Case No. 74532

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

U.S. BANK, N.A., a National Banking Association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4; and NV WEST SERVICING, LLC, a Nevada Limited Liability Company, as Trustee for Nashville Trust 2270, inclusive,

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JOANNA S. KISHNER, District Judge
District Court Case No. A-13-678814-C.

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

Appellant, SFR Investments Pool 1, LLC, is a privately held limited liability company and there is no publicly held company that owns 10% or more of SFR Investments Pool 1, LLC's stock.

In District Court, SFR Investments Pool 1, LLC, was represented by Howard C. Kim, Esq., Jacqueline A. Gilbert, Esq., Diana S. Ebron, Esq. and Karen L. Hanks, Esq., of Kim Gilbert Ebron fka Howard Kim & Associates. Ms. Gilbert, Mr. Kim, and Ms. Ebron, of Kim Gilbert Ebron represent Appellant on appeal.

DATED this 20th of May 2018.

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STATEMENT OF JURISDICTION

This Court has jurisdiction under NRAP 3A(b)(1). The District Court entered judgment in favor U.S. Bank, N.A., A National Banking Association As Trustee For The Certificate Holders Of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4; and NV West Servicing, LLC, A Nevada Limited Liability Company, As Trustee for Nashville Trust 2270 on October 16, 2017, and the notice of entry of that order was entered on October 20, 2017. This order was a final order. SFR Investment Pool 1, LLC, timely noticed its appeal on November 17, 2017.

APPELLANT'S ROUTING STATEMENT

Pursuant to NRAP 28(a)(5), SFR states that this case contains "matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law[.]" Pursuant to NRAP 17(a)(10) this case also involves "matters raising as a principal issue a question of statewide public importance." NRAP 17(a)(11). This case involves a unique issue of law as to the whether a court can use facts which have been expunged—as in a retroactive annulment of a bankruptcy stay, thereby wiping clean the underlying fact of a stay violation—in doing an equitable analysis of foreclosure sale. Additionally, this appeals deals with whether the sale price was adequate or if the Bank produced any evidence that the sale was burden with fraud, oppression or unfairness that brought about a low sale price at auction other than the expunged bankruptcy stay.

ISSUES PRESENTED

1) Whether the District Court erred as a matter of law in considering a "violation of the automatic bankruptcy stay" as part of its equity analysis after the stay had been retroactively annulled by a Bankruptcy Court's order, which expressly stated "Any postpetition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay."
2) Whether the District Court erred in voiding the Association sale when the only purported evidence of fraud, unfairness or oppression it found was the violation of the automatic stay which has been annulled by the bankruptcy court, and the district court did not determine that those facts accounted for or brought about the price paid at auction prior to doing a *Shadow Wood* analysis.
3) Whether the District Court erred as a matter of law in not recognizing and giving deference to SFR's BFP status.
4) Whether the District Court erred in determining the price paid by SFR was inadequate.
5) Whether the District Court erred in voiding the Association's sale and deeming the Bank's sale as proper, valid and enforceable.

STATEMENT OF THE CASE

This case involves the non-judicial foreclosure of 2270 Nashville Avenue, Henderson, NV 89052. On January 5, 2006, a deed of trust ("DOT") was recorded identifying Lucas Parks as the borrowers ("Borrower"). (2AA_0295.) After the Borrowers became delinquent on assessments due to Copper Ridge Community Association (the "Association"), the Association foreclosed on its validly recorded lien. (2AA_0295.) At the Association foreclosure sale, SFR placed the highest cash bid of $14,000.00. (*See* 2AA_0299.) However, during this time the borrower had filed for Chapter 11 Bankruptcy on August 23, 2010, in California. *In re Richard Parks and Lucy Parks*, Case No. 8:10-bk-21738-TA (Bankr. C.D. Cal.).

On May 24, 2012, while the bankruptcy case was open, the Association, through its agent NAS, recorded a Notice of Delinquent Assessment Lien. (1AA_238.) NAS also recorded a Notice of Default and Election to Sell and Notice of Foreclosure Sale, without first seeking leave of the bankruptcy court. (1AA_54-55; see 3AA_253.)_This Bankruptcy was unknown to SFR at the time it purchased the Property.

On March 22, 2013, SFR Investments Pool 1. LLC filed a complaint for quiet title and injunctive relief. The District Court dismissed SFR complaint and SFR

appealed. While the case was on appeal, NDSC foreclosed on the property, sold the Property to Nashville Trust 2270, NV West Servicing, LLC as Trustee.

After the *SFR* decision of 2014, this case was remanded by the Nevada Supreme Court. Following remand, SFR filed a Motion for Relief from the Automatic Stay in the California Bankruptcy Court. 4AA_915—5AA-983. Over the Bank's objection, the Bankruptcy Court granted SFR equitable relief by way of Order Granting the Retroactive Annulment of the Automatic Stay on May 15, 2017 and Notice of that order was filed in the District Court case on May 19, 2017. (5AA_1137-1143.) After this order, and after ordering additional briefing on the bankruptcy issue, on June 6, 2017, the District Court granted summary judgment in favor of the Bank and NV West. This appeal deals with the subsequent order by the District Court.

FACTUAL BACKGROUND

The following is the factual background surrounding this appeal.

A. General Facts

DATE	FACTS
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
July 1, 1997	The Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions and

	Restrictions ("CC&Rs").[1]
October 5, 1998	The Annexation Amendment subjecting the Property to the CC&Rs was recorded.[2]
January 5, 2006	Grant, Bargain, Sale Deeds, transferring the Property to the borrower, was recorded. [3]
January 5, 2006	Deed of Trust in favor of Wells Fargo ("DOT") was recorded.[4]
July 12, 2010	Corporate Assignment of the DOT to the Bank was recorded.[5]
July 12, 2010	Substitution of Trustee, substituting National Default Servicing Corporation ("NDSC") as Trustee under the DOT is recorded.[6]
May 24, 2012	Nevada Association Services, Inc. ("NAS") as agent to the Association records a Notice of Delinquent Assessment ("NODA").[7]
June 7, 2012	Another Assignment of Mortgage recorded purporting to transfer the January 5, 2006 Deed of Trust from Wells Fargo to the Bank.[8]
July 19, 2012	After more than 30 days elapsed from the date of mailing of the operative NODA, NAS recorded a Notice of Default ("NOD").[9] The Bank and the borrower received the NOD.[10]

[1] 1AA_126-193.
[2] 1AA_195-198.
[3] 1AA_200-205.
[4] 1AA_207-222.
[5] 1AA_234.
[6] 1AA_236.
[7] 1AA_238.
[8] 1AA_240.
[9] 1AA_242-243.
[10] 2AA_245-261.

	The Bank took no action after it received the NOD. [11] Wells Fargo, N.A. does not dispute that the NOD was in Wells Fargo, N.A.'s folder as of July 2012.[12]
August 7, 2012	The Bankruptcy Court granted the Bank's Motion for Relief from the Automatic Stay. However, the Bank did nothing to foreclose on its deed of trust.[13]
February 2, 2013	After more than 90 days elapsed from the date of the mailing of the NOD, NAS recorded a Notice of Foreclosure Sale ("NOS").[14] The Notice of Sale was mailed to numerous parties, including the borrower and the Bank.[15] Wells Fargo, N.A. does not dispute that the NOS was in Wells Fargo, N.A.'s folder as of March 2013.[16]
February 2013	The Notice of Sale was posted on the Property in a conspicuous place.[17] The Notice of Sale was thereafter posted in three public places in Clark County for 20 consecutive days. [18] The Notice of Sale was published in the Nevada Legal News for three consecutive weeks.[19]
March 1, 2013	Association foreclosure sale took place and SFR placed the winning bid of $14,000.00.[20] This amount was paid by SFR.

[11] 2AA_303-313, 51:10-16.
[12] *Id.* at 28:19 – 29:15.
[13] 4AA_932, ¶6.
[14] 2AA_253-261.
[15] ***Id.***
[16] 2AA_307 at 32:10 – 33:7.
[17] 2AA_263-266.
[18] *Id.*
[19] *Id.*
[20] 2AA_295-297; *see* 2AA_299.

	[21] There were multiple qualified bidders in attendance at the sale.[22] No one acting on behalf of the Bank attended the sale.[23]
March 6, 2013	Trustee's Deed Upon Sale ("Foreclosure Deed") vesting title in SFR.[24] SFR has no reason to doubt the recitals in the Foreclosure Deed.[25] If there were any issues with delinquency or noticing, none of these were communicated to SFR.[26] Further, neither SFR, nor its agent, have any relationship with the Association besides owning property within the community.[27] Similarly, neither SFR, nor its agent, have any relationship with NAS, the Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties at publically-held auctions conducted by NAS.[28]
Prior to March 3, 2013	The Bank never contacted NAS prior to the sale.[29] The Bank never paid or tried to pay any portion of the Association's lien.[30] The Bank did not challenge the foreclosure sale in any civil or

[21] 2AA_292-293.
[22] *Id.* at ¶ 15.
[23] 2AA_312 at 54:11-13.
[24] 2AA_272-276.
[25] *Id.* at ¶ 13.
[26] *Id.* at ¶ 14.
[27] *Id.* at ¶ 16.
[28] *Id.* at ¶ 17.
[29] 2AA_309 at 51:20 – 52:4.
[30] *Id.* at 52:11-14.

	administrative proceeding.[31] No release of the superpriority portion of the Association's lien was recorded against the Property. No lis pendens was recorded against the Property.
March 8, 2013	NDSC on behalf of Bank, recorded a Notice of Trustee's Sale purporting to sell the Property at a Bank foreclosure sale to be held on April 1, 2013.[32]
March 22, 2013	SFR files a Complaint for quiet title and to enjoin the Bank from holding its foreclosure sale.[33]
March 22, 2013	SFR filed its Notice of Lis Pendens on the Property. [34]
June 11, 2013	Order entered dismissing SFR's complaint with prejudice and Expunging SFR's Lis Pendens.[35]
	Neither the Bank nor NDSC recorded a new Notice of Sale after the Order expunging SFR's Lis Pendens was recorded.
July 12, 2013	SFR filed a Notice of Appeal from the June 11, 2013 order.[36]
July 18, 2013	NDSC foreclosed on the property, sold the Property to Nashville Trust 2270, NV West Servicing, LLC as Trustee. [37]
July 31, 2013	Trustee's Deed Upon Sale is recorded purporting to put title to the Property in Nashville Trust #2270, NV West Servicing,

[31] *Id.* at 54:18-22.
[32] *See* 3AA_516:12-14. The Bank suggested it had filed a request for judicial notice contemporaneously with its Motion for Summary Judgment, but no such document was ever filed. For this brief, SFR presumes the information regarding this document as cited in the motion is correct.
[33] 1AA_002-012.
[34] 2AA_268-270.
[35] 2AA_316-318.
[36] *SFR Investments Pool 1 v. U.S. Bank, N.A.*, No. 63614 (Nev. April 15, 2014).
[37] 2AA_272-276.

	LLC, as Trustee.[38]
December 10, 2014	Nevada Supreme Court reverses and remands the June 11, 2013 order dismissing SFR's Complaint.
August 10, 2016	Bank filed a motion for summary judgment, for the first time asserting a violation of the automatic stay.[39]

B. The Bankruptcy Issues

On August 23, 2010, Richard and Lucy Parks, the former homeowners of the Property, filed their voluntary petition for Chapter 11 bankruptcy protection in the United States Bankruptcy Court, Central District of California. (4AA_931, ¶1.) Neither the Association nor its foreclosing agents were listed as creditors in the Debtors' Petition. As such, neither NAS nor the Association were included in the mailing matrix for the case. (*Id.* at ¶2.) On July 2, 2012, The Bank filed it Motion for Relief from the Automatic Stay and asserted that the Debtors had no equity in the Property and it was not necessary for an effective reorganization. (4AA_931, ¶5.) As set forth above, the Association recorded its notices while the bankruptcy stay was in place, both before and after the Bank's motion for relief. There is no evidence that the Bank lodged a complaint with the Bankruptcy Court or the trustee regarding the stay violations. SFR had no knowledge of the bankruptcy issues when it purchased the Property at the Association foreclosure auction. (4AA_938 at ¶ 8.)

[38] *Id.*
[39].

The Bank did not make any allegations regarding the bankruptcy stay violation in its amended answer and counterclaim. (*See* 1AA_31-58.) The Bank never moved to amend its Answer and Counterclaim prior to the close of discovery to make the allegations. It was only in its first motion for summary judgment did the Bank raise the issue, arguing that the Association's foreclosure was void. (*See* 4AA at 932, ¶15.)

On January 24, 2017, SFR filed a motion in the Bankruptcy Court in the Central District of California seeking equitable relief to retroactively annul the automatic stay. (4AA_914-5aA_983.) The motion was served on the Bank through its bankruptcy counsel and directly by U.S. Mail. (5AA_977-983.) Despite this, the Bank "argued it was not made aware of SFR's request to annul the automatic stay" until SFR filed its opposition to the Bank's motion. (6aA_1266, at ¶28.) The Bank opposed the motion.

After a notice and hearing, considering the Bank's opposition, the Bankruptcy Court granted the motion for retroactive relief, thereby annulling any violation by the Association taken as to the Property. (5AA_1136-1143.) The order annulled the stay retroactive to the Petition Date, August 23, 2010, stating that "[a]ny postpetition acts taken by Movant to enforce its remedies regarding the Property do not consttitue a violation of the stay." Further, the relief also applies "for any and all actions in support of the foreclosure taken with respect to the Property by the Copper Ridge

Community Association and/or its agent Nevada Association Services." (*Id.*) SFR filed a notice of the bankruptcy order on May 19, 2017. (5AA_1136-1143.)

C. The District Court's Order

Following full briefing on the parties' motions for summary judgment,[40] and additional briefing on the effect of the retroactive annulment and "fraud, unfairness, or oppression"[41] the District Court granted summary judgment in favor of the Bank. (6AA_1261-1272.)

While the District Court found that the Association, NAS, or SFR did not know of the bankruptcy proceedings, it also made a finding that such information was not "unavailable" to SFR, despite having been given information that to obtain such knowledge one would need a PACER (federal court system) account. (*See* 6AA_1265; 6AA_1250.) The District Court concluded that the price paid by SFR was 'inadequate." (6AA_1269.) The District Court stated it "must still balance the equities under *Golden v. Tomiyasu*, 79 Nev. 503, 514 (1963)." (*Id.*) While the District Court recognized that there must be "evidence of fraud, unfainess, or oppression related to the sale," it did not say how that evidence must

[40] For MSJ's see 1AA_97-2AA_318 (SFR MSJ); 2AA_319-3AA503 (Ass'n MSJ); 3AA_509-665 (Bank MSJ). All motions were opposed and replies filed.
[41] 5AA_1209-6AA_1247 (Bank Supplement); 6AA_1248-1256 (SFR Supplement).

affect the sale. (*Id.*) The District Court determined its job was to look at "what was reasonably foreseeable at the time of the HOA foreclosure sale as to the status of the Property." (*Id.*) The District Court did not consider how, if there was fraud, unfairness, or oppression, it brought about and accounted for the price obtained at the auction, as required under *Golden*. And under its incomplete analysis, the District Court determined that even though there is no stay violation, due to retroactive annulment "there is no evidence before the Court that US bank or its predecessor had any knowledge at the tiem of the HOA foreclosure sale to SFR that years later SFR would seek and obtain a retroactive annulment of the automatic stay." (*Id.* at 1268.) The District Court then said that the sale was conducted in violation of the stay and that constituted evidence of fraud, unfairness, or oppression realted to the sale." (Id. at 1269.) In other words, while stating it recognized that the retroactive annulment made it so no violation occurred, the District Court considered the now-irrelevant stay violation in making its conclusion. The District Court did not find that the sale was improperly conducted under the statute. The Bank presented no evidence and the District Court made no findings that the Bank would have done anything differently if there had not been a bankruptcy or that it relied on Association's actions during the Bankruptcy to preserved its purported interest in the Property.

The District Court did not base its ruling on anything other than the non-existent stay violation. And, using that, the District Court voided the foreclosure sale (6AA_1269) and concluded that the sale to NV West by US Bank was valid.

SUMMARY OF ARGUMENT

This Court should reverse and remand the District Court's order for the following reasons:

First, the District Court relied heavily on the fact that a Bankruptcy Stay was in place during the time of the foreclosure. However, this Bankruptcy Stay was retroactively annulled. This means it is the same as if the Association had obtained the Bankruptcy Court's permission to lift the stay and then proceeded with the its foreclosure. Put simply, no stay violation ever occurred.

Despite this, and despite recognizing that the Bankruptcy Court had annulled the stay violation, the District Court chose to still consider the fact of the stay violation in its equity analysis, stating "there is no evidence before the Court that US Bank or its predecessor had any knowledge at the time of the HOA foreclosure sale to SFR that years later SFR would seek and obtain a retroactive annulment of the automatic stay." (6AA_1268.)

Second, no fraud oppression or unfairness surrounded the foreclosure nor was the purchase price inadequate. The only evidence of fraud oppression or unfairness was alleged violation of the Bankruptcy stay. While, this was retroactively annulled,

the Bank failed to show how these brought about a low price a foreclosure. However, this Court does not need to get to inadequacy if no fraud, oppression of unfairness undermined the sale.

Finally, the District Court ignored SFR's Bona Fide Purchaser ("BFP") status when Nevada affords strong favor to BFPs in quiet title matters, so strong that such a finding trumps any equitable relief being sought by a complaining party. *Shadow Wood HOA v. N.Y. Cmty. Bancorp,* 132 Nev. ____, 366 P.3d 1105, 1115 (2016). The district court granted equity to the Bank even though it knew not only of the bankruptcy and the alleged violation by the Association, yet did not complain to the bankruptcy trustee or court in an effort to stop the sale. But the District Court did not afford SFR the same weight where SFR had no notice of the bankruptcy and, as soon as it was made aware, went to the bankruptcy court seeking equity to have the automatic stay retroactively annulled.

For these reasons, this Court should vacate the District Court's order voiding the sale to SFR, granting equitable relief to the Bank and validating the Bank's sale to a party who was not a bona fide purchaser, and remand with instructions to enter an order quieting title in favor of SFR free and clear of the first deed of trust and voiding the Bank's foreclosure sale to NV West.

…

ARGUMENT

I. STANDARD OF REVIEW

"This [C]ourt reviews a district court's grant of summary judgment de novo." *Wood v. Safeway, Inc*., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A motion for summary judgment should be granted "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 judgment as a matter of law." *Id.;* NRCP 56(c). All evidence and inferences must be viewed in a light most favorable to the non-moving party on a summary judgment motion. *Safeway*, 121 Nev. at 729, 121 P.3d at 1029.

II. THE RETROACTIVE ANNULMENT OF THE BANKRUPTCY STAY DID NOT AFFECT THE BANK.

A. There Was No Violation of a Bankruptcy Stay.

The Association's sale did not violate the bankruptcy automatic stay, the Bankruptcy Court expunged any such violation.

When a party files for protection under the Bankruptcy laws, the law institutes an automatic stay of any actions against the party and the bankruptcy estate. 11 U.S.C. §362(a), (c). However, such stay is not indefinite, and the stay may be annulled by the bankruptcy court:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of

this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d)(1)-(2). Accordingly, a bankruptcy court has authority to make exception to, and to annul, the automatic stay under 11 USC § 362(d). *Schwartz v. United States* (*In re Schwartz*), 954 F.2d 569, 572-573 (9th Cir.1992).

That power to annul is freely given, as the Ninth Circuit has recognized: the bankruptcy court has "wide latitude in crafting relief from the automatic stay, **including the power to grant retroactive relief** from the stay." *Id*. at 572 (emphasis added); *In re Nat'l Envtl. Waste Corp.*, 129 F.3d 1052, 1054–55 (9th Cir. 1997); *Mataya v. Kissinger* (*In re Kissinger*), 72 F.3d 107, 109 (9th Cir.1995). This retroactive relief, which, if granted, moots any issue as to whether the violating sale was void because, upon retroactive annulment there would have been no actionable stay violation. *In re Fjeldsted*, 293 B.R. 12, 21, (B.A.P. 9th Cir. 2003); *see In re Kvassay*, 652 F. App'x 546, 548, 2016 WL 3318334 (9th Cir. 2016) (holding that retroactive relief can validate acts that otherwise would violate the automatic stay); *see also In re Myers*, 491 F.3d 120, 130 (3d Cir. 2007) (holding that actions taken

by a foreclosing trustee which would be in violation of a bankruptcy stay are ratified by a retroactive annulment of such a stay); *see also Khozai v. Resolution Trust Corp*., 177 B.R. 524, 527 (E.D. Va. 1995) (holding that a Bankruptcy Court has the authority to nullify a stay retroactively to validate a foreclosure sale).

In granting retroactive annulment of the automatic stay the Bankrputcy Court necessarily considered the equities. (*See* 6AA_1225-1232, specifically at 1229 (discussing factors to be considered by a court in weighing equities).) This included arguments raised by the Bank in opposition. (*Id.*) The Bankruptcy Court concluded that equities weighed in favor of retroactive annulment. (*Id.*; see also 5AA_All parties have acknowledged the authenticity of the Order Granting Retroactive Annulment of the Automatic Stay, including the District Court. (5AA_1136-1143; 6AA_1266, ¶26.) This retroactive annulment makes it as if a violation had *never* happened. In fact, the order states that "[a]ny postpetition acts taken by Movant to enforce its remedies regarding the Property *do not* constitute a violation of the stay" (5AA_1142.)(emphasis added). The Bankruptcy court also extended the order "for any and all actions in support of the foreclosure taken with respect to the Property by the Copper Ridge Community Association and/or its agent Nevada Association Services." (5AA_1143.)

Despite the Bankruptcy Court's order granting retroactive annulment of the

automatic stay, the District Court factored in the alleged violations in weighing the equities. This is improper. First, the existence of a federal remedy for violation of the stay must be read as an implicit rejection of state court remedies. *Abdallah v. United Sav. Bank*, 43 Cal. App. 4th 1101, 1109, 51 Cal. Rptr. 2d 286, 291 (1996), as modified on denial of reh'g (Mar. 22, 1996). Second, even if the Bankruptcy Court had otherwise exceeded its powers in granting retroactive annulment, the order could not be collaterally attacked in the District Court. *Id.* This is exactly what the Bank led the District Court to do by considering the facts as they existed prior to the retroactive annulment—it collaterally attacked the retroactive annulment. This is especially so where the District Court voided the Association's foreclosure sale based solely on those facts. The District Court exceeded its discretion when it considered the stay violation in granting equitable relief to the Bank.

Therefore, because the District Court relied wholly on the forbidden facts to reach its conclusion, this Court should vacate the summary judgment in favor of the Bank and remand with instructions to enter judgment in favor of SFR and voiding the sale to NV West.

B. The Prior Stay Violation Does Not Amount to Fraud Oppression or Unfairness.

Even if the equities of the foreclosure were considered for a second time by the District Court, *Shadow Wood* required the District Court to evaluate the entirety

of the circumstances of the sale, including the actions of the all parties involved. . .” *Shadow Wood HOA v. N.Y. Cmty. Bancorp. Inc.*, 132 Nev. ___, ___, 366 P.3d 1105, 1114-1115 (2016). Additonally, the District Court was required to determine that if there was some element of fraud, unfairness or oppression, that somehow accounted for or brought about the price it found inadeuqate. *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963). Here, there was no such evidence. A simple review of the facts of this case shows that the Bank took no action in the foreclosure or bankruptcy to complain of the stay violation and the bankruptcy did not affect the outcome of the sale or the price received at auction.

Herein, the Bank was mailed all applicable notices of the foreclosure. (2AA_245-261; 2AA_303-313, 51:10-16; *Id.* at 28:19 – 29:15; 2AA_253-261; 2AA_307 at 32:10 – 33:7.) Despite having actual notice of the Association foreclosure proceedings, the Bank took no action or steps to protect its interest. In regards to the bankruptcy of the borrower, the Bank provided no evidence that it Bank relied on the bankruptcy as a reason as to why it did not need to protect its interest. Moreover, if the Bank truly felt that a foreclosure was improper due to a bankruptcy stay violation, it would have been very easy to reach out to the Bankruptcy Court, Association, NAS or attend the sale and make these concerns known. Instead, the Bank took no action, even to complain of the stay violation in bankruptcy. As such, equity cannot tip in favor of the Bank.

Finally, it is simply inappropriate given that the Bank lifted the stay and chose not to foreclose on the Property and let SFR, an unsuspecting bona fide purchaser, purchase the Property. *See Bank of New York Mellon v. K&P Homes, LLC*, 404 P.3d 403, 2017 WL 4790995, at *1 (Nev. Oct. 20, 2017) (unpublished disposition).

> While we recognize that the district court referred to "coercion" instead of "unfairness," appellant's only proffered evidence of unfairness was the fact that the 2008 Notice of Default was recorded during the pendency of the former homeowners' bankruptcy case.[3] Given that appellant did not acquire its interest in the property until three years after the bankruptcy case was closed, we are not persuaded by appellant's unsupported argument that it chose not to stop the HOA foreclosure sale based on its belief that a court would at some later date declare the sale void. Accordingly, we are not persuaded that the foreclosure sale was affected by unfairness so as to justify setting it aside.

Moreover, as this Court noted "the bankruptcy court granted respondent's request to retroactively annul the stay, which makes this case different from others in which this court has addressed the recording of foreclosure notices during the pendency of a bankruptcy petition." *Id.* at n.3. This Court, at least, recognizes the importance of the purchaser obtaining the retroactive annulment upon learning of any stay violation when weighing equities.

Here, the Bank provided no evidence of reliance on the stay violation or "that it chose not to stop the [Association's] foreclosure on its belief that a court would at some later date declare the sale void." Anything of the sort in the Bank's papers is

merely argument of counsel, unsupported by evidence, not even a declaration. Thus, the foreclosure sale cannot be said to have been "affected by unfairness so as to justify setting it aside." *Id.* at *1. Yet that is the only reason on which the District Court granted the Bank's motion.

Neither the Bank nor the District Court provided or cited to evidence that the price paid by SFR was inadequate or deflated due to a bankruptcy stay. In fact, it is completely inequitable to compare the price paid by SFR at auction and then say SFR should have known about the bankruptcy. That is absurd. Even the Bank's expert did not consider the bankruptcy in his evaluation. Mr. Dugan has opined that his valuations, in fact, have no relationship to a distress sale. (*See* 4AA_839 and related exhibits.) SFR did not know of the stay in place at the time. Simply put, arguing that the price was affected by such a stay is creative after-the-fact lawyering. The evidence shows that the Bank never intended to do anything to protect its interest. The retroactive annulment of the bankruptcy stay does not change the fact that the Bank neither relied on the stay violation nor took any action to protect its interest in the property. When looking at the equities, the District Court simply determined that somehow the Bank was wronged by the bankruptcy stay, but failed to take into account any equities in favor of SFR. Instead, the Court simply decided that the price SFR paid was too low so it could not be entitled to equity. This is an error of law, or at the very least unsupported by fact so as to be an abuse of discretion.

C. The District Court Erred in Granting Equitable Relief to the Bank When SFR did not Know of the Bankruptcy and Had no Reason to Know.

The District Court ignored SFR's status as a BFP. 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 187, 248; *Allen v. Webb*, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971) ("A specific finding of what the consideration was may be implied from the record."). Even if a purchaser may purchase a property for lower than the property's value on the open market, the fact that SFR paid "valuable consideration" is undisputed. *Shadow Wood,* 366 P.3d at 1115 (*citing Fair v. Howard*, 6 Nev. 304, 308 (1871) ("the question is not whether the consideration is adequate, but whether it is valuable"); *see also Poole v. Watts*, 139 Wash, App. 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale purchaser purchased the property for a "low price" did not in itself put the purchaser on notice that anything was amiss with the sale). Further, "[w]here a party is claiming equitable title, burden is on party claiming such equity to allege and prove that the person holding legal title is not a bona fide purchaser." *First Fidelity Thrift & Loan Assn v. Alliance Bank*, 60 Cal.App.4th 1433 (1998). SFR had actual title to the property pursuant to NRS 116.31164(3)(a). The Bank was seeking equitable

"title" or "interest" in trying to keep its lien in place. Thus, SFR has no burden to prove to it is a BFP; instead, the Bank bears the burden to disprove SFR's BFP status

Regardless, the record demonstrates SFR is a BFP:

- SFR placed the highest bid, $14,000.00 at the foreclosure sale;[42]
- SFR paid NAS with a cashier's check;[43]
- SFR had no communications with the HOA, NAS or the homeowner;[44]
- SFR paid valuable consideration for the property.[45]
- SFR had no knowledge of the bankruptcy when it placed the winning bid at the auction.[46]

Despite these facts, the District Court gave no regard to SFR's asserted status as a bona fide purchaser. In fact, the District Court seemed to put emphasis on the fact that nothing prevented SFR of knowing about the bankruptcy and stay violations. Yet the District Court did not find any specific facts that would have led SFR into such an inquiry, because there were none.

The District Court erroneously tipped the scales of equity in favor of the Bank, allowing the deed of trust to survive and voiding the Association's foreclosure sale

[42] 2JA_0404-0405.
[43] 2JA_0398 ¶ 11; 2JA_0400-0401.
[44] 2JA_0398 ¶ 16.
[45] 2JA_0398.
[46] 4AA_938 at ¶ 8.

to SFR. The District Court failed to consider SFR's status as a BFP despite the Bank having failed to avail itself of earlier remedies or bring the bankruptcy issue to anyone's attention, even in the allegations set forth in its amended answer and counterclaim. The district court ignored all those facts, citing none of them in determining equity.

III. THE *GOLDEN* RULE APPLIES TO FORECLOSURE SALES.

The Bank's "commercial reasonableness" argument also fails because in Nevada a low sales price is never enough to overturn a foreclosure sale; no irregularities existed in the foreclosure; and, the price paid at auction was commercially reasonable. In *Shadow Canyon*, this Court reaffirmed that:

> 'inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price'** (internal citations omitted) (emphasis added).

Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 227 Shadow Canyon, 405 P.3d 641, 647 (Nev. 2017) ("*Shadow Canyon*") (quoting *Golden v. Tomiyasu*, 387 P.2d 989, 995 (Nev. 1963).

The *Golden* Rule requires actual evidence of fraud, unfairness, or oppression and a showing of how the evidence affected the sale to consider setting aside the sale, **and** the Bank "has the burden to show that the sale should be set aside in light

of [SFR's] status as the record title holder." *Id.* (citing *Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996); NRS 47.250(16) (rebuttable presumption law has been obeyed); and NRS 116.31166(1)-(2) ("[C]onclusive presumption that certain steps in foreclosure process have been followed."). Put simply, SFR need only show its valid deed to be entitled to quiet title. The Bank had all the burden to show the sale should be set aside and it failed to do so, which the District Court properly recognized.

A. There Were No Irregularities with the Foreclosure.

The Nevada Supreme Court reaffirmed in *Shadow Canyon* that the appropriate standard for analyzing NRS Chapter 116 foreclosure sales is the four-factor approach set forth in *Golden*. *Shadow Canyon*, 405 P.3d at 647. First, there must be a price inadequacy. Second the Bank's claims must rise to the level of fraud, unfairness, or oppression. Third the Bank's claims of fraud, unfairness or oppression must affect the price obtained at sale. *Golden*, 79 Nev. at 514, 387 P.2d at 995. If the Bank has met these initial steps, then, and only then, should the Court balance the equities between the parties.

Here, the Bank has utterly failed to satisfy the critical second and third factor of the *Golden* Rule: whether or not there is actual evidence of fraud, unfairness or oppression, and if so, that it "accounts for and brings about the inadequacy in price."

The District court relied solely on the bankruptcy issues to find fraud, unfairness, or oppression to justify setting aside the Association sale. As discussed fully above, that argument fails. SFR obtained retroactive annulment and the Bank provided no evidence that the sale was in any way affected by the bankruptcy. Finally, the Bank provided and cited to no other evidence of fraud, unfairness, or oppression, other than the stay violation to support its motion. Thus, it follows that there being no actual evidence of fraud, unfairness or oppression, then it could not affect the price paid at auction. Thus, the Bank failed to meet its burden under Golden, Shadow Wood and Shadow Canyon.

This Court should vacate the district court judgment and remand with instructions to enter judgment in favor of SFR.

B. The Price Paid at Auction Was Adequate.

As no irregularities existed with the foreclosure, this Court need not consider the price paid by SFR at foreclosure. *See Oller v. Sonoma Cty. Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955)(case from which *Golden* Rule was adopted); "[I]f the district court looks at the sale as a whole and finds no evidence of fraud, unfairness or oppression affecting the sale, "then the sale cannot be set aside, regardless of the inadequacy of price." *Shadow Canyon*, 405 P.3d at 647. However, even if analyzed, this Court will find, as did the District Court, that the price paid by

SFR was adequate because fair market value has no applicability to a forced sale situation. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-538 (1994). This will also show that gauging the value of the property off of the Bank's DOT was improper by the District Court. Foreclosure redefines the market in which the property is offered for sale as opposed to the free market, leaving "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself." *Id.* at 548-49. So long as the state statutes include requirements for public noticing of the auction and provisions for competitive bidding, then the price obtained is the reasonable equivalent value of the property. *See In re Tracht Gut, LLC*, 836 F.3d 1146 (9th Cir. 2016)(extending *BFP*'s analysis to California tax sales because they afford the same procedural safeguards as a mortgage foreclosure sale); *T.F. Stone v. Harper*, 72 F.3d 466 (5th Cir. 1995); *Kojima v. Grandote Int'l Ltd. Co.*, 252 F.3d 1146 (10th Cir. 2001).

NRS 116 provides all these same safeguards: (a) NRS 116 requires an NOD is mailed to all interested parties and subordinate claim holders; [47] (b) after 90 days of the recording of the NOD, the NOS must be mailed to all interested parties and subordinate claim holders;[48] be posted in a public place and be published in a

[47] NRS 116.31163; NRS 116.31168; *see also G & P Investment Enterprises*, Case No. 68842(stating notice is required to be sent to the deed of trust beneficiary.).
[48] NRS 116.311635(1)(b)(1); NRS 116.311635(1)(b)(3); NRS 116.31168(1); NRS 107.090(3)-(4).

newspaper of general circulation for three consecutive weeks, at least once a week.[49] Additionally, NRS 116 requires the sale take place in the County in which the property is situated.[50] As a result, all subordinate interest holders, as well as the public as a whole, are made aware of an NRS 116 auction. These noticing and foreclosure provisions ensure the auction was publicly noticed and would create competitive bidding.

Here, the Association did everything required of it under the law to foreclose on its lien including meeting all the requirements of NRS 116. Legally, it is as if NAS never was in violation of the bankruptcy stay. Therefore, the foreclosure was properly noticed including the recording and mailing, and posting of all applicable notices.[51] Additionally, the auction was publicly held,[52] and SFR placed the winning bid at auction.[53] The Association owed no duty to the Bank to try the highest price it could. *Shadow Canyon*, 405 P.3d at 644-45. The Association had to follow the elaborate statutory requirements to foreclosure. It did.

While the Bank may complain about the total amount received during the auction, the market conditions that existed—largely created by the Bank—

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[49] NRS 116.311635(c)
[50] NRS 116.31164
[51] 2AA_245-261; 2AA_303-313, 51:10-16; *Id.* at 28:19 – 29:15; 2AA_253-266; 2AA_307 at 32:10 – 33:7.
[52] 2AA_272–276.
[53] *Id*.

significantly lowered the value of the property. Even the Bank's expert witness has conceded that his evaluation fails to account for any of the market conditions. While SFR acknowledges that under normal foreclosure situations, perhaps using the "fair market value" to determine adequate price is justified under the Golden rule. But that is not and has not been the circumstances with these NRS 116 sales. The purchasers have had to fend off either bank foreclosure sales, as SFR had to here, or defend the meaning of the statute, from almost the very beginning. And it did so with little success until this Court gave the banks and courts guidance. But that was not enough, and the banks, like the one here, kept changing their tactics and allegations looking for something to stick. This is something that should be stopped and stopped now. If some allegation was not raised in the first instance, a bank should not be allowed to go on a fishing expedition looking for its "slight" evidence of unfairness. If it has to look that hard, then whatever the fact is, it did not affect the price. This continuing litigation *ad nauseum*, is why "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself." *BFP*, 511 U.S. at 549. But given this was a public auction, if the Bank disagreed with the collective public's valuation of the property, it should have bought the property at the auction itself.

It cannot be contested the amount paid by SFR was adequate given that the Association foreclosure complied with all requirements of NRS 116 and this

foreclosure was a public auction open to all entities, including the Bank.

C. Bona Fide Purchaser Status Trumps Equitable Relief

Because there were no irregularities with the sale, there is no need for this, or the District Court, to balance the equities. But, if this Court were to continue its analysis under *Shadow Wood*, *Shadow Canyon*, and *Golden*, which it should not, then SFR's status as a bona fide purchaser must be given the weight it deserves; something the District Court failed to do.

As discussed above, SFR was a BFP when it purchased the Property. Mere knowledge that there was a deed of trust on the Property is not enough to deprive SFR of its BFP status. *Shadow Wood*, 366 P.3d at 1115-1116 (depriving a purchaser of BFP status because it knows that a former interest holder may later challenge the sale post hoc is unsupported by the law). Indeed, this Court recognized the importance of a bona fide purchaser ("BFP") and instructed the district courts to give it full consideration when it stated,

> When sitting in equity, however, courts must consider the entirety of the circumstances that bear upon the equities…This includes considering the status and actions of all parties involved, including whether an innocent party may be harmed by granting the desired relief.

Shadow Wood, 366 P.3d at 1114 citing *Smith v. United States*, 373 F.2d 419, 424 (4th Cir. 1966) ("Equitable relief will not be granted to the possible detriment of innocent third parties."); *In re Vlasek*, 325 F.3d 955, 963 (7th Cir. 2003) ("[I]t is an

age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties."); *Riganti v. McElhinney*, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) ("[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.")

This Court further stated that "[c]onsideration of harm to potentially innocent third parties is especially pertinent here where [the Bank] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property." *Shadow Wood*, 366 P.3d at 1114 fn. 7 citing *Cf. Barkley's Appeal. Bentley's Estate*, 2 Monag. 274, 277 (Pa. 1888) ("in the case before us, we can see no way of giving the petitioner the equitable relief she asks without doing great injustice to other innocent parties who would not have been in a position to be injured by such a decree as she asks if she had applied for relief at an earlier day.").

In other words, this Court recognized that when a bona fide purchaser has no notice of a pre-sale dispute, such as an attempted payment, equity cannot be granted to the party attempting to pay, particularly when the tendering party was in a position to seek relief earlier and prevent anyone from becoming a bona fide purchaser by putting the world on notice of their attempts to pay. Knowledge of the mere existence of the deed of trust is not enough to beat

By emphasizing "the legal remedies available to prevent the property from being sold to a third party," this Court placed the burden on the party seeking equitable relief to prevent a potential purchaser from attaining BFP status. *See First Fidelity Thrift & Loan Ass'n v. Alliance Bank*, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d 295 (Cal.Ct.App. 1998) Put simply, equitable relief cannot be granted at the expense of a BFP. As this Court has oft noted, "[i]n seeking equity, a party is required to do equity." *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp*., 103 Nev. 126, 127, 734 p.2d 1233, 1235 (1987).

Here, the Bank failed to raise any issues with regard to the bankruptcy stay violation with the bankruptcy court. In fact, it waited until it lost the SFR decision, and after it amended its answer and counterclaim: the Bank waited five long years before ever raising the issue with anyone, let alone do anything about it. The Bank simply sat back and let SFR, a party with no reason to know of the bankruptcy, to purchase the Property.

This seemingly harsh result is reinforced by the fact that not even a due process violation is sufficient to overcome an individual's status as a BFP. *Swartz v. Adams*, 93 Nev. 240, 245–46, 563 P.2d 74, 77 (1977) (finding that where notice of sale was not given to owners, property still could not be returned to the owners because the property was purchased by a BFP). This Court remanded *Swartz* to allow the owners to seek compensatory relief against the person who initiated the sale

rather than harm an innocent third party. *Id*. This is what should happened in this case.

D. The Bank's Recourse is Against the Parties who Allegedly Harmed It.

This is not to say the Bank or NV West have no recourse; it simply means it has no recourse against SFR by encumbering SFR's title. Rather, it still potentially has recourse against the Association/Collection Company i.e. the parties who caused the alleged harm in the first place. SFR in no way concedes that NAS's rejection of the Bank's payment, was wrongful, but even if it was, this still leaves as the only appropriate remedy, money damages, not equitable relief that harms SFR, the innocent purchaser. This is consistent with *Swartz* noting:

> …the ideal remedy would be to return that property to the former owner pending constitutionally sufficient proceedings. Unfortunately, this may no longer be done without injury to innocent third parties who are bona fide purchasers of the property. However, Violet has also sought compensatory relief in her complaint. We therefore reverse and remand the case to the court below for appropriate proceedings consistent with this opinion.

93 Nev. at 245–46, 563 P.2d at 77.

This is consistent with the Restatement's commentary: the wronged junior lienholder must seek a remedy from someone other than the purchaser. *See* Restatement (Third) Property: Mortgages, §8.3, Comment *b*. Other courts have also consistently found that a BFP is protected even when there is a wrongful rejection

of tender. *Moeller v. Lien,* 25 Cal. App. 4th 822, 831–32, 30 Cal.Rptr.2d 777, 783 (1994) (precluding an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor); *see also Munger v. Moore,* 11 Cal. App. 3d 1, 7, 89 Cal. Rptr. 323 (Ct. App. 1970)("a trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained where there has been an illegal, fraudulent or willfully oppressive sale of property under a power of sale contained in a mortgage or deed of trust")(citations omitted).

If a homeowner, who was not afforded due process and therefore could not even avail herself of earlier remedies or prevent a BFP from purchasing the property, was not entitled to equitable relief, then certainly the Bank who did have notice and six months and two days to invoke any number of remedies, and allowed a BFP to purchase the property, is not entitled to equity.

The so-called harmed party (Bank) can seek money damages against the party who caused the harm (Association/Collection Company). But under no set of circumstances can equitable relief, to the detriment of the innocent purchaser, be granted to a party (Bank) who ignored earlier remedies and allowed a BFP to purchase the property.

This Court summarized this notion when it stated:

> Where the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby.

Shadow Wood, at 1116.

This is not even a novel idea of jurisprudence. One of the most fundamental principles of law, whether it be civil or criminal, is that only the party that caused or contributed to the harm can be held responsible. If BFP status is not given adequate weight, then all sales lack finality and all statutory foreclosure schemes are jeopardized; effectively morphing a non-judicial foreclosure into a judicial foreclosure. *See Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777, 782 (1994); *Melendrez v. D & I Investment, Inc.*, 26 Cal.Rptr.3d 413, 428 (Cal.Ct.App. 2005 (Creating finality to BFPs 'was to promote certainty in favor of the validity of the private foreclosure sale because it encouraged the public at large to bid on the distressed property…'")(internal citation omitted); *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); *McNeill Family Trust v. Centura Bank*, 60 P.3d 1277 (Wyo. 2003); *In re Suchy*, 786 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

Furthermore, failing to give adequate weight to BFP status effectively rewards the alleged harmed party who failed to protect itself by either invoking earlier remedies or defeating a BFP from purchasing the Property.

In the present case, the evidence unequivocally shows that the Bank never availed itself of any number of earlier remedies. Most importantly, the Bank allowed a BFP to purchase the Property. The Bank never made any official record of its letter which they ask this Court to deem tender. The Bank did not record any official notice that it disputed the foreclosure sale. The Bank did not foreclose on its own deed of trust. The Bank did not file a complaint with NRED. The Bank did not seek an injunction to enjoin the sale. The Bank did not record a lis pendens against the Property. Finally, the Bank did not attend the sale. Most importantly, the Bank did nothing to notify potential purchasers that it had sent a letter which the Bank viewed as a tender. Because of this SFR had no notice, actual or inquiry, that the Bank sent the letter.

It is a maxim, "he who seeks equity must do equity." No one is entitled to the aid of the court when that aid is only made necessary by that party's own inactions or self-created hardship. Equity was not created to relieve a person of the consequences of his own inactions. This maxim holds true in this case.

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CONCLUSION

Based on the foregoing, this Court should vacate the District Court order voiding the sale, granting equitable relief to the Bank, and deeming the sale to NV West good. This Court should remand with instructions to enter an order that the Association sale was proper, without any equitable reason to set it aside, and that the sale to NV West was void and title should be returned to and quieted in SFR's name free and clear of the deed of trust or any other encumbrances related to the deed of trust.

DATED this 21st day of May 2018.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14 point, double-spaced Times New Roman font.
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the pages of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and is contains 8108 words in 35 pages.
3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

…

…

4. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of May 2018.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 21st day of May 2018. Electronic service of the foregoing **Appellant's Opening Brief and Volumes 1 through 6 of the Appellant's Appendix** filed concurrently herewith shall be made in accordance with the Master Service List as follows:

Docket Number and Case Title: 72222 - SFR INV.'S POOL 1, LLC VS. MORTG. ELEC. REGISTRATION SYS.'S, INC.
Case Category Civil Appeal
Information current as of: Jun 29 2017 05:14 p.m.

Electronic notification will be sent to the following:
Jacqueline Gilbert
Darren Brenner
Natalie Winslow

Dated this 21st day of May 2018.

/s/Jacqueline A. Gilbert
An employee of KIM GILBERT EBRON