AFFIRMATIVE DEFENSE**
26 **(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

27 The homeowner's association foreclosure sale was not commercially reasonable, and the
28 circumstances of sale of the property violated the homeowner's association's obligation of good faith
under NRS 116.1113 and duty to act in a commercially reasonable manner.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

EIGHTH AFFIRMATIVE DEFENSE
(Third Party Fault)

The damages complained of, if there were any, were proximately contributed to or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other persons unknown to Defendant at this time, and were not caused in any way by Defendant or by persons for whom Defendant is legally responsible.

NINTH AFFIRMATIVE DEFENSE
(Reduction of Damages Based on Third Party Fault)

Defendant is entitled to have any award against it reduced or eliminated to the extent that the negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of other persons that contributed to Plaintiff's damages, if any.

TENTH AFFIRMATIVE DEFENSE
(No Standing)

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

ELEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Defendant avers the affirmative defense of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Provide Notice)

Defendant was not provided proper notice of the "super-priority" assessment amounts and the homeowner's association foreclosure sale, and any such notice provided to Defendant failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

THIRTEENTH AFFIRMATIVE DEFENSE
(Plaintiff is Not Entitled to Relief)

Defendant denies that the Plaintiff is entitled to any relief for which it prays.

FOURTEENTH AFFIRMATIVE DEFENSE
(Failure to Do Equity)

Defendant avers the affirmative defense of failure to do equity.

FIFTEENTH AFFIRMATIVE DEFENSE
(Plaintiff is not a Bona Fide Purchaser for Value)

Plaintiff purchased the property with record notice of the interest of the deeds of trust recorded against the property.

SIXTEENTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Violations of Constitutional and Federal Law)

The homeowners' association sale is void or otherwise fails to extinguish the applicable deed of trust because it violates provisions of the United States Constitution and federal law.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Pursuant to NRCP 11, Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

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WHEREFORE, Defendant prays for the following:

2. For attorney's fees and costs of defending this action; and

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

DATED this 12th day of December, 2014.

AKERMAN LLP

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

WILLIAM S. HABDAS, ESQ.

Nevada Bar No. 13138

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Las Vegas, Nevada 89144

Attorneys for Defendant Bank of America, N.A.

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CERTIFICATE OF SERVICE

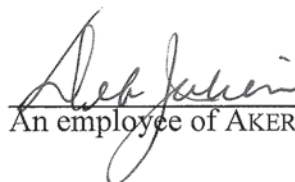
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 12th day of December, 2014 I caused to be served a true and correct copy of foregoing **DEFENDANT BANK OF AMERICA, N.A.'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

Michael V. Infuso, Esq.
Zachary P. Takos, Esq.
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Las Vegas, NV 89146
Attorneys for Plaintiff


An employee of AKERMAN LLP