

Case No. 74416

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

MARCHAI B.T., A BANK TRUST,

Respondent.

Electronically Filed
Dec 03 2018 08:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable LINDA MARIE BELL
District Court Case No. A-13-689461-C, Consolidated With A-16-742327-C

JOINT APPENDIX VOLUME 4

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@kgelegal.com

DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@kgelegal.com

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Attorneys for Appellant SFR Investments Pool 1, LLC

Vol.	Tab	Date Filed	Document	Bates Number
1	3	11/07/2013	Affidavit of Service	JA_0074
1	4	11/12/2013	Affidavit of Service	JA_0076
1	8	12/19/2013	Affidavit of Service	JA_0106
1	9	12/27/2013	Affidavit of Service	JA_0108
5	25	09/14/2016	Affidavit of Service	JA_1118
5	26	09/14/2016	Affidavit of Service	JA_1122
5	27	09/14/2016	Affidavit of Service	JA_1126
3	13	01/14/2016	Appendix of Exhibits to Marchai's Motion for Summary Judgment	JA_0544
2	12	01/14/2016	Appendix of Exhibits to Marchia's Motion for Summary Judgment	JA_0272
5	19	02/22/2016	Certificate of Service	JA_1015
1	1	09/30/2013	Complaint	JA_0001
5	20	03/22/2016	Decision and Order	JA_1017
7	38	10/03/2017	Decision and Order	JA_1483
5	23	08/25/2016	Exempt from Arbitration Action Concerning Title to Real Estate Complaint	JA_1099
5	24	08/25/2016	Initial Appearance Fee Disclosure	JA_1115
7	48	8/6/2018	Judgment	JA_1592
7	46	4/26/2018	Judgment against Cristela Perez and U.S. Bank	JA_1581
1	7	12/03/2013	Marchai's Answer to Counterclaim	JA_0098
1	10	01/14/2016	Marchai's Motion for Summary Judgment	JA_0110
7	39	10/4/2017	Marchai's Notice of Entry of Decision and Order	JA_1499
7	49	8/7/2018	Marchai's Notice of Entry of Judgment	JA_1597

7	45	12/30/2017	Marchai's Notice of Entry of Order	JA_1575
1	6	11/13/2013	Marchai's Notice of Lis Pendens	JA_0095
1	2	10/03/2013	Marchai's Notice of Pendency of Action	JA_0068
5	18	02/15/2016	Marchai's Opposition to Counter-Motions to Strike Pursuant to NRCP Rule 37	JA_0993
6	35	08/14/2017	Marchai's Opposition to SFR's & Wyeth Ranch's Motion for Summary Judgment	JA_1365
4	14	02/03/2016	Marchai's Opposition to SFR's Motion for Summary Judgment	JA_0816
7	43	11/8/2017	Marchai's Opposition to SFR's Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1560
4	16	02/08/2016	Marchai's Reply in Support of Motion for Summary Judgment	JA_0884
7	40	10/10/2017	Memorandum of Costs and Disbursements	JA_1517
5	28	12/13/2016	Notice of Entry of Order	JA_1130
5	29	12/13/2016	Notice of Entry of Order	JA_1135
5	30	12/13/2016	Order Lifting Stay and Consolidating Cases	JA_1140
7	51	8/29/2017	Recorder's Transcript of Defendant SFR's Motion for Summary Judgment	JA_1608
7	50	8/8/2018	SFR's Amended Notice of Appeal	JA_1604
5	32	02/06/2017	SFR's Answer to Complaint	JA_1154
1	5	11/13/2013	SFR's Answer, Counterclaim, and Cross Claim	JA_0078
1	11	01/14/2016	SFR's Motion for Summary Judgment	JA_0192
5	33	07/21/2017	SFR's Motion for Summary Judgment	JA_1164
7	41	10/19/2017	SFR's Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1549
7	42	11/3/2017	SFR's Notice of Appeal	JA_1556

5	21	03/23/2016	SFR's Notice of Entry of Decision and Order	JA_1043
5	22	03/24/2016	SFR's Notice of Entry of Decision and Order	JA_1071
7	47	4/27/2018	SFR's Notice of Entry of Judgment	JA_1585
4	15	02/04/2016	SFR's Opposition to Marchai's Motion for Summary Judgment	JA_0852
7	44	11/13/2017	SFR's Reply in Support of its Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1569
4	17	02/09/2016	SFR's Reply in Support of Motion for Summary Judgment and Counter-Motions to Strike	JA_0908
6	36	08/21/2017	SFR's Reply in Support of SFR's Motion for Summary Judgment	JA_1434
5	31	01/31/2017	Wyeth Ranch Community Association's Answer and Affirmative Defenses	JA_1143
6	34	07/21/2017	Wyeth Ranch Community Association's Motion for Summary Judgment	JA_1277
7	37	08/21/2017	Wyeth Ranch's Reply in Support of Motion for Summary Judgment	JA_1470

CHRONOLOGICAL INDEX

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When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-15-811-013

TSN WR-7119-A

Inst #: 201210310000686
Fees: \$17.00
N/C Fee: \$0.00
10/31/2012 08:04:08 AM
Receipt #: 1364092
Requestor:
ALESSI & KOENIG LLC
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On November 28, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as instrument number 0001246, of the official records of Clark County, Nevada, **WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)**

The street address and other common designation, if any, of the real property described above is purported to be: 7119 Wolf Rivers Ave, Las Vegas, NV 89131. The owner of the real property is purported to be: Cristina Perez

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$11,656.07. Payment must be in made in the form of certified funds.

Date: October 10, 2012



By: Ryan Korbow, Esq. of Alessi & Koenig LLC on behalf of Wyoth Ranch Community Association

A&K000250

MBT0585

EXHIBIT 2-LL

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89151

2166
50-7418222

11/13/12 DATE

PAY TO THE ORDER OF Alessi & Koenig \$ 300.00

Three Hundred and no/100 DOLLARS



LOCKHEED FEDERAL
CREDIT UNION
Per Nevada Uniform Code (NVC) 685-004

FOR 7119 Wolf Rivers HOA

[Signature]

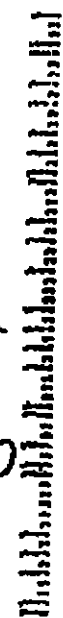
7119 Wolf Rivers Ave
Las Vegas, NV 89131
15 NOV 2012 PM 5:1



RECEIVED
NOV 27 2012
BY: 11632

Alessi & Koenig
9500 W Flamingo
STE 205
LAS VEGAS, NV 89147

69147572155



A&K000255

MBT0590

EXHIBIT 2-MM

11632

CRISTELA PEREZ
PO BOX 760166
LAS VEGAS, NV 89136-0166

CRISTELA PEREZ
7118 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

CRISTELA PEREZ
17480 BURBANK BLVD #104
ENCINO, CA 91316-1760

CMG MORTGAGE INC.
3160 CROW CANYON RD
SAN RAMON, CA 94583-1366

MERS, Inc.
PO Box 2026
Farmington, MI 48301-2026

US BANK, National Association ND
4328 - 17th Ave SW
FARGO, ND 58103-6200

APACHE ELECTRIC
4300 N PECOS #26
LAS VEGAS, NV 89116-0142

CITY OF LAS VEGAS SEWER
495 S Main St
LAS VEGAS, NV 89101-6318

CitiMortgage, Inc
1000 Technology Drive
O'Fallon, MO 63366-2236

US Bank National Assn, Trustee
Stanwich Mortgage Loan Trust1
1610 E St Andrews Place Suite B160
Santa Ana, CA 92705-4931

CAMCO
PO Box 12117
Las Vegas, NV 89112-0117

OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SANARA AVE SUITE 206
LAS VEGAS, NV 89104-4128

NOTS MAILINGS

A&K000278

MBT0613

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **CRISTELA PEREZ**
PO BOX 750188
LAS VEGAS, NV 89138-0188

Stamp: LAS VEGAS, NV JUL 29 2013

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **CRISTELA PEREZ**
17460 BURBANK BLVD #104
ENCINO, CA 91310-1760

Stamp: LAS VEGAS, NV JUL 29 2013

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **MERS, Inc.**
PO Box 2028
Ft. Worth, TX 76101-2028

Stamp: LAS VEGAS, NV JUL 29 2013

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **CRISTELA PEREZ**
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

Stamp: LAS VEGAS, NV JUL 29 2013

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **CMG MORTGAGE INC.**
3160 CROW CANYON RD
SAN RAMON, CA 94583-1368

Stamp: LAS VEGAS, NV JUL 29 2013

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **US BANK, National Association**
4325 - 17th Ave SW
FARGO, ND 58103-8200

Stamp: LAS VEGAS, NV JUL 29 2013

NOTS MAILINGS

A&K000279

MBT0614

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
APACHE ELECTRIC
4300 N PECOS #25
LAS VEGAS, NV 89116-0142

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
CITY OF LAS VEGAS SEWER
495 S Main St
LAS VEGAS, NV 89101-6318

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
CRM Mortgage, Inc
1000 Technology Drive
O'Fallon, MO 63368-2239

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
US Bank National Assoc, Trustee
Stanwich Mortgage Loan Trust
1810 E St Andrews Place Suite B160
Santa Ana, CA 92705-4931

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

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Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
CAMCO
PO Box 12117
Las Vegas, NV 89112-0117

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

U.S. Postal Service
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(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

Sent To
OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 206
LAS VEGAS, NV 89104-4120

Stamp, Zip, No.
or PO Box No.
City, State, ZIP+4

7012 3460 3081 0450

NOTS MAILINGS

A&K000280

MBT0615

EXHIBIT 2-NN

Alessi & Koenig, LLC
Order # 11632
TS # 11632

AFFIDAVIT OF POSTING NOTICE OF SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 7/30/2013, I posted a copy of the Notice of Sale pursuant to NRS 116.311635, concerning Sale 11632, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

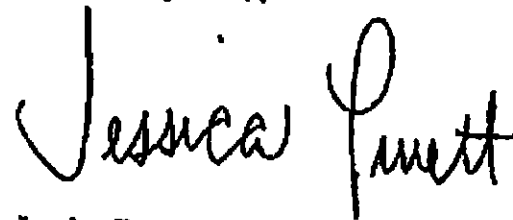
The purported owner and address of the property contained in the Notice of Sale being:

Cristela Perez, 7119 Wolf Rivers Avenue, Las Vegas NV 89131.

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

Dated 7/30/2013

Nevada Legal Support Services LLC

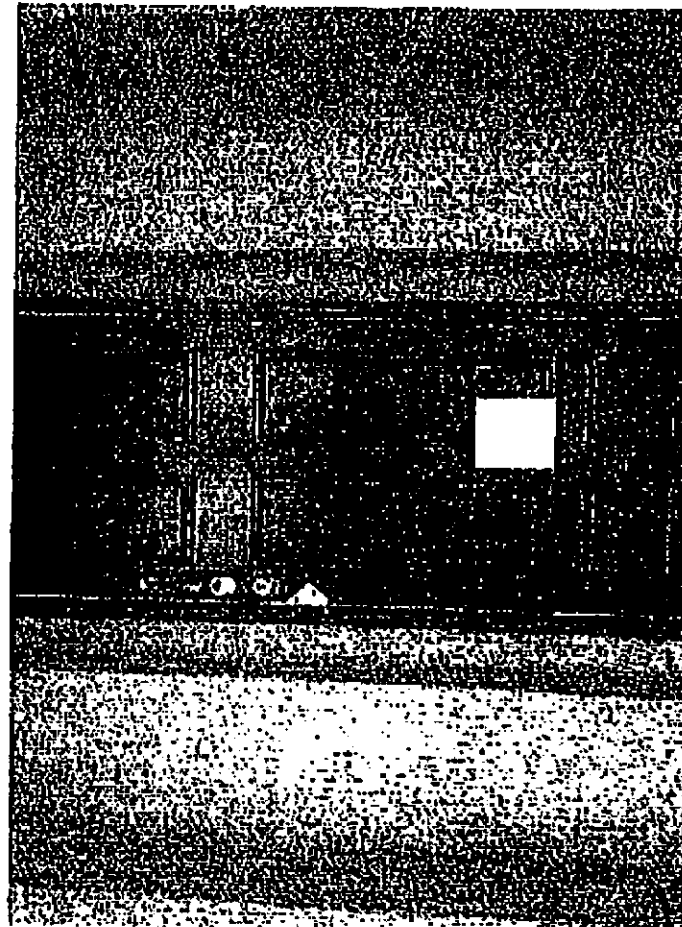
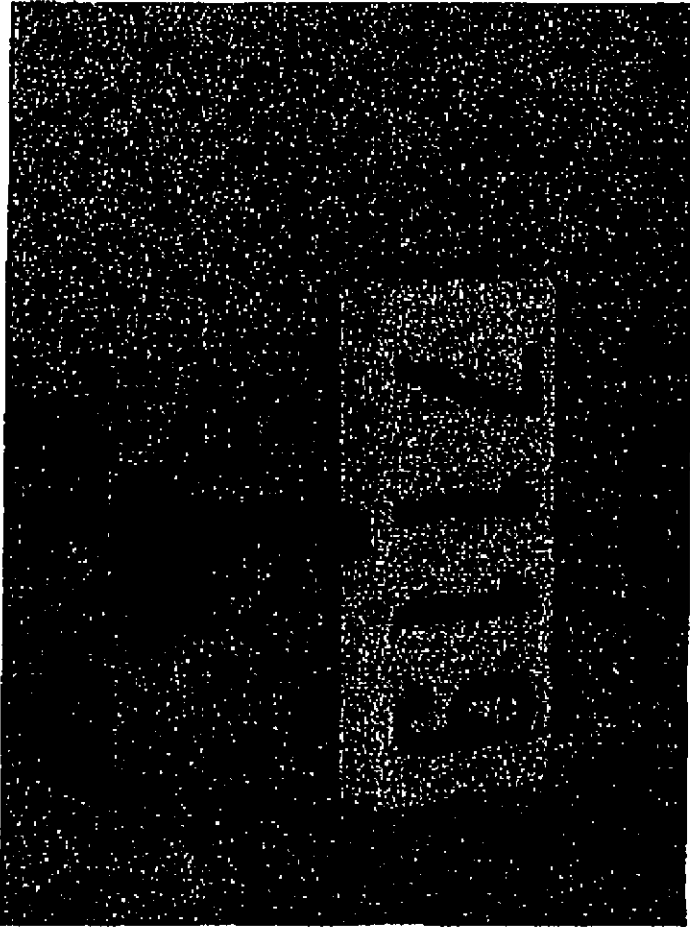


Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 453727 73
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
ALESSI TRUSTEE CORP

A&K000288

MBT0623



Photos taken by: James Vignale Sr. County: CLARK 36
Photo Date: 7/31/2013 Time: 2:36 PM NLN ID# 453727 Page 1 of 1
Primary Borrower: Cristela Perez
Property Address: 7119 Wolf Rivers Avenue, Las Vegas NV 89131

Alessi & Koenig, LLC Order # 11632 TS#11632

Nevada Legal Support Services LLC
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747 NV. Lic. #1711

A&K000289

MBT0624

EXHIBIT 2-00

Alessi & Koenig, LLC
Order # 11632
TS # 11632

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, James Vignale Sr., state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served Cristeln Perez with a copy of the Notice of Sale, on 7/31/2013 at approximately 2:36 PM, by:

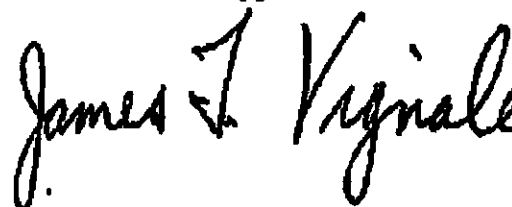
Attempting to personally serve the person(s) residing at the property, however no one answered the door. I thereafter posted a copy of the Notice of Sale on the property in the manner prescribed pursuant to NRS 116.311635, in a conspicuous place on the property, which is located at:

7119 Wolf Rivers Avenue
Las Vegas NV 89131

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

Dated 7/31/2013

Nevada Legal Support Services LLC



James Vignale Sr., R-249802
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 453727 73
COUNTY OF SERVICE: CLARK
SERVER: James Vignale Sr.

A&K000287

MBT0622

EXHIBIT 2-PP

Inst #: 201307310001002
Fees: \$17.00
N/C Fee: \$0.00
07/31/2013 09:01:04 AM
Receipt #: 1714716
Requestor:
ALESSI & KOENIG LLC
Recorded By: RNS Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-15-811-013

TSN 11632

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

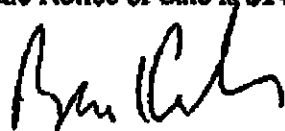
NOTICE IS HEREBY GIVEN THAT:

On August 28, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as instrument number 0001246, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIER'S CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139. The owner of the real property is purported to be: CRISTELA PEREZ

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$14,090.80. Payment must be made in the form of certified funds.

Date: July 11, 2013



By: Ryan Korb, Esq. of Alessi & Koenig LLC on behalf of Wyoth Ranch Community Association

A&K000282

MBT0617

EXHIBIT 2-QQ

AFFP
11632

Affidavit of Publication

STATE OF NEVADA)
COUNTY OF CLARK)

SS

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Aug 02, 2013
Aug 09, 2013
Aug 16, 2013

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Aug 16, 2013



Rosalie Qualls

NOTICE OF TRUSTEE'S SALE
APN: 126-15-011-013
T8N 11032

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-828-8907 IMMEDIATELY. NOTICE IS HEREBY GIVEN THAT: On August 28, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as Instrument number 0001249, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIER'S CHECK at 2:00 p.m., at 8800 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor) The street address and other common designation, if any, of the real property described above is purported to be: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139. The owner of the real property is purported to be: CRISTELA PEREZ. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$14,090.80. Payment must be made in the form of certified funds. Date: July 11, 2013 By: Ryan Korbaw, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association
Published in Nevada Legal News
August 2, 9, 16, 2013

01104266 00355586 (702)254-9044

ALESSI & KOENIG, LLC
9500 WEST FLAMINGO ROAD #205
LAS VEGAS, NV 89147

A&K000290

MBT0625

EXHIBIT 2-RR

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 125-15-811-013
b. _____
c. _____
d. _____

2. Type of Property:

a. <input type="checkbox"/> Vacant Land	b. <input checked="" type="checkbox"/> Single Fam. Res.
c. <input type="checkbox"/> Condo/Twnhse	d. <input type="checkbox"/> 2-4 Plex
e. <input type="checkbox"/> Apt. Bldg	f. <input type="checkbox"/> Comm'l/Ind'l
g. <input type="checkbox"/> Agricultural	h. <input type="checkbox"/> Mobile Home
Other _____	

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property \$ 21,000.00
b. Deed in Lieu of Foreclosure Only (value of property) ()
c. Transfer Tax Value: \$ 307,403.00
d. Real Property Transfer Tax Due \$ 1,568.25

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

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: Grantor

Signature _____ Capacity: _____

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas
State: NV Zip: 89147

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

Print Name: SFR Investments Pool 1, LLC
Address: 5030 Paradise Road, B-214
City: Las Vegas
State: NV Zip: 89119

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

A&K000283

MBT0618

Inst #: 201309090001816
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$1668.26 Ex: #
09/09/2013 10:58:58 AM
Receipt #: 1783390
Requestor:
ALESSI & KOENIG, LLC
Recorded By: JACKOM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SPR Investments Pool 1, LLC
5030 Paradise Road, B-214
Las Vegas, NV 89119

A.P.N. No.125-15-811-013

TS No. 11632

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SPR Investments Pool 1, LLC
The Preceding Beneficiary herein was: Wyeth Ranch Community Association
The amount of unpaid debt together with costs: \$14,677.80
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$21,000.00
The Documentary Transfer Tax: \$1,568.25
Property address: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139
Said property is in [] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): CRISTELA PEREZ

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of
Deficient Assessment Lien, recorded December 20, 2011 as instrument number 0001246, in Clark County,
does hereby grant, without warranty expressed or implied to: SPR Investments Pool 1, LLC (Grantee), all its
right, title and interest in the property legally described as: WYETH RANCH-UNIT 2 PLAT LOT 13 BLOCK
A, as per map recorded in Book 112, Pages 8 as shown in the Office of the County Recorder of Clark County
Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain
Notice of Deficient Assessment Lien, described herein. Default occurred as set forth in a Notice of Default
and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law
regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale
have been complied with. Said property was sold by said Trustee at public auction on August 28, 2013 at the
place indicated on the Notice of Trustee's Sale.

Ryan Korbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC.

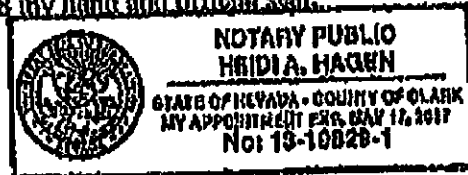
State of Nevada)
County of Clark)

SUBSCRIBED and SWORN before me

AUG 29 2013

Ryan Korbow

WITNESS my hand and official seal.
(Seal)



(Signature)

A&K000284

MBT0619

EXHIBIT 3

DECLARATION OF CHAIM FREEMAN

I, Chaim Freeman, declare as follows:

1. I am the trustee of Marchai, B.T., a business trust formed under the laws of the State of Nevada, plaintiff in *Marchai, B.T. v. Perez*, Case No. A-13-689461-C, which is pending in the Eighth Judicial District Court, Clark County, Nevada. I have made this declaration in support of Marchai, B.T.'s Motion for Summary Judgment (the "Motion"). I have personal knowledge of and am competent to testify to the facts set forth herein.

2. On October 19, 2005, Cristela Perez entered into an InterestFirst Adjustable Rate Note (the "Note") with CMG Mortgage, Inc. Attached to this declaration as Exhibit 3-A is a true and correct copy of the Note. On November 9, 2005, CMG Mortgage secured the Note through the recording of a Deed of Trust that identified the Mortgage Electronic Registration Systems, Inc., as nominee beneficiary. Attached to this declaration as Exhibit 3-B is a true and correct copy of the Deed of Trust.

3. On May 25, 2012, CMG Mortgage, through MERS the nominee beneficiary, assigned its interest in the Note and Deed of Trust to CitiMortgage, Inc. The Note contains an endorsement by which CMG Mortgage assigned its interest in the Note to CitiMortgage. See Ex. 3-A at 5. Likewise, on June 5, 2012, CitiMortgage recorded a Corporate Assignment of Deed of Trust with the Clark County Recorder. Attached as Exhibit 3-C is a true and correct copy of the Corporate Assignment of Deed of Trust.

4. On July 26, 2012, CitiMortgage assigned its interest in the Note and Deed of Trust to U.S. Bank, N.A., as Trustee for Stanwich Mortgage Loan Trust, Series 2012-6. Attached to the Note is an allonge executed by CitiMortgage, by which CitiMortgage assigned its interest in the Note to U.S. Bank. *See* Ex. 3-A at 8. On July 26, 2012, U.S. Bank recorded with the Clark County Recorder an Assignment of Mortgage that assigned the Deed of Trust from CitiMortgage to U.S. Bank. Attached as Exhibit 3-D is a true and correct copy of the Assignment of Mortgage.

5. On October 3, 2012, Carrington Mortgage Services, LLC, who serviced the loan for U.S. Bank, sent Perez a Notice of Intent to Foreclose, in which U.S. Bank noted that Perez defaulted under the terms of the Note on October 1, 2011, and, at the time had a past due amount of \$36,281.60. Attached as Exhibit 3-E is a true and correct copy of the Notice of Intent to Foreclose.

6. On March 12, 2013, U.S. Bank assigned its interest in the Note and Deed of Trust to Marchai. Attached to the Note is an allonge executed by U.S. Bank, by which U.S. Bank assigned its interest in the Note to Marchai. *See* Ex. 3-A at 9. On August 12, 2013, Marchai recorded with the Clark County Recorder an Assignment of Deed of Trust from U.S. Bank to Marchai. A true and correct copy of the Assignment of Deed of Trust is attached as Exhibit 3-F.

7. Despite demand, Perez has failed to cure the delinquency due under the Note and Marchai has elected to accelerate the sums due under the Note. As of January 14, 2016, Perez owes the unpaid principal balance of \$430,113.48, interest

in the amount of \$52,812.81, late charges in the amount of \$5,328.48, and fees in the amount of \$1,118.00, for a total owed of \$489,372.77.

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

EXECUTED on this 14th day of January 2016 in Las Vegas, Nevada.

A handwritten signature in black ink, appearing to read 'Chaim Freeman', is written above a horizontal line.

CHAIM FREEMAN

EXHIBIT 3-A

Perez (R)
2.3295889

Loan No.: 32501493

InterestFirstSM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published In
The Wall Street Journal) - Rate Caps)

10/31
CL

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MIN: 1009724-0832501493-7
MERS TELEPHONE: (888) 679-6377

October 19, 2005
[Date]

LAS VEGAS
[City]

NEVADA
[State]

LF MQLCP
7119 WOPE RIVERS AVENUE, LAS VEGAS, NEVADA 89131
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 442,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is CMG MORTGAGE, INC.. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.000%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the FIRST day of every month, beginning on December 1, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on November 1, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 3160 CROW CANYON ROAD, SUITE 248, SAN RAMON, CALIFORNIA 94583 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,841.67 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Variable Rate Uniform Instrument

Form 3530 12/01
(page 1 of 3)

usa3530



32501493



NOTE

MBT0002

Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the FIRST day of November, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an index. The "index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One-Fourth percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than Two percentage points (2.000%) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be five percent (5.00%) of any overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That

MULTISTATE Interest-Free ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Female Mar Uniform Instrument

Form 3534 11/01
(page 1 of 3)

MBT0004

Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
CRISTELA PEREZ -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

(Sign Original Only)

Pay to the order of:

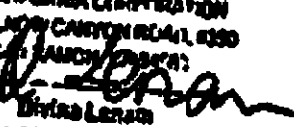
Without Recourse
CMG MORTGAGE, INC.

By: _____

Name and Title: _____

PAY TO THE ORDER OF
WITHOUT RECOURSE

CITIMORTGAGE, INC.

CMG MORTGAGE, INC.
A CALIFORNIA CORPORATION
3800 LOMA CANYON ROAD, SUITE 100
SAN JUAN CAPISTRANO, CA 92675

DAVID LERAN
ASSISTANT SECRETARY

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Fannie Mae Uniform Instrument

Form 3530 (11/01)
(page 3 of 3)

MBT0006

FIXED/ADJUSTABLE RATE ASSUMPTION RIDER

THIS ASSUMPTION RIDER is made this 19th day of October, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned person whether one or more, (the "Borrower") to secure Borrower's Note to CMG MORTGAGE, INC. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

7119 WOPE RIVERS AVENUE, LAS VEGAS, NEVADA 89131

7119 WOPE RIVERS AVENUE (PROPERTY ADDRESS)

ASSUMPTION COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. **ASSUMPTION.** Any person purchasing the Property from Borrower may assume full liability to repay Borrower's Note to Lender under the terms and conditions set out in this Assumption Rider.
- B. **AGREEMENT.** Lender may require the Purchaser to sign an assumption agreement, in the form required by Lender, which obligates the Purchaser to keep all the promises and agreements made in the Note and Security Instrument. Borrower will continue to be obligated under the Note and Security Instrument unless Lender releases Borrower in writing.
- C. **APPLICABILITY.** Lender is bound by these conditions and terms, as follows:
 - 1. Lender shall have no obligation to allow assumption by a purchaser from Borrower until the initial fixed interest rate payable on the Note changes to an adjustable rate;
 - 2. This Assumption Rider applies only to the first transfer of the Property by Borrower and not to a foreclosure sale;
 - 3. Purchaser must be an individual, not a partnership, corporation or other entity.
 - 4. Purchaser must meet Lender's credit underwriting standards for the type of loan being assumed as if Lender were making a new loan to Purchaser;
 - 5. Purchaser shall assume only the balance due on the Note at the time of assumption for the term remaining on the Note;
 - 6. If applicable, Borrower's private mortgage insurance coverage must be transferred to the Purchaser in writing, unless waived by Lender;

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(5/1, 7/1, 10/1 ARM)
mb2117ri

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32501493



RIDER

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7. If Borrower's Note has a conversion feature and Borrower has exercised the right of conversion of this loan to a fixed rate loan from Lender, this Assumption Rider is void and Lender has no obligation to allow assumption by a Purchaser from Borrower; and
8. Lender must reasonably determine that Lender's security will not be impaired by the loan assumption.
- D. **ASSUMPTION RATE.** Lender will allow assumption by Purchaser at Borrower's Note interest rate in effect at the time of assumption.
- E. **ADDITIONAL CHARGES.** In addition, Lender may charge an amount up to one percent (1%) of the current Note balance and its normal loan closing costs, except the cost of a real estate appraisal.
- BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants of this Assumption Rider.


CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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(5/1, 7/1, 10/1 ARM)

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MBT0008

CONFIDENTIAL

*True Certified Copy
of Original*

NOTE ALLONGE

Statement of Purpose: This Note Allonge is attached to and made part of the Note, for the purpose of Notchholder Endorsements to evidence transfer of interest.

Loan Number: 2003295889

Loan Date: 10/19/2006 **Original Loan Amount:** \$ 442,000.00

Originator: CMG MORTGAGE, INC.

Original Mortgagor: CRISTELA PEREZ

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NV 89131

Pay to The Order of
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6
Without Recourse



Id No: *12035949*

CITIMORTGAGE, INC.

By: 

M. E. Wileman, Vice President

MBT0009

ALLONGE

Pay to the Order of:

MARCHAI B.T.

Without Recourse:

Original Loan Amount: \$442,000.00

Dated: 10/19/2005

Made By: CRISTELA PEREZ

**Premises Secured: 7119 WOLF RIVERS AVENUE
LAS VEGAS, NEVADA 89131**

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH
MORTGAGE LOAN TRUST, SERIES 2012-6, BY CARRINGTON MORTGAGE
SERVICES LLC., AS ATTORNEY IN FACT**

By: 

Name: **GREG SCHLEPPY**
Title: **SR. VICE PRESIDENT**

7000035044

MBT0010

EXHIBIT 3-B



20051109-0001385

Assessor's Parcel Number: 125-15-811-013
 When recorded mail to:
CMG MORTGAGE, INC.
 3160 CROW CANYON ROAD, SUITE 240
 SAN RAMON, CALIFORNIA 94583
 Loan No.: 32501493

Fee: \$38.00
 R/C Fee: \$0.00

11/09/2005 09:44:04
 728890234470

Requestor:
FIDELITY NATIONAL TITLE

Frances Deane KCP
 Clark County Recorder Pgs: 22

Mail Tax Statements to:
CRISTELA PEREZ 4MG
 7119 WOLF RIVERS AVENUE
 LAS VEGAS, NEVADA 89131
 Prepared By:

Recording Requested By:

31

629028-64 [Space Above This Line For Recording Date]

DEED OF TRUST

MIN 1008724-0032501493-7
 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 19, 2005, together with all Riders to this document.
- (B) "Borrower" is CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY. Borrower is the trustor under this Security Instrument.
- (C) "Lender" is CMG MORTGAGE, INC.. Lender is a corporation organized and existing under the laws of the State of CALIFORNIA. Lender's address is 3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583.
- (D) "Trustee" is FIDELITY NATIONAL TITLE AGENCY OF NEVADA.
- (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

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document



32501493



DEED

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 19, 2005. The Note states that Borrower owes Lender Four Hundred Forty Two Thousand And 08/100 Dollars (U.S. \$ 442,000.00) 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 checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input 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 in, 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

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improved in regard to a "Federally related mortgage loan" even if the Loan does not qualify as a "Federally related mortgage loan" under RESPA.

(B) "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 13 IN BLOCK A OF WYETH RANCH- UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. A NON- EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Parcel ID Number: 125-15-811-013

LF MQ. 00
7119 WOLF RIVERS AVENUE
LAS VEGAS [City], Nevada 89131 [Zip Code] ("Property Address"):

which currently has the address of
[Street]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all covenants, 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 these 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 cancelling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for

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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.

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.

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due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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, instrumentally, 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

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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.

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.

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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 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

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either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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

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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, mortgage insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly)

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amounts that derive from (or might be characterized as) a portion of Borrower's payments for 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.

(1. 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

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than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amounts then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees

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to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall

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mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. These conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses 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. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.

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There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party herein a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 21.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spillage, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party,

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that any removal or other remediation of any Hazardous Substance affecting the Property is necessary. Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of this evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the

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Station Id :SR07

Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$4,420.00.

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CLARK,NV
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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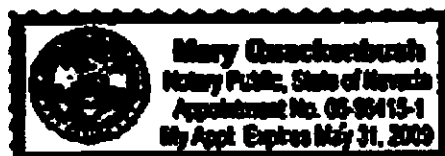
STATE OF NEVADA
COUNTY OF

Clark

This instrument was acknowledged before me on 10-20-05 by
CRIATELA PEREZ

Mary Quackenbush

My Commission Expires: 05-31-09



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FIXED/ADJUSTABLE RATE RIDER(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 19th day of October, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to CMG MORTGAGE, INC. ("Lender") of the same date and covering the property described in the Security Instrument and located at:

LF 110, 40
7119 WOHL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
(Property Address)

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.880%. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the FIRST day of November, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

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Beginning with the first Change Date, my adjustable interest rate will be based on an index. The "index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the date 45 days before each Change Date is called the "Current Index." If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) **Calculation of Changes** Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One-Fourth percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) **Notice of Changes** The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

D. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a

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bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

MULTI-STATE FIXED/ADJUSTABLE RATE RIDER - WEL One-Year LIBOR - Single Family - Female Mae Uniform Instrument Form 3187 6/01

(Page 3 of 4)

Initials: *cy* ...

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

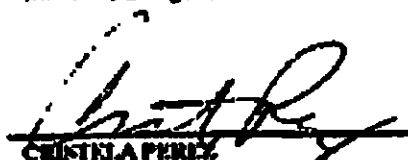
 CRISTINA PEREZ	(Seal) -Borrower	_____	(Seal) -Borrower
_____	(Seal) -Borrower	_____	(Seal) -Borrower

EXHIBIT 3-C

Inst #: 201206050003133

Fees: \$18.00

N/C Fee: \$0.00

08/05/2012 03:42:09 PM

Receipt #: 1187409

Requestor:

NATIONWIDE TITLE CLEARING

Recorded By: JACKSM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

I hereby affirm that this document submitted for recording
does not contain a social security number.

Signed: 
DERRICK WHITE
ASST. SECRETARY

Parcel #: 125-15-811-013

When Recorded Mail To:
CitMortgage, Inc.
C/O NTC 2100 AL. 19 North
Palm Harbor, FL 34683
Investor LA



CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMO MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS PO BOX 2026, FLINT, MI, 48901, (ASSIGNEE), by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust with all interest accrued thereby, all liens, and any rights due or to become due thereon to CITIMORTGAGE, INC., WHOSE ADDRESS IS 1800 TECHNOLOGY DRIVE, O'FALLON, MO 63308-2240 (888)283-7918, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Deed of Trust made by CRISTELA PEREZ, and recorded on 11/09/2005 as Instrument # 0001385, and/or Book 20051109, Page , in the Recorder's office of CLARK, Nevada. .

Date: 08/25/2012 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMO MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS.

By: 
DERRICK WHITE
ASST. SECRETARY

FORMS\FRMNV1



15926922

Branch :LDA,User :JGOW

Order: 08609266 Title Officer: MJ Comment:

Station Id :SR07

Parcel #: 125-15-811-013
Investor L#

STATE OF FLORIDA COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on 01/25/2012 (MM/DD/YYYY), by DERRICK WHITE as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Signed: 
MIRANDA AVILA
Notary Public - State of FLORIDA
Commission expires: 08/22/2014



Prepared By: ELance/NTC, 2100 Alh. 19 North, Palm Harbor, FL 34683 (800)346-9152

Mail Tax Statements to: CRISTELA PEREZ
7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

CIMAV 15926922 -@ MERS (MOM) EMK3826611 MIN 100072400325014937 MERS PHONE
1-888-679-MERS FORMSFRMNV1



15926922

CLARK,NV

Document: DOT ASN 2012.0605.3133

Page 2 of 2

Printed on 01/15/2013 2:57:45 PM

MBT0034

EXHIBIT 3-D

Branch :LDA,User :JGOW

Order: 08609266 Title Officer: MJ Comment:

Station Id :SR07

Inst #: 201207260002017

Fees: \$18.00

N/C Fee: \$0.00

07/26/2012 10:44:40 AM

Receipt #: 1248382

Requester:

ORION FINANCIAL GROUP

Recorded By: MSN Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

PREPARED BY & RETURN TO:

M. E. Wilman
2850 Exchange Blvd. # 100
Southlake, TX 76092
Parcel # 125-15-811-013

Assignment of Mortgage

Send Any Notices to Assignee.

For Valuable Consideration, the undersigned, CITIMORTGAGE, INC. 4950 REGENT BLVD, MAIL STOP N2A-232, IRVING, TX 75063 (Assignor) by these presents does assign and set over, without recourse, to U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6 1610 E. St. Andrews Pl, Suite B150, Santa Ana, CA 92705 (Assignee) the described mortgage with all interest, all fees, any rights due or to become due thereon, executed by CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS. Said mortgage Dated: 10/19/2005 is recorded in the State of NV, County of Clark on 11/9/2005, Book 20051109 Instrument# 0001385 AMOUNT: \$ 442,000.00 Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS NV 89131

IN WITNESS WHEREOF, the undersigned corporation/trust has caused this instrument to be executed by its proper officer. Executed on: 07/26/2012

CITIMORTGAGE, INC.

By:



M. E. Wilman, Authorized Signator


PEREZ JDM *12031213*

NV Clerk

MIN 100072400325014937
MERS Phone 888-679-6377
CTTICAP/WL17-2012/AS

CLARK,NV

Document: MTG ASN 2012.0726.2017

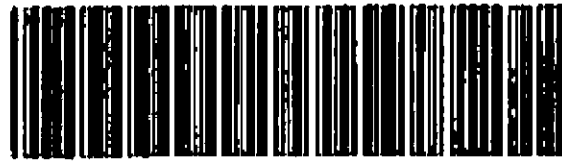
Page 1 of 2

Printed on 01/15/2013 2:57:46 PM

MBT0035

EXHIBIT 3-E

Carrington Mortgage Services, LLC
PO Box 9050
Temecula, CA 92589-9050



2266385873

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Carrington Mortgage Services, LLC
Attn: Payment Processing
PO Box 79001
Phoenix, AZ 85062-9001

Send Correspondence to:
Carrington Mortgage Services, LLC
PO Box 54285
Irvine, CA 92619-4285

20121004-61



CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139



N0565

MBT0047



P.O. Box 54285, Irvine, CA 92619-4285
(888) 788-7308 Fax (949) 517-5220

October 3, 2012

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

Property Address: 7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

RE: Loan Number: 7000035044

NOTICE OF INTENT TO FORECLOSE

Dear Mortgagor(s):

The above referenced loan is in default because the monthly payment(s) due on and after October 1, 2011 have not been received. The amount required to cure this delinquency, as of the date of this letter, is \$36,281.60, less \$0.00, monies held in Unapplied.

SUBSEQUENT PAYMENTS, LATE CHARGES, AND OTHER FEES WILL BE ADDED TO THE ABOVE STATED REINSTATEMENT AMOUNT AS THEY ARE ASSESSED.

Please remit the total amount due in CERTIFIED FUNDS, utilizing one of the following payment resources:

OVERNIGHT MAIL:
Carrington Mortgage Services, LLC
ATTN: Cashiering Dept.
1610 E. Saint Andrew Place, Ste. B-150
Santa Ana, Ca. 92705

| WESTERN UNION QUICK COLLECT
| Any Western Union Location:
| Code City: CARRINGTONMS
| Code State: CA
|

IF YOU ARE UNABLE TO BRING YOUR ACCOUNT CURRENT, PLEASE CONTACT CARRINGTON MORTGAGE SERVICES, LLC TO DISCUSS HOME RETENTION ALTERNATIVES TO AVOID FORECLOSURE AT (888) 788-7306 OR BY MAIL AT 1610 E. SAINT ANDREW PLACE, SUITE B-150, SANTA ANA, CA 92705.

YOU MAY ALSO CONTACT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") HOTLINE NUMBER AT (800) 569-4287 OR YOU CAN VISIT THEM AT <http://www.hud.gov/foreclosure/index.cfm> TO FIND OUT OTHER OPTIONS YOU MAY HAVE TO AVOID FORECLOSURE.



Failure to cure the delinquency within 30 days of the date of this letter may result in acceleration of the sums secured by the Deed of Trust or Mortgage and in the sale of the property.

You have the right to reinstate your loan after legal action has begun. You also have the right to assert in foreclosure, the non-existence of a default or any other defense to acceleration and foreclosure.

Should you have any questions, please contact our office at (888) 788-7306, 5:00 AM to 9:00 PM Monday through Thursday, 5:00 AM to 5:00 PM Friday, 6:00 AM to 10:00 AM Saturday and 8:00 AM to 12:00 PM Sunday, Pacific Time.

Sincerely,

Loan Servicing Department
Carrington Mortgage Services, LLC

-IMPORTANT BANKRUPTCY NOTICE

If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

-CREDIT REPORTING

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

-MINI MIRANDA

This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

-HUD STATEMENT

Pursuant to section 169 of the Housing and Community Development Act of 1987, you may have the opportunity to receive counseling from various local agencies regarding the retention of your home. You may obtain a list of the HUD-approved housing counseling agencies by calling the HUD nationwide toll free telephone number at (800) 569-4287.

-EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers CMS' compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

EXHIBIT 3-F

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Peak Loan Servicing
5900 Canoga Ave Suite 200
Woodland Hills CA 91367

Parcel ID#: 125-15-811-013

Ln# 7000035044/PEREZ

SPACE ABOVE THIS LINE FOR RECORDER'S USE

130170768

Assignment of Deed of Trust

Date of Assignment:

3/12/12

"This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title"

Assignor: : U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6

Assignee: : MARCIA B.T.

Executed By: CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY To
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR CMG MORTGAGE,
INC. and FIDELITY NATIONAL TITLE AGENCY OF NEVADA, as Trustee, Date of Deed of Trust:
10/19/2005 Recorded: 11/09/2005 in Book/Ref/Liber: — Page: — as Instrument/CPN No.: 20051109-0001385 in
Official Records of the CLARK County, State of NEVADA

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NEVADA 89131

Parcel ID #: 125-15-811-013

Legal:

LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK
112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON
LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021804 AS
THE SAME MAY BE AMENDED FROM TIME TO TIME.

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and
other good and valuable consideration, paid to the above named assignor, the receipt and sufficiency of which is hereby
acknowledged, said Assignor here by assigns unto the above-named Assignee, the said Deed of Trust, secured thereby,
which all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all
the powers and of all the covenants and provisions therein contained, and the said Assignor hereby Grants and conveys
unto the said Assignee, the Assignor's beneficial interest under the Deed of Trust.

Inst #: 201308120002562

Fee: \$15.00

N/C Fee: \$26.00

08/12/2013 02:42:09 PM

Receipt #: 1728913

Requestor:

L91 TITLE AGENCY INC.

Recorded By: CDE Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

MBT0037

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in the said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written

Dated: 3/12/13

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6, BY
CARRINGTON MORTGAGE SERVICES LLC, AS ATTORNEY
IN FACT


Witness: LETICIA MACIAS


By: GREG SCHLEPPY, SR. VICE PRESIDENT

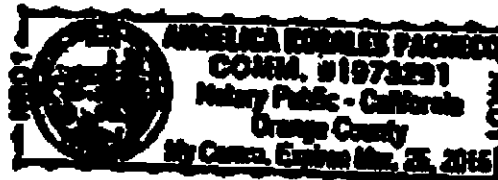
State of CALIFORNIA
County of ORANGE

On 3/12/13 before me, ANGELICA ROSALES PACHECO, Notary Public personally appeared GREG SCHLEPPY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


Notary: ANGELICA ROSALES PACHECO



MBT0038

EXHIBIT 4

20060406-0004914

Fee: \$21.00
N/C Fee: \$0.00

04/06/2006 17:00:22
T20060061379

Requestor:
FIRST AMERICAN TITLE INSURANCE LENDER

Frances Deane KXC
Clark County Recorder Pgs: 8

Assessor's Parcel Number: 125-15-811-013

Mall Tax Statements To (name and address):
CRISTELA PEREZ AND ROBERT ROSE
7119 WOLF RIVERS AVE
LAS VEGAS NV 89131

Return To (name and address):
First American
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115

State of Nevada Space Above This Line For Recording Data
Order #: 8744120 DEED OF TRUST
ALS #: 3000434454 (With Future Advance Clause)

1. DATE AND PARTIES. The date of this Deed of Trust (Security Instrument) is 12/26/2006 and the parties, their addresses and tax identification numbers, if required, are as follows:
GRANTOR: CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPARATE
PROPERTY 3000434454

☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors, their signatures and acknowledgments.

TRUSTEE: U.S. Bank Trust Company, National Association
111 S.W. Fifth Avenue, Suite 3500
Portland, OR 97204

LENDER: U.S. Bank, National Association N.D.
4325 17th Avenue S.W.
Fargo, ND 58103

RECORDERS MEMO
POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property (if property description is in metes and bounds the name and mailing address of the person who prepared the legal description must be included):

The real estate deed of trust herein is described in Exhibit "A" which is attached hereto and hereby incorporated herein by reference.

NEVADA - HOME EQUITY LINE OF CREDIT DEED OF TRUST
(NOT FOR FNMA, FHLMC, FHA OR VA USE)
Expires - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2008

8744120

(page 1 of 7)

The property is located in CLARK at 7119 WOLF RIVERS AVE
 (County)
 LAS VEGAS Nevada 89131
 (Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 100,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
 - A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)

B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Grantor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

8744120

(page 2 of 7)

Exhibit 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.
- Payments.** Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- Prior Security Interests.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.
- Claims Against Title.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.
- Property Condition, Alterations and Inspection.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.
- Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.
- Authority to Perform.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.
- Leaseholds; Condominiums; Planned Unit Developments.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- Condemnation.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

8744120

(page 3 of 7)

 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding sentence can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

8. **DEFAULT.** Grantor will be in default if any of the following occur:
 Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.
 Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following:
 (a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

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(page 4 of 7)

~~Exhibit~~ . 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Grantor represents, warrants and agrees that:

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(page 5 of 7)

~~Exhibit~~ - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisal and homestead exemption rights relating to the Property.
18. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

8744120

(page 6 of 7)

Eden - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

19. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
[Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other
21. ☐ **ADDITIONAL TERMS.**

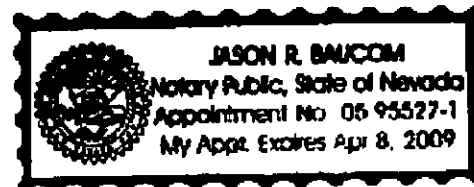
SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) CRISTELA PEREZ 1/30/06 (Date) (Signature) ROBERT ROSE 1/30/06 (Date)

ACKNOWLEDGMENT: Nevada
STATE OF Nevada COUNTY OF Clark ss.
This instrument was acknowledged before me this 30th day of January, 2006.
(Individual) by CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPERATE PROPERTY
My commission expires:

(Notary Public)

Branch Manager
(Title and Rank)



8744120

(page 7 of 7)

Exempt - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK,
WITH A STREET LOCATION ADDRESS OF 7119 WOLF RIVERS AVE; LAS VEGAS,
NV 89131-0139 CURRENTLY OWNED BY CRISTELA PEREZ HAVING A TAX
IDENTIFICATION NUMBER OF 125-15-811-013 AND BEING THE SAME
PROPERTY MORE FULLY DESCRIBED IN BOOK/PAGE OR DOCUMENT NUMBER
40721003728 DATED 7/19/2004 AND FURTHER DESCRIBED AS WYETH
RANCH-UNIT 2 PLAT BOOK 112 PAGE 8 LOT 13 BLOCK A PT S2 SE4 SEC 15
TWP 19 RGN 60.

125-15-811-013
7119 WOLF RIVERS AVE; LAS VEGAS, NV 89131-0139

20060131701500
27313887/2



BOOK PAGE LOT PEREZ
8744120

FIRST AMERICAN LENDERS ADVANTAGE
DEED OF TRUST



EXHIBIT 5

EXHIBIT "B"

CERTIFICATE OF CUSTODIAN OF RECORDS PURSUANT TO NRS 52.260

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

NOW COMES Dawn Alexander, who after first being duly sworn deposes and says:

1. That the deponent is the Senior AR Administrator of Wyeth Ranch Community Association, and in his or her capacity as Senior AR Administrator is a custodian of records for Wyeth Ranch Community Association.

2. That Wyeth Ranch Community Association, is licensed to do business in the State of Nevada.

3. That on or about the 9th day of the month of October of 2015, Wyeth Ranch Community Association, was served with a Subpoena Duces Tecum in connection with a Law Suit Entitled MARCHAI B.T. VS. CRISTELA PEREZ, et al., Case No. A-13-689461-C, calling for the production of documents relating to the purchase of real property as more fully described in the subpoena.

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

///
///
///

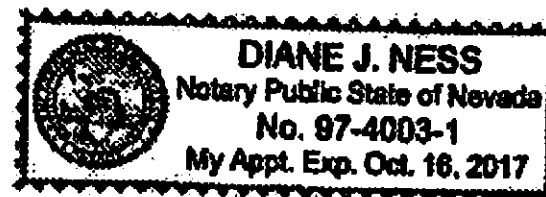
5. That the original of those records was made at or near the time of the act, event, condition, opinion, or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of Wyeth Ranch Community Association.

Dan Alexander
CUSTODIAN OF RECORDS

SUBSCRIBED AND SWORN to before me

On this 17 day of the month of OCTOBER 2015

NOTARY PUBLIC in and for the
County of Clark, State of Nevada



My appointment expires: 10/16/2017

EXHIBIT 5-A

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW*

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada Bar

Nevada Licensed Qualified Collection Manager
AMANDA LOWRIE



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

CALIFORNIA OFFICE

28914 Roadside Drive Suite F-4
Agoura Hills, California 91301
Telephone: (818) 735-9600
Facsimile: (818) 735-0096

ADDITIONAL OFFICES IN

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-843-6390

**AUTHORIZATION TO CONCLUDE NON-JUDICIAL FORECLOSURE
AND CONDUCT TRUSTEE SALE**

Dear Board of Directors and Management:

Alessi & Koenig, LLC is processing the posting and publication of a Notice of Trustee Sale for the below referenced property. Prior to the sale taking place, Alessi & Koenig requests a member of the Board of Directors, or a managing agent of the Board of Directors, sign this authorization.

If there are no bidders at the trustee sale, the property will revert to the homeowners association (HOA); and the HOA will acquire ownership of the property. Alessi & Koenig will record a Trustee's Deed Upon Sale on behalf of the HOA and advance the real property transfer tax; approximately \$500 per each \$100,000 of the properties assessed value.

Should the property revert to the HOA, Alessi & Koenig will provide an invoice for foreclosure fees and reimbursement of costs; including transfer tax and title insurance. Alessi & Koenig fees approximate \$2,500 to \$2,750.

Delinquent homeowner's name(s): **Cristela Perez**

Homeowner Association name: **Wyeth Ranch**

Delinquent homeowner's property address: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**

Trustee Sale Date:

Amount owed HOA (delinquent assessment): **\$3,330.32**

Approximate amount owed bank (1st mortgage): **\$542,000.00** 2nd Mortgage:

The undersigned has been authorized to execute this agreement on behalf of the above referenced Homeowners Association. Execution of this agreement authorizes Alessi & Koenig to conduct a public auction via trustee sale of the above referenced property.

Signed: 

AGENT

for

Dated: **11-5-09**

Wyeth

Ranch

MBT0293

EXHIBIT 5-B



A Multi-Jurisdictional Law Firm

9500 West Flamingo Road, Suite 100

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

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ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-843-6390

DAVID ALESSI*

THOMAS DAYARD*

ROBERT KOENIG**

RYAN KERDOW***

HUONG LAM***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar

AUTHORIZATION TO CONCLUDE NON-JUDICIAL FORECLOSURE AND CONDUCT TRUSTEE SALE

Dear Board of Directors and Management:

Alessi & Koenig, LLC is processing the posting and publication of a Notice of Trustee Sale for the below referenced property. Prior to the sale taking place, Alessi & Koenig requests a member of the Board of Directors, or a managing agent of the Board of Directors, sign this authorization.

If there are no bidders at the trustee sale, the property will revert to the homeowners association (HOA); and the HOA will acquire ownership of the property. Alessi & Koenig will record a Trustee's Deed Upon Sale on behalf of the HOA and advance the real property transfer tax.

Should the property revert to the HOA, Alessi & Koenig will provide an invoice for foreclosure fees and reimbursement of costs; including transfer tax and title insurance. Alessi & Koenig fees approximate \$2,500 to \$2,950.

Delinquent homeowner's name(s): **Cristela Perez**

Homeowner Association name: **Wyeth Ranch**

Delinquent homeowner's property address: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**

Estimated Trustee Sale Date: **May 8, 2011**

Approximate amount owed bank (1st mortgage): **\$542,000.00*** Approx Equity:

Approximate Amount owed HOA (delinquent assessment): **\$4,730.03**

Bank Foreclosing:

The undersigned has been authorized to execute this agreement on behalf of the above referenced Homeowners Association. Execution of this agreement authorizes Alessi & Koenig to conduct a public auction via trustee sale of the above referenced property.

Signed: 

AGENT for Wyeth Ranch

Dated: 6/2/11

MBT0294

EXHIBIT 5-C

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-15-811-013

TSN 11632

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

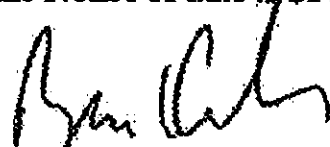
On August 28, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as instrument number 0001246, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139. The owner of the real property is purported to be: CRISTELA PEREZ

Wyeth Ranch CA

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$14,090.80. Payment must be in made in the form of certified funds.

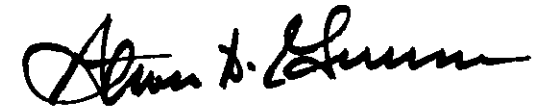
Date: July 11, 2013



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association

MBT0291

TAB 14



CLERK OF THE COURT

1 **OPPM**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for WELLS FARGO BANK, N.A.

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **MARCHAI, B.T., a Nevada business**
14 **trust,**

15 **Plaintiff,**

16 **vs.**

17 **CRISTELA PEREZ, an individual; et al.**

18 **Defendants.**

Case No.: A-13-689461-C
Dept. No. XXVI

19 **AND ALL RELATED CLAIMS**

20 **MARCHAI, B.T.'S OPPOSITION TO SFR INVESTMENTS POOL**
21 **1, LLC'S MOTION FOR SUMMARY JUDGMENT**

22 **I. INTRODUCTION**

23 SFR Investments Pool 1, LLC's Motion for Summary Judgment starts with a
24 faulty premise and devolves from that point. Specifically, the motion wrongly
25 assumes that Wyeth Ranch Homeowners Association foreclosed upon a lien that
26 contained superpriority amounts. However, the homeowner, Cristela Perez, paid
27 far in excess of nine months of association dues following Wyeth Ranch's institution

1 of an action to enforce the lien. By paying more than nine months of assessments
2 following Wyeth Ranch's institution of an action to enforce the lien, Perez satisfied
3 any superpriority portion of the lien. Thus, any foreclosure conducted by Wyeth
4 Ranch was conducted on a subpriority lien that is subject to Marchai's deed of trust.

5 The second fatal flaw to SFR's argument is that *it has no interest in the title*
6 *of the property to quiet*. Specifically, the "trustee's" deed that SFR acquired at the
7 foreclosure sale unambiguously states that SFR acquired Alessi & Koenig, LLC's
8 "right, title, or interest" in the property. However, SFR has presented no facts that
9 establish that Alessi & Koenig had any "right, title, or interest" in the property. As
10 this Court must enforce the plain, unambiguous language of the trustee's deed, SFR
11 cannot prevail on summary judgment. If SFR has an issue with the trustee's deed,
12 then it must pursue that issue with Alessi & Koenig, which it has failed to do.

13 The final nail in the coffin of SFR's argument comes from the Nevada
14 Supreme Court's recent opinion in *Shadow Wood Homeowners Association, Inc. v.*
15 *New York Community Bancorp, Inc.* In *Shadow Wood*, the Nevada Supreme Court
16 eviscerated the "conclusive" proof language of NRS 116.31166 and instead
17 reaffirmed what has always been the law: this Court has the authority to provide
18 equitable relief from a defective foreclosure. Thus, the "conclusive" proof language
19 in NRS 116.31166 does not salvage Wyeth Ranch's improper foreclosure.

20 *Shadow Ridge* also reaffirmed and expanded upon the authority of district
21 courts to void foreclosure sales on commercial reasonableness grounds. Specifically,
22 *Shadow Ridge* recognized that if a foreclosure sale fetches less than 20% of the fair
23 market value of the property, this Court can refuse to recognize such a sale because
24 the price is grossly inadequate. *Shadow Ridge's* conclusion is consistent with not
25 only the Restatement, but with other courts that have analyzed and applied the
26 Uniform Common Interest Ownership Act. Here, SFR paid *less than 7%* of the
27

1 value of the property. Thus, the foreclosure sale is commercially unreasonable as a
2 matter of law and should not be sanctioned by this Court.

3 Finally, even if this Court requires some unfairness or oppression to conclude
4 that voiding the foreclosure is appropriate, Marchai has presented facts that
5 prevent this Court from entering summary judgment. Specifically, Marchai did not
6 receive notice of Wyeth Ranch's foreclosure until *less than 24 hours before the sale*.
7 Upon receipt of that notice, Marchai immediately contacted Alessi & Koenig and
8 made efforts to postpone the foreclosure so that it could satisfy the lien. However,
9 Wyeth Ranch was less interested in getting paid, and apparently more interest in
10 kicking Perez out of the property. Consequently, on the day of the foreclosure,
11 Wyeth Ranch refused Marchai's reasonable request for a brief delay.

12 Accordingly, Marchai respectfully requests that this Court deny SFR's motion
13 for summary judgment.

14 II. STATEMENT OF DISPUTED FACTS¹

15 In its motion, SFR provides a chart of "facts" that it contends are
16 "undisputed."² Despite SFR's representation, some of the "facts" as presented by
17 SFR are clearly disputed.

18 For example, SFR represents, in bold typeface, that: (1) "The Bank was sent
19 the Association's notice of default" on February 28, 2012;³ (2) "The Bank was sent
20 the Association's notice of sale" on October 31, 2012;⁴ and (3) "The Bank was sent
21

22 ¹ In Marchai, B.T.'s Motion for Summary Judgment, Marchai set forth a complete statement of
23 undisputed facts, which it supported by citations to authenticated exhibits that Marchai filed in an
24 Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment. Marchai incorporates by
reference each of the facts and exhibits submitted in support of its motion for summary judgment as
if fully set forth in this opposition in full. The facts set forth in this opposition concern factual
information not set forth in Marchai's motion.

25 ² See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 3:7–5:4.

26 ³ See *id.* at 3:15–16.

27 ⁴ See *id.* at 3:21–22.

1 the Association's notice of sale" on July 31, 2013.⁵ SFR defines the "Bank" as
2 Marchai, B.T.⁶ Each of these statements is categorically *false*.

3 First, Marchai is not a *bank*. Instead, it is a Nevada business trust.⁷ Thus,
4 to categorize Marchai as a bank is misleading and untrue.

5 Second, Marchai did not acquire its interest in the note and deed of trust
6 until March 2013. Thus, Alessi & Koenig and Wyeth Ranch *could not* have sent
7 Marchai either the notice of default or the notice of sale in February or October
8 2012. In fact, the exhibits upon which SFR relies reflect *no mailing to Marchai*.⁸ ,

9 Third, even though Marchai acquired its interest in the note and deed of trust
10 in March 2013, the loan's prior servicer, U.S. Bank, N.A., did not transfer the
11 servicing information for the loan to Marchai's loan servicing company for nearly
12 four months (until July 2013).⁹ During this time U.S. Bank did not inform Marchai
13 of Wyeth Ranch's lien or its efforts to foreclose upon that lien.¹⁰ Because of U.S.
14 Bank's delay in sending the loan servicing file, the assignment of the deed of trust
15 from U.S. Bank to Marchai did not get recorded until August 12, 2013, just two
16 weeks before Wyeth Ranch's foreclosure.¹¹ SFR, however, represents that Alessi &
17 Koenig sent Marchai the notice of sale on July 31, 2013.¹² Again, this is patently
18

19 ⁵ See *id.* at 4:1–2. Notably, SFR completely ignores the notice of default recorded in 2009 and
the multiple notices of sale that preceded the October 31, 2012 notice.

20 ⁶ See *id.* at 1:25–26.

21 ⁷ See Decl. of Chaim Freeman ¶ 1, attached as Ex. 3 to the App. of Exs. to Marchai, B.T.'s Mot.
22 for Summ. J.

23 ⁸ See Ex. A-11 to SFR Investments Pool 1, LLC's Mot. for Summ. J. (Jan. 14, 2016).

24 ⁹ See Decl. of Scott Sawyer ¶ 2, attached as Ex. 1.

25 ¹⁰ See *id.*

26 ¹¹ See Sawyer Decl. ¶ 3.

27 ¹² See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 4:1–2.

1 false. The certified mail receipts produced by Alessi & Koenig on which SFR relies
2 show *no* mailing to Marchai.¹³

3 SFR also represents as fact that “the Bank was on notice of the Association’s
4 lien and foreclosure of the Property but failed to act to preserve its rights.”¹⁴ Again,
5 this is completely false. As set forth above, Marchai did not receive the notices
6 mailed by Alessi & Koenig. In fact, Marchai had no knowledge of Wyeth Ranch’s
7 lien or its efforts to foreclose upon that lien until after the August 28, 2013
8 foreclosure.¹⁵ Instead, Peak Loan Servicing, Marchai’s servicer, learned about the
9 trustee’s sale late in the afternoon on August 27, 2013, less than twenty-four hours
10 before the foreclosure sale.¹⁶ Upon learning of the sale, Peak contacted Alessi &
11 Koenig and asked it to postpone the sale so that it could pay the lien.¹⁷

12 On the morning of the day of the sale, Naomi Eden at Alessi & Koenig sent
13 an e-mail to Brittney O’Connor, the accounting clerk at Complete Association
14 Management Company, who manages Wyeth Ranch’s accounts, in which she notes
15 that “[t]he mortgage company is asking for an extension so they can get it paid
16 off.”¹⁸ Eden asked O’Connor if Alessi & Koenig could postpone the sale.¹⁹ O’Connor
17 responded to the e-mail asking Eden how many oral postponements Wyeth Ranch
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21 ¹³ See *id.* at Ex. A-11.

22 ¹⁴ See *id.* at 3:3–5.

23 ¹⁵ See Decl. of Chaim Freeman ¶ 2, attached as Ex. 2.

24 ¹⁶ See Sawyer Decl. ¶ 4.

25 ¹⁷ See Sawyer Decl. ¶ 5.

26 ¹⁸ See Decl. of David J. Merrill ¶¶ 4–5, attached as Ex. 3; see also email from Eden to O’Connor
(Aug. 28, 2013), attached as Ex. 3-A.

27 ¹⁹ See *id.*

1 could still make in connection with the sale.²⁰ Eden advised O'Connor that Wyeth
2 Ranch still had three postponements left.²¹

3 O'Connor then sent an e-mail to Michele Weaver, a manager at CAMCO, in
4 which she communicated that Wyeth Ranch had a foreclosure sale set for that
5 morning at 10:00 am, that Wyeth Ranch could still postpone the sale three times,
6 and that "[t]he mortgage company would like an extension so they can pay off the
7 account."²² In her e-mail to Weaver, O'Connor recognized the reasonableness of
8 Marchai's request as she expressly noted that she "will use all postponements then
9 go to sale on the 3rd sale date set," "[u]nless otherwise directed by the board."²³
10 According to the last e-mail in the chain, Weaver "received confirmation" that
11 Wyeth Ranch did "NOT want to postpone."²⁴ Thus, Wyeth Ranch refused to
12 postpone the sale so that Marchai could pay off the account and proceeded with the
13 foreclosure.²⁵ With mere hours (or minutes) remaining before the sale, there was
14 not much else Marchai could do. Thus, contrary to SFR's accusations, this is not a
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18 ²⁰ See email from O'Connor to Eden (Aug. 28, 2013), attached as Ex. 3-A.

19 ²¹ See email from Eden to O'Connor (Aug. 28, 2013), attached as Ex. 3-A.

20 ²² See email from O'Connor to Weaver (Aug. 28, 2013), attached as Ex. 3-A. It is unclear if the
21 foreclosure sale was for 10:00 a.m. or 2:00 p.m. Ms. O'Connor's e-mail notes that the sale is set for
10:00 a.m., but the Notice of Trustee's Sale set the sale at 2:00 p.m. *Compare id. with* SFR
Investments Pool 1, LLC's Mot. for Summ. J. at Ex. A-8.

22 ²³ See email from O'Connor to Weaver (Aug. 28, 2013).

23 ²⁴ See email from Michaels to O'Connor and Weaver (Aug. 28, 2013), attached as Ex. 3-A
24 (emphasis in the original).

25 ²⁵ The fact that Marchai did not receive notice of the trustee's sale until late in the day on the
26 afternoon before the foreclosure sale and did not learn that Wyeth Ranch would not postpone the
27 sale until shortly before the foreclosure refutes SFR's contention that Marchai could have paid the
lien, filed a lis pendens, or instituted an action to protect its interest. (See SFR Investments Pool 1,
LLC's Motion for Summ. J. at 16:5–17:3).

1 situation in which Marchai received all of the notices and “failed to act to preserve
2 its rights.”²⁶

3 4 III. ARGUMENT²⁷

5 “Summary judgment is appropriate when the record shows there is no
6 genuine issue of material fact remaining, and the movant is entitled to judgment as
7 a matter of law.”²⁸ “Therefore, summary judgment is improper whenever ‘a
8 reasonable jury could return a verdict for the non-moving party.’”²⁹ “When
9 reviewing the record, ‘the evidence, and any reasonable inferences drawn from it,
10 must be viewed in a light most favorable to the nonmoving party.’”³⁰ Here, either
11 SFR is not entitled to judgment as a matter of law or genuine issues of material fact
12 preclude summary judgment in favor of SFR. Accordingly, Marchai respectfully
13 requests that the Court deny the motion.

14 **A. Wyeth Ranch’s foreclosure could not have extinguished**
15 **Marchai’s deed of trust because Perez paid the superpriority**
portion of the lien, thus leaving the lien as subordinate to
Marchai’s deed of trust.

16 SFR argues that Wyeth Ranch’s foreclosure extinguished Marchai’s deed of
17 trust because the Nevada Supreme Court held in *SFR Investments Pool 1, LLC v.*
18 *U.S. Bank, N.A.* that the non-judicial foreclosure of an association’s “superpriority
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20 ²⁶ See SFR Investments Pool 1, LLC’s Mot. for Summ. J. at 3:3–6 (Jan. 14, 2016).

21 ²⁷ Marchai, B.T.’s Motion for Summary Judgment contains extensive argument why this Court
22 should grant summary judgment in favor of Marchai and against SFR. Rather than repeating all of
23 those arguments here, Marchai incorporates each of the arguments by reference as if fully set forth
herein. Instead, the argument below addresses the arguments raised by SFR in its motion for
summary judgment.

24 ²⁸ *Anderson v. Mandalay Corp.*, 131 Nev. Adv. Op. 82, 358 P.3d 242, 245 (2015) (citing *Wood v.*
25 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing N.R.C.P. 56(c))).

26 ²⁹ *Id.* (quoting *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 249, 849 P.2d 320, 322 (1993)).

27 ³⁰ *Id.* (quoting *Wood*, 121 Nev. at 729, 121 P.3d at 1029).

1 lien" extinguishes a first deed of trust.³¹ Implicit in SFR's argument is that the lien
2 upon which Wyeth Ranch foreclosed contained a superpriority piece consisting of
3 the nine months of association dues "immediately preceding institution of an action
4 to enforce the lien."³² However, as set forth in Marchai's motion for summary
5 judgment, Perez *paid* the superpriority portion of Wyeth Ranch's lien before it
6 foreclosed.³³ Specifically, Wyeth Ranch "instituted an action to enforce the lien"
7 either on September 30, 2008 (when it sent Perez a Notice of Delinquent
8 Assessment (Lien)), on January 5, 2009 (when it first recorded a Notice of Default
9 and Election to Sell Under Homeowners Association Lien), or definitely by January
10 14, 2010 (when it first recorded a Notice of Trustee's Sale).³⁴ However, between
11 February 3, 2010 and November 13, 2012, Perez paid Wyeth Ranch \$3,230.00 in
12 assessments, which greatly exceeds nine months of assessments.³⁵ Thus, when
13 Wyeth Ranch completed the foreclosure in 2013, its lien did not have any
14 superpriority piece that could extinguish Marchai's deed of trust.³⁶ Consequently,
15 Wyeth Ranch foreclosed on a subpriority lien, which means that SFR took subject to
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19 ³¹ See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 6:10–28 (Jan. 14, 2016) (citing *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)).

20 ³² See *id.*; see also NRS § 116.3116(2) (2011); *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 411.

21 ³³ See Marchai, B.T.'s Mot. for Summ. J. at 26:1–28:6 (Jan. 14, 2016).

22 ³⁴ See *id.* at 27:14–18; see also *CitiMortgage, Inc. v. Alessi & Koenig, LLC*, No. 2:13-CV-01976-
23 JCM-(GWF), 2015 WL 112892, at *5 (D. Nev. Jan. 8, 2015) (granting summary judgment in favor of
24 CitiMortgage because the association received payment of nine months of assessments following the
recording of a notice of default).

25 ³⁵ See Marchai, B.T.'s Mot. for Summ. J. at 27:18–28:3.

26 ³⁶ See *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411
27 (2014) (recognizing that the "subpriority" piece of an association's lien is subordinate to a first deed
of trust).

1 Marchai's deed of trust.³⁷ Accordingly, this Court must deny SFR's motion for
2 summary judgment on its quiet title and permanent injunction claims.³⁸

3
4 **B. SFR's manager has conceded that the Trustee's Deed Upon**
5 **Sale, which expressly states that it conveyed only Alessi &**
6 **Koenig's interest in the property, is accurate.**

7 SFR attached to its motion a Declaration of Paulina Kelso, who is SFR's
8 assistant manager.³⁹ According to Kelso, "SFR has no reason to doubt the recitals
9 in the Trustee's Deed Upon Sale."⁴⁰ One such recital in the Trustee's Deed Upon
10 Sale—which is the most critical recital as it expresses what SFR purchased at the
11 foreclosure—states that SFR purchased all of Alessi & Koenig's "right, title, or
12 interest" in the Property.⁴¹ This Court must enforce the intent of the parties, which
13 intent this Court must ascertain only from the plain language of the deed itself.⁴²

13 ³⁷ See *id.*

14 ³⁸ Curiously, SFR notes that Wyeth Ranch did not record a "release of the super-priority lien,"
15 as if that supports SFR's belief that Wyeth Ranch's lien contained a superpriority piece. (See SFR
16 Investments Pool 1, LLC's Mot. for Summ. J. at 4:5.) SFR's contention, however, is irrelevant and
17 contradicts the Nevada Supreme Court's opinion in *SFR v. U.S. Bank*. Specifically, SFR has failed to
18 cite to any authority that required Wyeth Ranch to record a "release of the super-priority lien" once
19 it received payment from Perez. In fact, *SFR* arguably concluded that the association did *not* need to
20 provide notice to the lender that the lien upon which it foreclosed contained a superpriority piece.
21 130 Nev. Adv. Op. 75, 334 P.3d at 418. If the lender need not receive notice that the foreclosure of
22 the association's lien will extinguish its interest, then SFR need not receive notice that the
23 foreclosure of a lien with no superpriority amounts will result in SFR taking subject to Marchai's
24 deed of trust. See *id.* What is sauce for the goose is sauce for the gander. In addition, recording a
25 "release of the super-priority lien" is nonsensical because *SFR* concluded that the association has *one*
26 *lien*, that can have two pieces: a superpriority piece and a subpriority piece. See *id.* at 411. Thus,
27 Wyeth Ranch did not have a "super-priority lien" that it could release. See *id.* Instead, Wyeth
28 Ranch had *one lien* that consisted solely of subpriority amounts.

22 ³⁹ See Decl. of Paulina Kelso, attached as Ex. B to SFR Investments Pool 1, LLC's Mot. for
23 Summ. J. ¶ 4 (Jan. 14, 2016).

24 ⁴⁰ *Id.* ¶ 7.

25 ⁴¹ See Trustee's Deed Upon Sale (Sept. 9, 2013), attached as Ex. 2-RR to the App. of Exs. to
26 Marchai, B.T.'s Mot. for Summ. J. (Jan. 14, 2016).

27 ⁴² See *7912 Limbwood Ct. Tr. v. Wells Fargo Bank, N.A.*, No. 2:13-CV-00506-APG-(GWF), 2015
28 WL 5123317, at *3 (Aug. 31, 2015) (citing *City Motel, Inc. v. State ex rel. State Dep't of Highways*, 75
Nev. 137, 141, 336 P.2d 375, 377 (1959)).

1 Accordingly, because, as SFR concedes, it acquired Alessi & Koenig's right, title,
2 and interest in the property, it did not acquire Wyeth Ranch's interest.⁴³
3 Consequently, SFR cannot succeed on any of its claims based upon the faulty
4 presumption that it purchased Wyeth Ranch's interest. Accordingly, this Court
5 must deny SFR's motion.
6

7 C. The Nevada Supreme Court's opinion in *Shadow Wood*
8 *Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*
9 *eviscerates SFR's arguments concluding the "conclusive"*
10 *nature of the recitals in the Trustee's Deed Upon Sale.*

11 SFR spends a good portion of its motion arguing that the recitals in the
12 Trustee's Deed Upon Sale concerning the provision of notice provides "conclusive"
13 proof that Marchai cannot overcome as a matter of law.⁴⁴ However, the Nevada
14 Supreme Court expressly rejected this argument in *Shadow Wood Homeowners*
15 *Association, Inc. v. New York Community Bancorp, Inc.*⁴⁵

16 In *Shadow Wood*, the association argued that the "conclusive" nature of the
17 recitals set forth in a trustee's deed "bar any post-sale challenges regardless of
18 basis."⁴⁶ The Nevada Supreme Court rejected this argument. Specifically, the court
19 stated: "We decline to give the default recital such a broad and unprecedented
20 reading"⁴⁷ Instead, the court recognized "that courts retain the power to grant

21 ⁴³ Because Perez paid the superpriority portion of the lien and because SFR acquired Alessi &
22 Koenig's—not Wyeth Ranch's—interest in the property, SFR's argument that title vested in SFR
23 "without equity or right of redemption" are irrelevant because the "title" SFR received is Alessi &
24 Koenig's "title" and, even if it was Wyeth Ranch's interest, that interest was subject to Marchai's
deed of trust. (See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 9:6–10:2.)

25 ⁴⁴ See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 6:20–8:23 (citing *Bourne Valley*
26 *Court Tr. v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131 (D. Nev. 2015); *SFR Investments Pool 1,*
27 *LLC v. Wells Fargo Bank, N.A.*, Case No. A-13-682296-C, 2015 WL 4501851 (Nev. Dist. Ct. July 21,
28 2015)).

⁴⁵ No. 63180, 132 Nev. Adv. Op. 5, 2016 WL 347979 (Jan. 28, 2016).

⁴⁶ *Id.* at *4.

⁴⁷ *Id.*

1 equitable relief from a defective foreclosure sale despite NRS 116.31166.”⁴⁸ Thus,
2 SFR’s reliance upon the “conclusive” recitals in the Trustee’s Deed Upon Sale do not
3 bar this Court’s power to grant equitable relief from a defective foreclosure.⁴⁹

4 Here, as set forth in more detail in Marchai’s motion for summary judgment,
5 Wyeth Ranch did not properly foreclose.⁵⁰ First, Wyeth Ranch did not mail the
6 Notice of Delinquent Assessment (Lien) to all of Perez’s mailing addresses.⁵¹
7 Second, it does not appear that Alessi & Koenig mailed the Notice of Default and
8 Election to Sell to CMG Mortgage, nor did Alessi & Koenig mail the Notice of
9 Default and Election to Sell by certified mail to any lienholder.⁵² Finally, it does not
10 appear that Alessi & Koenig mailed that Notice of Trustee’s Sale to anyone by first
11 class mail.⁵³

12 Accordingly, because Wyeth Ranch did not properly foreclose upon its lien
13 and the recitals do not bar this Court from granting equitable relief from a defective
14 foreclosure, this Court should deny SFR’s motion for summary judgment.⁵⁴

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20 ⁴⁸ *Id.* at *5.

21 ⁴⁹ *See id.*

22 ⁵⁰ *See* Marchai, B.T.’s Mot. for Summ. J. at 29:1–30:2 (Jan. 14, 2016).

23 ⁵¹ *See id.* at 29:6–9.

24 ⁵² *See id.* at 29:10–15.

25 ⁵³ *See id.* at 29:16–19.

26 ⁵⁴ *See SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419
27 (2014); *Shadow Wood Homeowners Ass’n v. New York Community Bancorp, Inc.*, No. 63180, 132 Nev.
Adv. Op. 5, 2016 WL 347979, at *5 (Jan. 28, 2016).

1 D. This Court should deny SFR's motion for summary judgment
2 because paying \$21,000.00 for a property that SFR valued at
3 \$307,403.00—only 6.8% of the value—is commercially
4 unreasonable.

5 SFR argues that this Court should grant summary judgment in its favor and
6 against Marchai because Wyeth Ranch conducted a commercially reasonable
7 foreclosure.⁵⁵ For support, SFR makes two arguments. First, SFR claims that NRS
8 116.3116 does not require commercially reasonable sales.⁵⁶ Second, SFR claims
9 that even if an association must conduct a commercially reasonable sale, the
10 assessment of commercial reasonableness does not involve the comparison of
11 market value with the price paid at the foreclosure.⁵⁷ However, both arguments fail
12 in light of the Nevada Supreme Court's opinion in *Shadow Wood*.⁵⁸

13 First, in *Shadow Wood*, the Nevada Supreme Court expressly recognized that
14 a commercially unreasonable sale *can* constitute “grounds to justify the district
15 court in setting aside . . . [a] foreclosure sale.”⁵⁹ The court's ruling was consistent
16 with *Long v. Towne*, which recognized that a court can set aside an association
17 foreclosure sale for commercial unreasonableness.⁶⁰ Accordingly, SFR's premise
18 that NRS 116.3116 does not grant courts authority to set aside a commercially
19 unreasonable sale lacks merit.⁶¹

20 Second, SFR argues that a commercially unreasonable sale has nothing to do
21 with the comparison of the price fetched at the foreclosure sale with the fair market

22 ⁵⁵ See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 11:10–16:4 (Jan. 14, 2016).

23 ⁵⁶ See *id.* at 11:12–12:1.

24 ⁵⁷ See *id.* at 12:2–16:4.

25 ⁵⁸ See *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *6–8.

26 ⁵⁹ See *id.* at *6.

27 ⁶⁰ See *id.* at *4 (citing *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982)).

28 ⁶¹ See *id.*

1 value of the property.⁶² Again, the Nevada Supreme Court's opinion in *Shadow*
2 *Wood* contradicts SFR's argument. Although the court noted that typically
3 inadequacy of price alone will not justify setting aside a sale on commercial
4 reasonableness grounds, the court cited with approval the Restatement (Third) of
5 Property, which concludes that "a court is warranted in invalidating a sale where
6 the price is less than 20 percent of fair market value."⁶³ Specifically, the
7 Restatement concluded that if the price is "grossly inadequate," a court can set
8 aside a foreclosure sale based upon *price alone*.⁶⁴ The Restatement sets a general
9 benchmark of 20% of fair market value.⁶⁵ In other words, if the sale price at a
10 foreclosure is less than 20% of the fair market value, then it is likely grossly
11 inadequate and if it is greater than 20% it is likely not grossly inadequate.⁶⁶

12 The court's opinion and the Restatement's position is consistent with the
13 Vermont Supreme Court's decision in *Will v. Mill Condominium Owner's*
14 *Association*, in which the Court held "as a matter of law" that an association's
15 foreclosure sale in which a \$70,000.00 property sold for \$3,510.10 (19.94% of the
16 market value) "did not conform with the requirements of good faith and commercial
17 reasonableness set forth by § 1-113 of UCIOA."⁶⁷

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20 ⁶² See SFR Investments Pool 1, LLC's Mot. for Summ. J. at 12:2–16:4 (Jan. 14, 2016).

21 ⁶³ See *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *6 (quoting Restatement (Third)
of Property (Mortgages) § 8.3 cmt. b (1997)).

22 ⁶⁴ See Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (1997).

23 ⁶⁵ See *id.*

24 ⁶⁶ See *id.*; see also *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *6 (recognizing that
25 the lender "failed to establish that the foreclosure sale price was grossly inadequate as a matter of
26 law" because the sale fetched a sales price of 23% of market value, which is greater than the 20%
threshold established in the Restatement).

27 ⁶⁷ 848 A.2d 336, 338 (Vt. 2004).

1 Here, SFR paid just \$21,000.00 at the foreclosure sale for a property that
2 SFR valued at \$307,403.00.⁶⁸ Thus, SFR paid 6.8% of the fair market value. Such a
3 grossly inadequate price alone justifies this Court from refusing to recognize the
4 validity of Wyeth Ranch's sale and denying SFR's motion for summary judgment.⁶⁹
5 This Court should heed the direction from the Nevada Supreme Court and the
6 Nevada Legislature, which have directed this Court to apply UCIOA uniformly
7 among those states that have enacted it, and follow the Vermont Supreme Court
8 and declare the sale in this case commercially unreasonable since the sale fetched
9 less than 20% of the value of the property.⁷⁰

10 Although *Shadow Wood* indicates that a district court can set aside a sale
11 based upon price alone if the price is grossly inadequate, if this Court adheres to the
12 old standard and concludes that Marchai must also present evidence of fraud,
13 unfairness, or oppression, in addition to the grossly inadequate price, then genuine
14 issues of material fact exist that prevent this Court from granting summary
15 judgment in favor of SFR.⁷¹ Specifically, concluding that Wyeth Ranch's foreclosure
16 extinguished Marchai's deed of trust is grossly unfair for several reasons.

17 First, although Marchai acquired the note in March 2013, Marchai's loan
18 servicing company did not receive the transfer of the servicing of the loan from the
19 prior servicer for nearly four months (until July 2013). Consequently, the
20 assignment of the deed of trust from U.S. Bank, to Marchai, did not get recorded
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22 ⁶⁸ See Marchai, B.T.'s Mot. for Summ. J. at 66:8–10 (Jan. 14, 2016).

23 ⁶⁹ See *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *6 (quoting Restatement (Third)
24 of Property (Mortgages) § 8.3 cmt. b (1997)).

25 ⁷⁰ See *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 410
(2014); NRS § 116.1109(2); see also *Will*, 838 A.2d at 338.

26 ⁷¹ See *Shadow Wood Homeowners Ass'n*, 2016 WL 347979 at *6 (citing *Long v. Towne*, 98 Nev.
27 11, 639 P.2d 528 (1982)).

1 until August 12, 2013, after the Notice of Trustee's Sale recorded, and a little more
2 than two weeks before Wyeth Ranch conducted the foreclosure. As a result,
3 Marchai did not receive *any* of the notices in connection with Wyeth Ranch's
4 foreclosure. In addition, Marchai did not learn about the trustee's sale until late in
5 the afternoon on August 27, 2013, the day before the sale. Upon learning of the
6 sale, Marchai contacted Wyeth Ranch through Alessi & Koenig and asked it to
7 postpone the sale so that it could pay the lien. Even though Wyeth Ranch could
8 postpone the sale three times without issuing a new notice of trustee's sale, Wyeth
9 Ranch refused.⁷²

10 Second, Alessi & Koenig recorded multiple notices of delinquent assessment,
11 notices of default, and notices of sale without rescinding any prior notices, which
12 causes confusion in the record. For example, Alessi & Koenig recorded on Wyeth
13 Ranch's behalf a Notice of Delinquent Assessment (Lien) on October 8, 2008, a
14 Notice of Default and Election to Sell Under Homeowners Association Lien on
15 January 5, 2009, and a Notice of Trustee's Sale on January 14, 2010. On March 9,
16 2011, Alessi & Koenig rescinded *only* the January 14, 2010 notice of trustee's sale,
17 which it improperly identified in the notice of rescission as the January 11, 2010
18 notice of trustee's sale. Then, on March 29, 2011, Alessi & Koenig recorded another
19 Notice of Trustee's Sale, which it based upon the January 5, 2009 Notice of Default
20 and Election to Sell. However, Wyeth Ranch never completed the foreclosure
21 contemplated by these notices, which would lead a reasonable person to believe—as
22 happened here—that Perez *paid* at least some of her association dues thereby
23 satisfying the superpriority portion of the association's lien. Further, although
24

25 ⁷² The fact that Marchai did not receive notice of the trustee's sale until late in the day on the
26 afternoon before the foreclosure and did not receive notice until the day of the sale that Wyeth Ranch
27 would not postpone the sale refutes SFR's contention that Marchai could have paid the lien, filed a
lis pendens, or instituted an action to protect its interest. (See SFR Investments Pool 1, LLC's
Motion for Summ. J. at 16:5–17:3.)

1 Wyeth Ranch never completed the foreclosure contemplated by these notices, Wyeth
2 Ranch *did not rescind the original notice of lien, notice of default, or the March 29,*
3 *2011 notice of sale.*

4 Instead, Alessi & Koenig left all of the prior notices as a matter of record, but
5 restarted the foreclosure process. On December 20, 2011, Alessi & Koenig recorded
6 a *second* Notice of Delinquent Assessment (Lien). Again, on February 28, 2012,
7 Alessi recorded a *second* Notice of Default and Election to Sell Under Homeowners
8 Association Lien. Interestingly, this second notice of default claims that it is based
9 upon Perez's alleged default in her obligations since January 2008, yet bases the
10 notice upon the notice of delinquent assessment recorded on December 20, 2011.
11 This extensive delay between Perez's alleged failure to pay her assessments
12 between January 2008 and December 20, 2011 could also lead a reasonable person
13 to conclude that Wyeth Ranch's lien expired because an association's lien expires
14 "unless proceedings to enforce the lien are instituted within 3 years."⁷³

15 On October 31, 2012, Alessi recorded yet *another* Notice of Trustee's Sale
16 without rescinding the prior notice. Again, however, Wyeth Ranch did not foreclose
17 based upon this notice. Instead, on July 31, 2013, Alessi & Koenig recorded yet
18 *another* Notice of Trustee's Sale, which set a sale for August 28, 2013. Wyeth Ranch
19 and Alessi & Koenig cannot litter the record with multiple confusing recordings and
20 expect such a sale to be commercially reasonable.

21 Third, the language of the notices that Alessi & Koenig used cause confusion
22 because Alessi & Koenig held itself out as a "trustee," yet no recorded document
23 creates any trust relationship between Alessi & Koenig and Wyeth Ranch.

24 Fourth, although SFR tries to justify the grossly inadequate price in this case
25 based upon the uncertainty in the law before the Nevada Supreme Court issued its
26

27 ⁷³ See NRS § 116.3116(5) (2012).

1 opinion in *SFR v. U.S. Bank*, this uncertainty supports Marchai's contention that
2 extinguishing its deed of trust based upon an unconstitutionally vague statute that
3 fails to give fair notice is, if not unconstitutional, incredibly unfair and justifies
4 setting aside the sale.⁷⁴

5 Fifth, allowing the foreclosure sale in this case to extinguish Marchai's deed
6 of trust is also incredibly unfair to Perez. It is undisputed that Perez paid \$3,230.00
7 in association dues after Wyeth Ranch instituted its action to enforce the lien.
8 Nevertheless, if this Court concludes that Perez's payments, for whatever reason,
9 did not extinguish the superpriority portion of Wyeth Ranch's lien, then this Court
10 is subjecting *Perez* to a judgment by Marchai for the full unpaid amount of the note.

11 Consequently, if this Court does not conclude that the grossly inadequate
12 price should, as a matter of law consistent with the Restatement and other courts
13 that have interpreted UCIOA, defeat SFR's motion, then genuine issues of material
14 fact preclude this Court from granting summary judgment in favor of SFR
15 concerning the unfairness Wyeth Ranch's foreclosure. Accordingly, this Court
16 should deny SFR's motion.

17 **E. SFR cannot satisfy its burden of proof to establish it is a bona**
18 **fide purchaser for value.**

19 SFR bears the burden of proof to establish that no genuine issues of material
20 fact exist that permit this Court to enter summary judgment on its claim for quiet
21 title.⁷⁵ Likewise, SFR bears the burden of demonstrating that it is a bona fide
22 purchaser for value.⁷⁶ "A subsequent purchaser is bona fide under common-law

23 ⁷⁴ See Marchai, B.T.'s Mot. for Summ. J. at 30:3–51:3 (Jan. 14, 2016).

24 ⁷⁵ See *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *6 (citing *Breliant v. Preferred*
25 *Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)).

26 ⁷⁶ *Bailey v. Butner*, 64 Nev. 1, 7, 176 P.2d 226, 229 (1947) (recognizing that a person who seeks
27 to establish a higher priority based upon the claim that he is a bona fide purchaser bears the burden
28 of proof).

1 principles if it takes the property 'for a valuable consideration and without notice of
2 the prior equity, and without notice of facts which upon diligent inquiry would be
3 indicated and from which notice would be imputed to him, if he failed to make such
4 inquiry."⁷⁷ Here, SFR cannot satisfy its burden as a matter of law because it had at
5 least inquiry notice that Perez may have paid the superpriority portion of the lien or
6 that the lien was extinguished and the equities weigh in favor of Marchai.

7 As set forth above and in Marchai's motion for summary judgment, Wyeth
8 Ranch started the process to enforce its lien when it recorded a Notice of Delinquent
9 Assessment (Lien) on October 8, 2008. Wyeth Ranch continued the foreclosure
10 process by recording a Notice of Default and Election to Sell Under Homeowners
11 Association Lien on January 5, 2009, and finally when it recorded the Notice of
12 Trustee's Sale on January 14, 2010. Despite the fact that Wyeth Ranch instituted
13 an action to enforce its lien between 2008 and 2010, Wyeth Ranch never completed
14 the foreclosure. Instead, Wyeth Ranch abruptly stopped its foreclosure, and
15 restarted again on December 20, 2011, nearly two years later, through the recording
16 of another Notice of Delinquent Assessment (Lien). All of these documents are a
17 matter of record in the property's title. Thus, SFR had at least inquiry notice that
18 Wyeth Ranch either received some payment by Perez that could have satisfied (and
19 did satisfy) the superpriority portion of the lien, or that Wyeth Ranch attempted to
20 foreclose upon a lien that had expired as a matter of law.⁷⁸ Because SFR had at
21 least inquiry notice that Wyeth Ranch foreclosed upon the subpriority portion of the
22 association's lien (or had no valid lien to foreclose upon), SFR cannot satisfy its
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26 ⁷⁷ *Shadow Wood Homeowners Ass'n*, 2016 WL 347979, at *10 (quoting *Bailey*, 64 Nev. at 19, 176 P.2d at 234).

27 ⁷⁸ See NRS § 116.3116(5) (2012).

1 burden of demonstrating it is a bona fide purchaser.⁷⁹ Accordingly, this court
2 should deny the motion.⁸⁰

3 IV. CONCLUSION

4 SFR simply cannot carry its burden of establishing that it is entitled to
5 judgment as a matter of law. First, SFR is wrong on the law because Wyeth Ranch
6 did not foreclose upon any superpriority portion of the lien, SFR obtained Alessi
7 & Koenig's interest—not Wyeth Ranch's—interest, the conclusive proof
8 presumption has no basis, and the foreclosure in this case was commercially
9 unreasonable as a matter of law. Second, even if SFR has some legal basis by which
10 this Court could entertain its quiet title claim, genuine issues of material fact
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16 ⁷⁹ See *id.*

17 ⁸⁰ SFR argues that even if it had notice, Marchai “would still have to prove that SFR was not a
18 BFP and that SFR somehow induced the Association to fraudulently sell the Property to SFR.”
19 (SFR Investments Pool 1, LLC’s Mot. for Summ. J. at 11:4–9 (Jan. 14, 2016). To support such an
20 outrageous claim, SFR purportedly relies upon the Nevada Supreme Court’s opinion in *Bailey v.*
21 *Butner*, 64 Nev. 1, 8–9, 176 P.2d 226, 229–30 (1947). However, *Bailey* says no such thing. First,
22 *Bailey* recognizes that the person alleging bona fide purchaser status (SFR here) bears the burden to
23 prove that status. See *Bailey*, 64 Nev. at 7, 176 P.2d at 299. Thus, Marchai does not have to prove
24 that SFR was not a bona fide purchaser. See *id.* Second, Marchai certainly does not need to
25 establish fraud. Marchai misreads *Bailey*. *Bailey* concerned a situation in which a Bailey entered
26 into an oral contract for sale of property with Butner and subsequent to that alleged oral contract,
27 Butner entered into a written contract to sell a portion of the same property to Rutherford and
28 another written contract to sell another portion of the same property to Hopkins. Hopkins later sold
his portion of the property to Rutherford. The issue was if Rutherford knew of Bailey’s alleged claim,
but Hopkins did not, could Bailey challenge the sale from Hopkins to Rutherford. Because Hopkins
was a bona fide purchaser, even though Rutherford was not, the Court noted that Rutherford could
be a bona fide purchaser of Hopkins interest even if he knew of Bailey’s prior interest so long as he
did not “in any manner participate fraudulently, to induce or encourage the transaction between
Bailey and Hopkins.” *Id.* at 8–9, 176 P.2d at 229–30. Here, unlike *Bailey*, SFR acquired an interest
from a foreclosure sale, not from a bona fide purchaser. Thus, SFR cannot step in the shoes of a bona
fide purchaser. See *id.* Thus, the discussion SFR cites in *Bailey* is inapposite.

1 preclude this Court from granting summary judgment. Accordingly, Marchai
2 respectfully requests that this Court deny the motion.

3 DATED this 3rd day of February 2016.

4 DAVID J. MERRILL, P.C.

5
6 By: 
7 DAVID J. MERRILL
8 Nevada Bar No. 6060
9 10161 Park Run Drive, Suite 150
10 Las Vegas, Nevada 89145
11 (702) 566-1935
12 Attorneys for MARCHAI, B.T.
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February 2016, a copy of the foregoing Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment was served electronically to the following through the Court's electronic service system:

Howard Kim & Associates	
Contact	Email
Diana S. Cline	<u>diana@hkimlaw.com</u>
Sarah Felts	<u>sarah@hkimlaw.com</u>
Tomas Valerio	<u>tomas@hkimlaw.com</u>

Howard Kim & Associates	
Contact	Email
E-Service for Howard Kim	<u>eservice@hkimlaw.com</u>


An employee of David J. Merrill, P.C.

EXHIBIT 1

DECLARATION OF SCOTT SAWYER

I, Scott Sawyer, declare as follows:

1. I am an employee of Peak Loan Servicing, who is the loan servicer for Marchai, B.T. in connection with the note secured by a deed of trust on 7119 Wolf Rivers Avenue, Las Vegas, Nevada (the "Property"). I have made this declaration in support of Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment. I have personal knowledge of and am competent to testify to the facts set forth in this declaration.

2. Although Marchai acquired its interest in the note, which is secured by a deed of trust on the Property, in March 2013, the prior servicer, U.S. Bank, N.A., did not transfer the servicing information for the loan to Peak until July 2013. During this time of transition, U.S. Bank did not notify Peak about Wyeth Ranch's lien or its efforts to foreclose upon its lien.

3. Following the receipt of the servicing file from U.S. Bank, Peak arranged for the recording of an assignment of the deed of trust to Marchai, which was recorded on August 12, 2013.

4. Late in the afternoon of August 27, 2013, Peak received notice that Wyeth Ranch Homeowners Association had scheduled a foreclosure sale for the following day, August 28, 2013.

5. Upon receipt of this notice, Patricia Ortega, a Peak employee, promptly contacted Alessi & Koenig, LLC and asked if it would postpone the sale so that Marchai could arrange to pay off the lien.

6. Peak learned the following day, August 28, 2013, that Wyeth Ranch refused to postpone the sale to allow Marchai to pay off the lien.

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

EXECUTED this 3rd day of February 2016 in Woodland Hills, California.



SCOTT SAWYER

EXHIBIT 2

DECLARATION OF CHAIM FREEMAN

I, Chaim Freeman, declare as follows:

1. I am the trustee of Marchai, B.T., a business trust formed under the laws of the State of Nevada, plaintiff in *Marchai, B.T. v. Perez*, Case No. A-13-689461-C, which is pending in the Eighth Judicial District Court, Clark County, Nevada. I have made this declaration in support of Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment. I have personal knowledge of and am competent to testify to the facts set forth herein.

2. Marchai had no knowledge of Wyeth Ranch Homeowners Association's lien or its efforts to foreclose upon that lien, including the sale scheduled for August 28, 2013, until after the sale occurred.

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

EXECUTED on this 3rd day of February 2016 in Los Angeles, California.



CHAIM FREEMAN

EXHIBIT 3

DECLARATION OF DAVID J. MERRILL

I, David J. Merrill, declare as follows:

1. I am shareholder of David J. Merrill, P.C., attorney of record for Marchai, B.T. in *Marchai, B.T. v. Perez*, Case No. A-13-689461-C, which is pending in the Eighth Judicial District Court, Clark County, Nevada. I have made this declaration in support of Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment. I have personal knowledge of and am competent to testify to the facts set forth herein.

2. On December 2, 2015, David J. Merrill, P.C. substituted in the place of Law Offices of Les Zieve as counsel of record for Marchai.

3. On December 15, 2015, I received an electronic copy of the case file from the Law Offices of Les Zieve.

4. The electronic file received from the Law Offices of Les Zieve contained a Certificate of Custodian of Records Pursuant to NRS 52.260 from Wyeth Ranch Community Association, to which were attached a couple hundred pages of documents that the Law Offices of Les Zieve received in response to a subpoena duces tecum.

5. The Law Offices of Les Zieve added Bates numbers to the documents and produced them on October 19, 2015, with Plaintiff's Supplemental Disclosures.

6. Attached as Exhibit A to this declaration is a true and correct copy of the Certificate, along with a true and correct copy of one of the documents originally attached to the Certificate.

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

EXECUTED on this 3rd day of February 2016 in Las Vegas, Nevada.



DAVID J. MERRILL

EXHIBIT 3-A

EXHIBIT "B"

CERTIFICATE OF CUSTODIAN OF RECORDS PURSUANT TO NRS 52.260

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

NOW COMES Dawn Alexander, who after first being duly sworn deposes and says:

1. That the deponent is the Senior AR Administrator of Wyeth Ranch Community Association, and in his or her capacity as Senior AR Administrator is a custodian of records for Wyeth Ranch Community Association.

2. That Wyeth Ranch Community Association, is licensed to do business in the State of Nevada.

3. That on or about the 9th day of the month of October of 2015, Wyeth Ranch Community Association, was served with a Subpoena Duces Tecum in connection with a Law Suit Entitled MARCHAI B.T. VS. CRISTELA PEREZ, et al., Case No. A-13-689461-C, calling for the production of documents relating to the purchase of real property as more fully described in the subpoena.

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

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5. That the original of those records was made at or near the time of the act, event, condition, opinion, or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of Wyeth Ranch Community Association.

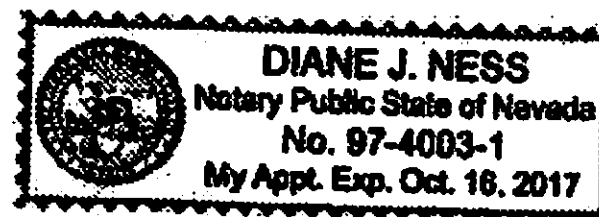
Don Alexander
CUSTODIAN OF RECORDS

SUBSCRIBED AND SWORN to before me

On this 17 day of the month of OCTOBER 2015

NOTARY PUBLIC in and for the
County of Clark, State of Nevada

My appointment expires: 10/16/2017



Brittney O'Connor

From: Samantha Michaels
Sent: Wednesday, August 28, 2013 9:18 AM
To: Brittney O'Connor; Michele Weaver
Subject: RE: 7119 Wolf Rivers - *Wyeth Ranch*

Importance: High

Hi Brittney.

Michele just received confirmation that they do NOT want to postpone.

From: Brittney O'Connor
Sent: Wednesday, August 28, 2013 9:07 AM
To: Michele Weaver; Samantha Michaels
Subject: FW: 7119 Wolf Rivers

Hello,

This property has a sale date set for TODAY at 10 am. There are 3 postponements remaining. Unless otherwise directed by the board we will use all postponements then go to sale on the 3rd date set. Please advise. The mortgage company would like an extension so they can pay off the account.

Thank you.

Brittney O'Connor
Accounting Clerk
CAMCO
2009 CAI Management Company of the Year
702-531-3382 - Office
702-531-3392 - Fax
www.camconeveda.com



From: Naomi Eden [<mailto:naomi@allessikoenig.com>]
Sent: Wednesday, August 28, 2013 9:01 AM
To: Brittney O'Connor
Subject: RE: 7119 Wolf Rivers

Three more left.

From: Brittney O'Connor [<mailto:Brittney.oconnor@camconeveda.com>]
Sent: Wednesday, August 28, 2013 8:59 AM

To: Naomi Eden
Subject: RE: 7119 Wolf Rivers

Naomi,
How many postponements are there?

Brittney O'Connor

Accounting Clerk

CAMCO

2009 CAI Management Company of the Year

702-531-3382 - Office

702-531-3392 - Fax

www.camcovevada.com



From: Naomi Eden [<mailto:naomi@alessikoenig.com>]

Sent: Wednesday, August 28, 2013 8:49 AM

To: Brittney O'Connor; Yvette Saucedo

Subject: 7119 Wolf Rivers

Good morning,

This one is set for sale today. The mortgage company is asking for an extension so they can get it paid off. Is it ok to postpone?

Thanks,

Naomi Eden, J.D.

Alessi & Koenig, LLC

www.alessikoenig.com

Our office closes at 2 pm on Fridays.

Las Vegas Office

9500 W. Flamingo Road, Suite. 205

Las Vegas, NV 89147

Telephone: (702) 222-4033

Facsimile: (702) 222-4043

Reno Office

1135 Terminal Way, Suite 106A

Reno, NV 89502

Telephone: (775) 626-2323

Facsimile: (775) 222-4043

Los Angeles Office

28914 Roadside Dr., Suite. F-4

Agoura Hills, CA 91301

Telephone: (818) 735-9600

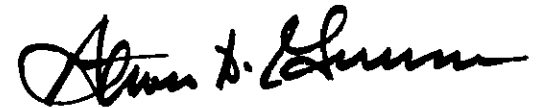
Facsimile: (818) 735-0096

Please be advised that Alessi & Koenig, LLC, may be acting as a debt collector attempting to collect a debt and any information you provide will be used for that purpose.

CONFIDENTIALITY NOTICE: The information contained in this electronic transmission, is privileged and confidential and is intended only for the recipient(s) named above. If the reader of this message is not the recipient(s) named above, or an authorized agent of such recipient(s) responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this electronic transmission in error. Any review, dissemination, distribution, or copying of this electronic transmission including any attachments is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately. Thank you.

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TAB 15



CLERK OF THE COURT

OMSJ

DIANA CLINE EBRON, ESQ.
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Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. VII

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

**SFR INVESTMENTS POOL 1, LLC'S
OPPOSITION TO MARCHAI B.T.'S
MOTION FOR SUMMARY JUDGMENT**

**Hearing Date: February 16, 2016
Hearing Time: 9:00 a.m.**

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

THRESHOLD PROCEDURAL ARGUMENT

On January 14, 2016, MARCHAI, B.T., a Bank Trust (“Marchai” or “the Bank”) filed its Motion for Summary Judgment. Said pleading totaled 67 pages, exclusive of the caption page, the table of contents, the table of authorities, the Certificate of Service, and 271 pages of exhibits. The brief grossly exceeds the page limit without permission of the court, or even seeking leave of the court, as required by Eighth Judicial District Court Rule 2.20(a).

In light of the above, SFR Investments Pool 1, LLC (“SFR”) hereby objects to the unapproved filing of said 67 page motion and moves the court to strike and not consider the excess pages, i.e., pages 31-67 as filed.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

SFR hereby opposes the Bank’s Motion for Summary Judgment (“Bank’s Mot.”). This Opposition is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court may entertain. This opposition is also based on SFR’s Motion for Summary Judgment (“SFR’s Motion” or “SFR’s Mot.”), which is incorporated fully herein by reference.

The Bank’s motion for summary judgment should be denied because the Bank knew about Wyeth Ranch Community Association’s (the “Association”) foreclosure sale, but instead of protecting its security interest, it chose not to pay the Association lien before the Association foreclosure sale, and also chose not to attend the sale and potentially save its security interest by bidding on the Property itself.

Further, the Bank chose not to record any instrument or file a lawsuit that would give notice to any subsequent purchaser of the Property that there were any purported irregularities with the foreclosure process. The Bank must accept the reality that the sale cannot be set aside and that its

1 deed of trust was extinguished at the Association foreclosure auction. Besides, any “irregularities”
2 (assuming it can even be called that) in the proceedings of the sale itself, is something of which
3 SFR would have no knowledge. **SFR can rely on the conclusive proof of the recitals of the**
4 **Association foreclosure deed, along with the presumption that a foreclosure sale is properly**
5 **conducted and a foreclosure deed is valid. The Bank has failed to introduce admissible**
6 **evidence to the contrary.**

7 The Bank’s circular reasoning relying on the price paid at auction alone provides no
8 evidence of any problems with the foreclosure sale process allowing this Court to find the sale
9 commercially unreasonable. Furthermore, the Bank ignores that the reasonableness of the price
10 paid must be determined by the context at the time of the sale. Here, SFR was the highest bidder
11 at the sale and the Bank provides no evidence of any fraud, unfairness, or oppression in the
12 procedures of the sale.

13 The Bank also expends considerable verbiage trying to convince this Court that the SFR
14 decision should not be applied retroactively to permit extinguishment of the Bank’s deed of trust.
15 Not only is the Bank is wrong, but the central case the Bank relies upon, Chevron Oil Co. v.
16 Hudson, 404 U.S. 97 (1971), is not even germane to the issues in this case.

17 The Bank’s facial due process arguments fail for the following reasons. **First**, the Bank
18 lacks standing to assert a due process violation because it received the foreclosure notices as
19 required by NRS 116.3116. **Second**, the Nevada Supreme Court already addressed the issue of
20 whether the non-judicial foreclosure statutes require notice and rejected both an as applied and
21 facial challenge in the SFR Investments Pool 1, LLC v. U.S. Bank, N.A. decision.¹ **Third**, the
22 Bank fails to do a proper due process analysis, which begins with identifying both a state action
23 **and** a state actor, who does not exist in this scenario. **Fourth**, the statutes require notices be sent
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28 ¹ 130 Nev. ___, 334 P.3d 408, 419 (2014). (“SFR” or “the SFR decision”).

1 to all junior lienholders, including the Bank. Even the dissent in SFR agreed as much. Finally, the
2 conclusive proof in the recitals demonstrates the Bank received all the due process required.

3 Not only should the Bank's motion for summary judgment be denied, but SFR's motion
4 for summary judgment should be granted because Nevada law is now clear: **the Bank's first deed**
5 **of trust was extinguished by the Association's non-judicial foreclosure sale.** SFR, 334 P.3d at
6 419. Further, pursuant to NRS 116.31166(2), the recitals in the foreclosure deed provide
7 conclusive proof that the Bank was given notice of the sale and failed to protect its interest. As
8 the Bank well knows, according to Nevada law, a foreclosure sale and the resulting foreclosure
9 deed are both presumed valid. Therefore, the Bank's motion must be denied, and summary
10 judgment entered in favor of SFR is appropriate.
11

12 **II. RESPONSE TO STATEMENT OF UNDISPUTED FACTS**

13 SFR does not dispute Marchai's statement of facts with the exception of the following:

14 **Disputed Fact No. 1: " . . . in 2011 Wyeth Ranch started a new foreclosure without**
15 **rescinding any of the prior notices and continued to accept payments from Perez."** (Bank's
16 Mot., 14:1-6).
17

18 SFR disputes this "fact" as multiple legal conclusions couched as multiple factual statements.
19 Plaintiff's own Exhibit 1-F, expressly provides that on March 9, 2011, Wyeth Ranch's agent,
20 Alessi & Koenig filed a *Rescission* of the earlier Notice of Trustee Sale, as Instrument
21 #201103090001741. However, regardless of what payments might have occurred earlier, here
22 Perez and the Bank were informed by that particular *Notice of Delinquent Assessment (Lien)*
23 recorded on December 20, 2011 (*See* Exhibit 2-Y to Bank's Mot.) that the total amount Perez owed
24 the Association was \$9,296.56. Additionally, as evidenced by that particular *Notice of Trustee's*
25 *Sale* recorded on July 31, 2013(*See* Exhibit 2-PP to Bank's Mot.), Perez's total amount owed to
26 the Association had grown to \$14,090.80; and as evidenced by the *Trustee's Deed Upon Sale*
27 recorded on September 9, 2013 (*See* Exhibit 2-RR to Bank's Mot.) said unpaid obligation had
28

reached \$14,677.80.

While the dispute over this fact defeats the Bank's motion for summary judgment, the truth or falsity of these facts have no bearing whatsoever on SFR's Motion for Summary Judgment, which can still be granted even if disputed fact No. 1 were true.

Disputed Fact No. 2: "... Alessi conducted the foreclosure sale, at which time SFR . . . purchased *Alessi's interest in the property for \$21,000.00.*" (Bank's Mot., 20:1-2; 9-13).

The Trustee's Deed Upon Sale (*See* Ex. 2-RR to Bank's Mot.), as prepared by Alessi & Koenig, LLC ("Alessi") (as Trustee), expressly provides that on August 28, 2013, Alessi conducted the foreclosure sale, at which time SFR Investments Pool 1, LLC (as Grantee), purchased Wyeth Ranch Community Association's (as Foreclosing Beneficiary), interest in the Property for \$21,000.00. Thus, the evidence clearly indicates SFR purchased the Association's interest. SFR disputes that it purchased "Alessi's interest" in the property. Again, the truth or falsity of these facts have no bearing whatsoever on SFR's Motion for Summary Judgment, which can still be granted even if disputed fact No. 2 were true.

III. ARGUMENT

A. Summary Judgment Standard.

Summary judgment is only appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v. Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964).

B. The Association Foreclosure Deed is Presumed Valid, and SFR Can Rely on the Recitals Contained Therein as Conclusive Proof of the Association's Compliance With the Law

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

“A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof.” Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) “These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” Id. (citing NRS 47.180.). Here, for the Bank to prevail, it has the burden to prove that it is more probable than not that the Association foreclosure sale and the resulting foreclosure deed are invalid. Yet the Bank has not produced any admissible evidence to prove such an allegation that would allow the sale to be set aside.² To overcome the presumption of validity, the Bank must plead and prove a claim for fraud with particularity, or allege some unfairness or oppression that is not overshadowed by its own bad acts. The Bank has waived any right to challenge the sale.

Furthermore, as elaborated in SFR's Motion, in SFR, a foreclosure deed “*reciting* compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all other persons.’” SFR, 334 P.3d at 411-412 (quoting NRS 116.31166(2)). SFR's Mot., 7-8. In fact, the statute actually goes further, stating that the recitals “are conclusive proof of the matters recited.” NRS 116.31166(1). In addition, while here SFR is a bona fide purchaser for value,³ under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra,

² See Sections III(F) and III(H) herein.

³ See SFR's Mot., Sec. III(C) and Sec. III(H), infra.

1 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh'g (Jan. 31, 2001)
2 (holding that no limitation of bona fide purchaser can be read into a statute providing a conclusive
3 presumption).

4 The Bank has not produced any admissible evidence to prove that the Association and its
5 agent, Alessi failed to comply with all statutory notice requirements of NRS 116.3116. A recent
6 Nevada Supreme Court opinion held, “[T]he “conclusive” recitals concern default, notice and
7 publication of the NOS, all statutory prerequisites to a valid HOA lien foreclosure sale as stated in
8 NRS 116.31162 through NRS 116.31164...” Shadow Wood Homeowners Association, Inc. v.
9 New York Community Bancorp, Inc., 132 Nev. ___, ___ P.3d ___ (Adv. Op. No. 5, January 28,
10 2016). The bank in Shadow Wood never disputed its default (it was the owner of the Property
11 when the association foreclosed), never disputed the sale process as not being conducted in a
12 proper and lawful manner and never took any protective measures to prevent the Association
13 foreclosure sale from taking place. Id. at p.19

14 Just like in Shadow Wood, here the Bank does **not** dispute that the former homeowner
15 defaulted. And just like in Shadow Wood, the Bank does not dispute that the Association and its
16 agent, Alessi, complied with the notice and publication requirements of NRS 116.31162 through
17 NRS 116.31164. The Bank has not provided any admissible evidence that there was any
18 irregularity with the foreclosure sale process. In fact, the Bank does not deny that its predecessors
19 in interest CMG Mortgage Inc., and CitiMortgage, Inc., received all the statutorily required
20 notices. (*See* Exhibits 2-U, 2-BB, 2-JJ, and 2-MM to Bank’s Mot.)

21 Despite being mailed all the necessary notices, the Bank did absolutely nothing to protect
22 its interest. Bank has not introduced any facts into evidence suggesting: that it attempted to
23 purchase the property at the foreclosure sale; or, that it filed any actions to challenge the
24 foreclosure sale. As such, according to the Nevada Supreme Court’s binding interpretation of NRS
25 116.3116(2), because the Bank did not protect its interest after notice of the properly conducted
26 Association foreclosure sale, the first deed of trust was extinguished as a matter of law. Therefore,
27 the Bank’s motion for summary judgment should be denied, and summary judgment in favor of
28 SFR is appropriate.

1 **C. No Issues of Material Fact Exist as to Commercial Reasonableness.**

2 SFR thoroughly addressed the commercial reasonableness argument in its Motion,⁴ and
3 therefore will not reiterate it in full here. That being said, the Bank's claim that this Court should
4 deny SFR's motion for summary judgment because of the price paid for the Property was
5 commercially unreasonable is untenable.⁵ The Bank's Commercial Unreasonableness argument
6 is weak at best.

7 First, the Bank argues that a wide discrepancy between the sale price and the value of the
8 collateral compels close scrutiny into the commercial reasonableness of the sale.⁶ However, to
9 compare the amount SFR paid for the Property in late 2013 (in the midst of an economic downturn
10 and in light of the lenders' refusal to acknowledge that NRS 116.3116(2) gave associations true
11 super-priority liens) to the earlier sale price or original loan amount made in 2004 (during the
12 height of the market bubble) is misleading and disingenuous. The original loan amount provides
13 no information as to the type of sale and distressed real estate market conditions in Las Vegas in
14 August 2013.⁷ As the Hon. Philip Pro has recently noted, the reasonableness of the price paid
15 must be assessed based on the circumstances in the market at the time:

16 Before the Nevada Supreme Court issued SFR Investments, purchasing property at
17 an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit.
18 Nevada state trial courts and decisions from the United States District Court for the
 District of Nevada were divided on the issue of whether HOA liens are true priority
 liens such that their foreclosure extinguishes the first deed of trust on the property.

19 ⁴ See SFR's Mot., pp. 11-16 for a discussion of commercial reasonableness, fully incorporated herein by
20 reference.

21 ⁵ The Bank's reliance on Will v. Mill Condominium Owner's Association, 848 A.2d 336 (Vt. 2004), is
22 misplaced. The case is materially distinguishable. In Will, the court voided an association non-judicial
23 foreclosure sale as commercially unreasonable because: (1) the price was low; (2) there was only one
 bidder; and (3) the association told the bidder what price would be acceptable. In addition, the homeowner
 had tendered the amount to cure the lien on the same day as, but after the sale due to an apparent
 miscommunication between the HOA and the homeowner as to the sale date.

24 ⁶ Here Bank argues that SFR "valued the property at \$307,403.00" simply because \$307,403.00 is the
25 amount shown in the "Transfer Tax Value" field (not filed in by SFR) on the State of Nevada Declaration
26 of Value form as attached to the Trustee's Deed Upon Sale (See Exhibit 2-RR to Bank's Mot.). Bank
 then compares the price paid, \$21,000.00 to the Transfer Tax Value, and claims close scrutiny is
 warranted. (Bank's Mot. pp. 66:8-14) Commercial reasonableness analysis deals with looking at whether
 there was conduct that led to the low price, not simply comparing price to the assessor's Transfer Tax Value.

27 ⁷ Even if the Bank were to try and bring some argument regarding the "value" of the Property at
28 the time of the Association foreclosure sale, it would be precluded as it disclosed no such evidence
 during discovery and provided no expert report as to "value" at the relevant time.

1 SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale
2 risked purchasing merely a possessory interest in the property subject to the first
3 deed of trust. This risk is illustrated by the fact that title insurance companies
4 refused to issue title insurance policies on titles received from foreclosures of HOA
super priority liens absent a court order quieting title. (Mot. to Remand to State
Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy
between the purchase price a buyer would be willing to pay and the assessed value
of the property is to be expected.

5 Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp.3d 1131 (2015). Forced sale
6 situations bring prices much lower than in a situation of willing seller and buyer. See BFP v.
7 Resolution Trust Corporation, 511 U.S. 531, 537-538, 114 S.Ct. 1757 (1994).⁸

8 The Ninth Circuit Court of Appeals, in recent, similar cases, rejected arguments by lenders
9 that motions to dismiss could be affirmed on the basis of commercial unreasonableness, because
10 “‘inadequacy of price, however gross, is not in itself a sufficient ground’ for setting aside a sale
11 without ‘proof of some element of fraud, unfairness or oppression’” causing the low price, which
12 the bank had not identified. LVDG Series 125 v. Welles, No. 14-15859 at ¶ 3 (Memorandum order
13 of reversal and remand) (9th Cir. Aug. 27, 2015)⁹ (quoting Brunzell v. Woodbury, 85 Nev. 29, 32,
14 449 P.2d 158, 159 (1969) (internal citations omitted); see also, Kal-Mor-USA, LLC v. Bank of
15 America, N.A., No. 13-16591 at ¶ 2 (Memorandum order of reversal and remand) (9th Cir. August
16 27, 2015)¹⁰ (same).

17 Second, as Shadow Wood confirmed, demonstrating that an association sold a property at
18 its foreclosure sale for an inadequate amount is not enough to set aside that sale; there must also
19 be a showing of fraud, unfairness, or oppression. Shadow Wood at p. 15. citing Long v. Towne,
20 98 Nev. 11, 14, 639 P.2d 528, 530 (1982) (refusing to unwind a sale where the mortgage had been
21 fully paid and the property was sold at an association foreclosure sale for \$3,000). The Court again
22 noted that it adopted a rule in Golden v. Tomiyasu, that “‘inadequacy of price, **however gross**, is
23 not in itself a sufficient ground for setting aside a trustee’s sale legally made; there must be in
24 addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about
25

26 ⁸ See SFR’s Mot., 13-16, for a full analysis of BFP v. Resolution Trust Corp.

27 ⁹ Available at <http://cdn.ca9.uscourts.gov/datastore/memoranda/2015/08/27/14-15859.pdf>

28 ¹⁰ Available at <http://cdn.ca9.uscourts.gov/datastore/memoranda/2015/08/27/13-16591.pdf>

1 the inadequacy of price.” Shadow Wood, at p.13 (quoting Golden, 79 Nev. 503, 514, 387 P.2d
2 989, 995 (1964) (internal citations omitted) (emphasis added)).¹¹ In other words, price alone is
3 never enough to unwind a sale. The Golden Court even explained examples of irregularities, such
4 as

5 [S]everal lots have been sold in bulk where they could have been sold separately,
6 or sold in such manner that their full value could not be realized; if bidders have
7 been kept away; if any undue advantage has been taken to the prejudice of the
8 owner of the property; or he has been lulled into a false security; or if the sale has
been collusively or in any other manner conducted for the benefit of the purchaser,
and the property has been sold at a greatly inadequate price...

9 Golden, at 516.

10 Nevada law is clear: adequacy of price (also termed commercial reasonableness by other
11 lenders) is not judged by the price paid, but by the sale process, and if the sale process was fair
12 and not fraudulent, price alone will never be sufficient to unwind a sale.

13 Third, a balance of the equities requires this Court to weigh the Bank’s (in)actions. The
14 notice of sale was recorded on July 31, 2013, and the sale did not occur until August 28, 2013.
15 The Bank “knew the sale had been scheduled and that it disputed the lien amount, yet it did not
16 attend the sale, request arbitration to determine the amount owed, or seek to enjoin the sale pending
17 judicial determination of the amount owed.” Shadow Wood, at p.19. Furthermore, the notice of
18 sale included the required NRS 116.3116(3)(b) warning:

19 **WARNING! A SALE OF YOUR PROPERTY IS IMMINENT!**
20 **UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE**
21 **BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME,**
EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT
22 **BEFORE THE SALE DATE.**

23 Notice of Sale, Bank’s Mot., Ex. 2-OO.

24 In addition to the required warning, the Association’s notice of sale listed the lien amount
25 as \$14,090.80. The Bank did not pay the stated lien amount on the notice, or any other amount for

26 ¹¹ If the Bank attempts, in its Reply, to raise an issue of inadequacy of price based on the
27 Restatement as discussed in dicta in Shadow Wood, any such argument must fail as the Bank
28 provided no evidence of “value” at the time of the foreclosure sale. See n. 8, supra. As such, the
Bank has provided no comparator. Thus, if this Court is to consider price paid by SFR at all, which
it should not, then the Bank’s failure to provide evidence should be construed in favor of SFR.

1 that matter. In fact, the Bank did **less** than the lender in Shadow Wood.

2 Here, the Bank has offered no evidence of any fraud, unfairness or oppression in the sale
3 process that would justify setting aside the sale. The Association's sale was publically noticed, as
4 required by statute, multiple bidders attended the auctions, and neither the homeowner nor the
5 Bank paid the full amount to cure the lien before the sale. Here, viewing the transaction as a whole,
6 the sale was commercially reasonable, and as a matter of law, the Bank cannot rely on SFR's bid
7 as evidence that it was not.

8 Finally, NRS §116.31164 and §116.31166 are clear and unambiguous. Neither contain a
9 requirement that the sale be "commercially reasonable." The Bank's commercial unreasonableness
10 argument fails. This becomes even more evident when SFR's bona fide purchaser status is
11 considered.

12 **D. SFR is a Bona Fide Purchaser for Value**

13 Even if the Bank could somehow conjure up evidence to support its position that the
14 Association sale was invalid (which it cannot), the Bank's argument for equitable relief fails
15 because SFR is a bona fide purchaser for value (BFP). As discussed in SFR's Motion, SFR has
16 the valid defense of being a BFP. See SFR's Mot., pp. 10-11. To be clear, Nevada law does not
17 require that SFR be a bona fide purchaser to rely on the recitals in the foreclosure deed, but if
18 there were any irregularities with the Association sale, as long as SFR did not participate in
19 causing the irregularities, they cannot be imputed to SFR. In that regard, SFR can rely on the
20 defense that it was a bona fide purchaser. A BFP purchases real property: (i) for value; and (ii)
21 without notice of a competing or superior interest in the same property. Berge v. Fredericks, 95
22 Nev. 183, 185, 591 P.2d 246, 247 (1979). A "purchaser for value" is one who has given "valuable
23 consideration" as opposed to receiving the property as a gift. Id. at 248; Allen v. Webb, 87 Nev.
24 261, 266, 485 P.2d 677, 680 (1971) ("A specific finding of what the consideration was may be
25 implied from the record."). Finality in foreclosure sales to bona fide purchasers is required to
26 avoid chilled bidding. These continued attacks by the lenders on the association sales causes the
27 very issues with price that the lenders then complain of in their attacks on commercial
28 reasonableness.

1 First, here, SFR paid valuable consideration for the Property at the foreclosure sale.
2 Although the Bank believes that SFR purchased the Property for an amount lower than the
3 Property's actual worth, that SFR paid "valuable consideration" cannot be contested. See Shadow
4 Wood at p. 22. The question is not whether the consideration is adequate but whether it is valuable.
5 Id at p. 22. The fact that the foreclosure sale purchaser purchased the property for a "low price"
6 did not in itself put the purchaser on notice anything was amiss with the sale. Id. at 23 (quoting
7 Poole v. Watts, 139 Wash. App. 1018 (2007)).

8 Second, at the time of the sale, SFR had no notice of a competing or superior interest in the
9 Property. The public records showed only that (i) a deed of trust was recorded after the Association
10 perfected its lien by recording its declaration of CC&R; (ii) there was a delinquency by the
11 homeowner, which resulted in the Association instituting foreclosure proceedings; and (iii) after
12 complying with NRS Chapter 116, sold the Property at a public auction. In fact, according to
13 Shadow Wood, the Bank cannot even argue the "simple fact that the HOA trustee is attempting to
14 sell the property, and divest the title owner of its interest, is enough to impart constructive notice
15 onto the purchaser that there may be an adverse claim to title." Id. at p. 23. "Doing so would have
16 this Court hold that a purchaser at a foreclosure sale can never be bona fide because there is always
17 the possibility that the former owner will challenge the sale post hoc." Id. So, when an association's
18 foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices,
19 such as the case here, and without any facts to indicate the contrary, the purchaser would have only
20 "notice" that the former owner had the ability to raise an equitably based post-sale challenge, the
21 basis of which is unknown to that purchaser. Id. That the Bank retained the ability to bring an
22 equitable claim to challenge the Association's foreclosure sale is not enough in itself to
23 demonstrate that SFR took the Property with notice of any potential future dispute as to title.
24 Between the date of the Notice of Sale was recorded (July 31, 2013), and the date SFR purchased
25 the Property (August 28, 2013), the Bank never recorded a lis pendens or other document alleging
26 any problems with the foreclosure process or the foreclosure sale, and did not attend the sale and
27 announce any dispute with the Association. See SFR's Mot., Ex. B, ¶ 6. Therefore, like the Bank
28 in Shadow Wood, the Bank here point to no other evidence indicating that SFR had notice before

1 it purchased the Property, either actual or constructive, or inquiry, as to the Bank's attempts to
2 "tender" the lien and prevent the sale.

3 Additionally, SFR has no relationship with the Association or Alessi, except as a purchaser
4 of property. Id. at ¶¶ 8, 9. Therefore, nothing known to the Association or Alessi about any
5 purported irregularities in the foreclosure process could be deemed known by SFR. Nevertheless,
6 the Bank has not alleged any facts or introduced admissible evidence that SFR had any knowledge
7 precluding it from BFP status, other than an impotent deed of trust. All told, SFR is a BFP.

8 Even if the Bank could present some credible evidence that SFR somehow knew that the
9 Bank's interest was superior for some reason other than the Bank's faulty interpretation of the
10 NRS Chapter 116, the Bank would still have to prove that SFR was not a BFP **and** that SFR
11 somehow induced the Association to fraudulently sell the Property to it. Bailey v. Butner, 64 Nev.
12 1, 8-9, 176 P.2d 226, 229-230 (1947).

13 In Shadow Wood, the Nevada Supreme Court ruled, "when sitting in equity, however,
14 courts must consider the entirety of the circumstances that bear upon the equities. Shadow Wood,
15 132 Nev. ___, ___ P.3d ___ at p. 20 (quoting, In re Petition of Nelson, 495 N.W.2d 200, 203
16 (Minn. 1993). Further, the Court found that consideration of harm to potentially innocent third
17 parties is especially pertinent where the bank did not use the legal remedies available to it to
18 prevent the property from being sold to a third party, such as seeking a temporary restraining order
19 and preliminary injunctions and filing of lis pendens on the property. Id. at p. 21, fn. 7. Here, just
20 like the bank in Shadow Wood, the Bank did not use the various legal remedies that were available
21 to it, such as getting a temporary restraining order, preliminary injunction and filing of a lis
22 pendens. (Much like the Bank made SFR do in hundreds of cases prior to the SFR decision at a
23 substantial cost to SFR.) Instead, the Bank chose to do nothing. And just like the third party
24 purchaser in Shadow Wood, SFR is also a party in this action seeking to quiet title, claiming a
25 right to the Property as the foreclosure purchaser to whom the deed had been delivered. Because
26 the evidence does not show SFR had any notice of the pre-sale dispute between the Bank and the
27 Association, the potential harm to SFR must be taken into account and further defeats the Bank's
28 entitlement to summary judgment. The Bank simply cannot show "that the equities sway[] so far

1 in its favor as to support setting aside” the sale to SFR, a BFP, with no knowledge of any pre-sale
2 dispute between the Bank and the Association. See Shadow Wood, at p. 24. Court may not set
3 aside the Association foreclosure sale because that would harm SFR, an innocent third party
4 purchaser who is without any knowledge of any pre-sale dispute between the Bank and the
5 Association.

6 Where the complaining party has access to all the fact surrounding the questioned
7 transaction and merely makes a mistake as to the legal consequences of his act, equity should
8 normally not interfere, especially where the rights of third parties might be prejudiced thereby.”
9 Id. at 24 (quoting Nussbaumer v. Superior Court in & for Yuma Cty., 489 P.2d 843, 846 (Ariz.
10 1971.) Here, the Bank did not “tender” the amount provided in the notice of sale, as statute and
11 the notice itself instructed, and did not meet its burden to show that no genuine issue of material
12 fact existed regarding the proper amount of the Association’s lien or SFR’s bona fide status. The
13 Bank’s motion should be denied and summary judgment in favor of SFR is warranted.

14 **E. Actual Notice is not Required to Satisfy Due Process, But Even if it Was, the**
15 **Bank Received Actual Notice and Lacks Standing to Raise a Facial Challenge**

16 The Bank claims that the failure of NRS 116 is that it did not require actual notice to
17 Lenders. See Bank’s Mot., 41. Even if it were required (which it is not) the Bank received actual
18 notice from the foreclosing agent, Alessi. In fact, the Bank does not deny that it received a copy
19 of the Notice of Default and Notice of Sale.¹² (See Exhibits 2-AA and 2-BB; 2-MM and 2-PP to
20 Bank’s Mot.) Thus, the Bank lacks standing to assert a Facial challenge. see also Wiren v. Eide,
21 542 F.2d 757, 762 (9th Cir. 1976) (“receipt of actual notice deprives [appellant] of standing to
22 raise the claim” that the statutory notice scheme violated due process); see also Green Tree
23 Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one
24 receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional).
25 Any irregularity in notice does not violate due process where one has actual notice of the action to
26 be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 272, 130 S.Ct. 1367, 1378

27 ¹² Whereas on December 2, 2015, Bank failed to attend its duly noticed Deposition before the close
28 of discovery in this matter, Bank is now precluded from introducing contrary evidence on this
issue.

(2010) (debtor’s failure to serve a summons and complaint does not violate due process where creditor received “actual notice of the filing and contents of [debtor’s Chapter 13] plan.”); see also In re Medaglia, 52 F.3d 451, 455-56 (2d Cir. 1995) (“[D]ue process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.”) (cited with favor in SFR, 334 P.3d at 418.) Here, the Bank knew about the Association foreclosure sale when it received notice of the sale and chose not to take action to prevent the sale and therefore cannot claim injury as a result of the noticing provisions of the statute.

Although Nevada does not have the same Article III standing requirements as federal courts, “Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief.” Kahn v. Dodds (In re AMERCO Derivative Litig.), 252 P.3d 681, 694, 2011 Nev. LEXIS 18, *19-20 (Nev. 2011) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). “In cases for declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements.”^[1] Stockmeier v. Nev. Dep’t of Corr. Psychological Review Panel, 122 Nev. 385, 393, 135 P.3d 220, 225-226 (2006) (citing Bryan, 102 Nev. at 525-26, 728 P.2d at 444-45); see also Sereika v. State, 114 Nev. 142, 151, 955 P.2d 175, 180 (1998) (holding that Sereika lacked standing to challenge the constitutionality of a potentially applicable statute on the basis that it may be unconstitutionally applied to others not at issue in the case). Specifically, to demonstrate constitutional standing, the Bank must demonstrate (1) it suffered an “injury in fact” to a legally protected interest; (2) there is a causal connection by what the injury and the conduct complained of; and (3) it is likely the injury would be redressed by a favorable decision.” In this instance, the Bank has not been able to

^[1] To be sure, the Nevada Supreme Court in Stockmeier stated that “where the Legislature has provided the people of Nevada with certain statutory rights, we have not required constitutional standing to assert such rights but instead have examined the language of the statute itself to determine whether the plaintiff had standing to sue.” 122 Nev. at 393, 135 P.3d at 226. Here, NRS 116.3116 does **not** establish the standing criteria for lawsuits against a homeowner association or their trustee for non-compliance with this chapter. For comparison, the Stockmeier court explained that the applicable NRS 241.037(2) stated “any person denied a right conferred by [NRS Chapter 241] may sue,” id.; no such statement appears in NRS Chapter 116.

1 demonstrate that it has standing to claim the applicable statutes are unconstitutional. Miller v.
2 Warden, Nevada State Prison, 112 Nev. 930, 936, 921, P.2d 882, 885 (1996).

3 In sum, because the Bank was provided with actual notice of the Association's non-judicial
4 foreclosure sale, it lacks standing to assert its claim that NRS116.3116 facially violates its due
5 process rights. Summary judgment in favor of SFR is appropriate.

6 Assuming arguendo that the Bank had not received notices (which it did), however, its
7 argument that this alleged lack of notice deprived it of due process fails. The Bank points to the
8 Mennonite and Mullane decisions to support its position that any party must receive actual notice
9 to satisfy due process. See Bank's Mot., pp. 54-59. This is patently inaccurate, constituting a
10 rejection of United States Supreme Court precedent. To be clear, due process, if it were required
11 here, does not require actual notice. Specifically, "our cases have never required actual notice."
12 Dusenbery v. U.S., 534 U.S. 161, 171 (2002). Due process requires only that the noticing be
13 "reasonably calculated...to apprise interested parties of the pendency of the action[.]" Mullane v.
14 Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). If a notice identifies an event that
15 will impact an individual's property interest, then due process is satisfied. United Student Aid
16 Funds, Inc. v. Espinosa, 559 U.S. 260, 272 (2010) (bankruptcy plan's filing and contents); Jones
17 v. Flowers, 547 U.S. 220, 239 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture);
18 Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798 (tax sale).

19 Here, not only did the Association send the notice, but the notice satisfied due process
20 because it was "reasonably calculated...to apprise [the Bank] of" the pendency of the
21 Association's foreclosure. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. at 314. Thus, the
22 statutes worked just as recognized by the Nevada Supreme Court in the SFR decision, where the
23 majority recognized that notices of default and sale were required to be sent to junior lienholders,
24 just like the Bank, and the dissent agreed. SFR, 334P.3d at 411, 417, 418, 422 (noting the
25 incorporation of NRS 107.090(3)(b) and (4) through NRS 116.31168).

26 The Bank simply refuses to acknowledge that its own actions caused its loss, not those of
27 the Association, its agent, and certainly not those of SFR. The Bank's motion should be denied
28 and SFR's motion should be granted. This is especially so in light of the fact that the recitals in the

1 Association foreclosure deed are conclusive as to the noticing and that the Bank failed to provide
2 any admissible evidence to rebut that conclusion. Conversely, SFR's motion for summary
3 judgment should be granted.

4 **F. The Noticing Statutes are Constitutional**

5 Even if the Bank had standing to raise a facial constitutional challenge, which it does not,
6 it still cannot meet its burden to overcome the presumption of validity, the fact that the issue has
7 already been decided, the Constitutional avoidance doctrine, and the fact that NRS 116.3116-
8 116.31168 requires notices of default and sale be sent to all junior lienholders of record.

9 **1. Standard for a Constitutional Challenge**

10 The Bank cannot meet the high standard of showing that the noticing provisions of Chapter
11 116's non-foreclosure sales provisions were unconstitutional. Whether a statute is constitutional is
12 a question of law. Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 509, 217 P.3d 546,
13 551 (2009). "Statutes are presumed to be valid, and the challenger bears the burden of showing
14 that a statute is unconstitutional." Id. quoting Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682,
15 684 (2006)). In reasonably interpreting the statute, the court should construe the words "in light
16 of public policy and the spirit of the law." Id. (quoting Desert Valley Water Co. v. State, Engineer,
17 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1988)). The statute should be given its plain meaning,
18 construed as a whole and given meaning to all words or phrases. Id.

19 The party making a facial challenge to a statute "bears the burden of demonstrating that
20 there is no set of circumstances under which the statute would be valid." Déjà vu Showgirls v.
21 State, Dept. of Tax., 130 Nev. ___, ___, 334 P.3d 392, 398 (2014); see Flamingo Paradise
22 Gaming, 125 Nev. at 511, 217 P.3d at 552 (citing Washington State Grange v. Washington State
23 Republican Party, 552 U.S. 442, 449, 128 S.Ct. 1184, 1190 (2008) (noting that the Supreme Court
24 of the United States reaffirmed the requirement that a statute be void in all its application s to be
25 successful, when civil statutes are at issue). Facial challenges are generally disfavored because
26 they rest on speculation, and "run contrary to the fundamental principle of judicial restraint that
27 courts should neither "anticipate a question of constitutional law in advance of the necessity of
28

1 deciding it” nor “formulate a rule of constitutional law broader than is required by the precise
2 facts to which it is to be applied.” Washington State Grange, 552 U.S. at 450-51.

3 Courts must “avoid considering the constitutionality of a statute unless it is absolutely
4 necessary to do so.” Sheriff v. Andrews, 128 Nev. ___, ___, 286 P.3d 262, 263 (2012). Likewise,
5 courts “will not decide the constitutionality of a statute based upon a supposed or hypothetical case
6 which might arise thereunder.” Carlisle v. State, 98 Nev. 128, 131, 642 P.2d 596, 598 (1982).
7 These precepts emanate from and perpetuate the constitutional avoidance doctrine. Ashwander v.
8 Tenn. Valley Auth., 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring). Justice
9 Frankfurter described this doctrine as “the most fundamental principle of constitutional
10 adjudication [.]” U.S. v. Lovett, 328 U.S. 303, 320 (1946) (Frankfurter, J., concurring).

11 **2. The Nevada Supreme Court Already Decided the Issue**

12 The Bank acts as if the Nevada Supreme Court never issued the SFR opinion. They are
13 wrong. That case demonstrated at least one circumstance in which the statute was valid, and
14 therefore their facial challenge cannot stand. Washington State Grange, 552 U.S. at 449 (the
15 challenger must establish “that no set of circumstances exists under which the Act would be valid,”
16 *i.e.*, that the law is unconstitutional in all of its applications.”) (quoting United States v. Salerno,
17 481 U.S. 739, 745 (1987)). The inquiry should stop here.

18 Second, the Nevada Supreme Court did both a facial and as applied analysis, rejecting both.
19 Both the majority and dissent recognized that notice must be sent to all junior lienholders. The
20 majority expressly rejected the Bank’s argument that notice is limited to only lienholders who
21 “opt-in”, noting the incorporation of NRS 107.090(3)(b)(4) which, in the case of a bank foreclosure
22 sale, requires notice of sale to “[e]ach other person with an interest whose interest or claimed
23 interest is subordinate to the deed of trust.” SFR, 334 P.3d at 411. In an association foreclosure
24 sale those words must be read as notice to those with liens subordinate to the association’s lien.

25 Further, the majority found the lender’s due process argument “protean,” noting that since
26 Chapter 116 was adopted in 1991, the lender “was on notice that by operation of the statute, the
27 [earlier recorded] CC&R’s might entitle the HOA to a super priority lien at some future date which
28 would take priority over a [later recorded] first deed of trust.” Id. at 418 (quoting with approval

1 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F.Supp.2d 1142, 1152 (D. Nev.
2 2013) (rejecting a due process challenge to a nonjudicial foreclosure of a superpriority lien)).¹³
3 The dissent agreed with this interpretation, stating “[a]s the majority points out, by incorporating
4 certain notice provisions from Chapter 107, Chapter 116 appears to mandate that the association
5 mail the notice of default and notice of sale to the first security holders who have recorded their
6 security interest when the association is foreclosing on its lien.” SFR, 334 P.3d at 422 (Gibbons,
7 C. J., dissenting) (citing NRS 116.31168(1) and NRS 107.090).

8 Finally, the Nevada Supreme Court considered and rejected a facial challenge, stating “[t]o
9 the extent U.S. Bank argues that a statutory scheme that gives an HOA a superpriority lien that
10 can be foreclosed nonjudicially thereby extinguishing an earlier filed deed of trust, offends due
11 process, the argument is a nonstarter.” Id. at 418.

12 Notably, Nevada’s highest court rejected an additional facial challenge when deciding to
13 deny rehearing of SFR. Five amicus curiae briefs were accepted and considered in support of U.S.
14 Bank’s petition for rehearing. In the brief filed on behalf of the United Trustees Association and
15 American Legal & Financial Network, the amici argued “the Majority’s analysis runs afoul of due
16 process protections because the statutes do not absolutely require the HOA in a non-judicial
17 foreclosure to send notice of the lien or sale to the first mortgagee” and “when the first mortgagee
18 is not required to get notices of delinquency, default and sale. . . .” Amicus Brief in Support of the
19 Respondent U.S. Bank, N.A. as Trustee for the Certificate Holders of the Banc of America
20 Mortgage Pass-Through Certificates, Series 2008-A’s Petition for Rehearing Seeking Affirmance,
21 Amicus Curiae, United Trustees Association and American Legal & Financial Network, at pp.3-4
22 and 5.¹⁴ As the SFR court clearly stated in denying rehearing, “[w]e have considered the briefs of
23 amici curiae in resolving the petition for rehearing.” SFR Investments Pool 1, LLC v. U.S. Bank,
24 N.A., No. 63078, Order Denying Rehearing, at 2 n.1 (Nev. Oct. 16, 2014).¹⁵ The Bank’s motion

25 _____
26 ¹³ Limbwood recognized the notices as “statutorily required” to be sent to the lender. Limbwood, 979
F.Supp.2d at 1152 (“To the extent [the Bank] contends [the Association] failed to provide the required
notices. . . .”).

27 ¹⁴ Available at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=31261>, document number 14-
34536.

28 ¹⁵ Available at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=31261>, document number 14-

1 should be denied with prejudice because the Nevada Supreme Court has already decided and
2 rejected their constitutional arguments. Conversely, summary judgment in favor of SFR is
3 appropriate.

4 3. **There is No State Actor Involved;**
5 **NRS 116 Does Not Invoke Due Process Considerations**

6 Even if this Court opts to do a constitutional analysis, in derogation of the constitutional
7 avoidance doctrine, it must begin with finding that the Bank's deprivation was caused by state
8 action **and** a state actor. Their Motion ignores these requirements entirely. This is so because in
9 order for due process to be implicated, there must be a state actor. Brentwood Acad. v. Tenn.
10 Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001). If there is no state actor, then due
11 process—including concerns about “notice”—is inapplicable. Id.; Rendell-Baker v. Kohn, 457 U.S.
12 830, 838 (1982) (“If the action of the respondent school is not state action, our inquiry ends.”).

13 Moreover, **the burden of establishing a state actor is on the party claiming a**
14 **deprivation of a constitutionally protected interest.** Flagg Bros., Inc. v. Brooks, 436 U.S. 149,
15 156 (1978). Such a burden is steep and “necessarily fact-bound [.]” Brentwood, 531 U.S. at 298.
16 Unlike mechanics liens, which are not only creatures only of statute but require the use of the
17 judicial system to enforce, there is no state actor enforcing an association lien. Even if this Court
18 were to presume state action arising from the adoption of the UCIOA as Chapter 116, a private
19 party relying on a state-created procedural scheme is not sufficient to invoke due process:

20 While private misuse of a statute does not describe conduct that can be attributed
21 to the State, the procedural scheme created by the statute obviously is the product
22 of state action. This is subject to constitutional restraints and properly may be
23 addressed in a § 1983 action, **if the second element of the state-action**
24 **requirement is met as well.**

25 Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 941 (1982) (emphasis added). In Lugar, the
26 “second element of the state-action requirement” is “the party charged with the deprivation must
27 be a person who may fairly be said to be **a state actor.**” Id. at 937 (emphasis added). Again, due
28 process’ protections do not extend to private actor’s private conduct. Am. Mfr. Mut. Ins. Co. v.

34519.

1 Sullivan, 526 U.S. 40, 50 (1999). Rather, the private actor must be performing functions that are
2 **traditionally and exclusively performed by governments**. Flagg Bros., 436 U.S. at 158. As one
3 federal district court noted, “the power to impose fines or enforce liens are not traditional and
4 exclusive governmental functions.” Snowdon v. Preferred RV Resort Owners Ass’n, 2:08-cv-
5 01094-RCJ-PAL, at 14:14-15 (D. Nev. Apr. 1, 2009), aff’d, 379 Fed. Appx. 636 (9th Cir. 2010)
6 (“[Association] did not perform the traditional and exclusive public function of municipal
7 governance.” (internal citation omitted)).

8 Further, United States Supreme Court has determined a right’s origins (i.e. statutory or
9 common law) do not dictate whether a private entity is a state actor. S.F. Arts & Athletics, Inc. v.
10 USOC, 483 U.S. 522, 547 (1987) (“Nor is the fact that Congress has granted the USOC exclusive
11 use of the word ‘Olympic’ dispositive. All enforceable rights in trademarks are created by some
12 governmental act, usually pursuant to a statute or the common law. The actions of the trademark
13 owners nevertheless remain private.”). Similarly, that Court has never held the enactment of a
14 remedy transforms a private entity into a state actor. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S.
15 40, 53 (1999) (“We have never held that the mere availability of a remedy for wrongful conduct,
16 even when the private use of that remedy serves important public interests, so significantly
17 encourages the private activity as to make the State responsible for it.”).

18 Due process is not implicated because there is no state actor. Even if it was, however, the
19 constitutional avoidance doctrine and the SFR Court have already determined that due process is
20 not offended by NRS 116 non-judicial foreclosure statutes.

21 **4. The Statutes Require Notice to All Junior Lienholders of Record**

22 Due process, if it applies here, requires only that the noticing be “reasonably calculated...to
23 apprise interested parties of the pendency of the action[.]” Mullane, 339 U.S. at 314. If a notice
24 identifies an event that will impact an individual’s property interest, then due process is satisfied.
25 United Student Aid Funds, Inc., 559 U.S. at 272 (bankruptcy plan’s filing and contents); Jones,
26 547 U.S. at 239 (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite, 462 U.S. at
27 798 (tax sale). Here, the Association’s notice satisfied due process because, as set forth fully
28

1 above, it was “reasonably calculated...to apprise [the Bank] of” the pendency of the Association’s
2 foreclosure. Thus, the Bank’s motion should be denied and SFR is entitled to summary judgment.

3 The Bank’s attempt to have this Court construe the statute as “opt-in” is unavailing. First,
4 as discussed above, the Nevada Supreme Court has already recognized that NRS 116.31168
5 incorporates the whole of NRS 107.090. Further, the Bank’s reading of the statutes requires this
6 Court to ignore the constitutional avoidance doctrine and limit the meaning of the plain words.
7 While the Bank claims that the statutes require notice only to the unit owner and those other
8 persons who request it, the Bank is wrong. The 1991 Legislature included specific language in
9 NRS 116 stating that the noticing requirements of NRS 107.090 also apply to an association
10 foreclosure: **“The provisions of NRS 107.090 apply to the foreclosure of an association’s lien**
11 **as if a deed of trust were being foreclosed.” NRS 116.31168(1).**¹⁶ Indeed, NRS 107.090 requires
12 notice to all subordinate claim holders:

13 3. The trustee or person authorized to record the notice of default shall, within 10
14 days after the notice of default is recorded and mailed pursuant to NRS 107.080,
15 cause to be deposited in the United States mail an envelope, registered or certified,
16 return receipt requested and with postage prepaid, containing a copy of the notice,
17 addressed to:

16 (a) Each person who has recorded a request for a copy of the notice; and

17 **(b) Each other person with an interest whose interest or claimed interest is**
subordinate to the deed of trust.

18 NRS 107.090(3)(a)-(b) (emphasis added). As the Hon. Linda Bell recognized in analyzing the
19 statutes for facial constitutionality, “Chapter 116, if read in a vacuum,” it could lead to an
20 erroneous interpretation that” lenders are only entitled to notice upon request. SFR Investments
21 Pool 1, LLC v. Wells Fargo Bank, N.A., 2015 WL 4501851, at *6 (Nev.Dist.Ct. July 21, 2015).

22 However, Judge Bell understood that NRS 116.31168 incorporated fully NRS 107.090, including
23 subsection 3. Id. The Bank’s attempt to limit the provisions of NRS 107.090 to only the persons
24 who request notice belies the Legislature’s incorporation of the statute as a whole and to limit the

25
26 ¹⁶ The Legislature amended 116.31168 in 1993, by deleting the sentence “The association must also give
27 reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.” 1993 Nev.
28 Stat., ch. 573, § 40, at 2373. The Bank may try to make much ado of this change. This Court should not
allow Bank to misrepresent the amendment, however. At the same time it deleted this section, the
Legislature added 116.31163 and 116.311635 which, as is discussed in text on this page and the next,
require notice to all lienholders of record. 1991 Nev. Stat., ch. 573, §§ 6-7, at 2355.

1 language of subsection 3(b) to those with interests subordinate to the deed of trust. However, to
2 incorporate 107.090 fully, one must change the words “deed of trust” to “Association Lien”. The
3 second sentence of 116.31168, “[t]he request must identify the lien by stating the names of the
4 unit’s owner and the common-interest community[]” is meant to replace the structurally similar
5 final sentence in 107.090(2), “[t]he request must . . . identify the deed of trust by stating the names
6 of the parties thereto, the date of recordation, and the book and page where it is recorded.”

7 Pursuant to NRS 111.315, recording a document is notice to third persons; while NRS
8 111.320 provides that recording of an instrument impart(s) notice to all persons of the contents
9 thereof. Since NRS 116.31168 incorporates NRS 107.090(3), which requires notice to all
10 subordinate claim holders, associations have an affirmative duty to check the county property
11 records for all subordinate liens.

12 NRS 116.31163 and 116.311635 require the notice of default be recorded and mailed to
13 (1) those who request notice and “2. Any holder of a recorded security interest encumbering the
14 unit’s owner’s interest who has notified the association, 30 days before the recordation of the notice
15 of default, of the existence of the security interest[.]” NRS 116.31163(1)-(2), 116.311635(1)(b)(1)-
16 (2). Because the term “has notified” is not defined by the statute, the court should look to the plain
17 meaning of “notify,” which is “to provide notice.” BLACK’S LAW DICTIONARY 1090 (7th ed.
18 1999). Notice is the “[l]egal notification required by law or agreement, or imparted by operation
19 of law as a result of some fact (such as the recording of an instrument); definite legal cognizance,
20 actual or constructive, of an existing right or title[.]” *Id.* at 1087. The act of recording, therefore,
21 satisfies the requirement to notify the association, and therefore obligates the association to provide
22 notices of default and sale.

23 The language “has notified” in the statutes is broad enough to allow for those persons who
24 are holders of recorded interests or other parties in interest, such as assignees or loan servicers,
25 who for their own reasons have not yet recorded their interests to notify the Association directly
26 so as to receive the foreclosure notices. The Legislature included almost the same requirements
27
28

1 for an association non-judicial foreclosure sale as it did for non-judicial foreclosure sales by banks
2 before banks were perceived to be abusing the system.¹⁷

3 Finally, the Bank's reliance on Small Engine to support its "opt-in" argument is misplaced.
4 The Small Engine court, out of adherence to the constitutional avoidance doctrine, articulated a
5 way for courts to read "request-notice" statutes constitutionally. Small Engine Shop, Inc. v. Cascio,
6 878 F.2d 883, 890 (5th Cir. 1980). Particularly, the court held that "[Louisiana's 'opt-in' statute]
7 acts only to supplement Louisiana's preexisting constructive notice scheme in Louisiana
8 foreclosure actions. The provisions give property owners, whose identities a reasonably diligent,
9 responsible **state actor** could not reasonably ascertain, the opportunity to request such notice and
10 thereby become ascertainable." Id. at 890, 892-93 (emphasis added).¹⁸ Through this approach, a
11 "request-notice" statute works in tandem with a state's recording laws, ensuring notice to those
12 with recorded interests (such as CCSF) and those who requested notice. Id. at 892-93. Here, under
13 Small Engine, NRS 116's request-notice provisions are constitutional, especially when construed
14 in conjunction with Nevada's recording laws, (NRS Chapter 111)¹⁹, and with the requirements of
15 NRS 116.31168 and NRS 107.090. At bottom, Small Engine provides this Court with a blueprint
16 for how to give request-notice provisions a constitutional construction. Small Engine, 878 F.2d at
17 889.

18 Simply put, the non-judicial noticing requirements of NRS 116 require notice to lenders.
19 The Bank simply refuses to acknowledge that its own actions caused its loss, not those of the
20 Association, its agent, and certainly not those of SFR. The Bank's motion should be denied. This
21

22 ¹⁷ The non-judicial foreclosure requirements found in NRS 116.31162-116.31168 closely track the
23 requirements of NRS 107.080 in place at the time NRS 116 was enacted and through 2005 when the
24 Legislature began making significant changes to the requirements to address predatory lending and robo-
25 signing by the banks. The changes to NRS 107.080 since then include the implementation of the foreclosure
26 mediation program, special requirements designed to give extra information to those in owner-occupied
27 properties, and provisions to address concerns about which bank owns the note underlying the deed of trust
28 being foreclosed.

¹⁸ The Small Engine court recognized that both state action and state actors were required for its analysis,
concluding the action at issue fell within due process consideration as it included the statute, the courts via
a writ of seizure, and the sheriff to conduct the foreclosure sale. See id., at 884-85, 887, 892-93.

¹⁹ The Bank insists that Small Engine struck down a "request-notice" statute as unconstitutional; this
disregards that case's admonition that "[b]ecause Small Engine did not request notice under
La.Rev.Stat. Ann. 13:3886, we do not decide whether the provisions of the statute are constitutional in their
entirety." Small Engine, 878 F.2d at 893 n.9.

1 is especially so in light of the fact that the recitals in the Association foreclosure deed are
2 conclusive as to the noticing and that the Bank failed to provide any admissible evidence to rebut
3 that conclusion. Conversely, SFR's motion for summary judgment should be granted.

4 **G. The Foreclosure Sale Was Not a Regulatory Taking**

5 The Bank also argues that NRS 116.3116 violates the takings clause of the United States
6 and Nevada Constitutions. This argument also fails. The Fifth Amendment to the United States
7 Constitution prohibits "private property be[ing] taken for public use without just compensation.
8 U.S. Const. amend V. Article One of the Nevada Constitution correspondingly provides that
9 "[p]rivate property shall not be taken for public use without just compensation having been first
10 made, or secured." Nev. Const. art. I, 8(6). However, the Nevada Legislature's enactment of the
11 statutory framework encompassing HOA liens and non-judicial foreclosures does not rise to the
12 level of a government taking for a public purpose. Under the facts presented, the mere enactment
13 of the statutory framework alone is insufficient government action to establish such taking in
14 accordance with current law. Because Bank has failed to show that legislative enactment of
15 Chapter 116 is a governmental taking by regulation, or that a private foreclosure of an HOA lien
16 serves to further a public purpose, Bank's argument for dispositive summary judgment fails on the
17 theory of regulatory taking.

18 **H. Chevron Oil is Not Applicable to the SFR decision.**

19 The Bank argues that Chevron Oil²⁰ prevents this Court from "retroactively" applying
20 SFR. See the Bank's Mot., pp. 12-14. Chevron Oil, however, is inapplicable because it dealt with
21 retroactively applying new rules of law. Chevron Oil, 404 U.S. at 106-107; see also Harper v. Va.
22 Dep't of Taxation, 509 U.S. 86, 90, 94-95, 113 S.Ct. 2510 (1993). Contrastingly, SFR involved
23 statutory construction, an issue devoid of the retroactivity concerns discussed in Chevron Oil.

24 Retroactivity concerns are removed from the statutory construction context because, "[a]
25 judicial construction of a statute is an authoritative statement of what the statute meant before as
26 well as after the decision of the case giving rise to that construction." Morales-Izquierdo v. Dept.
27 of Homeland Sec., 600 F.3d 1076, 1087-88 (2010) (quoting Rivers v. Roadway Express, Inc., 511

28 ²⁰ Chevron Oil Co. v. Hudson, 404 U.S. 97, 106-107 (1971).

1 U.S. 298, 312–13 (1994)) (overruled in part on other grounds by Garfias-Rodriguez v. Holder, 702
2 F.3d 504, 516 (2012)). When a court interprets a statute, “it is explaining its understanding of
3 what the statute has meant continuously since the date when it became law.” Morales-Izquierdo,
4 600 F.3d at 1088 (quoting Rivers, 511 U.S. at 313 n.12). Consequently, judicial interpretations are
5 given “[f]ull retroactive effect[.]” Morales-Izquierdo, 600 F.3d at 1008 (quoting Harper, 509 U.S.
6 at 97). Here, SFR construed NRS 116.3116. Consistent with the aforementioned authorities, SFR
7 can—and should—be applied retroactively.

8 The Bank further cites to the recent ruling in United States District Court case, Christina
9 Trust v. S&P Homes, et al., Case No. 2:15-cv-01534-RCJ-VCF, 2015 WL 6962860 (D. Nev. Nov.
10 9, 2015), wherein Judge Jones analyzed the Chevron Oil factors in determining that SFR should
11 not be applied retroactively. The non-binding Christina Trust decision’s analysis regarding the
12 retroactivity of the SFR decision is flawed for several reasons, as discussed below.

13 In Chevron Oil, the court set forth three factors that courts should use in determining
14 whether a rule of law should be applied “nonretroactively[:.]”

15 **First, the decision to be applied nonretroactively must establish a new**
16 **principle of law, either by overruling clear past precedent on which**
17 **litigants may have relied, or by deciding an issue of first impression**
18 **whose resolution was not clearly foreshadowed. Second, it has been**
19 **stressed that we must . . . weigh the merits and demerits in each case by**
20 **looking to the prior history of the rule in question, its purpose and effect,**
21 **and whether retrospective operation will further or retard its**
22 **operation. Finally, we have weighed the inequity imposed by**
23 **retroactive application, for [w]here a decision of this Court could**
24 **produce substantial inequitable results if applied retroactively,**
25 **there is ample basis in our cases for avoiding the injustice or hardship**
26 **by a holding of nonretroactivity.**

27 Chevron Oil, 404 U.S. at 106-107 (internal citations omitted) (internal quotation marks omitted)
28 (emphasis added).

29 Contrary to the holding in Christina Trust, application of the Chevron Oil factors to the
30 SFR decision should not result in applying it “nonretroactively” [prospectively] only. Id.
31 Regarding the first prong, establishing a new principle of law, Judge Jones held that it weighed
32 heavily against retroactivity 1) because “both the state and federal courts were in sharp
33 disagreement as to whether an HOA foreclosure sale... extinguished a prior-recorded first deed of

1 trust[;]" 2) that "the practice in the real estate industry prior to announcement of [the SFR decision]
2 was to treat such sales as not extinguishing first mortgages[;]" and 3) that "[a]t best, the decision
3 'decid[ed] an issue of first impression whose resolution was not clearly foreshadowed.'" Christina
4 Trust, 2015 WL 6962860 *9-10 (citing SFR, 334 P.3d at 412). However, SFR did not establish a
5 new principle of law, either by *overruling clear precedent* or by deciding an issue of first
6 impression whose resolution was *not clearly foreshadowed*. Rather, SFR **confirmed what was**
7 **already established law** in NRS 116.3116 – that a portion of an association's lien is senior to the
8 first deed of trust, that an association can non-judicially foreclose on its lien, and that said
9 foreclosure would extinguish junior liens.

10 The "sharp disagreement" in the courts regarding the effect of an association foreclosure
11 sale on a first deed of trust was not only the result of courts refusing to follow the plain language
12 of NRS 116,²¹ but also illustrates that SFR did not "[overrule] *clear* past precedent[.]" Christina
13 Trust, 2015 WL 6962860 *9-10 (citing SFR, 334 P.3d at 412) (emphasis added). If anything, SFR
14 confirmed "clear past precedent" upon which litigants relied, namely the plain language of the
15 statute²². Christina Trust, 2015 WL 6962860 *9. Furthermore, the notion that the Bank could not
16 foresee that the first deed of trust would be extinguished under NRS 116.3116 is ludicrous and
17 disingenuous; 116.3116 "clearly foreshadowed" this result. Christina Trust, 2015 WL 6962860
18 *9.

19 Judge Jones next held that "retroactive application of the rule would not further the purpose
20 of the rule – to ensure HOA's are quickly made whole on the superpriority portions of their lien
21 by pressuring banks to pay that amount before the HOA foreclosure. . . ." Christina Trust, 2015

23 ²¹ See, e.g. Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP, Case No. 2:13-cv-00895-
24 JCM-GWF, 2013 WL 4048573 *6 (D. Nev. Aug. 9, 2013) ("[t]o construe NRS 116.3116 to permit an
HOA foreclosure to extinguish a first position deed of trust would be an absurd result"); Bayview Loan
25 Servicing, LLC v. Alessi & Koenig, LLC, Case No. 2:13-cv-00164-RCJ, 2013 WL 2460452 *9 (D. Nev.
June 6, 2013) ("[t]he Court does not believe that the legislature intended the extreme result of
extinguishment of a first mortgage in any case where and HOA forecloses its own lien").

26 ²² Judge Jones' explanation that "the practice in the real estate industry prior to announcement of [the SFR
27 decision] was to treat such sales as not extinguishing first mortgages" is inconsistent with his immediately
prior explanation of the "sharp disagreement" regarding the extinguishment rule, as well as the actions of
28 all other parties besides the banks before the SFR decision. In other words, the Associations and investors
relied and acted based upon the plain language of NRS 116.

1 WL 6962860 *10. However, this analysis misses a pertinent point. Specifically, the test requires
2 a balancing of the pros and cons of a rule to determine “whether retrospective operation [would]
3 further **or retard** its operation.” Chevron Oil, 404 U.S. at 106-107 (quoting Linkletter v. Walker,
4 381 U.S. 618, 729) (emphasis added). Here, nonretroactive (prospective) application would retard
5 operation of the rule by disarming association and investor reliance on the plain language and
6 meaning of NRS 116, and would result in the same “sharp disagreement” that gave rise to the SFR
7 decision in the first place. SFR, 334 P.3d at 412. Retroactive application, on the other hand, would
8 further the purpose of the rule in ensuring associations get paid by allowing their pre-SFR
9 foreclosure sales to stand. Conversely, not applying SFR retroactively would retard operation of
10 the rule by potentially eliminating associations’ remedies for a homeowner’s failure to pay his/her
11 assessments, or a bank’s failure to protect its interest pursuant to the plain language of NRS
12 116.3116 or at least the provisions of its Planned Unit Development Rider. Thus, by invalidating
13 the pre-SFR foreclosure sales, the associations may have lost the ability to foreclose upon their
14 liens pursuant to NRS 116, and in turn may have lost the money they recovered during those
15 foreclosure sales to cover the delinquencies, depending on the flip of the coin decision of their
16 judge.

17 Finally, Judge Jones determined that extinguishment of a first deed of trust by
18 foreclosure of an association lien “*worth a tiny fraction of that mortgage*,” where notice to the
19 bank was “not robust enough to satisfy basic principles of due process *were the foreclosing entity*
20 *a state actor* and where the extinguishment rule was *not only unclear but presumed* within the
21 relevant industry at the time of the foreclosure sale *to be the contrary*” would result in “an
22 extremely, not just a substantially, inequitable result.” Christina Trust, 2015 WL 6962860 *10
23 (emphasis added). This conclusion is flawed because it directly contradicts the prior rulings of that
24 court, and relies on assumptions and arguments already refuted by SFR above. **First**, the
25 comparative value of an association lien to a first deed of trust is irrelevant; NRS 116.3116
26 specifically provides that a portion of such association lien is senior to the first deed of trust, that
27 this lien may be foreclosed upon non-judicially, and that said foreclosure would extinguish junior
28 liens. See NRS 116.3116, *et seq.* **Second**, Judge Jones’ statement about due process concerns

1 “...were the foreclosing entity a state actor...” confirms SFR’s argument that NRS 116 does not
2 invoke due process considerations because there is no state actor. Christina Trust, 2015 WL
3 6962860 *10; see also SFR’s Opp., 23:7-24:26. In fact, Judge Jones has already explicitly held
4 that “the power to impose fines or enforce liens are not traditional and exclusive governmental
5 functions.” Snowdon v. Preferred RV Resort Owners Ass’n, Case No. 2:08-cv-01094-RCJ-PAL,
6 at 14:14-15 (D. Nev. Apr. 1, 2009), *aff’d*, 379 Fed. Appx. 636 (9th Cir. 2010) (“[Association] did
7 not perform the traditional and exclusive public function of municipal governance.” (internal
8 citation omitted)). However, even if due process did apply, the SFR decision (regardless of
9 retroactivity) already demonstrated at least one circumstance where the provisions of NRS 116
10 were valid, thereby precluding a facial challenge. See SFR’s Mot., at 13:13-18. Further, the
11 provisions of NRS 116 would satisfy due process because they require notice to all junior
12 lienholders of record. Id. at 16:25-20:10. Indeed, Judge Jones himself has already *rejected* the
13 argument that NRS 116.3116 violates due process. See Nationstar Mortgage, LLC v. Rob and
14 Robbie, LLC, Case No. 2:13-cv-01241-RCJ-PAL, 2014 WL 3661398 *3 (D. Nev. July 23, 2014)
15 (emphasis added). **Lastly**, Judge Jones’ characterization of the extinguishment rule as “unclear”
16 and “presumed...to be the contrary” are statements which appear to contradict each other.
17 Christina Trust, 2015 WL 6962860 *10. Nonetheless, the purported lack of clarity of the rule is
18 belied by the plain language of NRS 116.3116. Additionally, the “presum[ption]” that an
19 association foreclosure sale did not extinguish the deed of trust contradicts the “sharp
20 disagreement” in the courts,²³ as well as the actions of all other parties besides the banks during
21 this time, namely associations, trustees and investors who in fact relied upon and followed the
22 plain language of NRS 116. Christina Trust, 2015 WL 6962860 at *9-10 (citing SFR, 334 P.3d at
23 412). Again, the SFR decision was clearly foreshadowed by the plain language of NRS 116.3116.

24 In sum, Chevron Oil is distinguishable from SFR in that the latter dealt with statutory
25 construction of an existing law and not application of a new rule of law. Nonetheless, applying
26 the Chevron Oil factors to the SFR decision, as attempted in the non-controlling Christina Trust

27
28 ²³ Again, the divide in the courts was a result of refusal to follow the plain language of the statute. See,
e.g., Premier One, 2013 WL 4048573 *6; Bayview, 2013 WL 2460452 *9.

case, actually results in favor of retroactive application.

Thus, this Court should not reward Marchai for failing to take care of its security interest by way of this flawed argument.

III.

CONCLUSION

To conclude, the undisputed evidence here shows that the public foreclosure sale was properly noticed, multiple bidders appeared, and the sale was consummated at arms' length to the highest bidder (SFR) in accordance with reasonable procedures. There is no evidence of fraud, unfairness, or untoward suppression of bids. For the foregoing reasons, SFR requests this Court deny Marchai's Motion for Summary Judgment in its entirety, and grant SFR's Motion for Summary Judgment and quiet title in SFR's name.

DATED this 4th day of February, 2016.

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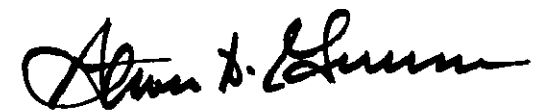
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC’S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** to:

Select All		Select None
David J. Merrill P.C.		
Name	Email	Select
David J. Merrill	david@djmerillpc.com	<input checked="" type="checkbox"/>

/s/ Alan G. Harvey
An employee of Kim Gilbert Ebron

TAB 16



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. VII

AND ALL RELATED CLAIMS

**MARCHAI, B.T.'S REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT¹**

¹ SFR Investments Pool 1, LLC starts its opposition by arguing that this Court should strike any pages over thirty from Marchai, B.T.' Motion for Summary Judgment in accordance with EDCR 2.20. (See SFR Investments Pool 1, LLC's Opposition to Marchai, B.T.'s Motion for Summary Judgment at 2:2-9.) Marchai respectfully requests that the Court grant leave to Marchai and consider the motion as drafted and as filed by the Clerk.

While Marchai certainly understands the pressures of this Court's docket and does not seek to burden this Court with an extremely lengthy brief, a longer brief is necessary here. First, Marchai did provide the table of contents and table of authorities required by EDCR 2.20, but inadvertently forgot to include a request to file an overlength brief in its motion. Second, good cause exists for filing an overlength brief. Although the Nevada Supreme Court has clarified some issues through its opinions, it has left many questions concerning NRS 116 unanswered. In addition, courts continue to issue opinions with varying reasons for either enforcing or refusing to enforce NRS

1
2 I. INTRODUCTION

3 Notwithstanding the extensive briefing, argument, and exhibits presented to
4 this Court, this Court can grant summary judgment in favor of Marchai, B.T. and
5 against SFR Investments Pool 1, LLC on one ground that does not require this
6 Court to conduct a constitutional analysis, does not require this Court to decide if
7 the sale was commercially reasonable, and does not require this Court to decide
8 whether SFR is a bona fide purchaser. The one ground on which this Court can
9 confidently rest its decision is as follows: *after* Wyeth Ranch Homeowners
10 Association instituted an action to enforce its lien, the unit owner, Cristela Perez,
11 paid far in excess of nine months of association dues. Consequently, Perez *satisfied*
12 the superpriority portion of Wyeth Ranch's lien and any foreclosure of the lien could
13 only have consisted of subpriority amounts that have no effect upon Marchai's deed
14 of trust. *SFR's opposition to Marchai's motion for summary judgment* does not (nor
15 can it) dispute either the facts or the law on which Marchai bases its argument. In
16 other words, case closed. To the extent SFR acquired any interest in the property it
17 did so *subject to* Marchai's deed of trust.

18 However, even if this Court (for some reason not argued by SFR), concludes
19 that Perez did not satisfy the superpriority portion of the lien (a conclusion the

20 116. Thus, to preserve the arguments below for an appeal to the Nevada Supreme Court, Marchai
21 must brief each argument on which the Nevada Supreme Court has not yet issued an opinion.
22 Unfortunately, those arguments include complex constitutional arguments concerning the language
23 of the statute. Third, although Marchai's brief would have exceeded thirty pages if it used the Times
24 New Roman font, Marchai's counsel prefers the slightly larger Century Schoolbook font, which adds
25 to the length of the documents, but helps counsel's middle-aged eyes. Fourth, to enhance readability,
26 Marchai's brief includes citations in the footnotes, which also adds to the length of a brief. Finally,
27 the procedure for obtaining an order for filing an overlength brief is unclear. Must a movant file a
28 motion on an order shortening time and get a ruling on that issue before filing? In addition, the
language in EDCR 2.20 is similar to EDCR 2.24(a), which requires leave of court before filing a
motion for rehearing. However, in practice parties simply file a motion for rehearing, not a motion
for leave to file a motion for rehearing. Accordingly, Marchai respectfully requests that the Court
accept the brief as drafted or, rather than striking the brief, grant Marchai leave to trim the brief to
less than thirty pages.

1 undisputed facts compel), this Court can still enter summary judgment in favor of
2 Marchai and against SFR for the following reasons.

3 First, the “trustee’s” deed by which SFR claims that it acquired an interest in
4 the property expressly states that SFR acquired Alessi & Koenig, LLC’s interest.
5 While SFR provides great joy in repeatedly claiming that the recitals in the
6 trustee’s deed are “conclusive,” SFR is less enamored with the trustee’s deed’s
7 express language about what interest it received because Alessi & Koenig *had no*
8 *interest in the property to convey*. Nevertheless, SFR asks this Court to ignore the
9 language of the trustee’s deed and assume that Alessi & Koenig truly was a trustee
10 that acted on behalf of Wyeth Ranch, a beneficiary. However, this the Court cannot
11 do as any conveyance of an interest in land, including to a trustee, *must be in*
12 *writing*. Here, SFR has presented no evidence of a trust agreement by which Alessi
13 & Koenig obtained legal or equitable title from Wyeth Ranch. Accordingly, SFR is
14 stuck with the language in the trustee’s deed that it acquired Alessi & Koenig’s non-
15 existent interest in the property.

16 Second, contrary to SFR’s contentions, the Nevada Supreme Court’s decision
17 in *Shadow Wood Homeowners Association, Inc. v. New York Bancorp, Inc.*
18 eviscerated the “conclusive” proof language in NRS 116 and instead stands for the
19 position that this Court has the equitable authority to set aside an association’s
20 foreclosure sale.

21 Third, because the foreclosure sale in this case fetched less than 20% of the
22 fair market value of the property, the sale was grossly inadequate and should be set
23 aside by this Court as a matter of law.

24 Fourth, the void for vagueness doctrine compels a conclusion that this Court
25 should strike down NRS 116 as unconstitutional as it failed to give fair notice that
26 the nonjudicial foreclosure of an association’s lien would extinguish a first deed of
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1 trust. Marchai notes that SFR made no argument in opposition to Marchai's
2 position on this issue.

3 Fifth, SFR's arguments that this Court should not grant summary judgment
4 in favor of Marchai based upon its argument that NRS 116 is facially
5 unconstitutional lack merit. SFR first claims that Marchai lacks standing because
6 it had notice of the sale, yet the undisputed facts show that Marchai never received
7 notice of the sale. In addition, SFR's argument that the Nevada Supreme Court
8 already decided a facial challenge to NRS 116 lacks merit. Further, contrary to
9 SFR's conclusion, the Nevada Legislature's enactment of NRS 116 qualifies as state
10 action under the due process clause. Moreover, SFR's argument that the language
11 in NRS 116 does not contain an improper "opt-in" ignores accepted rules of
12 statutory construction and provides an incredibly strained reading of NRS
13 116.31168.

14 Sixth, the terse, unsupported single paragraph SFR provides in opposition to
15 Marchai's argument that NRS 116 enacted a regulatory taking provides no
16 authority to refute Marchai's contention that the Nevada Legislature's enactment of
17 NRS 116 enacted a regulatory taking.

18 Seventh, this Court can either apply the Nevada Supreme Court's decision in
19 *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* prospectively and avoid the
20 constitutional problems created by the statute, or it can strike down NRS 116 as
21 unconstitutional as it failed to give fair notice to Marchai. Either way, this Court
22 should grant summary judgment in favor of Marchai and against SFR.

23 Accordingly, Marchai respectfully requests that this Court grant its motion
24 for summary judgment and deny SFR's motion for summary judgment.
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II. STATEMENT OF UNDISPUTED FACTS²

In its opposition, SFR quibbles with Marchai's statement of undisputed facts.³

SFR contests Marchai's statement that Alessi & Koenig did not rescind its prior notices.⁴ Instead, SFR contends that Alessi & Koenig did rescind *one* notice of trustee's sale.⁵ However, Marchai acknowledged that Alessi & Koenig rescinded *one* notice of trustee's sale in its motion.⁶ What Alessi & Koenig did *not* do, however, was rescind the Notice of Delinquent Assessment (Lien) recorded on October 8, 2008, the Notice of Default and Election to Sell Under Homeowners Association Lien recorded on January 5, 2009, and the Notices of Trustee's Sale recorded on March 29, 2011, and October 31, 2012. SFR conveniently ignores these facts because they demonstrate that Wyeth Ranch "instituted an action to enforce its lien" in 2008, 2009, or 2010, and Perez then *paid* the superpriority portion of the lien, leaving Wyeth Ranch with only a subpriority lien to foreclose. Thus, SFR has not created a genuine issue of material fact that will defeat Marchai's motion.⁷

² In Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment, Marchai supplemented the statement of undisputed facts with additional facts that refute SFR's unsupported "facts." Accordingly, Marchai incorporates by reference each of the facts set forth in its opposition and the exhibits attached thereto in support of its motion for summary judgment.

³ See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 4:12–5:15 (Feb. 4, 2016).

⁴ See *id.* at 4:14–5:4.

⁵ See *id.* at 4:18–21.

⁶ See Marchai, B.T.'s Mot. for Summ. J. at 12:13–14 (Jan. 14, 2016); *see also* Ex. 1-D to App. of Exs. in Supp. of Marchai, B.T.'s Mot. for Summ. J (Jan. 14, 2016).

⁷ Marchai addresses SFR's second "factual issue" below in Section III(B).

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III. ARGUMENT⁸

A. SFR does not dispute (nor can it) that the foreclosure sale (to the extent it conveyed anything at all) conveyed an interest subject to Marchai's deed of trust.

Marchai's first argument why this Court should grant summary judgment in its favor and against SFR is that Perez *paid* the superpriority portion of the lien when she paid \$3,230.00 in assessments following Wyeth Ranch's institution of an action to enforce the lien. SFR's response to this most important of arguments? Crickets.

SFR does not dispute that Wyeth Ranch instituted an action to enforce its lien in either 2008, 2009, or 2010. Further, SFR does not dispute that Perez paid \$3,230.00 following Wyeth Ranch's institution of an action to enforce the lien. Finally, SFR does not dispute that the \$3,230.00 payment greatly exceeded nine months of Wyeth Ranch's dues. Accordingly, SFR cannot dispute that Perez satisfied the superpriority portion of Wyeth Ranch's lien and, thus, the foreclosure—to the extent it conveyed anything at all—existed of purely the *subpriority* portion of the lien.⁹ Thus, this Court must enter summary judgment in Marchai's favor and against SFR.

⁸ Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment contains extensive argument expressly refuting many of the arguments SFR set forth in its opposition. Rather than repeating all of those arguments here, Marchai incorporates each of the arguments by reference as if fully set forth herein.

⁹ See *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014); see also *CitiMortgage, Inc. v. Alessi & Koenig, LLC*, No. 2:13-CV-01976-JCM-(GWF), 2015 WL 112892, at *5 (D. Nev. Jan. 8, 2015) (granting summary judgment in favor of CitiMortgage because the association received payment of nine months of assessments following the recording of a notice of default).

1 B. SFR has presented no admissible evidence that Alessi & Koenig
2 obtained title—either legal or equitable—such that it acted as a
3 trustee and could convey any interest to SFR.

4 SFR repeatedly tries to hang its hat on the recitals in the “Trustee’s” Deed
5 Upon Sale. In fact, in its motion for summary judgment, SFR even conceded that it
6 had “no reason to doubt the recitals in the Trustee’s Deed Upon Sale.”¹⁰ Those
7 recitals state that SFR acquired *Alessi & Koenig’s* interest in the property. But,
8 SFR has presented *no evidence* that Alessi & Koenig had *any interest* in the
9 property to convey. Nevertheless, SFR contends that the “Trustee’s” Deed Upon
10 Sale states that Wyeth Ranch was the “foreclosing beneficiary” and SFR is the
11 “grantee.”¹¹ However, SFR has failed to introduce *any* admissible evidence that
12 Alessi & Koenig was a trustee that held an interest in the property in trust for the
13 benefit of Wyeth Ranch.¹² In fact, without a *written trust agreement* proving that
14 Wyeth Ranch transferred title—either legal or equitable—to Alessi & Koenig, SFR
15 could not have acquired *anything* from Alessi & Koenig through the “Trustee’s”
16 Deed Upon Sale.¹³ Accordingly, this Court should grant summary judgment in
17 favor of Marchai and against SFR.¹⁴

18 ¹⁰ See Decl. of Paulina Kelso, attached as Ex. B to SFR Investments Pool 1, LLC’s Mot. for
19 Summ. J. ¶ 4 (Jan. 14, 2016).

20 ¹¹ See SFR Investments Pool 1, LLC’s Opp’n to Marchai, B.T.’s Mot. for Summ. J. at 5:5–15.

21 ¹² See *generally id.*

22 ¹³ See NRS § 11.205(1) (“No estate or interest in lands . . . *nor any trust or power over or*
23 *concerning lands*, or in any manner relating thereto shall be created, granted, assigned, surrendered
24 or declared . . . unless by act or operation of law, or by deed or conveyance, *in writing*, subscribed by
25 the party creating, granting, assigning, surrendering or declaring the same, or by the party’s lawful
26 agent thereunto authorized in writing.”) (emphasis added); see also NRS § 11.235 (“Every grant or
27 assignment of any existing trust in lands, goods, or things in action, unless the same shall be in
28 writing, subscribed by the person making the same, or by his or her agent lawfully authorized, *shall*
 be void.”) (emphasis added).

¹⁴ Because no written document establishes that Alessi & Koenig acted as a trustee for Wyeth
 Ranch and thus any such interest is *void* as a matter of law, SFR’s attempt to rely upon a
 “disputable presumption” that a “trustee” conveyed real property to a particular person actually
 conveyed the property to the person, is not only rebutted, but completely inapplicable here. See SFR

1 C. Even after the Nevada Supreme Court issued its opinion in
2 *Shadow Wood Homeowners Association, Inc. v. New York*
3 *Community Bancorp, Inc.*, SFR continues to improperly argue
4 that the recitals in the “trustee’s deed” are conclusive.

5 In the Opposition, SFR repeatedly argues that the recitals in the trustee’s
6 deed are “conclusive,” and thus, not subject to challenge by Marchai.¹⁵ However, as
7 Marchai noted in its opposition to SFR’s motion for summary judgment, the Nevada
8 Supreme Court has now eviscerated the “conclusive proof” language in NRS
9 116.3116.¹⁶

10 In *Shadow Wood*, the court refused to read the recitals as broadly as SFR
11 argues here.¹⁷ Instead, the court recognized “that courts retain the power to grant
12 equitable relief from a defective foreclosure sale despite NRS 116.31166.”¹⁸ Thus,
13 SFR’s reliance upon the “conclusive” recitals in the Trustee’s Deed Upon Sale do not
14 bar this Court’s power to grant equitable relief from a defective foreclosure.¹⁹

15 In addition, SFR claims that Marchai “does not dispute that” Wyeth Ranch
16 and Alessi “complied with the notice and publication requirements.”²⁰ In addition,
17 Marchi claims that “[d]espite being mailed all the necessary notices, the Bank did
18 absolutely nothing to protect its interest.”²¹ SFR is wrong.

19 Investments Pool 1, LLC’s Opp’n to Marchai, B.T.’s Mot. for Summ. J. at 6:2–8; *see also* NRS §§
20 11.205(1), 11.235.

21 ¹⁵ *See* SFR Investments Pool 1, LLC’s Opp’n to Marchai, B.T.’s Mot. for Summ. J. at 6:20–7:28.

22 ¹⁶ *See* Marchai, B.T.’s Opp’n to SFR Investments Pool 1, LLC’s Mot. for Summ. J. at 10:7–11:14
23 (Feb. 3, 2016) (citing *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Community Bancorp, Inc.*, No.
24 63180, 132 Nev. Adv. Op. 5, 2016 WL 347979 (Jan. 28, 2016)).

25 ¹⁷ *Shadow Wood*, 132 Nev. Adv. Op. 5, 2016 WL 347979, at *4.

26 ¹⁸ *Id.* at *5.

27 ¹⁹ *See id.*

28 ²⁰ *See* SFR Investments Pool 1, LLC’s Opp’n to Marchai, B.T.’s Mot. for Summ. J. at 7:15–16
(Feb. 4, 2016).

²¹ *See id.* at 7:21–22.

1 In the Motion, Marchai detailed the fact that Alessi & Koenig did not conduct
2 a proper foreclosure in accordance with NRS 116.²² Further, as set forth in the
3 opposition to SFR's motion for summary judgment, Marchai did not have notice of
4 the sale and, when Marchai's servicer learned of the sale (less than twenty-four
5 hours before the sale) it took immediate steps to postpone the foreclosure so that it
6 could pay the lien, but Wyeth Ranch refused the reasonable request.²³ Thus, SFR's
7 argument that Marchai sat on its rights is completely false.

8
9 D. Consistent with *Shadow Wood*, the foreclosure sale here is
10 grossly inadequate because it did not fetch more than 20% of
11 the fair market value of the property and, if required, the sale
12 was grossly unfair to Marchai.

13 In its opposition to SFR's motion for summary judgment, Marchai set forth
14 substantial arguments as to why a foreclosure sale that fetches only 6.8% of the
15 value of the property is commercially unreasonable as a matter of law.²⁴ Marchai
16 will not reiterate those arguments here.

17 However, Marchai must address SFR's improper interpretation of the
18 Nevada Supreme Court's opinion in *Shadow Wood*. Specifically, SFR contends that
19 under *Shadow Wood*, a court cannot set aside a foreclosure sale that fetches a
20 grossly inadequate price as a matter of law without some proof of fraud, oppression,
21 or unfairness.²⁵ SFR is wrong.

22 In *Shadow Wood*, the Nevada Supreme Court expressly recognized that a
23 *grossly inadequate price* can justify setting aside a sale as a matter of law.
24 Although the court recognized that "demonstrating that an association sold a

25 ²² See Marchai, B.T.'s Mot. for Summ. J. at 29:1–30:2 (Jan. 14, 2016).

26 ²³ See Marchai, B.T.'s Opp'n to SFR Investments Pool 1, LLC's Mot. for Summ. J. at 4:5–7:2
(Feb. 3, 2016).

27 ²⁴ See *id.* at 12:18–14:10.

28 ²⁵ See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 9:17–10:12.

1 property at its foreclosure sale *for an inadequate price* is not enough to set aside” a
2 sale without “a showing of fraud, unfairness, or oppression,” a party challenging a
3 sale can “establish that the foreclosure sale price was *grossly inadequate* as a
4 matter of law.”²⁶ The court then noted that because the price fetched at the
5 foreclosure sale exceeded 20% of the fair market value of the property, the sales
6 price was not grossly inadequate as a matter of law.²⁷ Here, however, the price
7 fetched only 6.8% of the fair market value of the property. Thus, under the
8 reasoning in *Shadow Wood*, the sale in this case is “grossly inadequate as a matter
9 of law.”²⁸

10 Nevertheless, even if this Court concludes that Marchai must still provide
11 evidence of fraud, oppression, or unfairness, Marchai’s opposition to SFR’s motion
12 for summary judgment provides plenty of evidence that the sale in this case was not
13 commercially reasonable.²⁹ In addition, because the Covenants, Conditions, and
14 Restrictions provide that an assessment lien will not defeat a first deed of trust,
15 Marchai and any potential bidders were certainly “lulled into a false security” that
16 foreclosure will not affect Marchai’s deed of trust.³⁰ Accordingly, this Court should
17 grant Marchai’s motion for summary judgment.³¹

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19 ²⁶ See *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Community Bancorp, Inc.*, 132 Nev. Adv.
Op. 5, 2016 WL 347979, at *6 (Nev. Jan. 28, 2016) (emphasis added).

20 ²⁷ See *id.* (citing Restatement (Third) of Property: Mortgages § 8.3 cmt. b (1997) recognizing
21 that a court can invalidate a sale for a grossly inadequate price, which is a sale that fetches less than
20% of the fair market value).

22 ²⁸ See *id.*

23 ²⁹ See Marchai, B.T.’s Opp’n to SFR Investments Pool 1, LLC’s Mot. for Summ. J. at 14:10–
24 17:16 (Feb. 3, 2016).

25 ³⁰ See *Golden v. Tomiyasu*, 79 Nev. 503, 516, 387 P.2d 989, 995 (1964). Even though the
26 Nevada Supreme Court ultimately determined that an association could not, through its CC&R’s,
subordinate its lien to a first deed of trust, that does not mean that this Court should not consider
27 the fact that the CC&Rs have mortgage savings clauses when determining whether there was any
“unfairness” in the foreclosure. As the Nevada Supreme Court noted in *Shadow Wood*, this Court
“must consider the entirety of the circumstances that bear upon the equities.” See *Shadow Wood*

1 **E. SFR cannot establish as a matter of law that it is a bona fide**
2 **purchaser.**

3 As set forth in Marchai's opposition to SFR's motion for summary judgment,
4 SFR bears the burden of demonstrating that it is a bona fide purchaser for value.³²
5 As set forth in Marchai's opposition, SFR cannot satisfy its burden as a matter of
6 law.³³ In addition to the argument set forth in Marchai's opposition, SFR also had
7 notice under the CC&R's that the foreclosure of an association's lien would not
8 defeat the holder of a first deed of trust. Although, the Nevada Supreme Court later
9 concluded that the CC&R's could not subordinate their liens consistent with
10 UCIOA, SFR was certainly on notice that, at least according to the CC&R's, Wyeth
11 Ranch's foreclosure could not defeat Marchai's deed of trust. Accordingly, SFR
12 cannot establish that it is a bona fide purchaser for value.

13 **F. SFR completely ignores Marchai's argument that NRS 116**
14 **violates due process under the void for vagueness doctrine.**

15 Although SFR takes several meritless positions against Marchai's argument
16 that NRS 116 did not provide due process to Marchai because of the statute's
17 unconstitutional "opt-in" provision, SFR makes *no argument* even attempting to
18 refute Marchai's argument that NRS 116 failed to provide fair notice that the non-

19 *Homeowners Ass'n, Inc. v. N.Y. Community Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 2016 WL 347979, at
20 *9 (Nev. Jan. 28, 2016).

21 ³¹ SFR's contention that a balance of equities weighs in favor of SFR ignores the facts of this
22 case. (See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 10:13–11:7
23 (Feb. 4, 2016)). Contrary to SFR's allegations, Marchai did *not* have notice of the foreclosure until
24 after the sale. *Compare id.* at 10:13–22 *with* Marchai, B.T.'s Opp'n to SFR Investments Pool 1,
25 LLC's Mot. for Summ. J. at 4:5–5:8. In addition, when Marchai's servicer learned of the sale the
26 afternoon before the sale occurred, it promptly took steps to contact Wyeth Ranch to postpone the
27 sale so that it could pay the lien, but Wyeth Ranch unreasonably refused. (See *id.* at 5:8–7:2.) Thus,
28 the balance of equities tips sharply in favor of Marchai, not SFR.

29 ³² See Marchai, B.T.'s Opp'n to SFR Investments Pool 1, LLC's Mot. for Summ. J. at 17:21–22
30 (citing *Bailey v. Butner*, 64 Nev. 1, 7, 176 P.2d 226, 229 (1947) (recognizing that a person who seeks
31 to establish a higher priority based upon the claim that he is a bona fide purchaser bears the burden
32 of proof)).

33 ³³ See *id.* at 17:17–19:2.

1 judicial foreclosure of an association's lien will extinguish a first deed of trust.³⁴
2 Even though the motion detailed the conflicting, constitutionally ambiguous,
3 internally inconsistent language of NRS 116 and why, this Court cannot, consistent
4 with the fair notice doctrine, enforce NRS 116 to deprive Marchai of its interest in
5 property, SFR again responds with crickets.³⁵ Accordingly, this Court should grant
6 summary judgment in favor of Marchai and against SFR.

7
8 **G. SFR's argument that Marchai lacks standing to raise a facial**
9 **challenge because it received notice of the foreclosure rests**
10 **upon a faulty premise.**

11 SFR's opposition incorrectly argues that Marchai—whom SFR deceptively
12 refers to as the "Bank"—received actual notice from Alessi by way of the notice of
13 default and notice of sale.³⁶ Thus, according to SFR, Marchai lacks standing to
14 contest the facial constitutionality of the statute.³⁷ However, SFR's premise that
15 Marchai received the notices of the sale is factually incorrect.

16 As set forth in Marchai's opposition to SFR's motion for summary judgment,
17 Marchai did not receive *any* of the notices of the foreclosure.³⁸ In fact, Marchai did
18 not learn of the foreclosure until *after* the foreclosure occurred.³⁹ Because Marchai
19 did not receive any notice, let alone *actual notice*, of the sale, SFR's argument that
20 Marchai lacks standing is without merit.⁴⁰

21 ³⁴ See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 14:14–25:3.

22 ³⁵ Compare Marchai, B.T.'s Mot. for Summ. J. at 30–49 (Jan. 14, 2016) with SFR Investments
23 Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 14:14–25:3.

24 ³⁶ See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 14:17–18.

25 ³⁷ See *id.* at 14:14–17:3.

26 ³⁸ See Marchai, B.T.'s Opp'n to SFR Investments Pool 1, LLC's Mot. for Summ. J. at 5:5–8 (Feb.
27 3, 2016).

28 ³⁹ See *id.*

⁴⁰ In a footnote, SFR contends that because Marchai did not appear for a deposition on
December 2, 2015, that Marchai cannot introduce any evidence to support the fact that it did not

1 **H. The Nevada Supreme Court has not decided the**
2 **constitutionality of NRS 116.**

3 SFR argues that the Nevada Supreme Court in *SFR Investments Pool 1, LLC*
4 *v. U.S. Bank, N.A.* already decided that NRS 116 is constitutional, on its face.⁴¹ The
5 Nevada Supreme Court made no such ruling.

6 In *SFR*, U.S. Bank presented an as-applied, not facial, challenge to the
7 association's compliance with the notice provisions of NRS 116, arguing that "the
8 content of the notice it received" was not specific enough to satisfy statutory
9 requirements.⁴² U.S. Bank also argued that the association's notice did not explain
10 "how the beneficiary of the first deed of trust c[ould] prevent the superpriority
11 foreclosure sale."⁴³ However, the Nevada Supreme Court did not actually resolve
12 U.S. Bank's as-applied challenge because, "at the pleadings stage, we credit the
13 allegations of the complaint that SFR provided all statutorily required notices as
14 true and sufficient to withstand a motion to dismiss."⁴⁴ Thus, because the court
15 accepted the allegations of the complaint as true, the court did not determine
16 whether the association complied with NRS 116's notice requirements.⁴⁵

17 Instead, in *SFR*, all parties acknowledged that U.S. Bank received notice.
18 U.S. Bank disputed the sufficiency of the notice and the information provided. The

19 receive notice. (See *SFR Investments Pool 1, LLC's* Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 14
20 n.12.) Not surprisingly, SFR fails to cite any authority for such a draconian legal theory. (See *id.*)
21 In fact, although this Court can award sanctions for the failure of a party to appear at a deposition,
22 the Court can only award those sanctions "on motion." See N.R.C.P. 37(d). Here, SFR has made no
23 such motion. Accordingly, this Court cannot ignore any facts presented by Marchai.

24 ⁴¹ See *id.* at 18:11–20:3.

25 ⁴² *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d. 408, 418
26 (2014)

27 ⁴³ *Id.*

28 ⁴⁴ *Id.*

⁴⁵ *Id.*; see also *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672
 (2008).

1 Nevada Supreme Court never addressed, nor did U.S. Bank allege, any facial
2 shortcomings of NRS 116 itself.⁴⁶

3 Thus, in *SFR*, the parties presented, and the court decided, only whether the
4 nonjudicial foreclosure of the specific lien in that case violated U.S. Bank's right to
5 due process. The parties did not raise the issue of whether the specific "opt-in"
6 notice provisions of NRS 116 violate due process on its face.

7 Here, however, Marchai asserts a direct facial challenge to NRS 116. Thus,
8 the particular facts of this case are irrelevant and Marchai presents a purely legal
9 issue appropriate for decision on summary judgment.⁴⁷ Whether an individual
10 lienholder received notice, or if the association complied with all of NRS 116's
11 requirements, are also irrelevant for the purposes of this argument.⁴⁸ Instead, this
12 Court need only determine whether NRS 116's terms, on its face, violate a
13 constitutional right. For the reasons set forth in Marchai's motion, NRS 116 is
14 unconstitutional because its "opt-in" notice provisions do not comport with due
15 process.

16 In response to SFR's attempt to rely upon the dissenting opinion in *SFR*
17 *Investments Pool 1, v. U.S. Bank*, for the position that the incorporation of NRS
18 107.090 mandates notice to "first security holders who have recorded their security
19 interest when the association is foreclosing on its lien," this Court should note that
20 the majority opinion never makes this statement.⁴⁹ Thus, SFR's citation to the
21 dissent is not persuasive or controlling authority here.

23 ⁴⁶ See generally *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d 408; see also Resp't Answering Br., *SFR*
24 *Investments Pool 1 v. U.S. Bank*, 2013 WL 9743231 at 23–26.

25 ⁴⁷ *Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

26 ⁴⁸ *Id.*

27 ⁴⁹ See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 422.

1 Further, contrary to SFR's contention, the Nevada Supreme Court's denial of
2 rehearing does not equate to a substantive consideration and rejection of a facial
3 challenge to NRS 116.⁵⁰

4 Finally, because the parties to *SFR Investments Pool 1 v. U.S. Bank*, did not
5 expressly raise the facial constitutionality of NRS 116, the implication that the
6 Court decided the issue anyway contravenes express precepts of judicial review.⁵¹
7 Accordingly, the existence of amicus briefs on rehearing that challenged the facial
8 constitutionality of NRS 116 cannot constitute grounds for a conclusion that the
9 Nevada Supreme Court has already considered and rejected these arguments.

10 **I. The Nevada Legislature's enactment of NRS 116 is sufficient**
11 **state action to invoke constitutional protections.**

12 SFR's assertion that there is no constitutional violation because there is no
13 state action is incorrect. SFR's argument fails because the Nevada Legislature's
14 enactment of NRS 116 satisfies the state actor requirement. "[A] 'state action
15 requires both an alleged constitutional deprivation 'caused by the exercise of some
16 right or privilege created by the State or by a rule of conduct imposed by the State
17 or by a person for whom the State is responsible,' and that 'the party charged with
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20 ⁵⁰ See *Marshak v. Reed*, 229 F. Supp. 2d 179, 184 (E.D.N.Y. 2002), *aff'd* 87 F. App'x 208 (2d Cir.
21 2004); *Landreth v. Comm'r*, 859 F.2d 643, 648 (9th Cir. 1988); *Exxon Chemical Patents, Inc. v.*
22 *Lubrizon Corp.*, 137 F.3d 1475, 1479 (Fed. Cir. 1998); *Fernandez v. Chardon*, 681 F.2d 42, 51 n.7 (1st
23 Cir. 1982); *Riley v. Camp*, 130 F.3d 958, 984 (11th Cir. 1997); *Luckey v. Miller*, 929 F.2d 618, 622
24 (11th Cir. 1991); *see also Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) ("Inasmuch,
25 therefore, as all that a denial of a petition for a writ of certiorari means is that fewer than four
26 members of the Court thought it should be granted, this Court rigorously has insisted that such a
27 denial carries with it no implication whatever regarding the Court's views on the merits of a case
28 which it has declined to review.").

25 ⁵¹ See *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544
26 (2010) (stating that an appellate court will not hear arguments raised for the first time on appeal on
27 the grounds that doing otherwise would jeopardize the efficiency, fairness, and integrity of the
28 judicial system).

1 the deprivation must be a person who may fairly be said to be a state actor.”⁵²
2 SFR’s argument that the foreclosure sale is a private action misconstrues Marchai’s
3 due process claim. Marchai has not challenged the specific exercise of the powers
4 enumerated in NRS 116. Instead, Marchai has asserted a facial challenge to NRS
5 116, which deprives lenders of an interest in real property without notice.

6 The property deprivation without notice is the result of the actions of the
7 Nevada Legislature, which drafted and enacted a constitutionally infirm statute.
8 “State actions within the meaning of the Fourteenth Amendment include not only
9 the acts of a legislature, but also the actions of the State’s judicial officers.”⁵³ The
10 creation of law is an exclusively governmental function reserved to the legislature
11 and, in certain circumstances, regulatory agencies. The unconstitutional conduct
12 here is the direct result of the Nevada Legislature’s creation and enactment of a
13 statute that does not, on its face, comport with due process.

14 In addition, SFR has invoked the power of this Court to enforce an
15 unconstitutional statute. Because SFR needs this Court’s power to give affect to an
16 unconstitutional statute, sufficient state action exists.⁵⁴

17 **J. SFR’s contention that NRS 116 does not create an improper**
18 **“opt-in” provision ignores the conflicting language of the**
19 **statute.**

20 In its final attempt to minimize the clear “opt-in” language of NRS 116, SFR
21 contends that NRS 116.31168 incorporates by reference all of NRS 107.090, which
22 requires notice to all subordinate lienholders. SFR’s argument lacks merit.

24 ⁵² *Wong v. Dep’t of Health & Human Servs.*, No. 2:10-CV-00249-KJD-(GWF), 2011 WL 769973,
25 at *4–5 (D. Nev. Feb. 26, 2011) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40 (1999)
(citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982))).

26 ⁵³ *Beazley v. Davis*, 92 Nev. 81, 83, 545 P.2d 206, 208 (1976).

27 ⁵⁴ *See Shelley v. Kramer*, 334 U.S. 1, 6 (1948).

1 First, SFR ignores the argument in Marchai's motion for summary judgment
2 that NRS 116.31168 cannot incorporate the provisions of NRS 107.090 as NRS 116
3 and NRS 107.090 had *different requirements concerning service of the notices of*
4 *default and sale.*⁵⁵ For example, NRS 116 required service by first class mail,
5 whereas NRS 107.090 required service by certified mail, return receipt requested.⁵⁶
6 However, service by first class mail and service by certified mail are not the same.⁵⁷

7 Second, the plain language of NRS 116.31168 applies only to requests for
8 notice. Specifically, NRS 116.31168 read, in its entirety:

9 The provision of NRS 107.090 apply to the foreclosure of an
10 association's lien as if a deed of trust were being foreclosed. The
11 *request* must identify the lien by stating the names of the unit's owner
and the common-interest community.

12 Here, NRS 116.31168 can be read to only involve notice to those who request it.⁵⁸
13 SFR's interpretation fails to interpret the language as a whole, which this Court
14 must.⁵⁹

15 Third, SFR's contention that NRS 116.31163 and NRS 116.311635's language
16 that requires service of the notice of default upon the "holder of a recorded security
17 interest . . . who has notified the association," means that by recording the notice

18 ⁵⁵ See Marchai, B.T.'s Mot. for Summ. J. at 46:6–48:2 (Jan. 14, 2016).

19 ⁵⁶ See *id.*; compare NRS §§ 116.31163 (2011) & NRS 116.311635 (2011) with NRS 107.090.

20 ⁵⁷ *In re Frazier*, 394 B.R. 399, 400 (Bankr. E.D. Va. 2008).

21 ⁵⁸ See *Seput v. Lacayo*, 122 Nev. 499, 502, 134 P.3d 733, 735 (2006) (noting that courts must
22 enforce the plain, unambiguous language of the statute without resorting to rules of statutory
23 construction). The plain language of NRS § 116.31168, which refers solely to the request for notice
24 also defeats SFR's application of the constitutional avoidance doctrine. The constitutional avoidance
25 doctrine "comes into play only when, after application of ordinary textual analysis, a statute is found
to be susceptible of more than one construction" and the constitutional avoidance doctrine provides a
means of choosing between two reasonable constructions. *Clark v. Martinez*, 543 U.S. 371, 385
(2005).

26 ⁵⁹ See *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102
27 (2006) ("[W]hen interpreting a statute, a court should consider multiple legislative provisions as a
whole.")

1 the holder of a security interest is notifying the association completely lacks merit.
2 If SFR's interpretation is correct, then the language of "who has notified the
3 association" is meaningless since the recording itself, in SFR's view, notifies the
4 association. However, this Court must give effect to all of the language of a
5 statute.⁶⁰ Accordingly, SFR's claim that NRS 116.31168 incorporates NRS 107.090
6 as a whole lacks merit.

7
8 **K. SFR provides no authority to suggest that an association
foreclosure cannot constitute a regulatory taking.**

9 In response to Marchai's argument that the Nevada Legislature's enactment
10 of NRS 116 enacted a regulatory taking, SFR simply says it does not, without
11 burdening this Court with the citation of any authority.⁶¹

12 The facts here are akin to *Armstrong*, cited in Marchai's motion for summary
13 judgment, which SFR completely ignores.⁶² In *Armstrong*, the contract that created
14 the possibility that the government may recover the lien property was enacted
15 prior to recording the secured interest. The party entitled to a secured interest had
16 knowledge of a preexisting contract or right, as SFR contends Marchai had here
17 (and Marchai disputes), which provided the potential of a future government
18 taking.⁶³ However, despite the pre-existing contract, there was no injury or taking
19 until the government physically took possession of the property, making it
20 impossible for the lienholder to enforce its lien.⁶⁴ The Court recognized that the

21 ⁶⁰ See *Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41, 302 P.3d 1144, 1147 (2013)
22 ("Provisions are read as a whole, with effect given to each word and phrase.")

23 ⁶¹ See SFR Investments Pool 1, LLC's Opp'n to Marchai, B.T.'s Mot. for Summ. J. at 25:4–17
(Feb. 4, 2016).

24 ⁶² See Marchai, B.T.'s Mot. for Summ. J. at 61:12–63:10 (Jan. 14, 2016) (citing *Armstrong v.*
25 *United States*, 364 U.S. 40, 48 (1960)).

26 ⁶³ *Armstrong*, 364 U.S. at 48.

27 ⁶⁴ *Id.*

1 *potential* for possession of the liened property did not constitute actual knowledge,
2 which may negate a takings claim.⁶⁵ Accordingly, the Court concluded that the
3 government's conduct constituted an unconstitutional taking, even though the
4 statute existed when the liens recorded.⁶⁶

5 *Armstrong* is particularly instructive because the government's prospective
6 authorization of the taking occurred before any lien existed, and the government
7 action that ultimately authorized the taking did not, by itself, effect the taking.⁶⁷
8 Although the contract was in place, prior to the lien, the taking did not occur until
9 the shipbuilding company's default triggered the government's retention of the
10 materials without compensation to the materialmen for its lien.⁶⁸

11 Likewise here, it is immaterial that the enactment of NRS 116 predated
12 Marchai's deed of trust.⁶⁹ It is the default of Perez's assessment obligations that
13 triggers the taking, and thus the harm to the lienholder.⁷⁰

14 None of SFR's arguments demonstrate how Wyeth Ranch's sale was not an
15 unconstitutional taking. Accordingly, this Court should grant summary judgment
16 in favor of Marchai and against SFR.
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21 ⁶⁵ *Id.*

22 ⁶⁶ *Id.*

23 ⁶⁷ *Id.*

24 ⁶⁸ *Id.*

25 ⁶⁹ *See id.*

26 ⁷⁰ *See id.* ("The total destruction by the government of all compensable value of these liens,
27 which constitute compensable property, has every possible element of a Fifth Amendment 'taking'
and is not a mere 'consequential incidence' of a valid regulatory measure.")

1 **L. This Court should apply *SFR Investments Pool 1, LLC v. U.S.***
2 ***Bank, N.A.* prospectively as the Nevada Supreme Court has**
3 **changed the well-accepted meaning of “institution of an**
4 **action” without notice.**

5 As set forth in the motion, and supported by, the court’s opinion in *Christina*
6 *Tr. v. S&P Homes*, this Court should apply the Nevada Supreme Court’s opinion in
7 *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* prospectively.⁷¹ SFR disputes
8 *Christina Trust’s* analysis and contends that the interpretation of a statute can
9 never be applied prospectively.⁷² SFR’s arguments lack merit.

10 In *Chevron Oil Co. v. Huson*, the United States Supreme Court expressly
11 recognized that courts can apply their decisions prospectively.⁷³ In *Chevron Oil Co.*,
12 the Court concluded that Louisiana’s one-year statute of limitation applied to claims
13 under the Lands Act. The Court, however, decided that it would apply that decision
14 prospectively because to apply it retroactively would bar the plaintiff’s claim, which
15 the Court concluded was incredibly inequitable.⁷⁴

16 Likewise, here, the Nevada Supreme Court issued a decision in *SFR*
17 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, that concluded, for the first time, that
18 the meaning of “institution of an action” in NRS 116.3116 does not have the same
19 recognized meaning of “institution of an action” that the Legislature has used
20 previously or that is widely accepted.⁷⁵ In other words, the court’s decision in *SFR*

21 ⁷¹ See Marchai, B.T.’s Mot. for Summ. J. at 63:11–65:4 (Jan. 14, 2016) (citing *Christina Tr. v. K*
22 *& P Homes*, No. 2:15-CV-01534-RCJ-(VCF), 2015 WL 6962860 at *4 (D. Nev. Nov. 9, 2015)).

23 ⁷² See *SFR Investments Pool 1, LLC’s* Opp’n to Marchai, B.T.’s Mot. for Summ. J. at 25:19–26:7
24 (Feb. 4, 2016).

25 ⁷³ 404 U.S. 97, 105–06.

26 ⁷⁴ *Id.* at 106–108.

27 ⁷⁵ Compare *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d
28 408, 414–17 (2014) with NRS § 598A.110 & NRS § 100.115(2); see also *Trustees of MacIntosh*
 Condominium Ass’n v. F.D.I.C., 908 F. Supp. 58, 63 (D. Mass. 1995) (“It is uncontested by the parties
 that a lawsuit is required before a lien for unpaid condominium fees achieves a ‘super-priority’
 status.”); *Benson v. Zoning Bd. of Appeal of Town of Westport*, 873 A.2d 1017, 1022 (Conn. Ct. App.

1 pulled the rug out from under lenders and persons like Marchai, who justifiably
2 relied upon the Nevada Legislature's use of "institution of an action" to mean
3 precisely what it has always meant: the filing of a civil complaint.⁷⁶ If, as *SFR* has
4 concluded, institution of an action means something different than its well-accepted
5 meaning, then this Court can choose to apply *SFR* prospectively in accordance with
6 *Chevron Oil Co.*, or this Court can strike down NRS 116 as unconstitutional as it
7 failed to provide fair notice to Marchai.⁷⁷ Either way, this Court should grant
8 summary judgment in favor of Marchai and against SFR.

9 IV. CONCLUSION

10 No genuine issues of material fact preclude this Court from granting
11 summary judgment in favor of Marchai and against SFR, particularly on the ground
12 that Perez satisfied the superpriority portion of Wyeth Ranch's lien when it paid
13 more than nine months of association dues. Accordingly, Marchai respectfully
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22 2005) ("[O]ur review of statutes and appellate case law reveals that the 'institution of an action' has
23 never been held to mean anything other than the filing of a civil action in court.").


24 ⁷⁶ See *id.*; see also *Chevron Oil Co.*, 404 U.S. at 107–08 (refusing to apply the correct
25 interpretation of the statute of limitations under the Lands Act because it would pull the rug out
from under a plaintiff who relied upon prior interpretations of the same act by the Fifth Circuit).

26 ⁷⁷ Compare *Chevron Oil Co.*, 404 U.S. at 107–08 with *F.C.C. v. Fox Television Stations*, 132 S.
27 Ct. 2307, 2318 (2012) (recognizing that an "abrupt change" in the meaning of a law fails to provide
fair notice and violates due process).

1 requests that this Court grant its motion for summary judgment and deny SFR's
2 motion for summary judgment.

3 DATED this 8th day of February 2016.

4 DAVID J. MERRILL, P.C.

5
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CERTIFICATE OF SERVICE

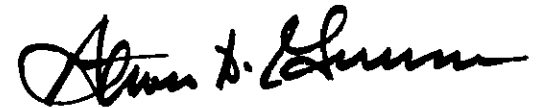
I hereby certify that on the 8th day of February 2016, a copy of the foregoing Marchai, B.T.'s Reply in Support of Motion for Summary Judgment was served electronically to the following through the Court's electronic service system:

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TAB 17



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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. VII

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

**REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
COUNTER-MOTIONS TO STRIKE
PURSUANT TO NRCP RULE 37(d) AND
EIGHTH JUDICIAL DISTRICT COURT
RULE 2.20(a)**

Defendants.

**Hearing Date: February 16, 2016
Hearing Time: 9:00 a.m.**

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

SFR Investments Pool 1, LLC (“SFR”) hereby files its Reply in support of its Motion for Summary Judgment. This Reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court may entertain. This Reply is also based on SFR’s Motion for Summary Judgment (“SFR’s Mot.”), and SFR’s Opposition (“SFR’s OPP”) to MARCHAI B.T., a Bank Trust, (“Marchai” or “the Bank”) Motion for Summary Judgment (“Marchai’s Mot.”), which are incorporated fully herein by reference. SFR concurrently files Counter-motions to strike portions of Marchai’s Mot., and Marchai’s Opposition to SFR’s Mot.

1) Marchai’s Motion for Summary Judgment Grossly Exceeds the Authorized Page Limit Without Permission of the Court; Striking the Excess is Appropriate

On January 14, 2016, MARCHAI, B.T., a Bank Trust (“Marchai” or “the Bank”) filed its Motion for Summary Judgment. Said pleading totaled 67 pages, exclusive of the caption page, the table of contents, the table of authorities, the Certificate of Service, and 271 pages of exhibits. The brief grossly exceeds the page limit without permission of the court, or even seeking leave of the court, as required by Eighth Judicial District Court Rule 2.20(a).

In light of the above, SFR Investments Pool 1, LLC (“SFR”) hereby objects to the unapproved filing of said 67 page motion and moves the court to strike and not consider the excess pages, i.e., pages 31-67 as filed.

2) Prior to the Close of Discovery Marchai’s Person Most Knowledgeable Failed to Present For Duly Noticed Deposition; Striking Evidentiary Declarations Submitted Now in Support of Marchai’s MSJ and in Opposition to SFR’s MSJ is Appropriate

Nevada Rule of Civil Procedure Rule 37(d) provides that if a person designated under Rule 30(b)(6) to testify on behalf of a party fails to appear before the officer who is taking the deposition after being served with a proper notice, the court on motion may make such orders in regard to the failure as are just. Here, the Rule 30 (b)(6) Notice of Marchai was duly Noticed for December 2,

2015. At such time and place, with all counsel present, the individual failed to attend their deposition.¹ Furthermore, Marchai's responses to SFR's amended interrogatories were served unverified by the party. Now, after the close of discovery in the matter, and in the face of opposing motions for summary judgment, Marchai seeks to introduce Declarations from individuals not previously identified or presented for testimony. Said Declarations are more specifically identified as Exhibit 1 to Marchai's Opposition to SFR's Mot., the Declaration of Scott Sawyer; and Exhibit 2 to Marchai's Opposition to SFR's mot., the Declaration of Chaim Freeman. It would be fundamentally unfair for said declarations to now be considered in light of the failure to appear for deposition and failure to verify the responses to interrogatories. Accordingly SFR respectfully moves this court that the declarations be stricken from the record and not be otherwise considered in reviewing the motions.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nothing in the Bank's opposition ("Bank's Opp") provides a reason against granting summary judgment in favor of SFR:² (1) Because there were no irregularities with the sale constituting fraud, unfairness, or oppression, SFR can rely on the conclusive recitals in the foreclosure deed; (2) Because the Bank's commercial reasonableness argument lacks merit since price alone is never enough, and there is no evidence of fraud, unfairness, or oppression; (3) Because SFR is a bona fide purchaser for value; (4) Because the Bank's due process argument is a non-starter since due process is not implicated, but even if it is, the Bank lacks standing because it or its predecessors in interest received actual notice; (5) Because the Bank's constitutional argument is futile as the Nevada Supreme Court has already decided the issue in SFR³ ("SFR" or

¹ See Declaration of Diana Cline Ebron, Esq., attached hereto as **Exhibit A**.

² SFR hereby incorporates by reference its Opposition to the Bank's Motion For Summary Judgment as though fully set forth therein, and also incorporates by reference SFR's Motion for Summary Judgment as though fully set forth herein.

³ SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. ___, 334 P.3d 408, 419 (2014).

1 “the SFR decision”); (6) Because the Bank’s retroactivity argument fails since the central case that
2 the Bank relies upon is not even germane to the issues in this case; and (7) Because Marchai, as a
3 Lienholder, is Not Entitled to an Equitable Remedy.

4 **II. ARGUMENT**

5 **A. The Association Foreclosure Deed is Presumed Valid, and SFR Can Rely on the**
6 **Recitals Contained Therein as Conclusive Proof of the Association’s Compliance.**

7 As fully discussed in SFR’s Opposition,⁴ foreclosure sales and the resulting deeds are
8 presumed valid. NRS 47.250(16)-(18). “A presumption not only fixes the burden of going forward
9 with evidence, but it also shifts the burden of proof.” Yeager v. Harrah's Club, Inc., 111 Nev.
10 830, 834, 897 P.2d 1093, 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777
11 P.2d 366, 368 (1989).) “These presumptions impose on the party against whom it is directed the
12 burden of proving that the nonexistence of the presumed fact is more probable than its existence.”
13 Id. (citing NRS 47.180.). Here, in order to prevail, the Bank had the burden to prove that it is more
14 probable than not that the Association foreclosure sale and the resulting foreclosure deed are
15 invalid. Specifically, to overcome the presumption of validity the Bank had to plead and prove a
16 claim for fraud with particularity, or allege some unfairness or oppression that is not overshadowed
17 by its own bad acts. Here the Bank failed to meet its burden or overcome the presumption of
18 validity.⁵ Thus, the foreclosure sale and foreclosure deed are presumed valid.

19 Furthermore, as fully discussed in SFR’s Motion⁶ and SFR’s Opposition,⁷ a foreclosure
20 deed “*reciting* compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is
21 conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all
22 other persons.’” SFR, 334 P.3d at 411-412 (quoting NRS 116.31166(2)). In fact, the recitals “are
23 conclusive proof of the matters recited.” NRS 116.31166(1). In addition, while here SFR is a bona
24

25 _____
26 ⁴ SFR’s Opp., 6:1-7:28.

27 ⁵ See SFR’s Opp., Section III(B) and III(E).

28 ⁶ SFR’s Mot., Section III(B)

⁷ SFR’s Opp., Section III(B)

1 fide purchaser for value,⁸ under Nevada law, it need not be a BFP to rely on the recitals as
2 conclusive proof. See Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001),
3 opinion reinstated on reh'g (Jan. 31, 2001)(holding that no limitation of bona fide purchaser can
4 be read into a statute providing a conclusive presumption).

5 While the deed recitals contained in NRS 116.31166 are generally conclusive as to those
6 matters asserted, the court may still set aside a defective foreclosure sale on equitable grounds.
7 Shadow Wood HOA, Inc. v. New York Cmty Bankcorp, 132 Nev. Adv. Op. 5, 2016 WL 347979
8 at *5-8 (Jan. 28, 2016). The deed recitals can only be overcome with evidence of fraud, unfairness
9 and oppression, similar to a commercial reasonableness analysis. Id. Indeed, this Court has
10 already mirrored this approach. SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A., No. A-
11 13-682296-C, 2015 WL 4501851 *5 (Nev. Dist. Ct. July 21, 2015) (the bank did not present
12 "evidence of fraud, oppression or unfairness related to the foreclosure sale or some other legal
13 ground for setting aside the sale").

14 Contrary to the Bank's assertions, Bourne Valley is directly on point in this case. It is also
15 consistent with the above holding in Shadow Wood. Here, the foreclosure deed stated as follows:

16 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under
17 that certain Notice of Delinquent Assessment Lien, recorded December 20, 2011,
18 as Instrument number 0001246, in Clark County, does hereby grant, without
19 warranty expressed or implied to: SFR Investments Pool 1, LLL (Grantee), all its
20 right, title and interest in the property legally described as: WYETH RANCH-
21 UNIT 2 PLAT LOT 13 BLOCK A, as per map recorded in book 112 page 8 as
22 shown in the Office of the County Recorder of Clark County Nevada. Trustee states
23 that: This conveyance is made pursuant to the powers conferred upon Trustee by
24 NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described
25 herein. Default occurred as set forth in a Notice of Default and Election to Sell
26 which was recorded in the office of the recorder of said county. All requirements
27 of law regarding the mailing of copies and the posting and publication of the copies
28 of the Notice of Sale have been complied with. Said property was sold by said
Trustee at public auction on August 28, 2013 at the place indicated on the Notice
of Trustee's sale.

25 SFR's Mot., Ex. A-10. Faced with similar recitals, the Bourne Valley court held the buyer "met
26 its burden of showing the required statutory notices were sent to the bank, reasoning that "[g]iven
27

28 ⁸ See SFR's Mot., Section III(D); see also SFR's Opp., Section III(D)

1 that the foreclosure deed recites there was a default, the proper notices were given, the appropriate
2 amount of time has lapsed between notice of default and sale, and notice of the sale was given,
3 under § 116.31166(1), the foreclosure deed constitutes 'conclusive proof' that the required
4 statutory notices were provided." Bourne Valley, 80 F.Supp.3d at 1135. The court continued that
5 the bank was then "required to come forward with evidence that a genuine issue of material fact
6 remains for trial as to notice." Furthermore, there are no procedural irregularities related to the
7 sale that would explain the Bank's failure to pay the lien. Bourne Valley, 30 F. Supp.3d at 1135.
8 Therefore, "... no issue of fact remains as to whether the required statutory notices were provided."
9 Bourne Valley, 30 F. Supp.3d at 1135.

10 Again, the Bank has presented no evidence sufficient to set aside the foreclosure sale.
11 Because there are no grounds to set aside the sale, SFR is entitled to rely on the conclusive proof
12 of the recitals and summary judgment in their favor is appropriate.

13 **B. No Issues of Material Fact Exist as to Commercial Reasonableness.**

14 In its Opposition, the Bank focuses on the purported disparity in purchase price paid by
15 SFR (\$21,000.00) to the purported "Transfer Tax Value" on the State of Nevada Declaration of
16 Value form (\$307,403.00) and then essentially asserts that "Transfer Tax Value" equals "Fair
17 Market Value" (by calculating that SFR paid 6.8% of \$307,400.00) without any legal authority for
18 this assertion. (See Bank's Opp. P. 14:1-4). However, to compare the amount SFR paid for the
19 Property in late 2013 (in the midst of an economic downturn and in light of the lenders' refusal to
20 acknowledge that NRS 116.3116(2) gave associations true super-priority liens) to the purported
21 "Transfer Tax Value" from the County Assessor's tax rolls, or the prior owner's price paid in 2004,
22 or even the original loan amount made in 2004 (during the height of the market bubble) is
23 misleading and disingenuous. The original loan amount provides no information as to the type of
24 sale and distressed real estate market conditions which existed in Las Vegas in August 2013.

25 As explained in SFR's Motion, the provisions of NRS 116 do not require that a non-
26 judicial foreclosure sale be conducted in a "commercially reasonable" manner. (See NRS
27 §116.31164 and §116.31166). However, as is clearly established by Nevada law and confirmed
28 very recently by the Nevada Supreme Court, an allegation of inadequate sales price alone is

1 insufficient to set aside a foreclosure sale; “there must also be a showing of fraud, unfairness, or
2 oppression.” Shadow Wood, at *4 (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530
3 (1982)). As the Shadow Wood Court recognized, Nevada adopted the California rule that “
4 inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee’s
5 sale legally made; there must be in addition proof of some element of fraud, unfairness or
6 oppression as accounts for and brings about the inadequacy of price[.]” Shadow Wood, at *5
7 (quoting Golden v. Tomiyasu, 79 Nev. 503, 504, 514, 387 P.2d 989, 995 (1964) (internal citations
8 omitted) (emphasis added)); see Bourne Valley, 80 F.Supp.3d at 1136.⁹ Here, there are no
9 allegations of fraud, oppression or unfairness. Instead, the Bank relies solely on the purported face
10 value of the deed of trust and compares that figure to the price paid by SFR and then claims it is
11 automatically commercially unreasonable. This argument fails. The amount a lender was willing
12 to lend on the Property in November 2005 when the market was still in a bubble has nothing to do
13 with the amount a purchaser would be willing to pay for the Property in August 2013 (in the midst
14 of an economic downturn and in light of lenders’ refusal to acknowledge that NRS 116.3116(2)
15 gave associations true super priority liens. See SFR’s Mot., at 13-16 for a full discussion of how
16 the market conditions must be considered in determining the adequacy of price.

17 The Association’s sale was publically noticed, as required by statute; multiple bidders
18 attended the auction; it is undisputed that neither the homeowner nor the Bank paid an amount to
19 cure the lien before the sale. Furthermore, both the Notice of Default and Notice of Sale were
20 appropriately mailed.

21 Additionally, the Bank has offered no evidence at all, let alone admissible evidence, of any
22 fraud, unfairness or oppression in the sale process that would justify setting aside the sale. In
23 addition to the price paid by SFR, which as demonstrated above is an unavailing argument on its
24

25 ⁹ Consequently, any reliance by the Bank on the non-controlling authority of Thunder Properties, Inc. v.
26 James L. Wood, et al., No. 3:14-cv-00068-RCJ-WGC, 2014 WL 25736363 (D.Nev. June 9, 2014) is
27 unpersuasive, as that court relied solely upon the purported disparity in purchase price to the total value of
28 the deeds of trust against the property. Id. at *4. That court also cited to Levers in support of its position,
although Levers does not stand for the proposition that price alone equals commercial unreasonableness.
See Levers v. Rio King Land & Invest. Co., 93 Nev. 95, 560 P.2d 917 (1977). Further, as explained in
SFR’s Opposition, Levers is factually distinguishable from this case. Id. at 98-100.

own, the Bank now alleges that the content of the foreclosure notices were deficient. However, the SFR court has noted, the full amount of the lien was the proper amount to be on the notices. SFR, 334 P.3d at 418. All of these arguments fail.

Finally, balancing the lack of any evidence of fraud, oppression and unfairness against the “weigh[t of] (in)action” by the Bank, this challenge to the commercial reasonableness of the foreclosure sale falls flat. Shadow Wood, 2016 WL 347979 at *8. This includes considering (a) the six-month lapse of time between the Bank’s receipt of the notices and the date of the foreclosure sale, (b) the warning language in the Notice of Sale received by the Bank, and (c) the Bank’s failure to record or file any document disputing or challenging the sale despite its knowledge. Id.

In sum, viewing the transaction as a whole, the sale was commercially reasonable, and summary judgment should be granted in favor of SFR.

C. SFR is a Bona Fide Purchaser for Value.

As fully discussed in SFR’s Motion¹⁰ and SFR’s Opposition,¹¹ even if the Bank proffered evidence to support its position that the Association sale was invalid, SFR has the valid defense of being a bona fide purchaser for value (BFP). While Nevada law does not require that SFR be a bona fide purchaser, if there were any irregularities with the Association sale, so long as SFR did not participate in causing the irregularities, they cannot be imputed to SFR.

A BFP purchases real property: (i) for value; and (ii) without notice of a competing or superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). A “purchaser for value” is one who has given “valuable consideration” as opposed to receiving the property as a gift. Id. at 186-187, 591 P.2d at 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971). Here, SFR paid valuable consideration for the Property and had no notice of a competing or superior interest in the Property.¹² It is not the amount of the valuable

¹⁰ SFR’s Mot., 10:1-11:9.

¹¹ SFR’s Opp., 11:12-14:13.

¹² More than a year after the SFR decision, the Bank still erroneously claims its interest was superior to the Association. It was not superior, and therefore, at the time of the foreclosure sale, all SFR had notice of was an **inferior** interest in the subject property. There needs to be finality to a foreclosure sale, so that buyers will attend and bid, without the continued threat of lawsuits challenging their title. Moeller v. Lien, 25

1 consideration SFR paid—here, cash—but the fact that it is valuable, which cannot be contested.
2 Shadow Wood, 2016 WL 347979 at *10. Furthermore, as the Nevada Supreme Court emphasized,
3 mere knowledge that a party may bring an equitable claim is insufficient to put a purchaser like SFR on
4 “notice of any potential future dispute as to title[]” which could defeat BFP status. Id. at *11.

5 Additionally, SFR has no relationship with the Association or Alessi, except as a purchaser
6 of Property. See SFR’s Mot., Ex. B, ¶¶ 8, 9. Therefore, nothing known to the Association or Alessi
7 about any purported irregularities in the foreclosure process could be deemed known by SFR.
8 However, even if the Bank could present some credible evidence that SFR somehow knew that the
9 Bank’s interest was superior for some reason other than the Bank’s faulty interpretation of the
10 NRS Chapter 116, the Bank would nonetheless have to prove that (a) SFR was not a BFP, **and** (b)
11 SFR somehow induced the Association to fraudulently sell the Property to SFR. Bailey v. Butner,
12 64 Nev. 1, 8-9, 176 P.2d 226, 229-230 (1947). There is absolutely no evidence of fraud, and
13 therefore SFR is entitled to summary judgment.

14 Assuming arguendo, if there were any irregularities with the sale, which there are not, first
15 the Bank must show those irregularities led to the low price. See Shadow Wood, 2016 WL 347979,
16 at *5 (citing Golden, 79 Nev. at 514, 387 p.2d at 995 (recognizing the adoption of adopting the
17 California rule that any element of fraud, unfairness, or oppression as accounts for **and brings**
18 **about** the inadequacy of price”) (internal citations omitted) (emphasis added)). As discussed
19 above, the Bank has provided no evidence of fraud, oppression, or unfairness, and certainly has
20 not shown that any of its alleged arguments brought about the price of which it complains. Instead,
21 it is the actions of lenders, like the Bank, that caused the prices at auctions to remain low.

22 Even if the Court goes further, courts in equity “must consider the entirety of the
23 circumstances that bear upon the equities[,]” including the actions and inactions of the parties and
24 “whether an innocent party [a BFP] may be harmed by granting the desired relief.” Shadow Wood,
25 at *9 (referencing In re Petition of Nelson, 495 N.W.2d 200, 203 (Minn. 1993) and citing Smith
26 v. United States, 373 F.2d 419, 424 (4th Circ. 1966)). This is true **even when there are potential**

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28 Cal.App.4th 822, 831-833, 30 Cal. Rptr. 777 (Cal. Ct. App. 1994)..

1 **irregularities in the foreclosure process**, such as pre-sale disputes between the association and
2 the lender, **where the buyer has no knowledge** or participation in the irregularities. Shadow
3 Wood, at *10 (emphasis added). Such consideration of harm to the innocent purchaser is
4 particularly important where the lender has failed to avail itself of the legal remedies available to
5 it to prevent the foreclosure sale. Id. at 21 (fn. 7). Here, between the date of the Notice of Sale
6 was recorded and the date SFR purchased the Property, and despite receiving notice, the Bank
7 failed to take any steps to protect its interest, including recording a lis pendens or other document
8 alleging any problems with the foreclosure process or the foreclosure sale. See SFR's Mot., Ex,
9 B.¶¶ 6, 10. Neither did the Bank attend the sale and announce its alleged dispute with the
10 Association or Alessi.

11 The Bank has provided no admissible evidence that SFR is anything but a bona fide
12 purchaser for value and innocent party, who would be harmed if the foreclosure sale was set aside.
13 Shadow Wood, 2016 WL 347979 at *9-10.

14 In sum, although not required in Nevada, SFR is a bona fide purchaser for value. Because
15 SFR is a BFP, it can rely on this defense so long as it did not know of or participate in any purported
16 irregularities in the sale process. SFR did not know of or participate in any such irregularities, and
17 indeed the Bank has presented no evidence of such knowledge or participation, fraudulent or
18 otherwise. Lastly, in seeking equitable relief, the court must also take into account and weigh the
19 Bank's own "(in)actions." Id. at *9. Here, the Bank — with actual notice of the pending foreclosure
20 sale — did nothing. SFR would be harmed by any belated claim to set aside the sale on those
21 grounds. Therefore, SFR is entitled to summary judgment.

22 **D. Actual Notice is not Required to Satisfy Due Process, But Even if it Was, the Bank**
23 **Lacks Standing to Raise a Facial Challenge as it Received Actual Notice**

24 As fully explained in SFR's Opposition,¹³ even if due process here were required, which it
25 is not, the Bank lacks standing to assert a facial due process violation. Even if it were required
26 (which it is not) the Bank does not deny that it and/or its predecessors in interest, CMG Mortgage,
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28 ¹³ SFR's Opp., 14:14-17:3.

1 CitiMortgage, and U.S. Bank, N.A., were mailed copies of the Notice of Default and Notice of
2 Sale by Alessi.¹⁴ (See Exhibits 2-AA and 2-BB; 2-MM and 2-PP to Bank's Mot.) "[R]eceipt of
3 actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme
4 violated due process. Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice
5 deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due
6 process); see Green Tree Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind.
7 Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the
8 statute are unconstitutional). Any irregularity in notice does not violate due process where one has
9 actual notice of the action to be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S.
10 260, 272, 130 S.Ct. 1367, 1378 (2010) (debtor's failure to serve a summons and complaint does
11 not violate due process where creditor received "actual notice of the filing and contents of [debtor's
12 Chapter 13] plan."). Here, the Bank knew about the Association foreclosure proceedings when it
13 received both notices required to be sent by NRS 116, and it still chose not to take action to prevent
14 the sale. The Bank, therefore, cannot claim injury as a result of the noticing provisions of the
15 statute.¹⁵

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19 ¹⁴ Whereas on December 2, 2015, Bank failed to attend its duly noticed Deposition before the close
20 of discovery in this matter, Bank is now precluded from introducing contrary evidence on this
21 issue.

22 ¹⁵ As explained in SFR's Opp., although Nevada does not have the same Article III standing requirements
23 as federal courts, "Nevada has a long history of requiring an actual justiciable controversy as a predicate to
24 judicial relief." Kahn v. Dodds (In re AMERCO Derivative Litig.), 252 P.3d 681, 694, 2011 Nev. LEXIS
25 18, *19-20 (Nev. 2011) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). "In cases for
26 declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased
27 jurisdictional standing requirements." Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel, 122
28 Nev. 385, 393, 135 P.3d 220, 225-226 (2006) (citing Bryan, 102 Nev. at 525-26, 728 P.2d at 444-45); see
also Sereika v. State, 114 Nev. 142, 151, 955 P.2d 175, 180 (1998) (holding that Sereika lacked standing
to challenge the constitutionality of a potentially applicable statute on the basis that it may be
unconstitutionally applied to others not at issue in the case). Specifically, to demonstrate constitutional
standing, the Bank must demonstrate (1) it suffered an "injury in fact" to a legally protected interest; (2)
there is a causal connection by what the injury and the conduct complained of; and (3) it is likely the injury
would be redressed by a favorable decision." In this instance, the Bank has not been able to demonstrate
that it has standing to claim the applicable statutes are unconstitutional. Miller v. Warden, Nevada State
Prison, 112 Nev. 930, 936, 921, P.2d 882, 885 (1996).

1 However, even if the Bank had not received the notices, which it did, its argument that this
2 alleged lack of notice deprived it of due process would still fail. The Bank’s citations to the
3 Mennonite and Mullane decisions to support its position that any party must receive actual notice
4 to satisfy due process are patently inaccurate, constituting a rejection of United States Supreme
5 Court precedent. To be clear, due process, if it were required here, does not require actual notice.
6 Specifically, “our cases have never required actual notice.” Dusenbery v. U.S., 534 U.S. 161, 171,
7 122 S.Ct. 694 (2002). Due process requires only that the noticing be “reasonably calculated...to
8 apprise interested parties of the pendency of the action[.]” Mullane v. Cent. Hanover Bank & Trust
9 Co., 339 U.S. 306, 314, 70 S.Ct. 652 (1950). If a notice identifies an event that will impact an
10 individual’s property interest, then due process is satisfied. United Student Aid Funds, Inc., 559 at
11 272 (bankruptcy plan’s filing and contents); Jones v. Flowers, 547 U.S. 220, 239, 126 S.Ct. 1708
12 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite Bd. of Missions v.
13 Adams, 462 U.S. 791, 798, 103 S.Ct. 2706 (tax sale).

14 Here, not only did the Association send the notices, but the notices satisfied due process
15 because they were “reasonably calculated...to apprise [the Bank] of” the pendency of the
16 Association’s foreclosure. Mullane, 339 U.S. at 314; see In re Medaglia, 52 F.3d 451, 455-56 (2d
17 Cir. 1995) (“[D]ue process is not offended by requiring a person with actual, timely knowledge of
18 an event that may affect a right to exercise due diligence and take necessary steps to preserve that
19 right.”) (cited with favor in SFR, 334 P.3d at 418). Thus, the statutes worked just as recognized by
20 the Nevada Supreme Court in the SFR decision, where the majority recognized that notices of
21 default and sale were required to be sent to junior lienholders, just like the Bank, and the dissent
22 agreed. SFR, 334 P.3d at 411, 417, 418, 422 (noting the incorporation of NRS 107.090(3)(b) and
23 (4) through NRS 116.31168).

24 In sum, actual notice is not required. However, even if it was, because the Bank’s
25 predecessors in interest were provided with actual notice of the Association’s non-judicial
26

1 foreclosure sale, it lacks standing to assert its claim that NRS116.3116 facially violates its due
2 process rights. Therefore, summary judgment should be granted in favor of SFR.

3 **E. NRS 116 is Constitutional.**

4 As fully briefed in SFR's Opposition, even if the Bank had standing to raise a facial
5 constitutional challenge, which it does not, it still cannot meet its burden to overcome the
6 presumption of validity; the fact that the issue of constitutionality has already been decided; the
7 Constitutional avoidance doctrine; and the fact that NRS 116.3116-116.31168 requires notices of
8 default and sale be sent to all junior lienholders of record. See SFR's Opp., pp. 17-25.

10 **1. Standard for a Constitutional Challenge**

11 As fully discussed in SFR's Opposition,¹⁶ "[s]tatutes are presumed to be valid, and the
12 challenger bears the burden of showing that a statute is unconstitutional." Flamingo Paradise
13 Gaming, LLC v. Chanos, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (quoting Silvar v. Eighth
14 Judicial Dist. Court, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)). The party making a facial
15 challenge to a statute "bears the burden of demonstrating that there is no set of circumstances under
16 which the statute would be valid." Déjà vu Showgirls v. State, Dept. of Tax., 130 Nev. ___, ___,
17 334 P.3d 392, 398 (2014); see Flamingo Paradise Gaming, 125 Nev. at 511, 217 P.3d at 552 (citing
18 Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449, 128 S.Ct.
19 1184, 1190 (2008) (noting that the Supreme Court of the United States reaffirmed the requirement
20 that a statute be void in all its applications to be successful, when civil statutes are at issue). Facial
21 challenges are generally disfavored because they rest on speculation, and "run contrary to the
22 fundamental principle of judicial restraint that courts should neither "anticipate a question of
23 constitutional law in advance of the necessity of deciding it" nor "formulate a rule of
24 constitutional law broader than is required by the precise facts to which it is to be applied."
25 Washington State Grange, 552 U.S. at 450-451.

26 Courts must "avoid considering the constitutionality of a statute unless it is absolutely
27 necessary to do so." Sheriff v. Andrews, 128 Nev. ___, ___, 286 P.3d 262, 263 (2012). Likewise,

28 ¹⁶ SFR's Opp., 17:27-18:28.

1 courts “will not decide the constitutionality of a statute based upon a supposed or hypothetical case
2 which might arise thereunder.” Carlisle v. State, 98 Nev. 128, 131, 642 P.2d 596, 598 (1982).
3 These precepts emanate from and perpetuate the constitutional avoidance doctrine. Ashwander v.
4 Tenn. Valley Auth., 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring). Justice
5 Frankfurter described this doctrine as “the most fundamental principle of constitutional
6 adjudication [.]” U.S. v. Lovett, 328 U.S. 303, 320 (1946) (Frankfurter, J., concurring). The Bank
7 ignores this important doctrine; this Court, however, cannot. If the Court can interpret the statutes
8 constitutionally, it must.

9 **2. The Nevada Supreme Court Already Decided the Issue**

10 As fully explained in SFR’s Opposition,¹⁷ the SFR opinion demonstrated at least one
11 circumstance in which the statute was valid, and therefore the Bank’s facial challenge cannot stand.
12 Washington State Grange, 552 U.S. at 449 (the challenger must establish “‘that no set of
13 circumstances exists under which the Act would be valid,’ i.e., that the law is unconstitutional in
14 all of its applications.”) (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)). The inquiry
15 should stop here.

16 The Nevada Supreme Court in SFR Investments Pool 1, LLC, v. U.S. Bank, N.A., did both
17 a facial and as applied analysis, rejecting both.¹⁸ SFR, 334 P.3d at 418 (“[t]o the extent U.S. Bank
18 argues that a statutory scheme that gives an HOA a superpriority lien that can be foreclosed
19 nonjudicially thereby extinguishing an earlier filed deed of trust, offends due process, the argument
20 is a nonstarter.”) Both the majority and dissent recognized that notice must be sent to all junior
21 lienholders.

22 Further, the majority recognized the incorporation of NRS 107.090 by NRS 116.31168(1),
23 and making the provisions “apply to the foreclosure of an association’s lien as if a deed of trust
24 were being foreclosed.” SFR, 334 P.3d at 411. The majority expressly noted that, through the

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26 ¹⁷ SFR’s Opp., 16:8-18:2.

27 ¹⁸ Notably, Nevada’s highest court also rejected an additional facial challenge when deciding to deny
28 rehearing of SFR. As the SFR court clearly stated in denying rehearing, “[w]e have considered the briefs
of amici curiae in resolving the petition for rehearing.” SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
No. 63078, Order Denying Rehearing, at 2 n.1 (Nev. Oct. 16, 2014).

1 incorporation of NRS 107.090(3)(b) and (4), both the notice of default and notice of sale were
2 required to be given to “[e]ach other person with an interest whose interest or claimed interest is
3 subordinate to the deed of trust.” SFR, 334 P.3d at 411 (quoting 107.090(3)(b)). Thus, by
4 incorporation, this means that notice is required to each person whose interest is subordinate to the
5 Association’s lien. These provisions are in addition to providing notice to each person with an
6 interest who has requested notice. See 107.090(2), (3)(a); see also 116.31163;
7 116.311635(1)(b)(1)-(2). The SFR dissent also recognized that the statutes require notice of default
8 and sale be sent to the lenders, as junior lienholders, through the incorporation of NRS 107.090.
9 SFR, 334 P.3d at 422. Thus, to the extent the Bank asks this Court to interpret NRS 116.3116 et
10 seq. otherwise, and render them unconstitutional, this Court must decline.

11 The Bank’s motion should be denied with prejudice because the Nevada Supreme Court
12 has already decided and rejected their constitutional arguments. Conversely, summary judgment
13 in favor of SFR is appropriate.

14 3. ***There is No State Actor Involved;***
15 ***NRS 116 Does Not Invoke Due Process Considerations***

16 As fully discussed in SFR ‘s Opposition,¹⁹ in order for due process to be implicated, there
17 must be a state actor. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n, 531 U.S. 288, 295
18 (2001). If there is no state actor, then due process—including concerns about “notice”—is
19 inapplicable. Id.; Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982) (“If the action of the
20 respondent school is not state action, our inquiry ends.”). Moreover, the burden of establishing a
21 state actor is on the party claiming a deprivation of a constitutionally protected interest. Flagg
22 Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). Such a burden is steep and “necessarily fact-
23 bound [.]” Brentwood, 531 U.S. at 298.

24 The “second element of the state-action requirement” is “the party charged with the
25 deprivation must be a person who may fairly be said to be **a state actor**.” Lugar v. Edmondson
26 Oil Co., Inc., 457 U.S. 922, 937 (1982) (emphasis added). Due process protections do not extend
27 to private actor’s private conduct. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999).

28 ¹⁹ SFR’s Opp., 20:21-22:12.

1 Rather, the private actor must be performing functions that are **traditionally and exclusively**
2 **performed by governments.** Flagg Bros., 436 U.S. at 158. As one federal district court noted,
3 “the power to impose fines or enforce liens are not traditional and exclusive governmental
4 functions.” Snowdon v. Preferred RV Resort Owners Ass’n, 2:08-cv-01094-RCJ-PAL, at 14:14-
5 15 (D. Nev. Apr. 1, 2009), aff’d, 379 Fed. Appx. 636 (9th Cir. 2010) (“[Association] did not
6 perform the traditional and exclusive public function of municipal governance.” (internal citation
7 omitted)).

8 The Bank’s reliance on Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975), is equally
9 misguided. Since Culbertson was decided, the United States Supreme Court has determined a
10 right’s origins (i.e. statutory or common law) do not dictate whether a private entity is a state actor.
11 S.F. Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 547 (1987) (“Nor is the fact that Congress has
12 granted the USOC exclusive use of the word ‘Olympic’ dispositive. All enforceable rights in
13 trademarks are created by some governmental act, usually pursuant to a statute or the common
14 law. The actions of the trademark owners nevertheless remain private.”). Similarly, that Court has
15 never held the enactment of a remedy transforms a private entity into a state actor. Am. Mfr. Mut.
16 Ins. Co. v. Sullivan, 526 U.S. 40, 53 (1999) (“We have never held that the mere availability of a
17 remedy for wrongful conduct, even when the private use of that remedy serves important public
18 interests, so significantly encourages the private activity as to make the State responsible for it.”).

19 Even the Ninth Circuit, in Charmicor v. Deaner, wherein it determined that a foreclosure
20 sale under NRS 107 did not implicate due process, noted that the statutory source of a power or
21 right “does not necessarily transform a private, nonjudicial foreclosure into state action.” 572 F.2d
22 694, 695-696 (9th Cir.1988). The court further recognized that Culbertson did not stand for the
23 proposition that the source of the rights being enforced was dispositive to the issue of state action:

24 [E]ven this court’s opinion in Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975),
25 holding that Arizona’s Innkeeper’s Lien Statute colored otherwise private
26 transactions with state action, did not consider the statutory source of the rights
27 involved to be determinative. Two judges thought that the distinction between
28 statutory and common law rights did not matter at all, 528 F. 2d at 435, n.5, 436-
437, and one stated that the distinction, while a factor to be considered, was not
dispositive of the state action issue. Id. at 431.

1 Charmicor, 572 F.2d at 696. The court held that “the distinction between the sources of the
2 California [contractual right] and the Nevada [statutory right conferring power of sale on a trustee]
3 powers of sale does not compel, or strongly support, a holding that the latter constitutes state
4 action, nor does it call into question the district court's reliance upon California cases.” Id. at 696.

5 Further, the Bank’s reliance on J.D. Constr., Inc. v. Ibex Int’l Grp., LLC, 126 Nev. ___, 240 P.3d
6 1033 (2010) is equally misplaced for several reasons. Initially, that case involved parties using state-created
7 mechanic’s liens procedures in conjunction with overt and significant assistance from state officials (i.e.
8 courts). For example, J.D. Constr. assessed 108.2275’s procedures for a property owner to expunge a
9 mechanic’s lien, which include: moving to dismiss the lien in court, submitting affidavits and documentary
10 evidence to the court in support of a court-filed motion to expunge, providing notice of a court-ordered
11 hearing, attending the court-ordered hearing, and abiding by a subsequently issued court order. J.D. Constr.,
12 240 P.3d at 1038. Here, Association enforced its lien through non-judicial foreclosure without a state
13 official’s overt and significant assistance. The absence of a state official’s overt and significant assistance
14 distinguishes the instant matter from J.D. Constr. Additionally, J.D. Constr. evaluated the constitutional
15 sufficiency of *procedures*. J.D. Constr., 240 P.3d at 1037 (“Second, we conclude . . . this procedure satisfies
16 due process[.]”). Hence, the Bank misuses J.D. Constr.

17 Due process is not implicated because there is no state actor. Even if it was, however, the
18 constitutional avoidance doctrine and the SFR Court have already determined that due process is
19 not offended by NRS 116 non-judicial foreclosure statutes.

20 **4. The Statutes Require Notice to All Junior Lienholders of Record**

21 As fully explained in SFR’s Opposition,²⁰ due process, if it applied here, would require
22 only that the noticing provisions be “reasonably calculated...to apprise interested parties of the
23 pendency of the action[.]” Mullane, 339 U.S. at 314. If a notice identifies an event that will impact
24 an individual’s property interest, then due process is satisfied. United Student Aid Funds, Inc., 559
25 U.S. at 272 (bankruptcy plan’s filing and contents); Jones, 547 U.S. at 239 (tax sale); Dusenbery,
26 534 U.S. at 168 (cash forfeiture); Mennonite, 462 U.S. at 798 (tax sale). Here, the Association’s

27
28 ²⁰ SFR’s Opp., 22:13-25:17.

1 notices satisfied due process because, as set forth fully above, they were “reasonably
2 calculated...to apprise [the Bank] of” the pendency of the Association’s foreclosure. Thus, the
3 Bank’s motion should be denied and SFR is entitled to summary judgment.

4 Further, the Bank’s attempt to have this Court construe the statute as “opt-in” is unavailing.
5 First, as discussed above, the Nevada Supreme Court has already recognized that NRS 116.31168
6 incorporates the whole of NRS 107.090. Additionally, the Bank’s reading of the statutes requires
7 this Court to ignore the constitutional avoidance doctrine and limit the meaning of the plain words.
8 While the Bank claims that the statutes require notice only to the unit owner and those other
9 persons who request it, the Bank is wrong. The Bank’s attempt to limit the provisions of NRS
10 107.090 to only the persons who request notice belies the Legislature’s incorporation of the statute
11 as a whole and to limit the language of subsection 3(b) to those with interests subordinate to the
12 deed of trust.

13 In sum, the non-judicial noticing requirements of NRS 116 require notice to lenders. The
14 Bank simply refuses to acknowledge that its own actions caused its loss, not those of the
15 Association, its agent, and certainly not those of SFR. This is especially so in light of the fact that
16 the recitals in the Association foreclosure deed are conclusive as to the noticing and that the Bank
17 failed to provide any admissible evidence to rebut that conclusion. SFR’s motion for summary
18 judgment should therefore be granted.

19
20 **F. *Chevron Oil* is Not Applicable to the *SFR* decision.**

21 The Bank argues that SFR should be applied prospectively (see Bank’s Mot. 63:11-65:4).
22 And yet does not include any argument to support that contention in its Opposition. Nonetheless,
23 SFR fully addressed this argument in its Opposition and will not repeat it in full here (see SFR
24 Opp. At 25-30). Essentially, Chevron Oil ²¹ prevents this Court from “retroactively” applying
25 SFR. See Bank’s Mot., pp. 12-14. Chevron Oil, however, is inapplicable because it dealt with
26 retroactively applying new rules of law. Chevron Oil, 404 U.S. at 106-107; see also Harper v. Va.
27 Dep’t of Taxation, 509 U.S. 86, 90, 94-95, 113 S.Ct. 2510 (1993). Contrastingly, SFR involved

28 ²¹ Chevron Oil Co. v. Hudson, 404 U.S. 97, 106-107 (1971).

1 statutory construction, an issue devoid of the retroactivity concerns discussed in Chevron Oil.

2 Put simply, Chevron Oil is distinguishable from SFR in that the latter dealt with statutory
3 construction of an existing law and not application of a new rule of law. Nonetheless, applying
4 the Chevron Oil factors to the SFR decision, actually results in favor of retroactive application.

5 **G. Marchai, as a Lienholder, is Not Entitled to an Equitable Remedy.**

6 The Bank argues that the Nevada Supreme Court recently found that while the deed
7 recitals contained in NRS 116.31166 are generally conclusive as to those matters asserted, the
8 court may still set aside a defective foreclosure sale on equitable grounds. Shadow Wood
9 Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5,
10 ____ P.3d ____, 2016 WL 347979 at *5-8 (Jan. 28, 2016). But Shadow Wood is distinguishable
11 from this case in one key aspect: the bank in Shadow Wood was the homeowner of the Property
12 which the Association foreclosed. Shadow Wood, 2016 WL 347979 at *1. In other words, it was
13 the homeowner who challenged the validity of the sale, not a lienholder, and unlike a lienholder,
14 a homeowner's remedy is solely equitable. In contrast, here Nationstar simply had a collateral
15 interest in the Property, and as such, its remedy at law, if one is even triggered, is money damages.
16 Munger v. Moore, 89 Cal.Rptr. 323 (Ct. App. 1970). It is well-settled that in Nevada, district
17 courts lack authority to grant equitable relief when an adequate remedy at law exists. Las Vegas
18 Valley Water Dist. V. Curtis Park Manor Water Users Ass'n, 98 Nev. 275, 277, 646 P.2d 549,
19 551 (1982). Because Marchai has an adequate remedy at law should they be able to prove some
20 irregularity with the sale, equitable relief is not available to Marchai.

21 Bank argues that the former homeowner Perez had paid Wyeth Ranch more than two years
22 of association dues which should have satisfied the superpriority portion of Wyeth Ranch's lien,
23 which would then mean that whatever SFR acquired at the foreclosure sale, it acquired "subject
24 to" Bank's deed of trust. However, to the extent the Bank suggests, even by inference, that taking
25 title subject to the first deed of trust is an option, the statute does not provide such an option.
26 Unless Marchai can demonstrate actual fraud, unfairness, or oppression **by the purchaser** at the
27 publically advertised and held auction, the purchaser should not be subject to any acts that would
28

1 set aside its unencumbered deed.

2 **III. CONCLUSION**

3 Based on the above, the Court should deny the Bank's motion for summary judgment and
4 instead, grant summary judgment in favor of SFR, stating that SFR is the title holder of the
5 Property and that the Bank's deed of trust was extinguished when the Association foreclosed its
6 lien containing super priority amounts.

7 DATED this 9th day of February, 2016.

8 **KIM GILBERT EBRON**

9
10 */s/Jacqueline A. Gilbert*
11 Diana Cline Ebron, Esq.
12 Nevada Bar No. 10580
13 Jacqueline A. Gilbert, Esq.
14 Nevada Bar No. 10593
15 Karen L. Hanks, Esq.
16 Nevada Bar No. 09578
17 7625 Dean Martin Drive, Suite 110
18 Las Vegas, Nevada 89139
19 Phone: (702) 485-3300
20 Fax: (702) 485-3301
21 *Attorneys for SFR Investments Pool 1, LLC*
22
23
24
25
26
27
28

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to:

Select All		Select None
David J. Merrill P.C.		
Name	Email	Select
David J. Merrill	david@djmerillpc.com	<input checked="" type="checkbox"/>

/s/ Alan G. Harvey
An employee of Kim Gilbert Ebron

EXHIBIT A

**DECLARATION OF DIANA CLINE EBRON IN SUPPORT OF SFR INVESTMENTS
POOL 1, LLC'S MOTION TO STRIKE PURSUANT TO NRCP RULE 37(d) AND
EIGHTH JUDICIAL DISTRICT COURT RULE 2.20(a), AS INCLUDED WITH REPLY
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, Diana Cline Ebron, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, formerly Howard Kim & Associates, admitted to practice law in the State of Nevada.
2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.
3. I make this declaration in support of SFR's Motion to Strike Pursuant to NRCP Rule 37(d), and Eighth Judicial District Court Rule 2.20(a) Marchai's Opposition to SFR's Motion for Summary Judgment.
4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.
5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case.
6. Attached hereto as **Exhibit A-1** is a true and correct copy of the condensed deposition transcript in the matter of Marchai B. T. vs. Cristela Perez et al.
7. Attached hereto as **Exhibit A-2** is a true and correct copy of Exhibit 1 to the condensed deposition transcript in the matter of Marchai B. T. vs. Cristela Perez et al.
8. Attached hereto as **Exhibit A-3** is a true and correct copy of Exhibit 2 to the condensed deposition transcript in the matter of Marchai B. T. vs. Cristela Perez et al.
9. Attached hereto as **Exhibit A-4** is a true and correct copy of the First Amended

Notice of 30(b)(6) Deposition of Marchai, B.T., dated October 27, 2015.

10. Attached hereto as **Exhibit A-5** is a true and correct copy of the Initial Notice of 30(b)(6) Deposition of Marchai, B.T., dated October 27, 2015.

11. Attached hereto as **Exhibit A-6** is a true and correct copy of the Interrogatories served in this matter.

12. Attached hereto as **Exhibit A-7** is a true and correct copy of the “unverified” Responses to Interrogatories served in this matter.

13. To the best of my knowledge, only “unverified” responses to interrogatories were received by our office.

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

Dated this 9th day of February, 2016.

/s/ Diana Cline Ebron
Diana Cline Ebron

EXHIBIT A-1

In The Matter Of:

*Marchai B.T. vs.
Cristela Perez, et al.*

*30(b)(6) Marchai B.T.
December 2, 2015*



Min-U-Script® with Word Index

30(b)(6) Marchai B.T. - December 2, 2015
Marchai B.T. vs. Cristela Perez, et al.

Page 1	
1	DISTRICT COURT
2	CLARK COUNTY, NEVADA
3	MARCHAI B.T., a Bank Trust,
4	Plaintiff,
5	vs.
6	CRISTELA PEREZ, an individual; SFR)
7	INVESTMENT POOL I, LLC, a limited)
8	liability company; U.S. BANK)
9	NATIONAL ASSOCIATION, N.D., a)
10	national association; DOES I)
11	through X; and ROE CORPORATIONS I)
12	through X, inclusive,
13	Defendants.
14	SFR INVESTMENTS POOL I, LLC, a)
15	Nevada limited liability company,
16	Counterclaimant/Cross-Claimant,
17	vs.
18	MARCHAI B.T., a Bank Trust; U.S.)
19	BANK NATIONAL ASSOCIATION, N.D., a)
20	national association; CRISTELA)
21	PEREZ, an individual; and DOES I)
22	through X; and ROE CORPORATIONS 1)
23	through 10, inclusive,
24	Counterdefendant/Cross-Defendants.
25	CERTIFICATE OF NONAPPEARANCE
	SCHEDULED DEPOSITION OF 30(B)(6) DEPOSITION OF
	MARCHAI B.T. (Wolf Rivers Avenue Property)
	Scheduled for Wednesday, December 2, 2015
	At 3:00 p.m.
	At 1055 Whitney Ranch Drive, Suite 110
	Henderson, Nevada
	REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715

Page 2	
1	APPEARANCES:
2	For the Plaintiff and Counterdefendant/Cross-Defendants,
3	MARCHAI B.T., a Bank Trust:
4	LAW OFFICES OF LES ZIEVE
5	BY: SHERRY A. MOORE, ESQ.
6	3753 Howard Hughes Parkway, Suite 200
7	Las Vegas, Nevada 89169
8	(702) 948-8565
9	(702) 920-8713 (Facsimile)
10	smoore@zievelaw.com
11	- and -
12	LAW OFFICE OF DAVID J. MERRILL
13	BY: DAVID J. MERRILL, ESQ.
14	10161 Park Run Drive, Suite 150
15	Las Vegas, Nevada 89145
16	(702) 566-1935
17	(702) 993-8841 (Facsimile)
18	david@djmerrillpc.com
19	For the Counterclaimant/Cross-Claimant, SFR INVESTMENTS
20	POOL 1, LLC:
21	HOWARD KIM & ASSOCIATES
22	BY: DIANA CLINE EBRON, ESQ.
23	1055 Whitney Ranch Drive, Suite 110
24	Henderson, Nevada 89014
25	(702) 485-3300
	(702) 485-3301 (Facsimile)
	diana@hkimlaw.com

Page 3		
1	E X H I B I T S	
2	NUMBER	DESCRIPTION PAGE
3	Exhibit 1	Second Amended Notice of 30(b)(6) Deposition of Marchai B.T. (6 pages) 4
4	Exhibit 2	String of e-mails between Ms. Ebron and Mr. Petiprin, dated between 10/27/15 and 12/1/15, regarding A-13-689461-C Marchai BT Bank Trust v. Cristela Perez -- written discovery (10 pages) 4
5		
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Page 4	
1	HENDERSON, NEVADA; WEDNESDAY, DECEMBER 2, 2015
2	3:06 P.M.
3	-oOo-
4	Whereupon --
5	(Prior to the commencement of the deposition
6	proceedings, Exhibits 1 and 2 were marked for
7	identification.)
8	MS. EBRON: Okay. Good afternoon. I am Diana
9	Cline Ebron. I represent SFR Investments Pool I, LLC in
10	this case. This is the time and place set for the
11	30(b)(6) deposition of plaintiff. This was originally
12	set for Tuesday, July 1st, 2014, and upon agreement of
13	the parties, the case was stayed for some time and this
14	deposition was set on October 27th, 2015, to
15	November 20th, 2015.
16	At the request of plaintiff, we rescheduled the
17	deposition to this afternoon. The deposition notice is
18	marked as a Exhibit 1.
19	Based on my e-mails and discussions with
20	counsel, it's my understanding that the plaintiff does
21	not have a witness and can't produce a witness today.
22	Since discovery in this case closed yesterday, I wanted
23	to go ahead and put it on the record and take a
24	nonappearance.
25	My e-mail correspondence is marked as Exhibit 2.

Page 5

1 Counsel, do you both want to make your
2 appearances and explain the substitution and anything
3 else you want?
4 **MR. MERRILL:** Yeah. David Merrill. I am going
5 to be substituting in in this case -- I am in the
6 process of substituting into this case.
7 It's my understanding that SFR's counsel was
8 notified yesterday that the client representative would
9 not be available today for the deposition as reflected
10 in Exhibit 2, and that's why the client representative
11 was not available.
12 We did ask to reschedule, but that was -- that
13 request was declined. However, we are still willing to
14 reschedule and conduct the deposition at a convenient
15 date and time.
16 **MS. MOORE:** And I'm Sherry Moore. I'm current
17 attorney of record for plaintiff. We were first
18 informed yesterday that Mr. Merrill was substituting
19 into this case, and that was the reason why -- or one of
20 the reasons why our client would not be here today.
21 **MS. EBRON:** And just from our end, because
22 discovery has already closed and we don't have any
23 information as to when a witness would be available and
24 we don't have any stipulation to extend discovery or I'm
25 not sure that would be that granted, I just wanted to go

Page 6

1 ahead and take this nonappearance today.
2 **MS. MOORE:** Thank you.
3 (Whereupon, the proceedings concluded at
4 3:09 p.m.
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Page 7

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:
4 I, Jean M. Dahlberg, a duly commissioned and
5 licensed Court Reporter, Clark County, State of Nevada,
6 do hereby certify:
7 That pursuant to the request of Diana Cline
8 Ebron, Esq., counsel for SFR Investments Pool I, Inc. in
9 the above-entitled cause, I did appear in the offices of
10 HOWARD KIM & ASSOCIATES, located at 1055 Whitney Ranch
11 Drive, Suite 110, in the City of Henderson, County of
12 Clark, State of Nevada, at 2:40 p.m., Wednesday,
13 December 2, 2015, for the purpose of placing under oath
14 and reporting the testimony of the 30(b)(6) Witness for
15 Marchai B.T., in the above-entitled cause;
16 That I remained at said location until 3:31 p.m.
17 on said date, during which time the deponent did not
18 appear, and during which time Diana Cline Ebron, Esq.,
19 Sherry A. Moore, Esq., and David J. Merrill, Esq., were
20 present, counsel for the respective parties.
21 IN WITNESS WHEREOF, I have hereunto set my hand in
22 my office in the County of Clark, State of Nevada, this
23 8th day of December, 2015.
24
25 JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

30(b)(6) Marchai B.T. - December 2, 2015
Marchai B.T. vs. Cristela Perez, et al.

	deposition (7) 4:5,11,14,17,17;5:9,14	4:9	4:5
A	Diana (1) 4:8	J	proceedings (2) 4:6;6:3
afternoon (2) 4:8,17	discovery (3) 4:22;5:22,24	July (1) 4:12	process (1) 5:6
agreement (1) 4:12	discussions (1) 4:19	L	produce (1) 4:21
ahead (2) 4:23;6:1	E	LLC (1) 4:9	put (1) 4:23
appearances (1) 5:2	EBRON (3) 4:8,9;5:21	M	R
attorney (1) 5:17	else (1) 5:3	marked (3) 4:6,18,25	reason (1) 5:19
available (3) 5:9,11,23	e-mail (1) 4:25	Merrill (3) 5:4,4,18	reasons (1) 5:20
B	e-mails (1) 4:19	MOORE (3) 5:16,16;6:2	record (2) 4:23;5:17
Based (1) 4:19	end (1) 5:21	N	reflected (1) 5:9
both (1) 5:1	Exhibit (3) 4:18,25;5:10	NEVADA (1) 4:1	represent (1) 4:9
C	Exhibits (1) 4:6	nonappearance (2) 4:24;6:1	representative (2) 5:8,10
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closed (2) 4:22;5:22	first (1) 5:17	O	S
commencement (1) 4:5	G	October (1) 4:14	set (3) 4:10,12,14
concluded (1) 6:3	Good (1) 4:8	one (1) 5:19	SFR (1) 4:9
conduct (1) 5:14	granted (1) 5:25	oOo- (2) 4:3;6:5	SFR's (1) 5:7
convenient (1) 5:14	H	originally (1) 4:11	Sherry (1) 5:16
correspondence (1) 4:25	HENDERSON (1) 4:1	P	stayed (1) 4:13
counsel (3) 4:20;5:1,7	I	parties (1) 4:13	still (1) 5:13
current (1) 5:16	identification (1) 4:7	place (1) 4:10	stipulation (1) 5:24
D	information (1) 5:23	plaintiff (4) 4:11,16,20;5:17	substituting (3) 5:5,6,18
date (1) 5:15	informed (1) 5:18	PM (2) 4:2;6:4	substitution (1) 5:2
David (1) 5:4	into (2) 5:6,19	Pool (1) 4:9	sure (1) 5:25
DECEMBER (1) 4:1	Investments (1)	Prior (1)	T
declined (1) 5:13			today (4) 4:21;5:9,20;6:1

Tuesday (1) 4:12			
U			
upon (1) 4:12			
W			
WEDNESDAY (1) 4:1 Whereupon (2) 4:4;6:3 willing (1) 5:13 witness (3) 4:21,21;5:23			
Y			
yesterday (3) 4:22;5:8,18			
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1 (2) 4:6,18 1st (1) 4:12			
2			
2 (4) 4:1,6,25;5:10 2014 (1) 4:12 2015 (3) 4:1,14,15 20th (1) 4:15 27th (1) 4:14			
3			
3:06 (1) 4:2 3:09 (1) 6:4 30b6 (1) 4:11			

EXHIBIT A-2

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

DIANA CLINE EBRON, ESQ.
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1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

**SECOND AMENDED NOTICE OF 30(b)(6)
DEPOSITION OF MARCHAI B.T.**

Date: Wednesday, December 2, 2015
Time: 3:00 p.m.

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

Counterclaimant/Cross-Claimant,

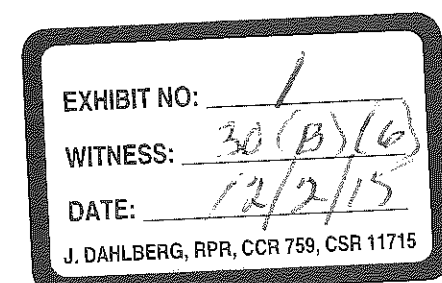
vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that Defendant SFR Investments Pool 1, LLC's ("SFR")
deposition of Plaintiff Marchai B.T. ("Marchai") originally scheduled for Tuesday, July 1, 2014
at 2:00 p.m and rescheduled to Friday, November 20, 2015 at 1:30 p.m. is now **rescheduled** to



1 Wednesday, December 2, 2015 at 3:00 p.m. in the offices of Howard Kim and Associates,
2 1055 Whitney Ranch Dr., Suite 110, Henderson, NV 89014, upon oral examination, pursuant to
3 Rule 30 of the Nevada Rules of Civil Procedure. This deposition may be vacated to the extent
4 Marchai disclaims an interest in the Property.

5 YOU ARE FURTHER NOTIFIED that the deposition shall be taken before a certified
6 court reporter, notary public or other officer authorized to administer oaths by the State where
7 the deposition is to be held. The deposition will be recorded by stenographic means. You are
8 invited to attend and to cross examine.

9 YOU ARE FURTHER NOTIFIED that the deponent is not a natural person. Pursuant to
10 Nevada Rule of Civil Procedure 30(b)(6), Marchai, is advised of its duty to designate one or
11 more of its knowledgeable officers, directors, managing agents, commissioners, employers or
12 other persons who consent to testify on its behalf concerning the subjects identified in this notice.

13 DEFINITIONS

14 The following definitions apply to these areas of inquiry:

15 1. "Property" refers to the real property located at **7119 Wolf Rivers Avenue, Las**
16 **Vegas, Nevada 89131, Parcel No. 125-15-811-013.**

17 2. The lower-case term "association" refers generally to a homeowners association,
18 planned unit development, or condominium association, and the capitalized term "Association"
19 refers specifically to Wyeth Ranch Homeowners Association.

20 3. "Association foreclosure sale" refers to the public auction held on August 28,
21 2013, by Alessi & Koenig ("Alessi") on behalf of the Association.

22 4. "Borrower" refers to Cristela Perez.

23 5. "First Deed of Trust" refers to the document recorded in the Official Records of
24 the Clark County Recorder as Instrument No. 200511090001385 on or about November 11,
25 2005.

26 6. "Assignment" refers to the document recorded in the Official Records of the
27 Clark County Recorder as Instrument No. 201308120002562 on or about August 12, 2013.

28 7. "Second Deed of Trust" refers to the document recorded in the Official Records

1 of the Clark County Recorder as Instrument No. 200604060004914 on or about April 6, 2006.

2 Marchai shall designate one (1) or more persons to testify on its behalf who shall be
3 expected to testify and provide full and competent testimony in the following areas of inquiry:

4 1. The creation, retention and current location of all copies, archives and backups of documents
5 mentioning the Association, the Association Lien and/or Association foreclosure as it relates
6 to Marchai's security interest in the Property including, but not limited to computer records,
7 imaged files, notes, correspondence, emails, loan modification applications/agreements,
8 short sale applications/agreements, foreclosure records, valuations, appraisals, broker's price
9 opinions, title reports and trustee's sale guarantees. This area of inquiry is limited to the
10 time period beginning from the time the Borrower applied for the subject loan to the date of
11 the Association foreclosure sale.
12

13 2. The current location and contents of the collateral file for the loan securing the First Deed of
14 Trust containing the original promissory note, deed of trust, and any recorded or unrecorded
15 assignments.
16

17 3. The transaction(s) through which Marchai obtained an interest in the Property, including the
18 type of transaction, date of the transaction, amount paid, and interest obtained.

19 4. Marchai's authority to enforce the First Deed of Trust and underlying promissory note,
20 including representations made in any Affidavit of Authority attached to a Notice of Default
21 recorded by Marchai or its agents.

22 5. The identity of any other entities of which Marchai is aware that claim an interest in the First
23 Deed of Trust and/or the underlying promissory note.

24 6. The identity of any entity of which Marchai is aware that insures or claims a contractual
25 interest in the First Deed of Trust and/or underlying promissory note.

26 7. Provisions of any pooling and servicing agreement and/or servicing guidelines applicable to
27 Marchai's security interest in the Property that mention or pertain to associations,
28 association liens or association foreclosures. This area of inquiry is limited to the time

- 1 period beginning from when the Association recorded its notice of delinquent assessments to
2 the time of the Association foreclosure sale.
- 3 8. All communications between Marchai and/or its agents and any other party that mention the
4 Association, Association's lien, Association assessments and/or Association foreclosure as it
5 relates to the Property. This area of inquiry is limited to the time period beginning from the
6 time the Borrower applied for the subject loan to the date of the Association foreclosure
7 sale.
- 8 9. All communications referencing the Property between Marchai and/or its agents and any
9 association, association's management company or association's collection company. This
10 area of inquiry is limited to the time period beginning from the time the Borrower applied
11 for the subject loan to the date of the Association foreclosure sale. This area of inquiry
12 includes communications between any agent of Marchai, including any
13 attorney retained to communicate with the Association regarding the Association lien or
14 Association foreclosure.
- 15 10. The date, amount, and manner of any monetary payments tendered by Marchai or its agents
16 to the Association, the Association's management company and/or the Association's
17 collection company relating to the Association's lien on the Property. This area of inquiry is
18 limited to the time period beginning from the time the loan securing the First Deed of Trust
19 was originated to the date of the Association foreclosure sale.
- 20 11. To the extent Marchai alleges that any payment it tendered towards the amounts included in
21 the Association's lien on the Property was rejected by the Association, the Association's
22 management company and/or the Association's collection company, the facts and
23 circumstances surrounding any such rejection.
- 24 12. Foreclosure notices, if any, referencing an association lien on the Property received by
25 Marchai, its predecessors in interest, or its agents, including the trustee of the First Deed of
26 Trust. This area of inquiry is limited to the time period beginning from the time the loan
27 securing the First Deed of Trust was originated to the date of the Association foreclosure
28 sale.

- 1 13. Attendance at and/or participation in the Association foreclosure sale by Marchai or its
2 agents.
- 3 14. Any litigation or alternative dispute resolution procedure pertaining to the Association lien
4 or Association foreclosure sale participated in by Marchai or its predecessors in interest
5 before the Association foreclosure sale.
- 6 15. If applicable, all communications between Marchai and the servicer of the loan secured by
7 the First Deed of Trust that mention the Association, Association's lien, Association
8 assessments and/or Association foreclosure as it relates to the Property. This area of inquiry
9 is limited to the time period beginning from the time the loan securing the First Deed of
10 Trust was originated to the date of the Association foreclosure sale.
- 11 16. All internal communications that mention the Association's lien, delinquent Association
12 assessments and/or Association foreclosure as it relates to the Property. This area of inquiry
13 is limited to the time period beginning from the time the loan securing the First Deed of
14 Trust was originated to the date of the Association foreclosure sale. For privileged
15 communications, please provide testimony regarding the date of any such communication
16 and the parties involved.
- 17 17. All title insurance policies and trustee's sale guarantees that mention the Association or the
18 Association lien as it relates to the Property, including any claims made against such policies
19 or guarantees. This area of inquiry is limited to the time period beginning from the date the
20 loan securing the First Deed of Trust was originated to the date of the Association
21 foreclosure sale.
- 22 18. Any valuation, appraisals and/or broker's price opinions of the Property obtained by
23 Marchai or its agents. This area of inquiry is limited valuation, appraisals and/or broker's
24 price opinions expressing the value of the Property anytime during the time period
25 beginning from the date the loan securing the First Deed of Trust was originated to the date
26 of the Association foreclosure sale.
- 27 19. Marchai's understanding of the purpose and effect of the Planned Unit Development Rider
28 included in the First Deed of Trust.

20. Marchai's practices, policies and procedures applicable to the Property for handling association liens. This area of inquiry is limited to the time period beginning from the date the loan securing the First Deed of Trust was originated to the date of the Association foreclosure sale.

21. Marchai's claims and affirmative defenses in this case, including but not limited to whether Marchai alleges any affirmative defenses relating to Fannie Mae, Freddie Mac, FHA, HUD, FHFA or any other federal government or government sponsored entity.

DATED this 18th of November, 2015.

HOWARD KIM & ASSOCIATES

/s/ Diana Cline Ebron

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th of October, 2015, pursuant to NRCP 5(b), I served via Eighth Judicial District Court electronic service, the foregoing ***SECOND AMENDED NOTICE OF 30(b)(6) DEPOSITION OF MARCHAI B.T.***, to the following parties:

Law Offices of Les Zieve

Contact

Benjamin D. Petiprin, Esq.

Email

bpetiprin@zievelaw.com

Attorney for Marchai B T Bank Trust

/s/ Diana Cline Ebron

Employee of Howard Kim & Associates

EXHIBIT A-3

diana@hkimlaw.com

From: Benjamin Petiprin [bpetiprin@zievelaw.com]
Sent: Tuesday, December 01, 2015 3:23 PM
To: diana@hkimlaw.com; david@djmerrillpc.com
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey; Sherry Moore
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Thanks Diana. I will let the client know.

From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Tuesday, December 01, 2015 3:05 PM
To: Benjamin Petiprin; david@djmerrillpc.com
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey; Sherry Moore
Subject: Re: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Hi Ben and David,

Since discovery closes in this case today and we agreed to continue the depo one day outside of the discovery period to accommodate your client, I am going to need to take a non-appearance tomorrow. Either or both of you are welcome to attend and explain the issues on the record if you wish.

Let me know if you have any questions.

Thanks,

Diana Cline Ebron, Esq.

Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

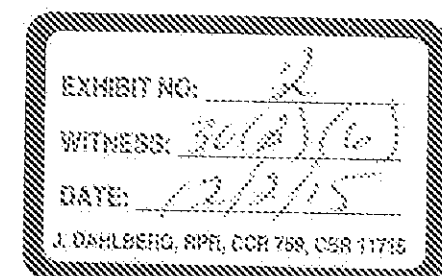
On Dec 1, 2015, at 2:53 PM, Benjamin Petiprin <bpetiprin@zievelaw.com> wrote:

Diana, my client just advised me that he will not be able to attend the deposition tomorrow. He is traveling to Florida.

We are substituting out of this case and we should have the substitution executed and filed by tomorrow. David Merrill is going to be substituting in the case. I know you've worked with him before. He will be in touch with you to reschedule the deposition.

I sincerely apologize for this and I hope you understand that this is outside of my control.

From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Wednesday, November 18, 2015 4:38 PM
To: Benjamin Petiprin



Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

Perfect. We will re-notice.

From: Benjamin Petiprin [mailto:bp@petiprin@zievelaw.com]
Sent: Wednesday, November 18, 2015 4:39 PM
To: diana@hkimlaw.com
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

We're good for 12/2 at 3PM. Thanks for your patience.

From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Wednesday, November 18, 2015 3:02 PM
To: Benjamin Petiprin
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

Thanks! I can also squeeze in a depo on 12/2 at 3 pm, with the understanding that it may go past 5pm (although I don't anticipate that). This is outside the discovery period by one day, but I am ok with that if you are.

Thanks,
Diana

From: Benjamin Petiprin [mailto:bp@petiprin@zievelaw.com]
Sent: Wednesday, November 18, 2015 3:00 PM
To: diana@hkimlaw.com
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

My call is at 3:30. I'll let you know.

From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Wednesday, November 18, 2015 2:54 PM
To: Benjamin Petiprin
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com; karen@hkimlaw.com
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery
Importance: High

Hi Ben,

Any word on this? If we are going to move Marchal BT Bank Trust's deposition from this Friday, November 20th, I will need a new date. If it is going to be tomorrow afternoon, I need to schedule the court reporter within the next couple hours.

Thanks,
Diana

Diana Cline Ebron, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110

Henderson, NV 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

From: Benjamin Petiprin [<mailto:bpetiprin@zievelaw.com>]
Sent: Tuesday, November 17, 2015 8:38 PM
To: diana@hkimlaw.com
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Ok, I'll let you know.

Benjamin D. Petiprin
Law Offices of Les Zieve

On Tue, Nov 17, 2015 at 8:37 PM -0800, "diana@hkimlaw.com" <diana@hkimlaw.com> wrote:

Well, I don't want to, but I will if that's the only day that would work for your client.

From: Benjamin Petiprin [<mailto:bpetiprin@zievelaw.com>]
Sent: Tuesday, November 17, 2015 8:36 PM
To: diana@hkimlaw.com
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Friday after thansksgiving? Isn't it against the law to work that day unless you're in retail?

Benjamin D. Petiprin
Law Offices of Les Zieve

From: diana@hkimlaw.com
Sent: Tuesday, November 17, 2015 8:34 PM
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery
To: Benjamin Petiprin <bpetiprin@zievelaw.com>
Cc: <jackie@hkimlaw.com>, <sarah@hkimlaw.com>

Sounds good. I am out of town until the Friday after Thanksgiving. We could do that day if you want, too.

From: Benjamin Petiprin [<mailto:bpetiprin@zievelaw.com>]
Sent: Tuesday, November 17, 2015 8:33 PM
To: diana@hkimlaw.com; diana@hkimlaw.com
Cc: jackie@hkimlaw.com; sarah@hkimlaw.com
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

I have a conference call with my client tomorrow. I'll let you know as soon as I do.

Benjamin D. Petiprin
Law Offices of Les Zieve

On Tue, Nov 17, 2015 at 8:32 PM -0800, "diana@hkimlaw.com" <diana@hkimlaw.com> wrote:

We could do it at 2pm if that's better.

From: diana@hkimlaw.com
Sent: Tuesday, November 17, 2015 3:41 PM
To: 'Benjamin Petiprin'
Cc: sarah@hkimlaw.com; jackie@hkimlaw.com
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

I can do Thursday, November 19th at 3pm. Would that work for you?

And, yes, I just got married last month.

From: Benjamin Petiprin [mailto:bpetiprin@zieve-law.com]
Sent: Tuesday, November 17, 2015 2:34 PM
To: diana@hkimlaw.com
Subject: FW: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

You just get married?

From: Benjamin Petiprin
Sent: Tuesday, November 17, 2015 2:31 PM
To: 'diana@hkimlaw.com'
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Diana,

My client is not available next Friday or the 30th. He is available any other day this week or next week (excluding the holidays). Can you provide an alternate time that would work for you?

From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Monday, November 16, 2015 10:23 AM
To: Benjamin Petiprin
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Hi Ben,

We can go forward with the deposition of your client on Friday, 11/20 or, if you let me know ASAP, we can switch it to the afternoon of 11/30.

As I explained on the phone, the discovery requests were e-served on 10/30 and hand-delivered to our office on 11/2, so our responses are not due until 12/2. Although we will still include objections for untimely service of written discovery, we will go ahead and provide responses by 12/2.

Let me know if you have any questions.

Thanks,
Diana

Diana Cline Ebron, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NY 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

From: Benjamin Petiprin [<mailto:bpstiprin@zlevelaw.com>]
Sent: Monday, November 16, 2015 10:11 AM
To: diana@hkimlaw.com
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

Diana,

Thanks for speaking with me right now. I'm waiting on my client to confirm this Friday's deposition and to give me a number for settlement discussions.

In the meantime, we agreed that you would respond to our discovery by 11/30 and we will respond to your discovery when it is due, so 11/25.

If my understanding is in error, please let me know. This one has some traction on my end so expect something from me soon.

From: diana@hkimlaw.com [<mailto:diana@hkimlaw.com>]
Sent: Tuesday, October 27, 2015 1:47 PM
To: Benjamin Petiprin
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

Hi Ben,

I don't recall that discussion, but we just served amended written discovery requests and a new deposition notice. We can change the date to one that is mutually convenient if it does not work for you. The court denied the motion for pre-trial coordination, but set a hearing with the discovery commissioners on 11/19/15 from 10 am-Noon to discuss "practical coordination" of these cases (see attached).

Let me know if you have any questions.

Thanks,

Diana

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Henderson, NV 89014
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From: Benjamin Petiprin [<mailto:bpetiprin@zisselaw.com>]
Sent: Tuesday, October 27, 2015 12:11 PM
To: diana@hkimlaw.com
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

Diana,

Per Phil Silvestri (who appeared at the ECC), you indicated you were going to re-send the discovery after we stipulated to the new scheduling order. I don't need you to re-send it, but please confirm the documents you just sent me is the discovery you want to propound. I didn't know if you were going to make changes to it etc.

Let me get a date for you for the deposition.

Also, what is the status of your motion to consolidate discovery? I assume this case would be part of that.

From: diana@hkimlaw.com [<mailto:diana@hkimlaw.com>]
Sent: Tuesday, October 27, 2015 12:02 PM
To: Benjamin Petiprin
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com
Subject: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery
Importance: High

Hi Ben,

I don't have any record of receiving responses to the attached written discovery we propounded in June 2014 before we stayed the case. Could you please resend or let me know when you could get me responses? Also, we never went forward with the deposition of your client.

Could you please provide me with dates before 12/1/15, which is the discovery cutoff?

Thanks,
Diana

Diana Cline Ebron, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NY 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

Sounds good. I am out of town until the Friday after Thanksgiving. We could do that day if you want, too.

From: Benjamin Petiprin [mailto:bpetiprin@zievelaw.com]
Sent: Tuesday, November 17, 2015 8:33 PM
To: diana@hkimlaw.com; diana@hkimlaw.com
Cc: jackie@hkimlaw.com; sarah@hkimlaw.com
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

I have a conference call with my client tomorrow. I'll let you know as soon as I do.

Benjamin D. Petiprin
Law Offices of Les Zieve

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Sent: Monday, November 16, 2015 10:23 AM
To: Benjamin Petiprin
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
Subject: RE: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery

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Let me know if you have any questions.

Thanks,
Diana

Diana Cline Ebron, Esq.
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1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

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Sent: Monday, November 16, 2015 10:11 AM
To: diana@hkimlaw.com
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey
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Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey

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Let me know if you have any questions.

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Diana

Diana Cline Ebron, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

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Sent: Tuesday, October 27, 2015 12:11 PM

To: diana@hkimlaw.com

Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com; Jenny Humphrey

Subject: RE: A-13-689461-C Marchal BT Bank Trust v. Cristela Perez--written discovery

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From: diana@hkimlaw.com [mailto:diana@hkimlaw.com]
Sent: Tuesday, October 27, 2015 12:02 PM
To: Benjamin Petiprin
Cc: Saman Heidari; sarah@hkimlaw.com; andrew@hkimlaw.com; karen@hkimlaw.com
Subject: A-13-689461-C Marchai BT Bank Trust v. Cristela Perez--written discovery
Importance: High

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Could you please provide me with dates before 12/1/15, which is the discovery cutoff?

Thanks,
Diana

Diana Cline Ebron, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Phone: (702) 485-3300
Direct: (702) 629-3200
Fax: (702) 485-3301
Cell: (702) 351-3612
diana@hkimlaw.com

EXHIBIT A-4

DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,
Plaintiff,
vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

**FIRST AMENDED NOTICE OF 30(b)(6)
DEPOSITION OF MARCHAI B.T.**

Date: Friday, November 20, 2015
Time: 1:30 p.m.

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

Counterclaimant/Cross-Claimant,
vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that Defendant SFR Investments Pool 1, LLC's ("SFR")
deposition of Plaintiff Marchai B.T. ("Marchai") originally scheduled for Tuesday, July 1, 2014
at 2:00 p.m., has been rescheduled to **Friday, November 20, 2015 at 1:30 p.m.** in the offices of

Howard Kim and Associates, 1055 Whitney Ranch Dr., Suite 110, Henderson, NV 89014, upon oral examination, pursuant to Rule 30 of the Nevada Rules of Civil Procedure. This deposition may be vacated to the extent Marchai disclaims an interest in the Property.

YOU ARE FURTHER NOTIFIED that the deposition shall be taken before a certified court reporter, notary public or other officer authorized to administer oaths by the State where the deposition is to be held. The deposition will be recorded by stenographic means. You are invited to attend and to cross examine.

YOU ARE FURTHER NOTIFIED that the deponent is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), Marchai, is advised of its duty to designate one or more of its knowledgeable officers, directors, managing agents, commissioners, employers or other persons who consent to testify on its behalf concerning the subjects identified in this notice.

DEFINITIONS

The following definitions apply to these areas of inquiry:

1. "Property" refers to the real property located at **7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013.**

2. The lower-case term "association" refers generally to a homeowners association, planned unit development, or condominium association, and the capitalized term "Association" refers specifically to Wyeth Ranch Homeowners Association.

3. "Association foreclosure sale" refers to the public auction held on August 28, 2013, by Alessi & Koenig ("Alessi") on behalf of the Association.

4. "Borrower" refers to Cristela Perez.

5. "First Deed of Trust" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 200511090001385 on or about November 11, 2005.

6. "Assignment" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 201308120002562 on or about August 12, 2013.

7. "Second Deed of Trust" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 200604060004914 on or about April 6, 2006.

Marchai shall designate one (1) or more persons to testify on its behalf who shall be expected to testify and provide full and competent testimony in the following areas of inquiry:

1. The creation, retention and current location of all copies, archives and backups of documents mentioning the Association, the Association Lien and/or Association foreclosure as it relates to Marchai's security interest in the Property including, but not limited to computer records, imaged files, notes, correspondence, emails, loan modification applications/agreements, short sale applications/agreements, foreclosure records, valuations, appraisals, broker's price opinions, title reports and trustee's sale guarantees. This area of inquiry is limited to the time period beginning from the time the Borrower applied for the subject loan to the date of the Association foreclosure sale.
2. The current location and contents of the collateral file for the loan securing the First Deed of Trust containing the original promissory note, deed of trust, and any recorded or unrecorded assignments.
3. The transaction(s) through which Marchai obtained an interest in the Property, including the type of transaction, date of the transaction, amount paid, and interest obtained.
4. Marchai's authority to enforce the First Deed of Trust and underlying promissory note, including representations made in any Affidavit of Authority attached to a Notice of Default recorded by Marchai or its agents.
5. The identity of any other entities of which Marchai is aware that claim an interest in the First Deed of Trust and/or the underlying promissory note.
6. The identity of any entity of which Marchai is aware that insures or claims a contractual interest in the First Deed of Trust and/or underlying promissory note.
7. Provisions of any pooling and servicing agreement and/or servicing guidelines applicable to Marchai's security interest in the Property that mention or pertain to associations, association liens or association foreclosures. This area of inquiry is limited to the time period beginning from when the Association recorded its notice of delinquent assessments to

- 1 the time of the Association foreclosure sale.
- 2 8. All communications between Marchai and/or its agents and any other party that mention the
- 3 Association, Association's lien, Association assessments and/or Association foreclosure as it
- 4 relates to the Property. This area of inquiry is limited to the time period beginning from the
- 5 time the Borrower applied for the subject loan to the date of the Association foreclosure
- 6 sale.
- 7 9. All communications referencing the Property between Marchai and/or its agents and any
- 8 association, association's management company or association's collection company. This
- 9 area of inquiry is limited to the time period beginning from the time the Borrower applied
- 10 for the subject loan to the date of the Association foreclosure sale. This area of inquiry
- 11 includes communications between any agent of Marchai, including any
- 12 attorney retained to communicate with the Association regarding the Association lien or
- 13 Association foreclosure.
- 14 10. The date, amount, and manner of any monetary payments tendered by Marchai or its agents
- 15 to the Association, the Association's management company and/or the Association's
- 16 collection company relating to the Association's lien on the Property. This area of inquiry is
- 17 limited to the time period beginning from the time the loan securing the First Deed of Trust
- 18 was originated to the date of the Association foreclosure sale.
- 19 11. To the extent Marchai alleges that any payment it tendered towards the amounts included in
- 20 the Association's lien on the Property was rejected by the Association, the Association's
- 21 management company and/or the Association's collection company, the facts and
- 22 circumstances surrounding any such rejection.
- 23 12. Foreclosure notices, if any, referencing an association lien on the Property received by
- 24 Marchai, its predecessors in interest, or its agents, including the trustee of the First Deed of
- 25 Trust. This area of inquiry is limited to the time period beginning from the time the loan
- 26 securing the First Deed of Trust was originated to the date of the Association foreclosure
- 27 sale.
- 28 13. Attendance at and/or participation in the Association foreclosure sale by Marchai or its

- 1 agents.
- 2 14. Any litigation or alternative dispute resolution procedure pertaining to the Association lien
- 3 or Association foreclosure sale participated in by Marchai or its predecessors in interest
- 4 before the Association foreclosure sale.
- 5 15. If applicable, all communications between Marchai and the servicer of the loan secured by
- 6 the First Deed of Trust that mention the Association, Association's lien, Association
- 7 assessments and/or Association foreclosure as it relates to the Property. This area of inquiry
- 8 is limited to the time period beginning from the time the loan securing the First Deed of
- 9 Trust was originated to the date of the Association foreclosure sale.
- 10 16. All internal communications that mention the Association's lien, delinquent Association
- 11 assessments and/or Association foreclosure as it relates to the Property. This area of inquiry
- 12 is limited to the time period beginning from the time the loan securing the First Deed of
- 13 Trust was originated to the date of the Association foreclosure sale. For privileged
- 14 communications, please provide testimony regarding the date of any such communication
- 15 and the parties involved.
- 16 17. All title insurance policies and trustee's sale guarantees that mention the Association or the
- 17 Association lien as it relates to the Property, including any claims made against such policies
- 18 or guarantees. This area of inquiry is limited to the time period beginning from the date the
- 19 loan securing the First Deed of Trust was originated to the date of the Association
- 20 foreclosure sale.
- 21 18. Any valuation, appraisals and/or broker's price opinions of the Property obtained by
- 22 Marchai or its agents. This area of inquiry is limited valuation, appraisals and/or broker's
- 23 price opinions expressing the value of the Property anytime during the time period
- 24 beginning from the date the loan securing the First Deed of Trust was originated to the date
- 25 of the Association foreclosure sale.
- 26 19. Marchai's understanding of the purpose and effect of the Planned Unit Development Rider
- 27 included in the First Deed of Trust.
- 28 20. Marchai's practices, policies and procedures applicable to the Property for handling

1 association liens. This area of inquiry is limited to the time period beginning from the date
2 the loan securing the First Deed of Trust was originated to the date of the Association
3 foreclosure sale.

4 21. Marchai's claims and affirmative defenses in this case, including but not limited to whether
5 Marchai alleges any affirmative defenses relating to Fannie Mae, Freddie Mac, FHA, HUD,
6 FHFA or any other federal government or government sponsored entity.

7 DATED this 27th of October, 2015.

HOWARD KIM & ASSOCIATES

8
9 /s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
10 JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
11 KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
12 1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
13 *Attorneys for SFR Investments Pool 1, LLC*

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on this 27th of October, 2015, pursuant to NRCP 5(b), I
16 served via Eighth Judicial District Court electronic service, the foregoing ***FIRST AMENDED***
17 ***NOTICE OF 30(b)(6) DEPOSITION OF MARCHAI B.T.***, to the following parties:

Law Offices of Les Zieve	
Contact	Email
Benjamin D. Petiprin, Esq.	bpetiprin@zievelaw.com

20 *Attorney for Marchai B T Bank Trust*

21 /s/ Sarah Felts
Employee of Howard Kim & Associates

EXHIBIT A-5

1 HOWARD C. KIM, ESQ.
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2 E-mail: howard@hkimlaw.com
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4 JACQUELINE A. GILBERT, ESQ.
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5 E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
6 1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
7 Telephone: (702) 485-3300
Facsimile: (702) 485-3301
8 *Attorneys for SFR Investments Pool 1, LLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARCHAI B.T., a Bank Trust,
12 Plaintiff,
13 vs.

Case No. A-13-689461-C

Dept. No. XXVI

14 CRISTELA PEREZ, an individual; SFR
15 INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
16 ASSOCIATION, N.D., a national
association; DOES I through X; and ROE
17 CORPORATIONS I through 10, inclusive,
18 Defendants.

**NOTICE OF 30(b)(6) DEPOSITION OF
MARCHAI B.T.**

**Date: Tuesday, July 1, 2014
Time: 2:00 p.m.**

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

21 Counterclaimant/Cross-Claimant,

22 vs.

23 MARCHAI B.T., a Bank Trust; U.S. BANK
24 NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
25 individual; and DOES I through X; and ROE
26 CORPORATIONS I through 10, inclusive,
Counter-Defendant/Cross-Defendants.

27 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

28 **PLEASE TAKE NOTICE** that Defendant/Counter-Claimant/Cross-Claimant SFR Investments

Pool 1, LLC, shall take the deposition of Plaintiff Marchai B.T. ("Marchai") on **Tuesday, July 1, 2014** at the hour of **2:00 p.m.**, in the offices of Howard Kim & Associates, 1055 Whitney Ranch Drive, Suite 110, Henderson, Nevada 89014, upon oral examination, pursuant to Rule 30 of the Nevada Rules of Civil Procedure.

YOU ARE FURTHER NOTIFIED that the deposition shall be taken before a certified court reporter, notary public or other officer authorized to administer oaths by the State of Nevada at the place where the deposition is to be held. The deposition will be recorded by stenographic means. You are invited to attend and to cross examine.

YOU ARE FURTHER NOTIFIED that the deponent is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), Marchai, is advised of its duty to designate one or more of its knowledgeable officers, directors, managing agents, commissioners, employers or other persons who consent to testify on its behalf concerning the subjects identified in this notice.

Marchai shall designate one (1) or more persons to testify on its behalf who shall be expected to testify and provide full and competent testimony in the following areas of inquiry:

1. The creation, retention and current location of all copies, archives and backups of documents related to, pertaining to, or connected with, in any way, to Marchai's security interest in the real property located at **7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013** ("the Property"), including, but not limited to the collateral file containing the original promissory note and deed of trust, computer records, notes and emails.
2. The transaction(s) through which Marchai obtained an interest in the Property.
3. Any pooling and servicing agreement and/or servicing guidelines applicable to Marchai's security interest in the Property.
4. All communications between Marchai and/or its agents and any other party regarding the Property.
5. All communications between Marchai and/or its agents and any homeowners association, management company or collection company regarding the Property.

6. Any monetary payments tendered to a homeowners association, management company and/or collection company relating to a homeowners association lien the Property.
7. The receipt of foreclosure notices, if any, related to a homeowners association lien on the Property.
8. All communications between Marchai and the servicer regarding the Property.
9. Marchai's practices, policies and procedures for handling competing liens recorded on properties in which Marchai has a security interest.
10. Marchai's practices, policies and procedures for lending or purchasing loans in communities that are part of a planned unit development or homeowner's association.
11. Marchai's practices, policies and procedures for servicing its loans in communities that are part of a planned unit development or homeowner's association.
12. Marchai's practices, policies and procedures for servicing loans in states where homeowners association liens may obtain priority over a first security interest.

DATED this 10 day of June, 2014.

HOWARD KIM & ASSOCIATES



HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2014, pursuant to NCRP 5(b), I served via U.S. mail the foregoing **NOTICE OF 30(b)(6) DEPOSITION OF MARCHAI B.T.**, to the following parties:

Benjamin Petiprin
Law Offices of Les Zieve
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Fax: 702-446-9898
Attorney for Marchai B T Bank Trust



Employee of Howard Kim & Associates

EXHIBIT A-6

INTG

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Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national
association; DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C

Dept. No. XXVI

INTERROGATORIES TO MARCHAI B.T.

Defendant/Counter-Claimant/Cross-Claimant SFR Investments Pool 1, LLC, by and
through its counsel, the law firm of Howard Kim & Associates, hereby requests Plaintiff Marchai
B.T. respond fully in writing and under oath to the following Interrogatories as required by

NRCP 33.

DEFINITIONS

The following definitions apply to these interrogatories:

1. "You" or "your" refers to Plaintiff Marchai B.T. and any representative(s), person(s), entity(ies), or other party acting or purporting to act on their behalf, including their attorney or attorneys and officers.

2. "Property" refers to the real property located at **7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013.**

3. The lower-case term "association" refers generally to a homeowners association, planned unit development, or condominium association, and the capitalized term "Association" refers specifically to Wyeth Ranch Homeowners Association.

4. "Association foreclosure sale" refers to the public auction held on August 28, 2013, by Alessi & Koenig ("Alessi") on behalf of the Association.

5. "SFR" refers to SFR Investments Pool 1, LLC.

6. "Borrower" refers to Cristela Perez.

7. "First Deed of Trust" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 200511090001385 on or about November 11, 2005.

8. "Assignment" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 201308120002562 on or about August 12, 2013.

9. "Second Deed of Trust" refers to the document recorded in the Official Records of the Clark County Recorder as Instrument No. 200604060004914 on or about April 6, 2006.

10. "Person" refers to any natural individual, governmental entity, or business entity, including a corporation, partnership, association, limited liability company, or other entity or combination thereof, and all corporations, divisions, or entities affiliated with, owned, or controlled directly or indirectly or owning or controlling directly or indirectly any such entities as well as directors, officers, employees, agents, attorneys, affiliates, or other representatives thereof, or third parties retained by any of the above.

11. "Communication" means any oral or written transmittal or receipt of words or information, by whatever manner or means and regardless of how or by whom the communication was initiated. References to communications with business entities shall be deemed to include all officers, directors, employees, agents, attorneys, affiliates, or other representatives of such entities.

12. "Document" means and includes all photographic, written, recorded, graphic or otherwise recorded matter, however produced or reproduced, including non-identical copies, preliminary, intermediate, and final drafts, writings, records, and recordings of every kind and description, whether inscribed by hand or mechanical, electronic, computer-generated, microfilm, photographic, or other means, as well as phonic (such as tape recordings) or visual reproductions of all statements, conversations, or events, and further including by way of example and not limitation, address books, appointment books, calendars, charts, circulars, statistical compilations, consultants' reports or studies, contracts or agreements, correspondence, experts' reports and studies, financial statements and calculations or balance sheets, graphs, house publications, inter-office or intra-office communications, e-mail, letters of intent, memorandum of any type, microfilm, minutes of any sort (including, without limitation, those of the Board of Directors or management, executive or finance committees), movies, notes, notebooks, opinions, organizational charts, photographs, press clippings or releases, publications, procedures, reports of any kind, statistical analysis, ledgers, invoices, checks, vouchers, books of account, studies of any kind, summaries, tabulations, telegrams, teletype, and telex messages, disks, computer printouts, tapes, cartridges, compact disks or other storage medium, no matter how described or designated.

INSTRUCTIONS

The following instructions apply to these interrogatories:

1. Where a claim of privilege is asserted in objection to any interrogatory and an answer is not provided on the basis of such assertion:

(a) The party asserting the privilege shall identify the nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law,