

**30(b)(6) U.S. Bank, Robert Ferguson - March 23, 2016
SFR Investments Pool, LLC vs. US Bank, N.A., et al.**

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EXHIBIT 4

EXHIBIT 4

PAULINA KELSO
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<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 SFR INVESTMENTS POOL 1, LLC, 5 a Nevada limited liability 6 company, 7 Plaintiff, 8 vs. No. A-13-678814-C 9 A-13-688734-C 10 U.S. BANK, N.A., a national 11 banking association as Trustee 12 for the Certificate Holders of 13 Wells Fargo Asset Securities 14 Corporation, Mortgage Pass-Through 15 Certificates, Series 2006-AR4; 16 LUCIA PARKS, an individual; DOES I 17 through X, and ROE CORPORATIONS I 18 through X, inclusive, 19 Defendants. 20 21 (Full caption on page 2) 22 23 DEPOSITION OF PAULINA KELSO 24 Tuesday, May 17, 2016 25 2:12 p.m. 26 27 3883 Howard Hughes Parkway, Suite 1100 28 Las Vegas, Nevada 29 30 Allyson W. Harris, NV OCR #740</p>	<p>1 U.S. BANK, N.A., a national 2 banking association as Trustee 3 for the Certificate Holders of 4 Wells Fargo Asset Securities 5 Corporation, Mortgage Pass-Through 6 Certificates, Series 2006-AR4, 7 Counterclaimant, 8 vs. 9 SFR INVESTMENTS POOL 1, LLC, 10 a Nevada limited liability 11 company, 12 Counter Defendant. 13 14 U.S. BANK, N.A., a national 15 banking association as Trustee 16 for the Certificate Holders of 17 Wells Fargo Asset Securities 18 Corporation, Mortgage Pass-Through 19 Certificates, Series 2006-AR4, 20 vs. 21 NEVADA ASSOCIATION SERVICES, INC., 22 a Nevada corporation; COPPER RIDGE 23 COMMUNITY ASSOCIATION, a Nevada 24 non-profit corporation, 25 Third-Party Defendants.</p>
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<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 SFR INVESTMENTS POOL 1, LLC, 5 a Nevada limited liability 6 company, 7 Plaintiffs, No. A-13-678814-C 8 A-13-688734-C 9 U.S. BANK, N.A., a national 10 banking association as Trustee 11 for the Certificate Holders of 12 Wells Fargo Asset Securities 13 Corporation, Mortgage Pass-Through 14 Certificates, Series 2006-AR4; 15 LUCIA PARKS, an individual; DOES I 16 through X, and ROE CORPORATIONS I 17 through X, inclusive, 18 Defendants. 19 SFR INVESTMENTS POOL 1, LLC, 20 a Nevada limited liability 21 company, 22 Plaintiff, 23 vs. 24 U.S. BANK, N.A., a national 25 banking association as Trustee 26 for the Certificate Holders of 27 Wells Fargo Asset Securities 28 Corporation, Mortgage Pass-Through 29 Certificates, Series 2006-AR4; 30 NV West Servicing, LLC, a Nevada 31 limited liability company, as Trustee 32 for NASHVILLE TRUST 2270; DOES I-X; 33 and CORPORATIONS I-X, inclusive, 34 Defendants. 35 36 ///</p>	<p>1 APPEARANCES OF COUNSEL: 2 For SFR Investments Pool 1, LLC: 3 KAREN HANKS, ESQUIRE 4 KIM GILBERT EBRON 5 7625 Dean Martin Drive, Suite 110 6 Las Vegas, Nevada 89139 7 702.485.3300 8 702.485.3301 Fax 9 karen@kgelegal.com 10 For U.S. Bank, N.A., as Trustee for the Certificate 11 Holders of Wells Fargo Asset Securities Corporation, 12 Mortgage Pass-Through Certificates, Series 2006-AR4: 13 JOHN S. DELIKANAKIS, ESQUIRE 14 SNELL & WILMER 15 3883 Howard Hughes Parkway, Suite 1100 16 Las Vegas, Nevada 89169 17 702.784.5200 18 702.784.5252 Fax 19 jdelikanakis@swlaw.com 20 For Copper Ridge Community Association: 21 TREVOR WAITE, ESQUIRE 22 ALVERSON, TAYLOR, MORTENSEN & SANDERS 23 7401 West Charleston Boulevard 24 Las Vegas, Nevada 89117 25 702.384.7000 26 702.385.7000 Fax 27 twaite@alversontaylor.com</p>

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<p>1 INDEX OF EXAMINATION</p> <p>2 WITNESS: PAULINA KELSO</p> <p>3</p> <p>4 EXAMINATION PAGE</p> <p>5 By Mr. Delikanakis 6, 91</p> <p>6 By Mr. Waite 90</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 INDEX TO EXHIBITS</p> <p>12 Number Page Description</p> <p>13 Exhibit 1 14 Notice of Deposition</p> <p>14 Exhibit 2 38 Notice of Deposition with</p> <p>Handwriting</p> <p>15</p> <p>Exhibit 3 76 Foreclosure Deed</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. -- correct?</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to go through the admonitions</p> <p>4 nonetheless, okay? Just cover the rules again.</p> <p>5 Basically this is an opportunity for me to</p> <p>6 ask you questions under oath.</p> <p>7 Do you understand that?</p> <p>8 A. I do.</p> <p>9 Q. The oath that you took a few moments ago</p> <p>10 carries the same weight and importance of any oath you</p> <p>11 would take in a court of law.</p> <p>12 Do you understand that?</p> <p>13 A. I do.</p> <p>14 Q. From time to time one of my colleagues here</p> <p>15 in the room may object. If you hear the word</p> <p>16 "objection," I'd like you to let that colleague make</p> <p>17 their objection, place it on the record, and then if</p> <p>18 you can answer the question, go ahead and answer it,</p> <p>19 unless you are directed by your counsel specifically</p> <p>20 not to answer the question.</p> <p>21 Do you understand that?</p> <p>22 A. I do.</p> <p>23 Q. Because everything that's being said in this</p> <p>24 room is being transcribed by the court reporter, it's</p> <p>25 very important that you provide us with a verbal</p>
<p>1 Deposition of Paulina Kelso</p> <p>2 Tuesday, May 17, 2016</p> <p>3 (Prior to the commencement of the</p> <p>4 deposition, all counsel present agreed to waive</p> <p>5 statements by the court reporter pursuant to Rule</p> <p>6 30(b)(4) of the NRCF.)</p> <p>7 PAULINA KELSO, having been first duly sworn,</p> <p>8 was examined and testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. DELIKANAKIS:</p> <p>11 Q. Could you state your name.</p> <p>12 A. Yes. My name is Paulina Kelso.</p> <p>13 Q. And your address?</p> <p>14 A. My home address --</p> <p>15 Q. Yeah.</p> <p>16 A. -- or business? Okay. My home address is</p> <p>17 1308 Premier Court, that's Las Vegas, Nevada, 89117, I</p> <p>18 believe. Sorry, I just moved there. I don't know if</p> <p>19 the zip code is exactly right.</p> <p>20 Q. That's okay. Your date of birth?</p> <p>21 A. 3-13-1976.</p> <p>22 Q. Have you been deposed before?</p> <p>23 A. Yes, I have.</p> <p>24 Q. I think you've been deposed many times --</p> <p>25 A. Yes.</p>	<p>1 response to my questions. Therefore, a nod, a wink,</p> <p>2 you know, a shrug of the shoulders can't be taken down</p> <p>3 by the court reporter, so it's very important that you</p> <p>4 give me a verbal response.</p> <p>5 Do you understand that?</p> <p>6 A. I do.</p> <p>7 Q. What I'm seeking here today is your best</p> <p>8 recollection, no guesses. I may from time to time ask</p> <p>9 you to estimate and I'll give you an example of what I</p> <p>10 always use to make the distinction between a guess and</p> <p>11 an estimate.</p> <p>12 If I asked you what is the size of my dining</p> <p>13 room table on Barbara Way, you would have to guess,</p> <p>14 wouldn't you?</p> <p>15 A. Yes.</p> <p>16 Q. Because you've never seen my dining room</p> <p>17 table; correct?</p> <p>18 A. Right.</p> <p>19 Q. Right. If I asked you to look at the table</p> <p>20 that we're sitting at here today, you could use your</p> <p>21 life experiences and your general knowledge to</p> <p>22 estimate the size of this table; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Am I clear on the distinction between a</p> <p>25 guess and an estimate?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. Great.</p> <p>3 At the end of this deposition the transcript</p> <p>4 will come to you in the form of a booklet. You'll</p> <p>5 have the opportunity to review your testimony in that</p> <p>6 booklet. You'll have the opportunity to also make</p> <p>7 changes to your testimony; however, I have to caution</p> <p>8 you that if you make substantive changes to your</p> <p>9 testimony, I or any of the other counsel in this</p> <p>10 matter can comment on those changes at any subsequent</p> <p>11 proceedings.</p> <p>12 Do you understand that?</p> <p>13 A. I do.</p> <p>14 Q. Got it.</p> <p>15 Are you taking any medications today?</p> <p>16 A. Any medications?</p> <p>17 Q. Any medications.</p> <p>18 A. Yes.</p> <p>19 Q. Are they in any way impairing your ability</p> <p>20 to give your best testimony? In other words, do you</p> <p>21 feel drowsy, sleepy, erratic, anything like that?</p> <p>22 A. No.</p> <p>23 Q. Not bothering you at all?</p> <p>24 A. No.</p> <p>25 Q. Okay, good. If you need to take a break,</p>	<p>1 Q. And where did you receive this double</p> <p>2 bachelor's degree?</p> <p>3 A. Idaho State University.</p> <p>4 Q. And what year did you receive?</p> <p>5 A. I believe that was in 1994.</p> <p>6 Q. Other than the degrees you've just</p> <p>7 described, have you received or earned any other</p> <p>8 certifications or diplomas?</p> <p>9 A. Excuse me. I have to correct that. It</p> <p>10 wasn't 1994. That's when I started, I believe. I</p> <p>11 think I graduated from that in 2004, so took me some</p> <p>12 time. And other than that, no, I do not have any</p> <p>13 other certifications or anything beyond that, no.</p> <p>14 Q. Okay. Are you presently employed?</p> <p>15 A. Yes.</p> <p>16 Q. Who is your current employer?</p> <p>17 A. My current employer is SFR Investments Pool</p> <p>18 1, LLC.</p> <p>19 Q. And what is your job title?</p> <p>20 A. I am the assistant manager.</p> <p>21 Q. And can you describe what are some of the</p> <p>22 duties that come under the job heading of assistant</p> <p>23 manager at SFR?</p> <p>24 A. Sure. My primary job duties are to prepare</p> <p>25 and attend depositions like this one and then I help</p>
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<p>1 we'll take a break, okay?</p> <p>2 A. Okay.</p> <p>3 Q. It's not a marathon.</p> <p>4 I have to ask this question, and I don't</p> <p>5 mean to embarrass you. Have you ever been convicted</p> <p>6 of a felony?</p> <p>7 A. No, I have not.</p> <p>8 Q. Where did you receive -- what's the highest</p> <p>9 level of formal education that you've received?</p> <p>10 A. Highest level of education that I have</p> <p>11 received is a JD.</p> <p>12 Q. And you received your JD when?</p> <p>13 A. In 2008.</p> <p>14 Q. From what school did you receive your JD?</p> <p>15 A. I received my JD from Seattle University</p> <p>16 School of Law.</p> <p>17 Q. Okay. And are you barred in any states to</p> <p>18 practice law?</p> <p>19 A. No, I am not.</p> <p>20 Q. Okay. After -- other than the JD, do you</p> <p>21 have any other formal degrees from a college or</p> <p>22 university?</p> <p>23 A. Other than the JD, I have a bachelor's</p> <p>24 degree, a double bachelor's in communications and</p> <p>25 political science.</p>	<p>1 with discovery. So I collect documents and e-mails or</p> <p>2 whatever I can about properties that are in litigation</p> <p>3 and pass those on to the attorneys. I am helping with</p> <p>4 trials now, and on a day-to-day basis I do office</p> <p>5 work, so anything in the office that I can help with,</p> <p>6 like answering phones, helping tenants, anything like</p> <p>7 with the property management.</p> <p>8 Q. How long have you held this title of</p> <p>9 manager?</p> <p>10 A. Since June of 2015.</p> <p>11 Q. When you say you are helping with trials,</p> <p>12 can you give me some examples of how you are helping</p> <p>13 with trials?</p> <p>14 A. Yes. I just meant that I attended a trial</p> <p>15 recently. I think it was in the last month, and I was</p> <p>16 a witness there.</p> <p>17 Q. Okay. So your helping in trials is not the</p> <p>18 actual preparation of the trial or preparation work</p> <p>19 with the attorneys to put their case on for trial, but</p> <p>20 you're appearing at trials as a witness?</p> <p>21 A. Correct.</p> <p>22 Q. Is that the limit of your helping with</p> <p>23 trials?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. How many times have you so far</p>

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1 appeared as a witness at trial?
2 A. Just once so far.
3 Q. Okay. And when did that occur?
4 A. I believe it was the first week in May.
5 Q. Okay. Do you recall the name of the case?
6 A. No, I do not.
7 Q. Do you recall the court in which the case
8 was pending?
9 A. It was at the justice court. I do not.
10 Q. Do you remember the name of the judge?
11 A. I do not.
12 Q. Do you remember the subject property that
13 was the subject of the case?
14 A. It's on the tip of my tongue. Sorry. Right
15 after that I had eight depositions the next week, so
16 I'm trying to -- I don't recall the subject property,
17 no.
18 Q. Do you know how many days the trial lasted?
19 A. I would approximate it was about a week.
20 Q. And how long was your testimony? How long
21 did your testimony last at the trial?
22 A. I believe it was about two hours. With
23 being asked questions by both parties, I think it was
24 about two hours.
25 Q. Direct and cross-examination?

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1 A. Yes.
2 Q. Okay. Who was SFR's attorney at that trial?
3 A. That would be Karen Hanks.
4 Q. Do you know who opposing counsel was, the
5 name of the opposing counsel?
6 A. Yes. Well, it was Akerman, and Darren and
7 Ariel, but I do not remember their last names.
8 Q. Do you know what the outcome of the trial
9 was?
10 A. No. I believe that's still pending.
11 Q. Okay. Thank you.
12 So are you here in response to a 30(b)(6)
13 deposition notice?
14 A. Yes.
15 MR. DELIKANAKIS: Okay. I'm going to go
16 ahead and have the court reporter mark the deposition
17 notice as No. 1.
18 (Exhibit 1 was marked for identification.)
19 BY MR. DELIKANAKIS:
20 Q. I've handed you what's been marked as
21 Exhibit 1, which I'll tell you is the Notice of
22 Deposition of SFR Investments Pool 1, LLC pursuant to
23 Nevada Rule of Civil Procedure 30(b)(6).
24 Have you seen this document before?
25 A. Yes, I have.

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1 Q. Are you familiar with the real property
2 identified as 2270 Nashville Avenue, Henderson, Nevada
3 890527?
4 A. Yes.
5 Q. And you are here today to discuss the
6 foreclosure of that property; correct?
7 A. Correct.
8 Q. Okay. What I'd like you to do is take some
9 time and review all the topics, okay? And there's
10 quite a few; I see that. There's 31 topics, so if
11 you're kind enough to take your time and read them,
12 because I'm going to ask you to make sure that you are
13 the person most knowledgeable regarding each of these
14 topics. If there are any that you are not the person
15 most knowledgeable, I'd like you to tell me. Let's do
16 it that way. I think that's faster than me just
17 reading off every single one.
18 A. Sure.
19 Q. Can we do that?
20 A. Yes.
21 Q. If you are not the person most knowledgeable
22 as to any of these topics, tell me.
23 MS. HANKS: Counsel, do you want me to put
24 the ones that we've filed the motion for protective
25 order on that we were talking about before we went on

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1 the record?
2 MR. DELIKANAKIS: Why don't you let her
3 testify as to whether or not she is the person most
4 knowledgeable with regard to a particular topic and
5 then you and I can have colloquy with regards to the
6 motion for protective order you told me was filed
7 today.
8 MS. HANKS: Sure.
9 MR. DELIKANAKIS: Thank you.
10 THE WITNESS: So there are a couple of topic
11 questions that I didn't prepare for be- --
12 BY MR. DELIKANAKIS:
13 Q. Okay. Tell me which ones they are.
14 A. Sure.
15 Q. I have them marked on mine.
16 MS. HANKS: Do you need this?
17 THE WITNESS: Yeah. So 15, 16, 17, 20, 21,
18 22, 23, 26, 29 and 30, and some of the questions I've
19 been asked before, generally speaking, so I might have
20 some answers generally to that, but I didn't look at
21 it specifically to this property because I was
22 instructed not to.
23 BY MR. DELIKANAKIS:
24 Q. And I don't want to know about
25 communications between you and your counsel, but I'm

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1 going to ask you who instructed you not to prepare for
2 the topics that you've just listed to me?
3 A. That would be counsel.
4 Q. Okay. So it's your testimony you were
5 instructed by counsel not to prepare for Topics 15,
6 16, 17, 20, 21, 22, 23, 26, 29 and 30?
7 A. Correct.
8 Q. In prior PMK depositions in which you
9 appeared as person most knowledgeable for SFR, have
10 you appeared as the person most knowledgeable with
11 regard to these now forbidden topics?
12 A. Yes, some of them at least. Usually I would
13 have that information on a property.
14 Q. Is this the first time that you've been
15 directed not to prepare for these particular PMK
16 topics?
17 A. No. I believe at least one other time I was
18 with this -- even maybe similar notice. Now, as far
19 as property files and getting into them in detail, no,
20 I've been instructed not to prepare on those.
21 Q. I'm going to stop you right there. If any
22 instructions came from your counsel, I don't want to
23 know about them; but if you were instructed by other
24 persons who are not your counsel, then I do know --
25 want to know about it, okay?

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1 A. Okay.
2 Q. So other than your counsel, is there anyone
3 else at SFR that instructed you not to prepare for the
4 PMK topics that you listed for me?
5 A. No.
6 Q. So all of this direction came from counsel?
7 A. Correct.
8 Q. What, if anything, did you do to prepare for
9 the topics that you have not excluded? Let's do it
10 that way. I mean, I can run through and go through
11 these numbers, so let's make sure we know exactly
12 which ones. So you are here to testify as PMK for
13 Topics 1 through 12; is that correct?
14 A. Yes.
15 Q. And 13 and 14?
16 A. Yes.
17 Q. And 18 and 19?
18 A. Yes.
19 Q. And 24 and 25?
20 A. Yes.
21 Q. 27 and 28 and 31?
22 A. Yes.
23 Q. What, if anything, did you do to prepare for
24 today's deposition with regard to those topics?
25 A. In order for me to prepare for those topics

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1 I pulled the property file that we have at SFR for the
2 named property and I reviewed what we had in the file.
3 I pulled the check of the receipt, because that's kept
4 separately, so I looked at that for the property file,
5 and then I spoke with a few people in the office, and
6 I also spoke with my manager, Chris Hardin.
7 Q. Which people in your office did you speak
8 with?
9 A. I spoke with the accountant.
10 Q. What is the name of the accountant?
11 A. Her first name is Arek, that's A-r-e-k.
12 Q. Do you know her last name?
13 A. I -- I don't. I've had to provide the
14 spelling of it a few times, but it's a long name.
15 Q. Okay. And what other people did you speak
16 to in preparation for this deposition?
17 A. Her assistant, and her name is Lauren
18 Johnson.
19 Q. And the third person you spoke to was
20 Chris Hardin; right?
21 A. There was another person. Her name is
22 Daniela. Cardenas I believe was her last name.
23 Q. Did you speak to "Paulyna" Kelso or
24 "Pauleena" Kelso?
25 A. That's me.

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1 Q. Okay. That's you. That's right. Okay.
2 Okay. Let's go down this list of people.
3 You testified that you spoke with Arek in preparation
4 for your deposition. What, if anything, did you and
5 Arek talk about?
6 A. Sure. I -- us -- what I do is I send an
7 e-mail to her and let her know that I needed to get
8 the transaction report for the property. That was
9 prior to the instruction from counsel, so -- but so
10 prior -- before I had that I went ahead and asked her,
11 like I typically do on a property, asked her to
12 prepare that, and that is the expense and the revenue
13 report.
14 Q. And when did you have this conversation with
15 Arek?
16 A. I believe it was within the last two
17 weeks.
18 Q. Did she provide you with that report?
19 A. Yes.
20 Q. And what have you done with it?
21 A. It is on my computer at my office.
22 Q. Okay. Other than speaking to Arek to obtain
23 that report, were there any other topics that you
24 discussed with Arek with regard to this property?
25 A. No.

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1 Q. Okay. Did you speak to Arek's assistant,
2 Lauren Johnson?
3 A. Yes.
4 Q. Why did you speak to Arek's assistant,
5 Lauren Johnson, in preparation for your deposition?
6 A. Lauren, she is the person who would have
7 communication with the HOA or a management company
8 after the purchase of a property. So I asked her to
9 do a search to see if she had any communications with
10 the HOA for this one.
11 Q. And what was the result of her search?
12 A. She didn't respond back to me, and typically
13 when she doesn't, that means she didn't have
14 anything.
15 Q. Did you follow up with Lauren to see if she
16 actually had any evidence of communications with the
17 HOA company?
18 A. Not after the initial e-mail, no, I did
19 not.
20 Q. Sitting here today, has she provided you
21 with any kind of a response?
22 A. No, she has not.
23 Q. Have you reached out to her in any way,
24 shape, or form to get an affirmative answer from her
25 like "I have nothing"?

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1 A. No, I did not.
2 Q. Okay. You also testified that you spoke
3 with Chris Hardin; is that correct?
4 A. Yes.
5 Q. Who is Chris Hardin?
6 A. Chris is the manager of SFR Investments Pool
7 1, LLC.
8 Q. How long has Chris been the manager?
9 A. I believe he started in October 2012. I
10 believe he's been the manager. I think initially
11 that's what he was hired as.
12 Q. What are Chris' duties at SFR, do you know?
13 MS. HANKS: Objection. Scope.
14 THE WITNESS: I'm not really sure about his
15 duties. I know that he has attended auctions and
16 purchased homes on behalf of SFR, and then he's the
17 office -- he's the manager, so if anybody has any
18 questions about their role at SFR or has any issues,
19 they go to Chris.
20 BY MR. DELIKANAKIS:
21 Q. Sounds like he's the boss of the office.
22 A. That's what I would call him, yes.
23 Q. That's what you would call him?
24 A. Yes.
25 Q. Who does Chris report to?

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1 MS. HANKS: Objection. Scope.
2 THE WITNESS: It's my understanding that he
3 reports to himself.
4 BY MR. DELIKANAKIS:
5 Q. Okay. So he reports to no one?
6 A. Correct. I've asked him that before, and he
7 said he makes the decisions himself.
8 Q. When did you speak to Chris Hardin to
9 prepare for your deposition?
10 A. For this property and this deposition, I
11 spoke with him this morning.
12 Q. For how long did you speak with him?
13 A. For about 15 minutes, and then I had also
14 e-mailed him probably within the last two weeks
15 also.
16 Q. Let's start with the conversation. During
17 the 15-minute conversation, what, if anything, did you
18 discuss with Chris Hardin?
19 A. With him I went through the topic questions
20 to ask him for any information that he would have. He
21 was the person who attended the auction, so I just
22 needed to know what he recalled from the auction.
23 Q. And did he provide you with his
24 recollection?
25 A. He didn't have a recollection of the auction

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1 specifically, so we spoke in general terms.
2 Q. Did he have a general recollection of the
3 auction?
4 A. He said he didn't have a recollection of the
5 auction, so, no.
6 Q. So he had no recollection of this auction
7 whatsoever?
8 A. Correct.
9 Q. Okay. What else, if anything, did you
10 discuss with Chris Hardin?
11 A. I asked him -- well, previously I had asked
12 him in e-mail to see if he had -- had any
13 correspondence or any kind of information -- excuse
14 me -- with any communications. Basically, I read the
15 questions to him, and the property owner or
16 previous -- we have it listed here as the borrower. I
17 asked him to check his -- for e-mails of that and then
18 any e-mails that he could -- in his system that he had
19 with any communications with anybody.
20 Q. So as part of your preparation for today's
21 deposition, you asked Chris Hardin to pull e-mails
22 with regard to which topics now? Could you read them
23 for me?
24 A. Sure. I believe that was No. 2, No. 3,
25 No. 8, No. 10, 11. As far as communication goes, I

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1 think that was -- those were the topics.
2 Q. And did Chris Hardin provide you with any
3 e-mails in response to your request?
4 A. No, he did not.
5 Q. Did he explain to you why he didn't provide
6 you with any e-mails?
7 A. Yes. So previously like I mentioned I
8 asked -- sent him an e-mail about that and I hadn't
9 received anything back, so I sat down with him this
10 morning and asked him "Do you have anything?" And he
11 did the check on his computer when I was sitting
12 there, and he said that he didn't have anything, and
13 then he mentioned that this property is actually --
14 the bank foreclosed on it, and that's probably likely
15 why he has no communications.
16 Q. Okay. Does SFR have a document retention or
17 document destruction policy? Are you aware of one?
18 MS. HANKS: Objection. Scope.
19 THE WITNESS: Other than everybody just
20 keeping their e-mails, I don't.
21 BY MR. DELIKANAKIS:
22 Q. Are you aware of any policy telling people
23 how long they should keep their e-mails?
24 MS. HANKS: Objection. Scope.
25 THE WITNESS: No, I am not.

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1 BY MR. DELIKANAKIS:
2 Q. Was there anything else you discussed with
3 Chris Hardin in preparation for today's deposition?
4 A. Yes. I asked him specifically about
5 Topic 5 -- sorry, even to go further, Topic 4, 5, 6,
6 7. And that was just the types of relationships that
7 are described in those topic questions with the HOA,
8 NAS. I did talk to him about some of the other topic
9 questions. So basically the ones that I didn't have
10 marked off, I read them to him and we discussed each
11 one a little bit.
12 Q. Okay. And, well, why don't we go through
13 them, then, and you can tell me what, if anything, he
14 told you.
15 A. Sure.
16 Q. Want to do it that way?
17 A. Sure.
18 Q. For Topic No. 1, "SFR's knowledge about the
19 real property at issue in this matter, commonly known
20 as 2270 Nashville Avenue, Henderson, Nevada, 89052" --
21 and there's an APN number -- "prior to the HOA sale,"
22 what did Mr. Hardin tell you with regard to Topic
23 No. 1?
24 A. Prior to the HOA sale, he said that he
25 likely did his usual searches on the Internet that he

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1 would have done for most properties he's purchased.
2 Q. Do you know what his usual searches are?
3 A. Yes.
4 Q. What are they?
5 A. So in order to find out about a property, he
6 typically goes to Foreclosure Radar, Nevada Legal
7 News, and the Clark County Legal News.
8 Q. As part of his searches, do you know if
9 Mr. Hardin ever checks to see if the homeowner is in
10 bankruptcy or not?
11 A. I don't believe he does, no.
12 Q. Do you know in this instance if he did?
13 A. I did not ask that specific question this
14 instance. I've asked him that question in general
15 when I've been asked it before, and he stated that he
16 does not.
17 Q. Okay. So he doesn't check to see to make
18 sure the homeowner is not in bankruptcy?
19 A. That is my understanding, that he does
20 not.
21 Q. Was there anything else Mr. Hardin relayed
22 to you with regard to Topic No. 1?
23 A. I don't believe so, no.
24 Q. Let's go to Topic No. 2, "Communications
25 between all parties to the lawsuit identified as SFR

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1 Investments Pool," et cetera, et cetera, et cetera,
2 "regarding the property. This includes pre-sale
3 communications and post-sale communications that refer
4 to SFR's pre-sale activity or SFR's purchase of the
5 property."
6 What, if anything, did Mr. Hardin relay to
7 you with regard to that topic?
8 A. He stated that he didn't have any
9 communications, post-sale or pre-sale, other than
10 payment of the check and, you know, the actual
11 auction. He knows he attended that, and just that
12 transaction of payment.
13 Q. Okay. The same would be true for No. 3,
14 Topic No. 3?
15 A. Correct.
16 Q. Okay. Topic No. 4, "SFR's preexisting,
17 current or ongoing relationship with Copper Ridge
18 Community Association, the HOA."
19 What, if anything, did Mr. Hardin say to you
20 with regard to that topic?
21 A. For that topic he did a search for Copper
22 Ridge Community, and he stated that there was no
23 preexisting, current, or ongoing unless it had to do
24 with another property that SFR might own that's within
25 that HOA. And he did look, and there are other homes

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1 that SFR does own within that community.
2 Q. But there was no communication with regard
3 to this property?
4 A. Correct.
5 Q. Were there any communications with Copper
6 Ridge Community Association not specifically related
7 to other properties that SFR owns, but just general
8 communications? In other words, there are
9 communications that deal with specific properties he
10 already owned; correct?
11 A. Correct.
12 Q. And he searched, and there's no
13 communication specifically with regard to this subject
14 property; correct?
15 A. Correct. That's the search he did. Now, I
16 did note that on the transaction report that there
17 were some assessments paid, so there would be that
18 communication, to pay for those -- it was a -- I'm
19 estimating that it was about a few months where SFR
20 paid assessments, and I believe there was maybe one or
21 two HOA fines; so I know that there was that
22 communication.
23 Q. Was there any other communication between
24 Mr. Hardin or SFR and Copper Ridge on any other
25 general topics not specific to the properties already

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1 owned or the subject property?
2 A. Not specific to -- can you repeat your
3 question.
4 Q. Sure. In other words, you've identified
5 that there was -- there were communications with
6 regard to SFR's already-owned properties within the
7 Copper Ridge Community; correct?
8 A. Either previously owned or had purchased or
9 after the fact also there could be.
10 Q. And when the search was done with regard to
11 communications as to this subject property, the result
12 was zero; correct?
13 A. Correct.
14 Q. What I'm asking is if I take those two
15 subsets out, were there any other communications
16 between SFR and Copper Ridge on any other topics
17 related generally to property within that association?
18 MS. HANKS: Objection. Scope.
19 THE WITNESS: I do not know.
20 BY MR. DELIKANAKIS:
21 Q. Do you know if Mr. Hardin did a search for
22 any e-mails between SFR and Copper Ridge that did not
23 fit neatly into one of these two categories,
24 properties already owned or previously owned, or this
25 subject matter?

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1 A. I do not know.
2 Q. Okay. Was there anything else Mr. Hardin
3 relayed to you with regard to Topic No. 47
4 A. No, I don't believe so.
5 Q. Okay. How about Topic No. 5, "SFR's
6 preexisting, current, or ongoing relationship with
7 Nevada Association Services, Inc., NAS"?
8 A. With that topic Chris stated that SFR does
9 not have a relationship with Nevada Association
10 Services other than to bid on properties.
11 Q. Did you ask Mr. Hardin to conduct a search
12 on his computer with regard to any communications that
13 would evidence that relationship?
14 A. No, I did not.
15 Q. Did Mr. Hardin characterize what the nature
16 of the relationship is today between SFR and NAS?
17 A. That's how he characterized it is that SFR
18 goes and bids on properties, and that is the only --
19 if you wanted to call it a relationship -- that SFR
20 has with NAS.
21 Q. Thank you.
22 What other topics did you discuss with
23 Mr. Hardin in preparation for your deposition?
24 A. 6 through 12.
25 Q. So we keep going down. Let's go through 6

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1 through 12.
2 A. Okay.
3 Q. No. 6, "Any agreements and/or arrangements,
4 written or oral/past or present, between SFR and the
5 HOA pertaining to HOA assessments, liens, or the
6 purchase or sale of the property."
7 What, if anything, did Mr. Hardin relay to
8 you with regard to this topic?
9 A. He stated that there are no agreements or
10 arrangements other than to pay assessments if SFR owns
11 properties and other than owning homes within that
12 HOA.
13 Q. I just want to confirm that your knowledge
14 as the person most knowledgeable with regard to these
15 topics that we're now going through -- are they based
16 solely upon your conversations with Mr. Hardin?
17 A. No. I go through the property files and
18 I -- like I said, I speak with the other individuals,
19 and so it's just based on what information I believe
20 SFR has in the office that are available.
21 Q. So in addition to your conversation with
22 Mr. Hardin with regard to Subject 6, did your own
23 personal investigation in preparation for this
24 deposition yield any other information with regard to
25 this topic?

<p style="text-align: right;">Page 33</p> <p>1 A. Other than seeing that SFR had paid 2 assessments, no, I didn't see anything within the file 3 and I didn't receive anything from the people that I 4 spoke with as far as any e-mails, so, no. 5 Q. Okay. Topic 7, "Any agreements and/or 6 arrangements, written or oral/past or present, between 7 SFR and NAS pertaining to HOA assessments, liens, or 8 the purchase or sale of the property." 9 What, if anything, did Mr. Hardin relay to 10 you with regard to that topic? 11 A. He stated that there is no agreement or 12 arrangement between SFR or NAS pertaining to HOA 13 assessments, liens, and -- or the purchase or the sale 14 of the property other than -- you know, he goes and 15 bids on the properties, and he makes the payment for 16 those properties, and they provide the foreclosure 17 deed to him and depend- -- and sometimes they will 18 record it. So other than those interactions that they 19 just -- they don't have any agreements or arrangements 20 other than that. 21 Q. Okay. You spoke in the present tense, so I 22 want to make sure I understand. 23 A. Sure. 24 Q. Did they ever -- did SFR ever have any such 25 agreements?</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. Topic 9, "Proof of service of all 2 correspondence or communications between you and any 3 lender, servicer, or beneficiary pursuant to any deed 4 of trust recorded against the property." 5 What, if anything, did Mr. Hardin relay to 6 you with regard to Topic 9? 7 A. He didn't have anything, and when I looked 8 in the file I didn't either. Once in a while I will 9 see those kind of documents for a property, but I 10 didn't see anything for this one. 11 Q. In reviewing the file, did you receive any 12 notices of bankruptcy stay? 13 A. I did not see any of those in the file. 14 Q. Topic 10, "Any correspondence or 15 communications between Lucia Parks, borrower, and SFR 16 regarding the property." 17 What, if anything, did Mr. Hardin relay to 18 you with regard to this topic, Topic 10? 19 A. He didn't have any communications with her. 20 He checked his e-mails and then stated that he didn't. 21 And then I -- typically when I see a communication 22 with a borrower or a previous owner, excuse me, to a 23 property, there are times where that person might 24 still or persons might still be in the property, so 25 sometimes I'll see it that way or I will see a new</p>
<p style="text-align: right;">Page 34</p> <p>1 A. It's my understanding SFR did not. 2 Q. Okay. And they don't, sitting here today? 3 A. And they don't, sitting here today. 4 Q. Did your independent investigation in 5 preparation for today's deposition yield any other 6 information with regard to the existence or the 7 nonexistence of such agreements? 8 A. In preparation for today's, no, and then I 9 prepare for quite a few depositions. I haven't ever 10 seen anything like that, no. 11 Q. Topic 8, "SFR's correspondence and/or 12 communications with any lender, servicer, or 13 beneficiary pursuant to any deed of trust recorded 14 against the property." 15 What, if anything, did Mr. Hardin speak to 16 you -- say to you with regard to this topic? 17 A. He stated that he didn't have any 18 correspondence or communications with the lender, 19 servicer, or any beneficiary. 20 Q. With regard to this property? 21 A. With regard to this property. 22 Q. Okay. In your preparation for today's 23 deposition, did you uncover any correspondence or 24 communications with regard to Topic 8? 25 A. No, I did not.</p>	<p style="text-align: right;">Page 36</p> <p>1 lease. They might be the first person to lease the 2 property. I didn't see that in this file. 3 Q. Okay. Topic 11, "Proof of service of 4 correspondence or communications between borrower and 5 SFR regarding the property." 6 What, if anything, did Mr. Hardin relay to 7 you with regards to that topic? 8 A. He didn't have anything. 9 Q. Okay. In preparation for this deposition, 10 do you have any other information with regard to this 11 topic either through your own investigation, meaning 12 searching through files, or conversations with other 13 people at SFR? 14 A. No, I do not. 15 Q. Okay. Topic 12, "SFR's knowledge of 16 borrower's alleged default in payment of homeowners 17 association dues relating to the property." 18 What, if anything, did Mr. Hardin relay to 19 you with regard to this topic? 20 A. So he stated that most likely he looked at 21 the Recorder's Web site prior to attending the 22 auction. So if there was a notice that there were a 23 default in the -- it will be the -- one of the notices 24 that's recorded, one of the three notices that would 25 be recorded on the Web site. Other than that, SFR, he</p>

<p style="text-align: right;">Page 37</p> <p>1 said, is not privy to any kind of information that 2 would have anything to do with that subject, I 3 guess. 4 Q. Other than what Mr. Hardin relayed to you in 5 your conversations, is there any other information you 6 have as the PMK with regard to this topic you can 7 relay to me? 8 A. I didn't see anything, no. 9 Q. Turn to page 5 of Exhibit 1. Which of these 10 topics did you discuss with Mr. Hardin? 11 A. I discussed No. 13 with him, No. 14. 12 Q. Your counsel's handed you a document. What 13 is that? 14 A. Yes, this is my notice that I received, that 15 I printed off. 16 Q. Have you marked it up? 17 A. Yes. 18 MR. DELIKANAKIS: I'd like to make a copy of 19 that and we'll attach it as an exhibit. Why don't we 20 do that. We'll go off the record. Thanks. 21 (Recess taken.) 22 MR. DELIKANAKIS: Let's go back on. 23 I'm going to hand you your original, and 24 what I've done is I made color copies of your 25 original. We'll mark this as Exhibit 2. Do you want</p>	<p style="text-align: right;">Page 39</p> <p>1 he had stated that there was none, so I wrote he 2 stated that there was none, basically. 3 Q. Okay. So these are simply your notes during 4 your conversation with Chris; correct? 5 A. Yes. 6 Q. I want to look at all of the pages just to 7 make sure that we're covering all of these notes. 8 On page 6 there's a notation at the bottom, 9 and I'm not going to try and read that name, "Damela"? 10 A. Daniela. 11 Q. "Daniela didn't have anything, didn't 12 receive anything from Chris. Nothing from Lauren." 13 What does that refer to? 14 A. That refers to the e-mail that I had sent 15 out to all three of them, asking them for any 16 communications that they'd had. 17 Q. Okay. I also note in looking at what's been 18 marked Exhibit 2, there are a bunch of red Xs over 19 specific topics. Did you mark those red Xs? 20 A. I did. 21 Q. And why did you mark those particular topics 22 with red Xs? 23 A. Those were the ones that I was instructed by 24 counsel not to prepare for. 25 Q. Okay. Thank you.</p>
<p style="text-align: right;">Page 38</p> <p>1 to mark that, the original as the exhibit, 37 2 THE WITNESS: Oh. 3 MR. DELIKANAKIS: Yeah. 4 THE WITNESS: Sure. 5 MR. DELIKANAKIS: Why don't we mark that 6 as -- is it 2 or 3? 7 THE WITNESS: I think it's 2. 8 MR. DELIKANAKIS: Let's mark that as 9 Exhibit 2. 10 (Exhibit 2 was marked for identification.) 11 BY MR. DELIKANAKIS: 12 Q. What we'll do is we'll look at what has been 13 marked as Exhibit 2, and this is the copy of the 14 Notice of Deposition which you brought here to the 15 deposition; correct? 16 A. Yes. 17 Q. Okay. So I'd like you to look at what's 18 been marked as Exhibit 2. I'm going to do a little 19 sidetrack here. Who highlighted Exhibit 2 in yellow? 20 A. I did. 21 Q. Okay. And, for example, under Topic 2 22 there's some handwriting that I'm going to try and 23 read it. It says, "None Chris." What does that mean? 24 A. So this is when I was talking with Chris and 25 I was just taking notes as I asked him questions. So</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. DELIKANAKIS: Go off the record. 2 (Discussion off the record.) 3 BY MR. DELIKANAKIS: 4 Q. Okay. You were testifying earlier as to 5 which topics on page 5 you discussed with Chris 6 Hardin. I think you listed Topic 13 and 14, and then 7 there was a pause, and then I asked a bunch of my 8 questions. So I'm going to let you finish answering 9 that question, okay? 10 A. Okay. Sure. So 13 and 14, 18, 19, 24 and 11 25. 12 Q. Okay. Now, when you sat down to talk with 13 Chris about the topics you just listed, did you, in 14 fact, speak with him about Topics 15, 16, 17, 20, 21, 15 22, 23 and 26 or not? 16 A. No, I didn't -- well, not all of them, 17 sorry. 15 and 16 -- let's see, actually, 15 I did not 18 talk to him about, and I normally don't just because 19 usually financial accounting I get, like I said, from 20 Arek. So any kind of financial things usually she's 21 the person that would provide that information for 22 me. 23 Q. How about 16? 24 A. 16, I did not talk to him about that. 17 -- 25 and this is today, my conversation regarding this</p>

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1 property.
2 Q. I understand.
3 A. Okay. Yes. No.
4 Q. Okay. Did you speak with him about 20, 21,
5 22, 23?
6 A. Not 20. 21, the status, that came up -- I
7 didn't ask him specifically that question, but that
8 did come up, because he was explaining to me how the
9 bank foreclosed on it after SFR had purchased it at
10 the auction. Sorry, did you ask me about the rest?
11 Q. Yeah, 22, 23, and I'll ask you about 26.
12 A. No.
13 Q. Okay. Other than your conversation today
14 with Chris Hardin, had you spoken to him with regard
15 to this property and these topics at any earlier point
16 in time?
17 A. Not particular to this property, but in a
18 general sense I have.
19 Q. Understood.
20 A. And can I correct myself --
21 Q. Of course.
22 A. -- on 26? I believe that we did speak about
23 No. 26 in -- kind of in a general sense, I guess. I
24 talked to him about that, yes.
25 Q. Okay. Let's start back at the top of the

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1 page. If you can please tell me what, if anything,
2 did Chris Hardin tell you with regard to Topic 13,
3 which is SFR's knowledge of any NRS 116.3116 notices
4 served relating to the property and/or the HOA
5 foreclosure sale?
6 A. With that topic he stated that he would --
7 SFR would likely have had the knowledge of the notices
8 being recorded, because he looks at the Recorder's --
9 Clark County Recorder's Web site prior to attending an
10 auction. That's what he usually does. So he believed
11 that that's what he did in this case, and that would
12 be to note that they were recorded.
13 Q. Okay. And sitting here today as a PMK, do
14 you have any other information to relay to us with
15 regard to Topic 13?
16 A. No, I do not.
17 Q. Okay. What, if anything, did Chris Hardin
18 relay to you with regard to Topic 14, which is SFR's
19 knowledge of the HOA's and NAS' compliance with all
20 statutory and legal requirements relating to the
21 property and/or the foreclosure sale?
22 A. He stated that SFR relies on the -- on NAS
23 and the HOA for meeting those requirements. He stated
24 that SFR relies on the recordings, again, of the
25 notices, and then on the foreclosure deed that it

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1 receives, that those -- that compliance has been met
2 with the statutory and legal requirements.
3 Q. So their knowledge -- I guess my question is
4 I understand that SFR relies upon the HOA's and
5 NSA's -- NAS' compliance, but what I want to know is
6 did SFR or does SFR have any knowledge that the HOA
7 and NAS actually complied with all of the statutory
8 legal requirements?
9 A. Other than the Recorder's Web site and the
10 foreclosure deed, no, I don't believe so.
11 Q. So other than looking at the Recorder's Web
12 site to make sure that something was actually recorded
13 and the foreclosure deed itself, now are you telling
14 me the language in the foreclosure deed?
15 A. Correct.
16 Q. So is it SFR's position that other than
17 actually looking at the foreclosure deed and making
18 sure it was recorded, they have no other knowledge
19 that the HOA and NAS actually complied with the
20 statutory legal requirements relating to the property
21 and the foreclosure sale?
22 A. That is my understanding.
23 Q. Okay. Topic 18. What, if anything, did
24 Chris Hardin relay to you with regard to Topic 18,
25 which is information, documentation, and/or

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1 communications pertaining to the HOA's foreclosure
2 sale of the property on or about March 1, 2013?
3 A. With that one we just reviewed what I had in
4 the file for the property, and that was the -- I have
5 the foreclosure deed, I have the check and the receipt
6 that they received -- or that they paid and then
7 received from NAS. Now, when it came to
8 communications, he stated again that he didn't have
9 any, and then other than that, that was the
10 information that we had pertaining to that sale.
11 There was also a Zillow printout, but it didn't have a
12 date on it, so I don't know that it was either prior
13 to the sale or after the fact, so. . .
14 Q. Did the Zillow update provide a valuation
15 for the property?
16 A. I didn't look at it specifically, but I
17 believe that Zillow does provide a Zestimate, what
18 they call a Zestimate.
19 Q. Right. And in this case the Zillow document
20 which you found in the file, did it contain an
21 estimate of the value of the property?
22 A. I believe it did, if I remember correctly.
23 Again, I just glanced at it, but it looked to me like
24 the -- typically what SFR has, if they have a printout
25 of Zillow, and that would be the first thing, I guess,

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1 first page you would see if you were to look at the
2 Zillow Web site.
3 Q. Do you remember a dollar amount ascribed to
4 the value of the property?
5 A. I don't.
6 Q. Other than this conversation with
7 Chris Hardin, did your own investigation with regard
8 to information documentation and communications
9 pertaining to the HOA's foreclosure sale of the
10 property on March 1, 2013 yield any other
11 communications?
12 A. No, it did not.
13 Q. Okay. Topic 19, what, if anything, did
14 Chris Hardin relay to you regarding recitals in the
15 foreclosure deed conveying the property from the HOA
16 to SFR recorded on or about March 6, 2013 and the
17 calculation of the Declaration of Value attached to
18 the foreclosed deed?
19 A. With that topic I actually showed him a copy
20 of the foreclosure deed that I had so that -- I said,
21 "Is there anything in the recitals of this deed that
22 stands out to you or that you need -- that, you know,
23 we should discuss?" And he said, "No, that's just a
24 typical foreclosure deed." And then as to the
25 calculation -- the Declaration of Value, I showed him

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1 that there is a woman's name that he said she's the
2 one who prepared that; so SFR didn't prepare that
3 Declaration of Value, so they would have to ask
4 somebody else about that.
5 Q. Did Mr. Hardin tell you who prepared that
6 Declaration of Value?
7 A. Right, he stated her name. I think it was
8 Elise. I do have it with me if you want me to look at
9 it.
10 Q. Did he know who this woman was?
11 A. I believe that he stated it was an employee
12 of NAS.
13 Q. Okay. Thank you.
14 Other than what you've just testified, is
15 there anything else that Mr. Hardin relayed to you
16 with regard to Topic 19?
17 A. No, I don't believe so.
18 Q. How about Topic 21? I believe you testified
19 you spoke to him about that topic.
20 A. Yeah, and I didn't ask him that one -- well,
21 I guess I did, not maybe necessarily as a topic
22 question, but I asked him when we first started
23 talking about the property because there just wasn't
24 much in the file. We didn't have any lease. We
25 didn't have our leases. We didn't have any work

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1 orders from tenants. Typically what I see in the file
2 we didn't have in this one, so I asked him if he knew
3 the reason for that.
4 Q. What did he say?
5 A. He stated that this -- when he -- well,
6 first he did a check of his e-mails. When he didn't
7 have anything, he sat and thought about it and said,
8 "Okay. I know what this property is, and this is one
9 where the bank foreclosed on the property and we don't
10 have it anymore."
11 Q. Okay. Topic 24, what, if anything, did
12 Mr. Hardin relay to you with regards to any policies,
13 procedures, and/or methods followed by SFR to receive
14 notice of HOA foreclosure sales in the state of
15 Nevada?
16 A. He stated that there weren't any policies,
17 procedures, or methods as far as receiving notice of
18 the foreclosure sales. Now, as far as what he
19 typically does to get -- to look at those -- the homes
20 that are going up for HOA foreclosure sale, then of
21 course he would look at the three Web sites I had told
22 you about, and then, depending on the collection
23 agencies, there are times when there actually -- a
24 list is actually provided by the collection agency.
25 Q. In this instance, did the collection agency

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1 provide a list to SFR of things to look for?
2 A. No, I don't believe so.
3 Q. You didn't see any such list in the file?
4 A. I did not.
5 Q. Other than what Mr. Hardin relayed to you
6 with regard to Topic 24, sitting here as the PMK, do
7 you have any other information regarding Topic 24 to
8 relay to us?
9 A. No, I don't believe so.
10 Q. So you conducted your own investigation as
11 to whether there were any policies and procedures
12 other than speaking to Mr. Hardin?
13 A. Regarding any policies and procedures?
14 Well, I also spoke with a person who used to attend
15 the auctions before Chris did, and it doesn't seem
16 like there's -- I haven't ever come across anything
17 like a formal policy or procedure of how either one of
18 them -- if they had -- I haven't seen anything where
19 they had like -- where they were receiving notice of
20 HOA foreclosure sales other than, like I said, I have
21 seen e-mails before, not to this property, but where
22 they have actually gotten notice that homes are going
23 up for auction.
24 Q. Who is this other person you spoke to that
25 used to attend the auctions?

<p style="text-align: right;">Page 49</p> <p>1 A. His name is Bob Diamond.</p> <p>2 Q. Is Bob Diamond still with SFR?</p> <p>3 A. I don't believe so.</p> <p>4 Q. When did Bob Diamond leave SFR? Do you</p> <p>5 know?</p> <p>6 MS. HANKS: Objection. Scope.</p> <p>7 THE WITNESS: No, I am not sure when he</p> <p>8 left.</p> <p>9 BY MR. DELIKANAKIS:</p> <p>10 Q. When you last spoke to Bob Diamond, was he</p> <p>11 still an employee of SFR?</p> <p>12 MS. HANKS: Objection. Scope.</p> <p>13 THE WITNESS: I don't believe so, no.</p> <p>14 BY MR. DELIKANAKIS:</p> <p>15 Q. When did you last speak with Bob Diamond?</p> <p>16 MS. HANKS: Objection. Scope.</p> <p>17 THE WITNESS: I believe it was in --</p> <p>18 approximately three or four months ago.</p> <p>19 BY MR. DELIKANAKIS:</p> <p>20 Q. And what prompted you to speak to</p> <p>21 Bob Diamond?</p> <p>22 MS. HANKS: Objection. Scope.</p> <p>23 THE WITNESS: I guess I'm not sure what you</p> <p>24 mean by prompting.</p> <p>25 BY MR. DELIKANAKIS:</p>	<p style="text-align: right;">Page 51</p> <p>1 done. So if he was interested in a property, if he</p> <p>2 had time, then he would go and look at the property,</p> <p>3 of course not inside it, but from the outside. He</p> <p>4 also looked at the Recorder's Web site, Clark County</p> <p>5 Recorder's Web site, and again he stated he was also</p> <p>6 looking for those notices and then -- I believe that's</p> <p>7 all.</p> <p>8 Q. Did Bob Diamond tell you that he would check</p> <p>9 to see to make sure the property was not part of a</p> <p>10 bankruptcy estate? Did he ever bother to check that?</p> <p>11 MS. HANKS: Objection. Scope.</p> <p>12 THE WITNESS: I don't believe he mentioned</p> <p>13 the bankruptcy. He did mention that when he was</p> <p>14 looking on the Recorder's Web site that he was looking</p> <p>15 for a clean property where the bank wasn't</p> <p>16 foreclosing. He looked for that. As far as a</p> <p>17 bankruptcy, I don't believe he spoke of that.</p> <p>18 BY MR. DELIKANAKIS:</p> <p>19 Q. So it wasn't his custom and practice to make</p> <p>20 sure it wasn't part of a bankruptcy estate or subject</p> <p>21 to a stay or anything like that?</p> <p>22 MS. HANKS: Objection. Scope.</p> <p>23 THE WITNESS: Not that I know of.</p> <p>24 BY MR. DELIKANAKIS:</p> <p>25 Q. In your conversations with Chris Hardin,</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. I'll the question: Why did you speak to</p> <p>2 Bob Diamond three to four months ago?</p> <p>3 MS. HANKS: Objection. Scope.</p> <p>4 THE WITNESS: Because I had been asked or</p> <p>5 had depositions that had to do with the time period</p> <p>6 when he was the person that attended the auctions.</p> <p>7 BY MR. DELIKANAKIS:</p> <p>8 Q. And in your conversations with Bob Diamond,</p> <p>9 he did not relay to you any kind of usual, standard</p> <p>10 operating procedure when SFR would bid on these</p> <p>11 properties?</p> <p>12 MS. HANKS: Objection. Form.</p> <p>13 BY MR. DELIKANAKIS:</p> <p>14 Q. Or he just tell you what he did, "This is</p> <p>15 what I do"?</p> <p>16 A. Yeah, that's what it was more like; he told</p> <p>17 me what he did.</p> <p>18 Q. And what did he do?</p> <p>19 MS. HANKS: Objection. Scope.</p> <p>20 THE WITNESS: To find out about auctions he</p> <p>21 used Foreclosure Radar. I remember that he stated</p> <p>22 that he paid for that service and used Foreclosure</p> <p>23 Radar. He talked about the auctions and kind of what</p> <p>24 that was all about. He actually drove to properties,</p> <p>25 which was different, I guess, than what Chris has</p>	<p style="text-align: right;">Page 52</p> <p>1 were his procedures any different than Bob Diamond's</p> <p>2 in the way in which he approached the potential</p> <p>3 bidding on a property?</p> <p>4 A. The way he approached a bidding on a</p> <p>5 property -- he stated, when I've talked with Chris,</p> <p>6 that he goes -- and the events of the auction, he goes</p> <p>7 with his gut reaction as to bidding on a property.</p> <p>8 Q. Okay. So other than the research you've</p> <p>9 already testified to, Foreclosure Radar and some of</p> <p>10 these other Web sites, his practice is, it is what it</p> <p>11 is; right? Does Chris Hardin ever check for</p> <p>12 bankruptcy filings on a particular property, again, to</p> <p>13 make sure it's not part of a bankruptcy estate or</p> <p>14 subject of a stay? Has he relayed that to you?</p> <p>15 MS. HANKS: Objection. Asked and answered.</p> <p>16 THE WITNESS: Not that I recall. I don't</p> <p>17 believe so, no.</p> <p>18 BY MR. DELIKANAKIS:</p> <p>19 Q. Okay. Thank you.</p> <p>20 Topic 25 -- actually, let's jump to 26. I</p> <p>21 think 24 and 25 are similar. I think we're covered on</p> <p>22 that.</p> <p>23 A. Yeah, the one thing he did mention with 25</p> <p>24 is that he's looking for a good rental property.</p> <p>25 Q. Okay. Did you discuss 26 with Chris?</p>

<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. What, if anything, did Chris relay to you</p> <p>3 with regard to Topic No. 26? It's rather long, so I'm</p> <p>4 not going to read it.</p> <p>5 A. Sure. With that one I just -- we talked</p> <p>6 about, generally, the information that I had about how</p> <p>7 SFR had acquired their properties, and all three of</p> <p>8 the situations that are listed here, which was</p> <p>9 foreclosure sales from HOA directly or third parties,</p> <p>10 I was aware that SFR has purchased in those three</p> <p>11 different contexts, and so I read that to him to</p> <p>12 verify that that was correct, and he stated it was.</p> <p>13 Q. Okay. So just to recap, if I were to ask</p> <p>14 you questions with regard to Topics 4, 5 -- do you</p> <p>15 have Exhibit 2 in front of you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If I were to ask you questions with</p> <p>18 regard to Topics 4, 5, 6, 7, 8, 10, 11, 12, you've</p> <p>19 been directed by counsel not to answer. Am I correct?</p> <p>20 A. No.</p> <p>21 MS. HANKS: No.</p> <p>22 BY MR. DELIKANAKIS:</p> <p>23 Q. Oh, so you will answer questions, just</p> <p>24 didn't prepare?</p> <p>25 A. No, we went through those.</p>	<p style="text-align: right;">Page 55</p> <p>1 upon which you're not going to answer, that's fine, go</p> <p>2 ahead and make your record.</p> <p>3 MS. HANKS: No, I'm just saying there's a</p> <p>4 pending motion for protective order, but having looked</p> <p>5 at the topics, there's really not even probably a</p> <p>6 purpose of the protective order because SFR doesn't</p> <p>7 have any information because it hasn't possessed the</p> <p>8 property since the bank foreclosed.</p> <p>9 MR. DELIKANAKIS: So the protective order</p> <p>10 would apply to which topics then?</p> <p>11 MS. HANKS: 15, 16, 17, 20, 21, 22, 23, 26</p> <p>12 and 29 and 30. And 29 I just -- I'm okay if it was a</p> <p>13 more pointed question about certain discovery, but</p> <p>14 Commissioner Bulla has ruled when it's vague like that</p> <p>15 or broad like that, we don't have to answer. And then</p> <p>16 No. 30 she's ruled that that's actually -- they're</p> <p>17 better suited for contention interrogatories and that</p> <p>18 that's too broad and that a 30(b)(6) wouldn't have to</p> <p>19 answer questions.</p> <p>20 MR. DELIKANAKIS: So these are the two basic</p> <p>21 protective order motions I haven't seen yet.</p> <p>22 MS. HANKS: I don't know if you haven't seen</p> <p>23 it, but you say you haven't seen it, but, yes --</p> <p>24 MR. DELIKANAKIS: I just showed you the</p> <p>25 docket. It's not even on file yet, so I don't think</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay.</p> <p>2 A. It's just --</p> <p>3 Q. I'm going to look at Top- -- there we go.</p> <p>4 Okay. So if I were to ask you questions about Topics</p> <p>5 15, 16, 17, 20, 21, 22, 23, 26, 29 and 30, it's SFR's</p> <p>6 position that you're not going to respond to questions</p> <p>7 with regard to those topics. Am I correct?</p> <p>8 A. I guess in some ways I think some of them</p> <p>9 were answered, but I didn't prepare specifically for</p> <p>10 this property, no, on those topics.</p> <p>11 Q. So you were directed by counsel not to</p> <p>12 prepare for those topics that I just read off. And I</p> <p>13 just want to know, is it SFR's position -- maybe</p> <p>14 counsel can answer this -- that you're not going to</p> <p>15 answer any questions with regard to these topics or</p> <p>16 will you?</p> <p>17 MS. HANKS: They're not going to answer any</p> <p>18 questions; correct. There's a pending motion for</p> <p>19 protective order, but like I said before we got on the</p> <p>20 record, Topics 15, 17, 20, 21, 22 and 23 don't even</p> <p>21 apply to this property because SFR doesn't have</p> <p>22 possession of it, so there are no answers to those</p> <p>23 questions.</p> <p>24 MR. DELIKANAKIS: I'll disagree with your</p> <p>25 characterization, but go ahead if that's the basis</p>	<p style="text-align: right;">Page 56</p> <p>1 anybody's seen it. Okay. Great.</p> <p>2 BY MR. DELIKANAKIS:</p> <p>3 Q. Are you aware of any bankruptcy relating to</p> <p>4 the property or its former owner?</p> <p>5 MS. HANKS: Objection. Scope.</p> <p>6 THE WITNESS: I do not know.</p> <p>7 BY MR. DELIKANAKIS:</p> <p>8 Q. Are you aware the former owner of the</p> <p>9 property, Lucia Parks, filed Chapter 11 bankruptcy</p> <p>10 protection -- for Chapter 11 bankruptcy protection in</p> <p>11 August of 2010?</p> <p>12 MS. HANKS: Objection. Scope.</p> <p>13 THE WITNESS: I do not know.</p> <p>14 BY MR. DELIKANAKIS:</p> <p>15 Q. Are you aware that Ms. Parks listed the</p> <p>16 property in her bankruptcy filing as part of the</p> <p>17 estate?</p> <p>18 MS. HANKS: Objection. Scope.</p> <p>19 THE WITNESS: I do not know.</p> <p>20 BY MR. DELIKANAKIS:</p> <p>21 Q. Did SFR do any investigation before buying</p> <p>22 the property to determine if the former owner had</p> <p>23 filed for bankruptcy?</p> <p>24 MS. HANKS: Objection. Scope.</p> <p>25 THE WITNESS: I do not know.</p>

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<p>1 BY MR. DELIKANAKIS: 2 Q. Did SFR ever search bankruptcy court records 3 with regard to this property? 4 MS. HANKS: Objection. Scope. 5 THE WITNESS: With regards to this property, 6 I do not know. 7 BY MR. DELIKANAKIS: 8 Q. Okay. With regards to the former owner of 9 this property. 10 A. I do not know. 11 Q. What diligence, if any, did SFR actually 12 undertake to determine the property could be legally 13 sold as an HOA sale? 14 MS. HANKS: Objection. Form and scope, 15 calls for a legal conclusion. 16 THE WITNESS: I was going to say that it 17 could legally be sold, I guess, reviewing the 18 Recorder's Web site. Other than that, I'm not sure. 19 BY MR. DELIKANAKIS: 20 Q. Okay. Was SFR aware that there was an 21 automatic stay in place with regard to the property at 22 the time of the HOA sale? 23 MS. HANKS: I'm sorry. I didn't hear the 24 middle part of that, Counsel. 25 MR. DELIKANAKIS: Yeah, could you read the</p>	<p>1 SFR decided to purchase or acquire," and you said who 2 had authority to decide what properties to purchase? 3 MR. DELIKANAKIS: I just think that's part 4 of the same question. 5 MS. HANKS: No -- 6 MR. DELIKANAKIS: Okay. 7 MS. HANKS: I'm not instructing her not to 8 answer it, so. . . 9 MR. DELIKANAKIS: Okay. 10 THE WITNESS: So you're asking me who made 11 the decision? 12 BY MR. DELIKANAKIS: 13 Q. No. Who is responsible at SFR for making 14 decisions regarding which properties to purchase at 15 HOA foreclosure sales? 16 A. That in -- during this time in 2013, that 17 would be Chris Hardin. 18 Q. Okay. Was he the single decision maker? 19 A. That was my understanding. 20 Q. There was no committee? 21 A. No, I don't believe so. 22 Q. I think you already testified to it, that he 23 ultimately made the decision, so there was no one 24 to -- there was no approval process in place. In 25 other words, it's not that Chris made a decision and</p>
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<p>1 question back. 2 (Record read.) 3 MS. HANKS: Thank you. Objection. Scope. 4 THE WITNESS: I do not know. 5 BY MR. DELIKANAKIS: 6 Q. Sitting here today, is SFR aware of any stay 7 in place with regard to the subject property? 8 MS. HANKS: Objection. Scope. 9 THE WITNESS: I do not know. 10 BY MR. DELIKANAKIS: 11 Q. Would SFR have purchased the property had 12 they known that there was a pending Chapter 11 13 bankruptcy? 14 MS. HANKS: Objection. Scope. 15 THE WITNESS: I do not know. 16 MR. DELIKANAKIS: Okay. Go off the record. 17 (Discussion off the record.) 18 MR. DELIKANAKIS: Back on the record. 19 BY MR. DELIKANAKIS: 20 Q. Who is responsible for making decisions 21 regarding which properties to purchase at the HOA 22 foreclosure? 23 MS. HANKS: Objection. Scope. 24 MR. DELIKANAKIS: It's Topic 28. 25 MS. HANKS: What's Topic 28? He has, "Why</p>	<p>1 someone else approved it; correct? 2 A. Correct. It's my understanding that Chris 3 makes the decision. 4 Q. How does SFR identify which properties it 5 might be interested in purchasing? 6 A. When he's looking at properties -- so, 7 again, at this time in 2013 that would have been 8 Chris. So when he was looking at them, he would look 9 at factors related to the house, and that would be the 10 location, age, square footage. He's looking for, 11 again, a property that he can rent and add to the 12 rental portfolio. 13 Q. Are any of these considerations or desires 14 in any written format, like a policy procedure manual 15 at SFR? 16 A. Not that I've seen no. 17 Q. Does SFR -- anyone at SFR communicate with 18 HOAs directly about upcoming foreclosure sales? 19 MS. HANKS: Objection. Scope. 20 THE WITNESS: With HOAs directly about 21 upcoming foreclosure sales? 22 BY MR. DELIKANAKIS: 23 Q. Does SFR ever contact HOAs in advance of 24 these foreclosure sales to discuss particular 25 properties?</p>

<p style="text-align: right;">Page 61</p> <p>1 A. I do not know. I know that SFR has</p> <p>2 purchased at least one property directly from an HOA,</p> <p>3 but I don't know the context of how that happened. So</p> <p>4 I guess I do not know for that question.</p> <p>5 Q. Okay. Does SFR ever communicate with</p> <p>6 collection agencies about upcoming foreclosure sales</p> <p>7 or particular properties at upcoming foreclosure</p> <p>8 sales?</p> <p>9 MS. HANKS: Objection. Scope.</p> <p>10 THE WITNESS: So I know that there are</p> <p>11 certain collection agencies that have provided SFR</p> <p>12 with a list of properties that are going to go up for</p> <p>13 auction. I have seen that. So in that context, yes.</p> <p>14 BY MR. DELIKANAKIS:</p> <p>15 Q. You say certain collection agencies. Would</p> <p>16 NAS be one of those collection agencies, Nevada</p> <p>17 Association Services?</p> <p>18 A. I don't think I've seen it with NAS, no.</p> <p>19 Q. What other collection agencies have you seen</p> <p>20 it with?</p> <p>21 MS. HANKS: Objection. Scope.</p> <p>22 THE WITNESS: The one off the top of my head</p> <p>23 is Alessi & Koenig.</p> <p>24 BY MR. DELIKANAKIS:</p> <p>25 Q. Okay. Who at SFR is responsible for</p>	<p style="text-align: right;">Page 63</p> <p>1 he's purchased many homes where the -- well, he goes</p> <p>2 there and once they find out what they've got, it can</p> <p>3 be a huge mess, and that has happened. So what</p> <p>4 somebody else values as -- or what (sic) they look at</p> <p>5 the house would be different than his if he was to</p> <p>6 look at it in that sense. And then also because of</p> <p>7 the risk of litigation that's associated with</p> <p>8 purchasing them at the HOA foreclosure sales.</p> <p>9 Q. So let's talk about that then, because SFR</p> <p>10 approaches this house cold; right? So you know that</p> <p>11 there's a house coming up in foreclosure, and I think</p> <p>12 you just testified that SFR really doesn't do much</p> <p>13 research as to the potential value of the case -- or</p> <p>14 the value of the house sitting here and there. I</p> <p>15 mean, is that your testimony? Is that SFR's</p> <p>16 testimony, that it really doesn't do any investigation</p> <p>17 as to what the value of the house is?</p> <p>18 MS. HANKS: Objection. Form.</p> <p>19 THE WITNESS: I guess I would say as to the</p> <p>20 market value, because for SFR their -- like I said,</p> <p>21 there's -- "value" would be, I guess, a loose term for</p> <p>22 better words.</p> <p>23 BY MR. DELIKANAKIS:</p> <p>24 Q. Loose --</p> <p>25 A. SFR doesn't do --</p>
<p style="text-align: right;">Page 62</p> <p>1 investigating potential purchases?</p> <p>2 A. Currently and since, I would say, December</p> <p>3 of 2012, that would be Chris Hardin.</p> <p>4 Q. Okay. Prior to bidding on a particular</p> <p>5 property, how does SFR determine what it's willing to</p> <p>6 pay at a foreclosure sale for a particular property?</p> <p>7 A. What it's willing to pay? When I've spoken</p> <p>8 to Chris, it seems that he makes that determination,</p> <p>9 once he's actually at the auction, what he's willing</p> <p>10 to pay. Again, he said he doesn't know because he</p> <p>11 doesn't know where the bidding is going to go.</p> <p>12 Q. And Chris does no research as to market</p> <p>13 value of the property?</p> <p>14 MS. HANKS: Objection. Scope.</p> <p>15 THE WITNESS: As to market value of the</p> <p>16 property? It's my understanding that when I've talked</p> <p>17 to him about value in the market and those kind of</p> <p>18 conversations it doesn't -- it's not something that he</p> <p>19 necessarily is looking at when he's going to purchase</p> <p>20 these properties, because he doesn't -- well, I guess</p> <p>21 for several reasons.</p> <p>22 BY MR. DELIKANAKIS:</p> <p>23 Q. Such as what?</p> <p>24 A. That would be that for one, he doesn't know</p> <p>25 the condition of the home he's going to get. He said</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Sorry.</p> <p>2 A. Sorry. SFR doesn't do appraisals or</p> <p>3 anything like that prior to a sale.</p> <p>4 Q. Okay. So if Chris doesn't -- if Chris sees</p> <p>5 a house that's being foreclosed on in, say, Spanish</p> <p>6 Trails, okay, even though Chris or SFR doesn't do an</p> <p>7 appraisal, certainly Chris must have some idea of what</p> <p>8 the value of the house is or could be, don't they?</p> <p>9 MS. HANKS: Objection. Scope.</p> <p>10 BY MR. DELIKANAKIS:</p> <p>11 Q. Based upon the surrounding houses or the</p> <p>12 association or the neighborhood or the demographic of</p> <p>13 people living -- or the income of the people living in</p> <p>14 these surrounding houses?</p> <p>15 MS. HANKS: Same objection. Scope.</p> <p>16 THE WITNESS: Again, I would say that when</p> <p>17 I've talked with Chris and he's talking about that, it</p> <p>18 was the risks that he takes in purchasing the</p> <p>19 properties at these foreclosure sales that is more of</p> <p>20 a concern to him. That isn't calculated into any kind</p> <p>21 of market value or value of Zest- -- like a Zillow</p> <p>22 Zestimate or anything that he sees. He doesn't know</p> <p>23 the condition, again, and he doesn't know how long it</p> <p>24 could go into litigation, if it even will, or those</p> <p>25 kind of expenses that SFR has once it purchases the</p>

<p style="text-align: right;">Page 65</p> <p>1 property. 2 BY MR. DELIKANAKIS: 3 Q. So it's SFR's position when they go in to 4 buy a home, whether it's Spanish Trails or Downtown 5 Las Vegas, the value is what? Zero? 6 MS. HANKS: Objection. 7 BY MR. DELIKANAKIS: 8 Q. I mean, are the risks so inherent in every 9 one of these purchases that they have absolutely no 10 idea what the value of this property is? 11 MS. HANKS: Objection. Scope and form. 12 THE WITNESS: I do not know. 13 BY MR. DELIKANAKIS: 14 Q. Have you ever had this discussion with 15 anybody at SFR, like don't you have an idea of what 16 this house is probably worth? 17 MS. HANKS: Objection. Scope. 18 THE WITNESS: Again, yes, I've had that 19 discussion, and that's the response that I've 20 received. 21 BY MR. DELIKANAKIS: 22 Q. Okay. So let's talk about the risk of 23 litigation. You mentioned that was one of the risks 24 that SFR undertakes when bidding on one of these 25 houses. What are the risks of litigation? What are</p>	<p style="text-align: right;">Page 67</p> <p>1 MS. HANKS: Objection. Scope. 2 THE WITNESS: I don't know. 3 BY MR. DELIKANAKIS: 4 Q. So prior to going to bid on this subject 5 property, did SFR do anything to determine the value 6 of the property -- of this property? 7 MS. HANKS: Objection. Form. 8 THE WITNESS: I do not know. 9 BY MR. DELIKANAKIS: 10 Q. Do you know if they looked at any comps? 11 A. I do not know. 12 Q. Do you know if Chris Hardin looked at any 13 comps? 14 A. I do not know. 15 Q. Do you know if Chris Hardin looked at any 16 appraisals? 17 A. I do not know. 18 Q. Do you know if Chris Hardin looked at 19 Zillow? 20 A. I saw a Zillow printout in the file, but I 21 do not know if it was looked at prior to or after the 22 sale. 23 Q. The sale of this particular property, do you 24 know how it was advertised? 25 A. For this particular property?</p>
<p style="text-align: right;">Page 66</p> <p>1 the known risks to SFR when they go to bid on this 2 house, for instance? What were the known risks of 3 litigation with regard to this house? 4 MS. HANKS: Objection. Scope. 5 THE WITNESS: Specific to this house, the 6 fact that they're purchasing the house at an HOA 7 foreclosure sale, that would be the risk of 8 litigation. 9 BY MR. DELIKANAKIS: 10 Q. Why is there a risk of litigation? 11 MS. HANKS: Objection. Scope. 12 THE WITNESS: The reason that there's a risk 13 of litigation is for one, SFR has -- at this time for 14 this house, had known -- had some experience in -- and 15 knew probably that there was chance that there could 16 be litigation. 17 BY MR. DELIKANAKIS: 18 Q. And the litigation would be what? What type 19 of litigation could they pos- -- could SFR possibly 20 face by purchasing -- excuse me. Go off the record. 21 (Recess taken.) 22 MR. DELIKANAKIS: Can you read back the last 23 question. 24 (Record read.) 25 MR. DELIKANAKIS: -- the subject property.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Yes, ma'am. 2 A. No, I do not. 3 Q. Okay. Do you know how the sale was noticed? 4 Was it in just the Nevada Legal News? 5 MS. HANKS: Objection. Scope. 6 THE WITNESS: I do not know. 7 BY MR. DELIKANAKIS: 8 Q. Have you attended any of these foreclosure 9 sales? 10 MS. HANKS: Objection. Scope. 11 THE WITNESS: I have attended two 12 foreclosure auctions, yes. 13 BY MR. DELIKANAKIS: 14 Q. Okay. When was the last one you attended? 15 A. I believe it was in June of 2015. 16 Q. In this particular sale, did Chris tell you 17 how many people attended to bid on this house? 18 A. Did Chris tell me -- no. 19 Q. Did anyone else at SFR relay to you how many 20 bidders there were on this particular house? 21 A. No. SFR doesn't keep track of that other 22 than I have seen at times on receipts, but on this one 23 I don't believe I saw that, no. 24 Q. Prior to attending the sale of this 25 property, did SFR determine if there were any other</p>

<p style="text-align: right;">Page 69</p> <p>1 liens or encumbrances recorded against the property?</p> <p>2 A. Specifically to this property, I do not</p> <p>3 know, but that is something that Chris would look for</p> <p>4 when he's viewing the Recorder's Web site in general.</p> <p>5 If there are other liens, he's looking at those.</p> <p>6 Q. Why would Chris -- why does Chris look for</p> <p>7 these encumbrances or liens? Do you know why?</p> <p>8 A. Yes. It's my understanding that he looks at</p> <p>9 them because there are some that will stay with the</p> <p>10 property even if SFR is a successful bidder and</p> <p>11 purchases the property.</p> <p>12 Q. And what types of liens are these?</p> <p>13 A. Those would be other HOA liens, tax liens,</p> <p>14 public utility liens.</p> <p>15 Q. What if SFR sees a lender's deed of trust</p> <p>16 recorded? Is that a red flag or not for SFR? Are</p> <p>17 they concerned about it I guess I should say?</p> <p>18 A. I don't believe they're concerned about it,</p> <p>19 no.</p> <p>20 Q. Do you know why they're not concerned about</p> <p>21 it?</p> <p>22 A. When I talked with Chris, it was because</p> <p>23 that SFR -- or I guess the Supreme Court has said that</p> <p>24 that deed -- or, I'm sorry, that first deeds of trust</p> <p>25 are what we were talking about; correct? That it</p>	<p style="text-align: right;">Page 71</p> <p>1 ascribe a percentage of risk, could you do that?</p> <p>2 Could SFR tell me what the percentage of risk is in</p> <p>3 its experience of when they buy a property that has a</p> <p>4 deed of trust already recorded on it, what percentage</p> <p>5 of these sales have ended up in litigation?</p> <p>6 MS. HANKS: Objection. Scope.</p> <p>7 THE WITNESS: I don't know a percentage. I</p> <p>8 know that SFR -- what they roughly own and roughly how</p> <p>9 many of those properties have gone to litigation, but</p> <p>10 I don't know if I could give a percentage of risk.</p> <p>11 BY MR. DELIKANAKIS:</p> <p>12 Q. Okay. Well, how many properties did they</p> <p>13 own and how many of them were subject to litigation at</p> <p>14 some point in time?</p> <p>15 MS. HANKS: Objection. Scope.</p> <p>16 THE WITNESS: Approximately 650 properties</p> <p>17 SFR owns, and I believe it's around, around maybe 250</p> <p>18 in litigation that I am aware of.</p> <p>19 BY MR. DELIKANAKIS:</p> <p>20 Q. Okay. That's about 38 percent; right?</p> <p>21 A. And at a specific time that could change --</p> <p>22 Q. Of course.</p> <p>23 A. -- so I don't want to say anything.</p> <p>24 Q. I understand, but based on figures you've</p> <p>25 just given me, that's about 38 percent of the</p>
<p style="text-align: right;">Page 70</p> <p>1 would be extinguished.</p> <p>2 Q. Does SFR prefer to purchase a property that</p> <p>3 doesn't have a deed of trust recorded?</p> <p>4 MS. HANKS: Objection. Scope.</p> <p>5 THE WITNESS: Does it prefer?</p> <p>6 BY MR. DELIKANAKIS:</p> <p>7 Q. Yeah. Have you ever had a discussion with</p> <p>8 Chris like would you prefer to bid on properties that</p> <p>9 don't have deeds of trust already recorded?</p> <p>10 MS. HANKS: Objection. Scope.</p> <p>11 THE WITNESS: I don't remember having that</p> <p>12 conversation with him.</p> <p>13 BY MR. DELIKANAKIS:</p> <p>14 Q. Have you had that discussion with anybody at</p> <p>15 SFR?</p> <p>16 A. No, I don't believe so.</p> <p>17 Q. When SFR purchases a property encumbered by</p> <p>18 a deed of trust at an HOA sale, does it know even</p> <p>19 before the sale it's more likely than not going to end</p> <p>20 up in litigation?</p> <p>21 MS. HANKS: Objection. Scope.</p> <p>22 THE WITNESS: I wouldn't say more likely</p> <p>23 than not, but SFR does know that there is a risk.</p> <p>24 BY MR. DELIKANAKIS:</p> <p>25 Q. Right. If you had to -- if SFR had to</p>	<p style="text-align: right;">Page 72</p> <p>1 properties have been in litigation at some point in</p> <p>2 time.</p> <p>3 A. That I'm aware of.</p> <p>4 Q. That you're aware of, of course. That's why</p> <p>5 you're here. You are only here to tell me what you're</p> <p>6 aware of.</p> <p>7 Okay. Are you specifically aware of SFR's</p> <p>8 purchase of property located at 2270 Nashville Avenue</p> <p>9 in Henderson, Nevada?</p> <p>10 A. I'm not sure what you're asking.</p> <p>11 Q. You have particular knowledge about this</p> <p>12 particular sale; correct?</p> <p>13 A. For this particular sale.</p> <p>14 Q. Purchase, yeah.</p> <p>15 A. SFR doesn't have -- you know, Chris doesn't</p> <p>16 have memory about this specific sale.</p> <p>17 Q. So he doesn't know how many bidders; right?</p> <p>18 A. Correct.</p> <p>19 Q. He doesn't know how it was advertised?</p> <p>20 A. That is my understanding.</p> <p>21 Q. Did Chris tell you how he learned that this</p> <p>22 property would be sold?</p> <p>23 A. This specific one?</p> <p>24 Q. Yes.</p> <p>25 A. No, he doesn't have a memory of that.</p>

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1 Q. In this particular instance did Chris review
2 the Clark County Recorder's Web site? And you may
3 have asked and answered this already. I apologize if
4 I'm being repetitive.
5 A. That's okay. Specifically he doesn't
6 recall. That's what he typically does.
7 Q. It is what he typically does. Okay. Have
8 you had discussions with Chris along the lines of if
9 you look at the Recorder's Web site and you see a deed
10 of trust, does that affect the way you might bid on
11 this property?
12 A. The discussions that I've had with Chris
13 about whether there is a first deed of trust, he has
14 stated that that is not something that he's very
15 concerned with.
16 Q. How much did SFR pay to purchase the
17 property in this case?
18 A. This property, I believe it was 1700, but if
19 you'll let me refer to the foreclosure.
20 Q. Of course.
21 A. Oh, 14,000.
22 Q. How did SFR determine that it would pay
23 14,000 for this property?
24 A. Again, that would be the events of the day
25 at the auction. SFR doesn't know until it's there and

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1 the bidding takes place what the price is going to be,
2 so they don't really know. Gut reaction.
3 Q. Gut reaction. Did SFR have a cap for this
4 particular property, in other words, a top price that
5 it was willing to bid on this property going into the
6 sale?
7 A. It's my understanding that they did not.
8 When I've talked to Chris, when this one was purchased
9 in 2013, he was going around to the auctions pretty
10 regularly, and I believe he said he would carry around
11 about 100,000 to the auctions. I mean, that's just on
12 a general basis.
13 Q. And he had full discretion to go as high as
14 he wanted?
15 A. That is my understanding.
16 Q. Does SFR make any record or document of the
17 bidding process? In other words, you know, I bid
18 5,000, 10,000, 14,000, then we got it. Is that
19 memorialized anywhere?
20 A. Not by SFR, no.
21 Q. So would it be memorialized by anybody else
22 that you're aware of?
23 A. The thing that I've seen memorialized is an
24 opening bid, and I believe that that is in a receipt
25 from NAS in this case, but I've also seen it in other

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1 cases. So an opening bid and then of course the
2 winning bid. But as far as does anybody keep records
3 of that? I do not know.
4 Q. At the time of the foreclosure sale for this
5 property, did SFR know what the HOA lien amount was?
6 A. I do not know.
7 Q. Did SFR receive any of the foreclosure
8 notices from NAS?
9 A. It is my understanding they did not. As far
10 as prior to -- yeah, well, they wouldn't after so, no,
11 I don't believe so.
12 Q. And what's that understanding based upon?
13 A. When I've -- I guess my research when I've
14 looked at properties. I don't see that the -- SFR was
15 privy to any of that prior to the auction. Again, on
16 the Recorder's Web site it's just the recording, so I
17 don't typically see those documents, and then when
18 I've spoken to Chris he has stated that -- I mean, I
19 don't know that there would be any way to send them,
20 SFR, notices on HOA sale. I don't know how that would
21 even happen.
22 Q. Okay. But your investigation you didn't see
23 any notices received?
24 A. I haven't, no.
25 Q. Do you have any idea, do you have any

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1 knowledge if U.S. Bank received a copy of the Notice
2 of Default -- or Notice of Delinquent Assessment?
3 A. No.
4 Q. Okay.
5 A. Not that I'm aware of other than the fact
6 it's recorded.
7 Q. Other than the fact it's recorded, do you
8 have any evidence that the bank actually received the
9 Notice of Delinquent Assessment?
10 A. Other than the recording and the foreclosure
11 deed that states that the law was followed and -- I do
12 not, SFR does not.
13 MR. DELIKANAKIS: Okay. Let's just jump to
14 that one. I'll hand you what we'll mark as Exhibit 3.
15 (Exhibit 3 was marked for identification.)
16 BY MR. DELIKANAKIS:
17 Q. So I've handed you what's been marked as
18 Exhibit 3. Have you seen this document before?
19 A. Yes, I believe so.
20 Q. Okay. And earlier, a few moments ago, you
21 testified that the foreclosure deed stated that the
22 law had been followed; correct? I'd like you to --
23 did I get your testimony right?
24 A. I believe so, yeah.
25 Q. Okay. So it's FSR -- SFR's position that

<p style="text-align: right;">Page 77</p> <p>1 the statutory requirements for holding a foreclosure 2 sale were satisfied; correct? 3 A. Correct. 4 Q. And why does SFR believe that? 5 A. Again, SFR relies on the Recorder's Web 6 site, the fact that notices are recorded and then also 7 the foreclosure deed that they receive after the 8 auction. 9 Q. Okay. Looking at Exhibit 3, the foreclosure 10 deed, what in this deed does SFR rely upon to confirm 11 or evidence that all statutory requirements were met? 12 And I'm going to point you to the middle of the second 13 paragraph. I think that's the operative language. 14 Take your time and read it, please, carefully. 15 A. So I believe it starts with the beginning of 16 the second paragraph, "This conveyance is made 17 pursuant," and then down to a little bit more than 18 halfway where it ends with "The Notice of Default and 19 the posting and publication of the Notice of Sale." 20 Q. And I'll point you to some language here. 21 It's a little further down. It says, "Nevada 22 Association Services, Inc. has complied with all 23 requirements of the law including, but not limited to, 24 the elapsing of 90 days, mailing of copies of Notice 25 of Delinquent Assessment and Notice of Default and the</p>	<p style="text-align: right;">Page 79</p> <p>1 your time to read it carefully. 2 MS. HANKS: Objection. Form. 3 THE WITNESS: There is a sentence. It says, 4 "Default occurred as set forth in a Notice of Default 5 and Election to Sell recorded on 7-19-2012." That 6 date's given. 7 BY MR. DELIKANAKIS: 8 Q. Okay. Does that identify the date that the 9 foreclosure notices were served? 10 MS. HANKS: Objection. Form. That calls 11 for speculation. 12 THE WITNESS: When they were served. I 13 don't know. 14 BY MR. DELIKANAKIS: 15 Q. That's my question. Is there anything in 16 this foreclosure deed marked as Exhibit 3 that 17 evidences when the foreclosure notices were served? 18 MS. HANKS: Objection. Form. 19 THE WITNESS: I do not know. 20 BY MR. DELIKANAKIS: 21 Q. Well, read it and tell me what you read. 22 A. I am reading it. I don't know. 23 Q. You don't see it, do you? 24 A. No, I am saying you -- your question is is 25 there anything that infers when it could be.</p>
<p style="text-align: right;">Page 78</p> <p>1 posting and publication of the Notice of Sale." 2 Do you see that? 3 A. Yes, and that's what I was referring to as 4 the last sentence. 5 Q. Right. Does this sentence identify when the 6 foreclosure notices were served? 7 MS. HANKS: Objection. Form. 8 THE WITNESS: When they were served? 9 BY MR. DELIKANAKIS: 10 Q. Yeah. Is there anything in this sentence 11 that would tell somebody reading it when were the 12 notices served? 13 MS. HANKS: Objection. Form. 14 THE WITNESS: I don't know. 15 BY MR. DELIKANAKIS: 16 Q. Well, just read the sentence. Do you see 17 anything there that would tell somebody like SFR when 18 the notices were served? 19 MS. HANKS: Objection. Form. 20 THE WITNESS: In that specific sentence 21 there are no dates given. 22 BY MR. DELIKANAKIS: 23 Q. Okay. Are there any more dates anywhere in 24 this foreclosure deed language that would evidence 25 when the foreclosure notices were served? And take</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. No, I didn't say inferred. 2 A. Oh, what did you say? 3 Q. I said is there any evidence in the language 4 contained in the foreclosure deed of trust that 5 provides or states or evidences when the foreclosure 6 notices were served? 7 MS. HANKS: Objection. Form. 8 THE WITNESS: From the language I would say 9 that they were in between the periods of 7-19-2012 and 10 3-1 of 2013. 11 BY MR. DELIKANAKIS: 12 Q. Okay. Does the sentence identify how the 13 foreclosure notices were served? 14 MS. HANKS: Objection. Form. 15 THE WITNESS: It provides that they were 16 served with compliance to the law. Other than that it 17 says -- how they were served I do not see except for 18 it says, "Posting and publication of the Notice of 19 Sale." 20 BY MR. DELIKANAKIS: 21 Q. Okay. So it doesn't actually identify how 22 the foreclosure notices were served, does it? 23 MS. HANKS: Objection. Form. 24 THE WITNESS: If you're meaning like 25 certified mail or -- I'm not sure what you're asking</p>

<p style="text-align: right;">Page 81</p> <p>1 me.</p> <p>2 BY MR. DELIKANAKIS:</p> <p>3 Q. Sure. If I write a sentence "I served the</p> <p>4 notice of foreclosure by mail," that would convey to</p> <p>5 anyone reading it that I served the notice of</p> <p>6 foreclosure by mail. If I write a sentence, I served</p> <p>7 the notice of foreclosure by certified mail, that</p> <p>8 would certainly convey to anybody reading it how the</p> <p>9 notice of foreclosure was served; right?</p> <p>10 A. Correct.</p> <p>11 Q. I'm just asking you if -- in reading this</p> <p>12 foreclosure deed, if you can point me to any place in</p> <p>13 the foreclosure deed that specifically describes how</p> <p>14 the notice of foreclosure was served.</p> <p>15 MS. HANKS: Objection. Form.</p> <p>16 THE WITNESS: It says mailing of copies of</p> <p>17 Notice of Delinquent Assessment and Notice of Default</p> <p>18 and the posting and publication -- so it just states</p> <p>19 mailing of copies.</p> <p>20 BY MR. DELIKANAKIS:</p> <p>21 Q. Okay. Does it identify who the notices were</p> <p>22 mailed to?</p> <p>23 A. Specifically who the notices were mailed to?</p> <p>24 I do not see where it specifically states a name of</p> <p>25 who it was mailed to.</p>	<p style="text-align: right;">Page 83</p> <p>1 BY MR. DELIKANAKIS:</p> <p>2 Q. So in SFR's opinion, this foreclosure deed</p> <p>3 of trust provided adequate notice that all of the</p> <p>4 requirements of the statute had been met?</p> <p>5 MS. HANKS: Objection. Form.</p> <p>6 THE WITNESS: That is my understanding.</p> <p>7 BY MR. DELIKANAKIS:</p> <p>8 Q. Who filled out the Declaration of Value</p> <p>9 page? It's Bates stamped USB4060.</p> <p>10 A. I believe that it is the name Elissa, and</p> <p>11 I'm not sure about the last name. That would be an</p> <p>12 employee of NAS.</p> <p>13 Q. And this \$14,000 is a total value sales</p> <p>14 price of the property. Who determined that \$14,000</p> <p>15 was the total value sales price of the property?</p> <p>16 A. That would be something that NAS would have</p> <p>17 to respond to. SFR didn't prepare the Declaration of</p> <p>18 Value.</p> <p>19 Q. I understand that SFR didn't prepare this</p> <p>20 document, but does SFR have any knowledge as to why</p> <p>21 \$14,000 was listed in Section 3 of the Declaration of</p> <p>22 Value?</p> <p>23 A. When I have discussed the Declaration of</p> <p>24 Value with Chris and when I've seen them, I've seen</p> <p>25 them in two different kinds of amounts. I believe</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Other than the general statement that it</p> <p>2 complied with the law, does the foreclosure notice,</p> <p>3 foreclosure deed language contain any evidence to</p> <p>4 confirm that the bidding process and auction process</p> <p>5 complied with the statute?</p> <p>6 MS. HANKS: Objection. Form.</p> <p>7 THE WITNESS: I do not know.</p> <p>8 BY MR. DELIKANAKIS:</p> <p>9 Q. Do you see any such language in the</p> <p>10 foreclosure deed that you can point me to?</p> <p>11 MS. HANKS: Objection. Form.</p> <p>12 THE WITNESS: It states that it was at a</p> <p>13 public auction, it indicates the place, and it was the</p> <p>14 highest bidder at the sale. I don't -- I'm not sure,</p> <p>15 I guess, what you mean by that.</p> <p>16 BY MR. DELIKANAKIS:</p> <p>17 Q. Okay. Does the sentence confirm that all</p> <p>18 the statutory time frames and deadlines were complied</p> <p>19 with? Is there an affirmative statement that all the</p> <p>20 statutory time frames were complied with in this</p> <p>21 foreclosure deed notice?</p> <p>22 MS. HANKS: Objection. Form.</p> <p>23 THE WITNESS: It states that NAS has</p> <p>24 complied with the requirements of law including, but</p> <p>25 not limited to, the elapsing of 90 days.</p>	<p style="text-align: right;">Page 84</p> <p>1 that they're provided by the Recorder's -- I want</p> <p>2 to -- it used to be -- okay. So I think that there</p> <p>3 was -- at one time one amount was used and another</p> <p>4 time another amount was used provided on the</p> <p>5 Assessor's page and then received by the Recorder. So</p> <p>6 the Recorder has to -- Clark County Recorder, they</p> <p>7 have to go ahead and accept the recording of it. So I</p> <p>8 guess at one point they were accepting either the</p> <p>9 amount that was actually paid for the property by SFR</p> <p>10 or the amount that was either provided, I believe, on</p> <p>11 the Assessor's Web site. And at first they weren't</p> <p>12 sure as to what amount to put there and so it kind of</p> <p>13 flip flopped as to the amounts. I've seen two</p> <p>14 different kinds of amounts in that.</p> <p>15 Q. In fact, the form actually allows for one or</p> <p>16 the other, right, total value/sales price of the</p> <p>17 property? So those could be two different figures;</p> <p>18 correct?</p> <p>19 MS. HANKS: Objection.</p> <p>20 THE WITNESS: Correct. Sorry.</p> <p>21 MS. HANKS: Objection. Calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: That's what the form says,</p> <p>24 "Total value/sales of property."</p> <p>25 BY MR. DELIKANAKIS:</p>

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1 Q. Right. And you just testified a few moments
2 ago that it was your experience that there was some
3 controversy as to which value would go in here; right?
4 A. I don't know if it was a controversy. I
5 just know that -- I believe in February -- it was
6 around February 2013 when they had changed that to, I
7 want to say, the taxable value.
8 Q. Who is "they"?
9 A. The -- what the Recorder's -- Clark County
10 Recorder was accepting as part of that amount.
11 Q. So what is the \$14,000 in this? Is it the
12 total value of the property or is it the sales price
13 of the property?
14 MS. HANKS: Objection. Form and calls for
15 speculation.
16 THE WITNESS: Well, again, SFR didn't
17 prepare this form, so I can't state that. I know that
18 SFR paid 14,000 for it, but, again, SFR did not
19 prepare the Declaration of Value in this case.
20 BY MR. DELIKANAKIS:
21 Q. Did SFR review the Declaration of Value
22 before it was recorded?
23 A. I don't know.
24 Q. In your experience at SFR, is it custom and
25 practice to review the Declaration of Value form

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1 before it's recorded?
2 A. I do not know.
3 Q. So, I guess, is this your guess that it's --
4 \$14,000 is the sale price?
5 A. It's not a guess. I am saying I don't know.
6 I know what SFR actually paid for the property, which
7 was 14,000, but, again, I don't know. I have seen at
8 times -- or I can't ask (sic) too many questions about
9 the Declaration of Value because we didn't prepare
10 this. At times I've seen where Chris has prepared
11 this and then I can ask him specific, but I can't -- I
12 don't have --
13 Q. When Chris has prepared these in the past,
14 has there ever been an instance where he entered in
15 the total value of the property as opposed to the
16 price paid at an HOA sale?
17 MS. HANKS: Objection. Scope.
18 THE WITNESS: I do not recall.
19 BY MR. DELIKANAKIS:
20 Q. So you have no idea if Chris has ever
21 entered in a total value --
22 MS. HANKS: Objection. Misstates --
23 BY MR. DELIKANAKIS:
24 Q. -- versus the actual sale price or purchase
25 price at an HOA sale?

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1 MS. HANKS: Objection. Scope.
2 THE WITNESS: I do not recall. I don't
3 remember the time frame when I've seen -- I don't even
4 recall, actually, the document. Just I know that I've
5 seen his signature at times, and he has said in those
6 cases, where his signature is on it, that SFR prepared
7 it, that he prepared the Declaration of Value.
8 BY MR. DELIKANAKIS:
9 Q. Okay. So when SFR prepares a Declaration of
10 Value, is it its custom and practice to provide the
11 sales price of the property or the total value of the
12 property as part of the Declaration of Value?
13 MS. HANKS: Objection. Form and scope.
14 THE WITNESS: It's my understanding that it
15 would be what the Recorder was requiring at that time.
16 BY MR. DELIKANAKIS:
17 Q. Okay. So it's SFR's position that they
18 would simply do what the Recorder told them to do?
19 MS. HANKS: Objection. Scope.
20 BY MR. DELIKANAKIS:
21 Q. In other words, if the policy of the
22 Recorder was you must enter a total value, they would
23 enter a total value. If the policy of the Recorder
24 was that you have to enter in sales price, SFR would
25 enter in sales price. Is that SFR's position?

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1 MS. HANKS: Objection. Scope.
2 THE WITNESS: That's my understanding.
3 BY MR. DELIKANAKIS:
4 Q. Just sitting here today do you know what the
5 Recorder requires when filling out this form? Does
6 the Recorder require a sales price of the property or
7 a total value?
8 MS. HANKS: Objection. Form and scope.
9 THE WITNESS: I do not know.
10 BY MR. DELIKANAKIS:
11 Q. Do you know at the time that this
12 declaration was filled out what the Recorder's policy
13 was? Total value or sales price?
14 MS. HANKS: Objection. Scope.
15 THE WITNESS: I don't know.
16 BY MR. DELIKANAKIS:
17 Q. At the time the foreclosure deed was
18 recorded, did SFR have any idea as to what the value
19 of the property was?
20 A. I do not know.
21 Q. Do you have an understanding what the
22 difference is between total value versus sales price
23 of the property? How would SFR describe that?
24 MS. HANKS: Objection. Scope.
25 THE WITNESS: I do not know.

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1 BY MR. DELIKANAKIS:
2 Q. Does SFR have an opinion what the fair
3 market value of the property was at the time it bid on
4 it?
5 MS. HANKS: Objection. Scope.
6 THE WITNESS: I do not know.
7 BY MR. DELIKANAKIS:
8 Q. So SFR took no undertaking whatsoever to
9 determine what the fair market value of the property
10 was at the time of the HOA sale?
11 MS. HANKS: Objection. Scope and form.
12 THE WITNESS: I do not know.
13 BY MR. DELIKANAKIS:
14 Q. So you don't know if they did or they
15 didn't?
16 A. Correct.
17 Q. What would you have to do to find out the
18 answer since you don't know? Who would you have to
19 ask?
20 A. I would likely speak with Chris Hardin,
21 since he was the person who was looking at the
22 properties prior to going and bidding on them.
23 Q. Okay. And in part of your conversations in
24 preparation for this declaration -- deposition, you
25 never asked Chris Hardin, "Hey, Chris, do you have any

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1 idea what the fair market value of this property was
2 when you bid on it?"
3 A. Did we have that conversation? No.
4 MR. DELIKANAKIS: Okay. I don't have any
5 more questions. Thank you.
6 EXAMINATION
7 BY MR. WAITE:
8 Q. I just have one. We talked a lot -- and
9 forgive me if you already answered this earlier. We
10 talked a lot about Chris Hardin today. Do you know
11 why you were designated the PMK as opposed to Chris?
12 MS. HANKS: Objection. Scope.
13 THE WITNESS: It's my understanding that
14 when I was hired it was because Chris, running the
15 business, he doesn't have time to attend all the
16 depositions and it was taking away from his ability to
17 manage the way he wanted to, so that is why I believe
18 I was chosen.
19 BY MR. WAITE:
20 Q. Okay. And then one other question. Do you
21 have any knowledge as to whether the auction for the
22 specific property was run any differently than
23 auctions that were -- that Chris or anyone else from
24 SFR have participated in in the past for specific HOA
25 foreclosures?

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1 A. I do not know.
2 MR. WAITE: Okay.
3 FURTHER EXAMINATION
4 BY MR. DELIKANAKIS:
5 Q. Yeah, I want to ask one other question. Are
6 you familiar with the term "commercial
7 reasonableness"?
8 A. Commercial reasonableness?
9 Q. Right.
10 A. Maybe a little bit.
11 Q. What's your understanding of the term
12 "commercial reasonableness," and particularly with
13 regard to sales of homes in HOAs, in other words, in
14 the context of whether purchase of a home at an HOA
15 sale was at a price that would be considered
16 commercially reasonable?
17 MS. HANKS: Objection. Scope.
18 THE WITNESS: Sure. Are you asking me
19 personally or are you asking me on behalf of SFR?
20 BY MR. DELIKANAKIS:
21 Q. On behalf of SFR do you have any
22 understanding of what commercial reasonableness means
23 in that context?
24 MS. HANKS: Objection. Scope.
25 THE WITNESS: I do not know.

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1 BY MR. DELIKANAKIS:
2 Q. Have you ever had any discussions with Chris
3 about commercial reasonableness with regard to homes
4 purchased at HOA sales?
5 MS. HANKS: Objection. Scope.
6 THE WITNESS: No, I don't believe I have.
7 MR. DELIKANAKIS: Thank you. We're done.
8 THE WITNESS: Thank you.
9 THE REPORTER: Counsel, do you want to order
10 a copy of the transcript?
11 MS. HANKS: Sure. We order every time.
12 And can you send it to me in .pdf so I can send it to
13 her?
14 THE REPORTER: Sure.
15 (The proceedings were concluded
16 at 4:14 p.m.)
17 * * * * *
18
19
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24
25

Page 93	Page 95
1 DEPOSITION ERRATA SHEET	1 CERTIFICATE OF REPORTER
2	2 STATE OF NEVADA)
3	3) ss:
4 Our Assignment No. J0363544	4 COUNTY OF CLARK)
5 Case Caption: SFR vs. U.S. Bank	5 I, Allyson W. Harris, a Certified Court Reporter
6	6 licensed by the State of Nevada, do hereby certify:
7 DECLARATION UNDER PENALTY OF PERJURY	7 That I reported the deposition of PAULINA KELSO,
8 I declare under penalty of perjury that I have	8 commencing on Tuesday, May 17, 2016.
9 read the entire transcript of my deposition taken in	9 That prior to being deposed, the witness, if any,
10 the captioned matter or the same has been read to me,	10 was by me duly sworn to testify to the truth. That I
11 and the same is true and accurate, save and except for	11 thereafter transcribed my said stenographic notes into
12 changes and/or corrections, if any, as indicated by me	12 typewritten form, and that the typewritten transcript
13 on the Deposition Errata Sheet hereof, with the	13 is a complete, true and accurate transcription of my
14 understanding that I offer these changes as if still	14 said stenographic notes. That review of the
15 under oath.	15 transcript was requested.
16 Signed on the _____ day of _____,	16 I further certify that I am not a relative,
17 20____,	17 employee or independent contractor of counsel or of
18	18 any of the parties involved in the proceeding, nor a
19	19 person financially interested in the proceeding, nor
20 PAULINA KELSO	20 do I have any other relationship that may reasonably
21	21 cause my impartiality to be questioned.
22	22 IN WITNESS WHEREOF, I have set my hand in my
23	23 office in the County of Clark, State of Nevada, this
24	24 3rd day of June, 2016.
25	25
	Allyson W. Harris, CCR No. 740
Page 94	
1 DEPOSITION ERRATA SHEET	
2 Page No. _____ Line No. _____ Change to: _____	
3 _____	
4 Reason for change: _____	
5 Page No. _____ Line No. _____ Change to: _____	
6 _____	
7 Reason for change: _____	
8 Page No. _____ Line No. _____ Change to: _____	
9 _____	
10 Reason for change: _____	
11 Page No. _____ Line No. _____ Change to: _____	
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13 Reason for change: _____	
14 Page No. _____ Line No. _____ Change to: _____	
15 _____	
16 Reason for change: _____	
17 Page No. _____ Line No. _____ Change to: _____	
18 _____	
19 Reason for change: _____	
20 Page No. _____ Line No. _____ Change to: _____	
21 _____	
22 Reason for change: _____	
23	
24 SIGNATURE: _____ DATE: _____	
25 PAULINA KELSO	

EXHIBIT 5

EXHIBIT 5

[Signature]

CLERK OF THE COURT

1 ORDER

2
3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 SFR INVESTMENTS POOL 1, LLC., a Nevada
8 limited liability company,

9 Plaintiff,

10 v.

11 NATIONSTAR MORTGAGE, LLC., a foreign
12 limited liability company; SANDRA SALAS, an
individual; and DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

13 Defendants.
14

Case No. A-13-684596-C

Dept. No. XXXI

15
16 ORDER DENYING APPLICATION FOR TEMPORARY RESTRAINING ORDER
17 ON ORDER SHORTENING TIME AND MOTION FOR PRELIMINARY
INJUNCTION AND DIRECTING BRIEFING AND ORAL ARGUMENT ON
18 PLAINTIFF'S NRCP 54B MOTION

19 This matter originally came on for hearing before Department XXXI on
20 Plaintiffs application for temporary restraining order and preliminary injunction on
21 July 17, 2013. David A. Rosenberg, Esq., and Victoria Hightower, Esq. appeared
22 on behalf of Plaintiff, SFR INVESTMENTS POOL 1, LLC ("SFR"). Jacob D.
23 Bundick, Esq. and Darren T. Brenner Counsel for Defendant, NATIONSTAR
24 MORTGAGE, LLC appeared and informed the Court that they had been retained
25 that morning by Defendant and thus had not had the opportunity to prepare a
26 brief. In order to ensure that there was proper notice of the pending Motions and
27
28

RECEIVED

AUG 05 2013

CLERK OF THE COURT

JOHANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89135

1 to provide all parties an opportunity to fully brief the matter, the Court stayed the
2 matter pending a continued hearing set for July 30, 2013.

3 On July 30, 2013 a hearing lasting over two hours regarding Plaintiff,
4 SFR INVESTMENT POOL 1, LLC.'S Application for Temporary Restraining
5 Order on Order Shortening Time and Motion for Preliminary Injunction was
6 conducted by Department XXXI. Present at the hearing were Diana S. Cline,
7 Esq. and David A. Rosenberg, Esq., Counsel for Plaintiff, SFR INVESTMENTS
8 POOL 1, LLC and Jacob D. Bundick, Esq. and Darren T. Brenner Counsel for
9 Defendant, NATIONSTAR MORTGAGE, LLC. Having reviewed the papers and
10 pleadings on file herein, heard oral arguments of counsel and based on the
11 evidence, this Court makes the following Findings of Fact and Conclusions of
12 Law¹:
13
14

15 **FINDINGS OF FACT**

16 1. In 1991 Nevada adopted Uniform Common Interest Ownership Act
17 as NEV. REV. STAT. § 116, including NEV. REV. STAT. § 116.3116(2).

18 2. On or about June 27, 1997 (the "Association"), recorded its
19 Declaration of CC&Rs. Reply 2.

20 3. On or about September 9, 2005 Sandra Salas obtained title to
21 certain real property located at 3365 Sheep Canyon Street, Las Vegas, NV
22 89122; Parcel No. 161-15-615-010 (the "Property") through Grant Bargain Sale
23
24
25

26 ¹ The parties requested and contended that this case and A-13-684630 were to be argued and
27 considered legally together with there being some factual distinctions given the different
28 properties at issue. Accordingly, the present Order and that in A-13-684630 have been prepared
consistent with that agreement of the parties.

1 Deed. Application for Temporary Restraining Order on Order Shortening Time
2 and Motion for Preliminary Injunction (hereinafter "Application") 9.

3 4. On or about June 15, 2007, Meridias Capital, Inc. recorded a first
4 deed of trust against the Property in the Official Records of the Clark County
5 Recorder as Instrument No. 200706150000678 ("Deed of Trust"). Application,
6 Ex. 7. The amount of the loan was approximately \$228,000.00 Opp. 3;
7 Application, Ex. 7. The loan and deed of trust were thereafter modified, and both
8 were assigned to Defendant. Opp. 3.
9

10 5. The subject property is located within a common-interest
11 community governed by the Sunrise Ridge aka Sunrise Ridge Master
12 Homeowners Association's (the "Association") , which was established pursuant
13 to NEV. REV. STAT. § 116. Compl. paragraph 25.

14 6. On or about May 1, 2009 Salas became delinquent on the loan
15 secured by First Deed of Trust.² Reply 2.

16 7. On or about November 5, 2009 Salas became delinquent on
17 Association assessments. Reply 3.

18 8. On or about, November 5, 2009 a Notice of Delinquent
19 Assessment Lien, was recorded on in the Official Records of the Clark County
20 Recorder as Instrument Number 2009110050003109 ("Association Lien").
21 Compl. Paragraph 8.

22 9. On or about January 29, 2010 the Association recorded Notice of
23 Default. Reply 3.
24
25

26 ² Sandra Salas is also named in the Complaint but given the current request for injunctive relief is limited to
27 preventing Defendant Nationstar from foreclosing on the property, and no other party has filed any
28 pleadings, the Court is only addressing whether Nationstar can foreclose as that is the only issue presented
to the Court at this juncture.

1 10. On or about May 7, 2012, Elsi Navarro, assistant secretary for
2 Mortgage Electronic Registration Systems, Inc. executed an assignment, that
3 transferred the beneficial interest in the Deed of Trust, together with the
4 underlying promissory note, to Bank of America, N.A., Successor by Merger to
5 BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP
6 ("BOA"), as Trustee of Meridias Capital, Inc.

7
8 11. The assignment was recorded on May 9, 2012 against the Property in
9 Official Records of the Clark County Recorder as Instrument
10 No.201205090000046. Compl. paragraph 27.

11 12. On or about August 8, 2012 Deb Backus, assistant secretary for
12 Mortgage Electronic Registration Systems, Inc. executed an assignment that
13 transferred the beneficial interest in the Deed of Trust, together with the
14 underlying promissory note, to Nationstar Mortgage, LLC. The assignment was
15 recorded on August 30, 2012 against the Property in Official Records of the Clark
16 County Recorder as Instrument No. 201208300000494. Compl. paragraph 28.

17 13. On or about October 23, 2012 Lisa Nix, Assistant Vice President for
18 Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP
19 FKA Countrywide Home Loans Servicing, LP executed an assignment, that
20 transferred the beneficial interest in the Deed of Trust, together with the
21 underlying promissory note, to Nationstar Mortgage, LLC. The assignment was
22 recorded on November 25, 2012 against the Property in Official Records of the
23 Clark County Recorder as Instrument No. 20122112500000026. Compl.
24 paragraph. 29.

25
26 14. On or about November 1, 2012, Ricky Broxton, Assistant Secretary for
27 Nationstar Mortgage, LLC, executed a document that substituted Cooper Castle
28

1 Law Firm, LLP ("Cooper Castle"), as trustee of the Deed of Trust. Id 30 The
2 substitution of trustee was recorded in the Official Records of the Clark County
3 Recorder as Instrument No. 201212040002963. Compl. paragraph 30.

4
5 15. On or about December 6, 2012, the Association recorded Notice of
6 Foreclosure Sale listing the amount of the delinquent assessment lien plus costs,
7 expenses and advances as \$6,441.84. Reply 3.

8
9 16. Based on the Foreclosure Deed attached to the Application and the
10 Complaint, the foreclosure sale was conducted by Nevada Association Service,
11 Inc. ("NAS"), agent for Sunrise Ridge aka Sunrise Ridge Master HOA (the
12 "Association")³, on or about on January 4, 2013. Application, Ex. 1.

13
14 17. Plaintiff asserts it acquired the Property for \$7,000.00 at the
15 foreclosure sale. Since the Association foreclosure sale, Plaintiff asserts that it
16 has expended additional funds and resources in relation to the Property.
17 Application, Ex. 1.

18
19 18. On or about January 8, 2013, the resulting foreclosure deed was
20 recorded in the Official Records of the Clark County Recorder as Instrument
21 Number 201301080001229 ("Association Foreclosure Deed"). Application, Ex. 1.

22
23 19. On or about January 22, 2013, Matthew Dayton, of Cooper Castle, as
24 Trustee for Nationstar Mortgage executed a notice of default and election to sell
25 pursuant to the terms of the Deed of Trust. Opp. 3. The notice of default was
26

27
28 ³ In contrast to the Complaint and the Foreclosure Deed, Plaintiff's Reply and the Declaration of
Christopher J. Hardin attached thereto as Exhibit 2 state that Alessi & Koenig, LLC ("Alessi"),
were involved in the sale. Given the conflicting information it is unclear from the record what role
they played, if any, or if the reference to them was in error. For example Mr. Hardin's declaration
states in relevant part: "9. On Wednesday, January 4, 2013 at approximately 2:00 p.m., I
attended a foreclosure auction that was noticed to be held at the offices of Alessi & Koenig, LLC
at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147." Reply, Ex. 2 at paragraph 9
but the foreclosure deed states that NAS conducted the sale. Application, Ex. 1.

1 recorded on January 28, 2013 in Official Records of the Clark County Recorder
2 as Instrument No. 201301280001031. Opp. 3.

3
4 20. On or about June 24, 2013, Cooper Castle, as Trustee for
5 Nationstar Mortgage recorded in the Official Records of the Clark County
6 Recorder as Instrument No. 201306240002425 a Notice of Trustee's Sale stating
7 that the Property would be sold at a public auction pursuant to the terms of the
8 Deed of Trust on July 23, 2013 at 1:00 p.m. Compl. paragraph 33.

9 21. On July 2, 2013 Plaintiff filed a Complaint alleging causes of Action
10 for Declaratory Relief/Quiet Title Pursuant to NEV. REV. STAT. § 30.010, et. seq.,
11 NEV. REV. STAT. § 40.10 & NEV. REV. STAT. § 116.3116, Unjust Enrichment and
12 Preliminary and Permanent Injunction. The present Motion for a Temporary
13 Restraining Order and Preliminary Injunction is pled only against Defendant
14 Nationstar as the entity who is attempting to foreclose on the property. Compl. 6-
15 8.

16 22. Plaintiff asserts *inter alia* that it is entitled to injunctive relief as it
17 purchased the Property from the Association after a foreclosure sale pursuant to
18 NEV. REV. STAT. § 116 and, according to statute, it is entitled to rely on the
19 recitations in the deed. Thus, it contends its payment of \$6,005.32 entitles them
20 to the property outright since the Association's foreclosure wiped out the security
21 interest of Defendant Nationstar and any other interests in the property.⁴ As
22 such Plaintiff contends that it is likely to succeed on the merits of its claims of
23 quiet title and unjust enrichment. It further contends that if Defendant is allowed
24 to move forward with its foreclosure sale, it will be irreparably harmed as the
25

26
27 ⁴ Neither party contends that there are outstanding taxes or other governmental liens so that
28 issue is not addressed.

1 property will be sold and monetary damages would not compensate it for the
2 loss. Compl. 6-8.

3 23. In response, Defendant contends that Plaintiff cannot prevail on the
4 merits of its claims because, Plaintiff's interpretation of the statute would violate
5 due process in general and as to the case at bar there is no evidence of any
6 notice to Defendant Nationstar, much less a notice relating to the "super priority"
7 amount. Defendant also contends that the HOA's Covenants, Conditions, &
8 Restrictions (CC&Rs) expressly state that the HOA's lien does not discharge
9 Defendant Nationstar's deed of trust. It also asserts that the amount paid, \$7000
10 is a commercially unreasonable price which cannot wipeout Defendant
11 Nationstar's interest. As to the assertion of irreparable harm, Defendant asserts
12 that Plaintiff cannot show a threat of immediate and irreparable injury since its
13 only harm is the amount it paid to the Association and any other monetary sums.
14 Opp. 4-15.

15
16
17 **CONCLUSIONS OF LAW**

18 1. This Court has jurisdiction over both the subject matter of this case
19 and the parties to this case.⁵

20 2. Article 6, Section 6 of the Nevada Constitution and NEV. REV. STAT.
21 § 33.010 authorize this Court to grant injunctive relief in the following cases:

22 1. When it shall appear by the complaint that the
23 plaintiff is entitled to the relief demanded, and such
24 relief or any part thereof consists in restraining the

25
26 ⁵ Given the relief actually sought in the Motion, Plaintiff was seeking a Preliminary
27 Injunction rather than an Temporary Restraining Order. Nevertheless, the Court addressed both
28 standards in its ruling and the outcome would be the same given the operative facts and law.

1 commission or continuance of the act complained of,
2 either for a limited period or perpetually.

3 2. When it shall appear by the complaint or affidavit
4 that the commission or continuance of some act,
5 during the litigation, would produce great or
6 irreparable injury to the plaintiff.

7 3. When it shall appear, during the litigation, that the
8 defendant is doing or threatens, or is about to do, or is
9 procuring or suffering to be done, some act in
10 violation of the plaintiff's rights respecting the subject
11 of the action, and tending to render the judgment
12 ineffectual.

13 3. "A preliminary injunction is available when the moving party can
14 demonstrate that the non-moving party's conduct, if allowed to continue, will
15 cause irreparable harm for which compensatory relief is inadequate and that the
16 moving party has a reasonable likelihood of success on the merits." Boulder
17 Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC, 125 Nev. 397, 403, 215 P.3d
18 27, 31 (2009)⁶ Put another way, NRS 33.010(1) authorizes an injunction when it
19 appears from the complaint the plaintiff is entitled to the relief requested, and at
20 least part of the reprieve consists of restraining the challenged act. Univ. and
21 Cmty Coll. Sys. of Nev. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100
22 P.3d 179, 187 (2004).

23 4. Before a preliminary injunction will issue, the applicant must show:
24 "(1) a likelihood of success on the merits; and (2) a reasonable probability that
25 the non-moving party's conduct, if allowed to continue, will cause irreparable
26

27 ⁶ In accordance with NEV. R. Civ. P. 65, before or after the commencement of a hearing of an
28 application for a preliminary injunction, "the Court may order the trial of the action on the merits to
be advanced and consolidated with the hearing of the application." NEV. R. Civ. P. 65 (a)(2). In
the present case there was no request that the matter be combined with a trial on the merits nor
did the Court order such, so the ruling herein is based on the motion for a temporary restraining
order and preliminary injunction.

1 harm for which compensatory damage is an inadequate remedy." S.O.C., Inc. v.
2 The Mirage Casino-Hotel, 117 Nev. 403, 408, 23 P.3d 243, 247 (2001), citing
3 Dangberg Holdings v. Douglas Cnty., 115 Nev. 129, 142-143, 978 P.2d 311, 319
4 (1999). In considering preliminary injunctions, courts also weigh the potential
5 hardships to the relative parties and others, as well as the public interest. Univ.
6 and Cnty Coll. Sys. of Nev., 120 Nev. at 721, 100 P.3d at 187, (1996) (citing
7 Clark Cnty Sch. Dist. v. Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719).

9 2. Determining whether to grant or deny a preliminary injunction is
10 within the district court's sound discretion. Att'y Gen. v. NOS Commc'ns, 120
11 Nev. 65, 67, 84 P.3d 1052, 1053 (2004). The district court's decision will not be
12 disturbed absent an abuse or unless it is based upon an erroneous legal
13 standard. *Id.* Factual determinations will be set aside only when clearly
14 erroneous or not supported by substantial evidence; however, questions of law
15 are reviewed de novo. S.O.C., Inc., 117 Nev. at 407, 23 P.3d at 246.

17 3. The statute at issue in this case, NEV. REV. STAT. § 116.3116,
18 discusses homeowner association liens against units or homes for unpaid or
19 delinquent assessments. It states in pertinent part:

20 1. The association has a lien on a unit for any construction
21 penalty that is imposed against the unit's owner pursuant to NRS
22 116.310305, any assessment levied against that unit or any fines imposed
23 against the unit's owner from the time the construction penalty,
24 assessment or fine becomes due. Unless the declaration otherwise
25 provides, any penalties, fees, charges, late charges, fines and interest
26 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of
27 NRS 116.3102 are enforceable as assessment under this section. If an
28 assessment is payable in installments, the full amount of the assessment
is a lien from the time the first installment thereof becomes due.

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

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

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

4. Notably, a lien under NEV. REV. STAT. § 116.3116(2) is "prior" to "all other liens and encumbrances on a unit," without the requirement of an enforcement action, except for, inter alia, "[a] first security interest." See NEV. REV. STAT. § 116.3116(2)(b). That exception specifies the association's lien is junior to the first security interest at least until an "action" is commenced. See NEV. REV. STAT. § 116.3116(2)(c).

5. NEV. REV. STAT. § 116 does not specifically define the term "action" with respect to one "enforc[ing] the lien," as described in NEV. REV. STAT. § 116.3116(2)(c).

6. The Court is aware of many cases in both the state and federal court system that have addressed in differing contexts the statutory interpretation

1 of NEV. REV. STAT. § 116.3116 and its application to Association foreclosures and
2 first deeds of trust. While much of the inquiry in those cases focused on whether
3 the statute was ambiguous or not and the ramifications of that determination,
4 given that Plaintiff in this case seeks injunctive relief from this Court not as an
5 Association but as a purported bona fide purchaser of the property, this Court's
6 first area of inquiry is to determine whether Plaintiff would likely establish that it is
7 a bona fide purchaser.
8

9 7. The law on whether a party is a bona fide purchaser is clear and
10 does not appear disputed between the parties. Specifically, the cases cited by
11 Plaintiff provide *inter alia* that "[t]he bona fide doctrine protects a subsequent
12 purchaser's title against competing legal or equitable claims of which the
13 purchaser had no notice at the time of the conveyance." 25 Corp., Inc. v.
14 Eisenman Chem. Co., 101 Nev. 664, 675, 709 P.2d 164, 172 (1985) (citing 77
15 Am. Jur. 2d *Vendor and Purchaser* § 633 at 754 (1975)). Indeed, Nevada has
16 long protected bona fide purchasers. See, e.g., Moresi v. Swift, 15 Nev. 215, 223
17 (1880) ("The rule that a man who advances money bona fide and without notice,
18 will be protected in equity, applies equally to real estate, chattels, and personal
19 estate.") (internal citation omitted)). In addition to having paid value without
20 notice, the buyer must be acting in good faith to be a bona fide purchaser. See
21 Berge v. Fredericks, 95 Nev. 183, 188, 591 P.2d 246, 249 (1979).
22

23 8. Other states such as California have a similar analysis. For
24 example in Countrywide Home Loans, Inc. v. United States,
25 CV:F:02:6405:AWI:SMS, 2007 WE 87827 (E.D. Cal. Jan. 9, 2007), at *11, the
26 Court held that: "A bona fide purchaser is one who pays value for property,
27
28

1 without notice of any adverse interest or of any irregularity in the sale
2 proceedings."

3
4 9. Given the law is undisputed, the Court needs to apply the law to the
5 evidence and facts in the present case. In so doing, the Court looked to the
6 declaration of the Manager of Plaintiff, Christopher Hardin.⁷ In that declaration,
7 Mr. Hardin sets forth inter alia that "[a]s part of my duties for SFR, I attend and
8 bid on real property at multiple public foreclosure auctions held on behalf of
9 homeowners' associations by their agents." Reply, Ex. 2. He also states that
10 "Prior to attending the auctions, I research which properties will be available for
11 sale..." Reply, Ex. 2.

12 10. Taking into account Mr. Hardin's declaration as the manager of
13 Plaintiff that researches the properties that will be available for sale and has
14 attended multiple foreclosure auctions, makes it unlikely that Plaintiff was not
15 aware of competing claims for the property which would be necessary to be
16 considered a bona fide purchaser.

17
18
19
20
21 ⁷ In paragraph ten of his declaration in case number A-13-684630-C which the parties requested
22 be argued and considered concurrently with this instant matter and which the parties contended
23 was legally similar, Mr. Hardin states in relevant part: "10. In my experience, the amount of the
24 bids at auction are directly affected by on-going litigation regarding the interpretation of NRS
25 116.3116 and information that impacts or may impact the litigation. The same factors also
26 impacted the amount SFR was willing to pay for this property." The declaration was signed three
27 days after the declaration that was presented in the instant case such that the court would have
28 no reason to believe that he was retracting the statement referenced herein. Although the Court
does not rely on evidence provided in a companion case for the instant ruling, based on the
declaration of Plaintiff's own manager that the price Plaintiff paid was impacted by the uncertainty
over what rights that entities such as Plaintiff SFR would obtain in these circumstances, could be
further support an assertion that Plaintiff was aware of or was on reasonable notice of competing
legal or equitable claims to the property. If the Court were to hold Plaintiff to its own words, it has
not established that it will likely prevail as a bona fide purchaser nor will it have the attendant
protections pursuant to Nevada law.

11. Plaintiff's Reply mirrors the statements of its manager further demonstrating that it will not likely be deemed a bona fide purchaser. In its Reply, Plaintiff asserts that:

Defendant's argument does not consider the market inefficiency caused by the ambiguity and inconsistency among Nevada courts in the interpretation of NEV. REV. STAT. § 116.3116. Once the application of the statute is clear enough for title companies to issue title insurance without a quiet title action, the bids at the auctions will reflect market rate without the discounts caused by the current uncertainty in the law.

Reply 9.

12. Plaintiff's argument in its Reply that the small purchase price it paid for the property is realistic in the marketplace due to the lack of certainty of whether the purchase will be upheld by the courts further shows that Plaintiff knew there were adverse interests in the property and that there was a likelihood that their asserted interest would not survive judicial scrutiny. Reply 9.

13. The Court having found that Plaintiff has not established that it is likely to be found to be a bona fide purchaser, Plaintiff cannot rely on the provisions of NEV. REV. STAT. § 116.31166. Huntington v. Mila, Inc., 119 Nev. 355, 357, 75 P.3d 354, 356 (2003) ("A subsequent purchaser with notice, actual or constructive, of an interest in property superior to that which he is purchasing is not a purchaser in good faith, and is not entitled to the protection of the recording act."); 25 Corp., Inc. v. Eisenman Chemical Corp., 101 Nev. 664, 665, 709 P.2d 164, 165 (1985) ("The bona fide doctrine protects a subsequent purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance."); Berge v. Fredericks, 95 Nev. 183, 186, 591 P.2d 246, 247 (1979) ("[A] party claiming title to the land by a

subsequent conveyance must show that the purchase was made in good faith, for a valuable consideration; and that the conveyance of the legal title was received before notice of any equities of the prior grantee.").

14. Instead, the Court then would need to determine if the provisions of NEV. REV. STAT. § 116 were properly followed to determine if Defendant's due process rights were taken into account and what if any interest it passed on to Plaintiff pursuant to the quitclaim deed. Both Art. 1, §8(5) of the Nevada Constitution and the 14th Amendment, § 1 of the U.S. Constitution guarantee due process of law prior to a deprivation of property. Defendant's contention that "senior deed of trust beneficiaries must receive notice of the super priority amount so they can cure and protect their secured interest in the property. SFR does not and cannot state that Nationstar ever received any notice of what the putative super priority amount was, whom to pay, or how long it had to pay" is well founded.

15. The Court was not provided with evidence that Defendant's due process rights were taken into account or that Defendant was properly noticed within the provisions of NEV. REV. STAT. § 116 as would be required from a party seeking injunctive relief. See e.g. Dangberg Holdings v. Douglas Cnty, 115 Nev. 129, 142-143, 978 P.2d 311, 319 (1999) (movant for a temporary restraining order must show a substantial likelihood of success on the merits). Plaintiff only asserts that "[u]nder the provisions of NRS 116, Defendant was given notice of the association's lien at least three times: first, through the recording of the declaration of CC&Rs; second, when the Association sent its notice of default; and third, when the Association sent its notice of sale. Reply 6. While Plaintiff argues that the Association sent notices to Defendant, there is no evidentiary

support for that argument. Mere argument in a Reply is not sufficient to establish a likelihood of success on the merits of Plaintiff's claims. Similarly, although Plaintiff correctly points out that the CC &Rs were recorded, prior to the loan being recorded, the recording of the CC&Rs would put Defendant on notice that the Association could assert a lien if assessments were delinquent but it did not put them on notice that the association would institute foreclosure proceedings several years later given the potential delinquency had not yet occurred.⁸

16. In sum, Plaintiff has not provided the Court with evidence that it would succeed on the merits of its claims for either quiet title or unjust enrichment because it has not shown that it is a bona fide purchaser and in the absence of such a determination it has not shown that Defendant was given due process and appropriate notice prior to any claim that its security interest was being eliminated. In the absence of any such evidence, the Court does not find that Plaintiff has a likelihood of success on the merits.⁹ See, e.g., "A quiet title claim requires a plaintiff to allege that the defendant is unlawfully asserting an adverse claim to title to real property." Kemberling v. Ocwen Loan Servicing, LLC, No. 2:09-cv- 00567, 2009 WL 5039495, at *2 (D. Nev. Dec. 15, 2009), citing See Clay v. Scheeline Banking & Trust Co., 40 Nev. 9, 16, 159 P. 1081, 1082 (1916)." The very object of the proceeding assumes that there are other

⁸ To the extent that Plaintiff's Motion could also be read to state that notice was not required pursuant to NEV. REV. STAT. § 116, given that Plaintiff is not likely to prevail as a bona fide purchaser, any such reading of the statute would be a violation of Defendant's due process rights. Thus, even if Plaintiff were attempting such an argument, it would have no merit as the interpretation would be Unconstitutional and hence unenforceable.

⁹ In light of the Court's ruling that Plaintiff is not likely to succeed on the merits, the Court need not address the other defenses raised by Defendant including whether the purported mortgage savings clause in the CC&Rs was in effect given the provisions of NEV. REV. STAT. § 116, or whether in certain circumstances NEV. REV. STAT. § 116.3116 allows a first security interest to be wiped out. With respect to Defendant's assertion that Plaintiff's claim would fail as it was not commercially reasonable, the Court took into account the purchase price in analysis of whether Plaintiff was a bona fide purchaser.

1 claimants adverse to the Plaintiff, setting up titles and interests in the land or
2 other subject-matter hostile to his [own]." Clay, 40 Nev. at 16, 159 P. at 1082.
3 Where such adverse claims exist, the party seeking to have another party's right
4 to property extinguished bears the burden of overcoming the "presumption in
5 favor of the record titleholder." See Breliant v. Preferred Corp., 112 Nev.663,
6 669, 918P.2d 314, 318(1996); Clay, 40 Nev. at 16, 159 P. at 1082.
7

8 17. Although the Court has found that there is not a likelihood of
9 success on the merits, the Court deems it appropriate to address the other
10 factors Courts review when injunctive relief is sought including the irreparable
11 harm component, weighing the potential hardships to the relative parties and
12 others, as well as evaluating the public interest. See e.g. Univ. and Cmty Coll.
13 Sys. of Nev., 120 Nev. at 721

14 18. As noted above, Plaintiff asserts consistent with Nevada precedent
15 that the loss of real property rights generally constitutes irreparable harm. See
16 e.g. Dixon v. Thatcher 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) (holding
17 that real property and its attributes are considered unique and loss of real
18 property rights generally results in irreparable harm)(citing Leonard v. Stoebling,
19 102 Nev. 543, 728 P.2d 1358 (1986) and Nevada Escrow Service, Inc.
20 v. Crockett, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to stop
21 foreclosure reversed because legal remedy inadequate)).
22

23 19. Defendant contends that Plaintiff cannot establish irreparable
24 harm as Plaintiff's damages are limited to its monetary investment, given it did
25 not purchase the property. Neither party directly addressed the balance of
26 hardships or public interest factors.
27
28

1 20. Based on all the evidence presented to the Court and given that if
2 Defendant were to proceed with its foreclosure it could eliminate not only any
3 property interest Plaintiff contends it has but also any other lien rights he may
4 have purchased from the Association and the lack of clarity asserted by the
5 parties relating to certain aspects of NEV. REV. STAT. § 116 that could be
6 addressed at further proceedings in this matter, the Court finds that there would
7 be irreparable harm to Plaintiff if he were able to establish a property interest in
8 the property.
9

10 21. When weighing the potential hardships and public interest, the
11 Court finds that although Plaintiff could lose the \$7000 investment and other
12 sums he may have spent on the property, Defendant is at risk to lose several
13 hundred thousand dollars. Further, as Defendant notes, the underlying borrower
14 is at risk to continue to owe a more significant sum of money if Plaintiff's
15 argument prevails. Accordingly, the balance of hardships favors Defendant.
16 Public interest also comes into play in favor of Defendants if they were to be
17 deprived of their property interest without due process.
18

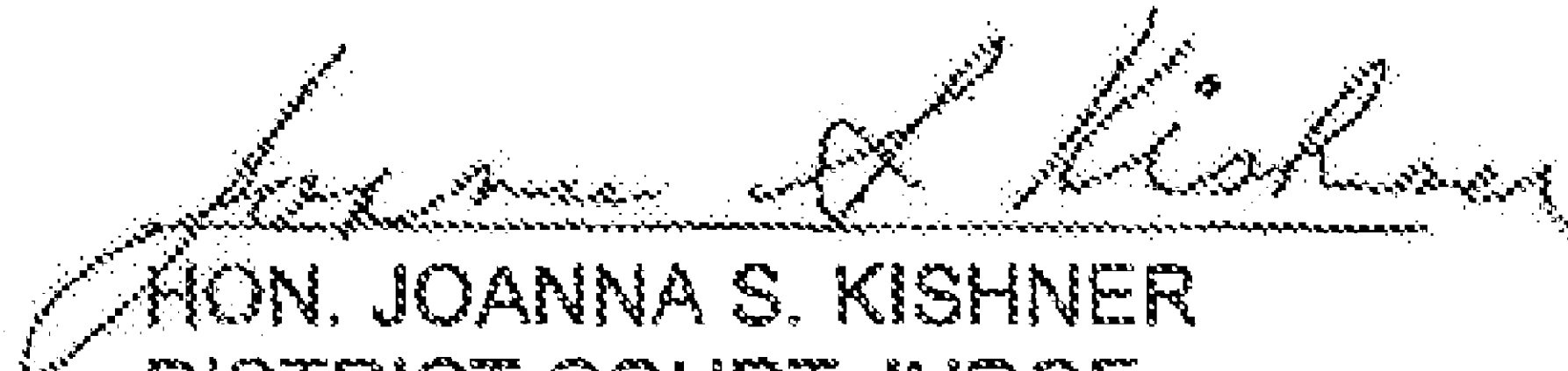
19 CONCLUSION
20

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff has
22 not shown a likelihood of success on the merits and thus its Motion for a
23 Temporary Restraining Order and Preliminary Injunction is DENIED.
24

25 IT IS further ORDERED, ADJUDGED AND DECREED that the Court will
26 hear Plaintiffs NEV. R. Civ. P. 54(b) motion after providing Defendant an
27 Opportunity to Respond to the Motion. In so doing the Court notes that the
28

1 request was brought up for the first time in its Reply. The Court will hear oral
2 argument on the proposed NEV. R. Civ. P. 54(b) Certification on Tuesday, August
3 13, 2013 at 9:00 a.m. in Courtroom 12B. Defendant's Opposition is due to be
4 filed, with a courtesy copy to the Court, on August 9, 2013 by 5:00 p.m. and
5 Plaintiff's Reply is due Monday, August 12, 2013 by 12:00 pm. Given the
6 importance of the issue and to not thwart the ends of justice, the Court is staying
7 enforcement of the denial of the Motion for a Temporary Restraining Order and
8 Preliminary Injunction and staying the case until such time the hearing on the
9 54(b) request. At the time of the hearing the Court will consider whether a further
10 stay is necessary.
11
12
13

14 Dated this 2nd day of August, 2013.
15
16

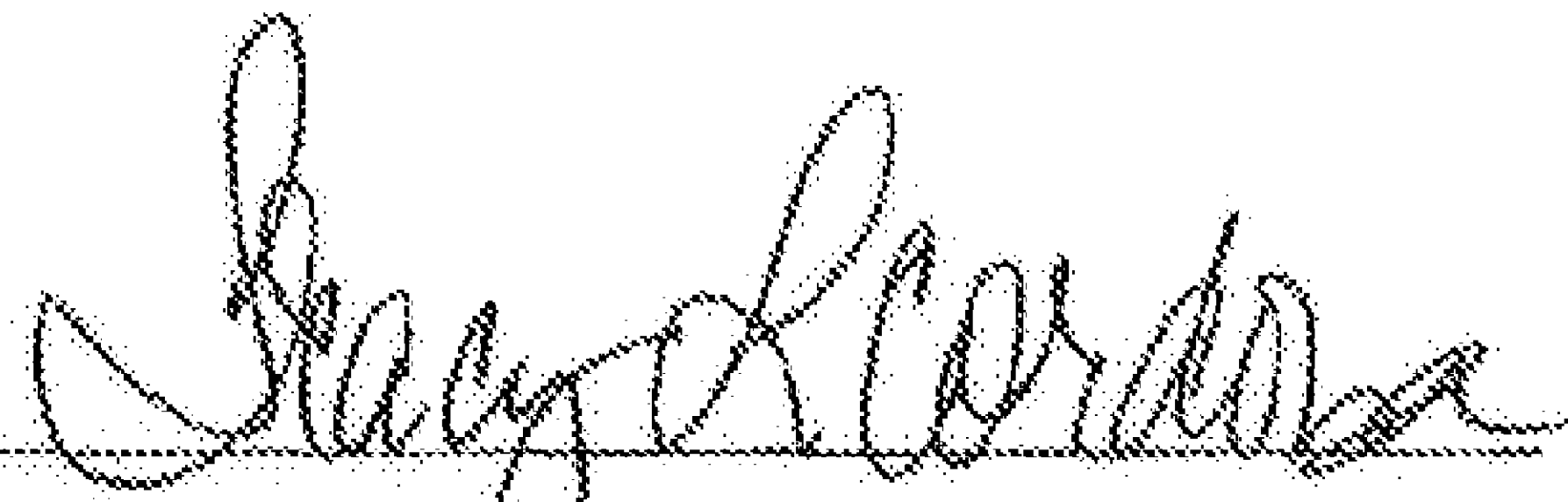
17 
18 HON. JOANNA S. KISHNER
19 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this ORDER was placed in the attorney's folder in the Clerk's Office and/or mailed to the proper party as follows:

David A. Rosenberg, Esq.
Howard Kim & Associates

Darren T. Brenner, Esq.
Akerman Senterfitt LLP




TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 6

EXHIBIT 6

1 **ORDER**


CLERK OF THE COURT

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5
6 **DESIGN 3.2, LLC.,**

7 **Plaintiff(s),**

8 **v.**

9 **BANK OF NEW YORK MELLON,**
10 **and DOES 1-10.,**

11 **Defendant(s)**

) **CASE NO. A621628**

) **DEPT NO. XV**

12
13 **DECISION AND ORDER**

14 **THIS matter having come on for hearing on June 15, 2011 for Defendant's Motion**
15 **For Summary Judgment, Plaintiff's Motion for Sanctions and Defendant's Countermotion**
16 **for Sanctions, the Plaintiff being represented by ALAN NEEDHAM, ESQ., and the**
17 **Defendant being represented by KEVIN HAHN, ESQ., and after reviewing all of the**
18 **moving papers on file herein, this Court makes the following Decision and Order:**

19 **///**

20 **///**

21 **///**

22 **///**

23 **///**

24 **///**

25 **///**

26 **///**

27 **///**

28 **///**

APR 08 2013

ABBI SILVER
DISTRICT JUDGE

DEPARTMENT FIFTEEN
LAS VEGAS NV 89155

FACTS

On August 10, 2006, homeowner/borrower Patrick McKnight executed a promissory note, secured by a deed of trust, for \$576,000 in favor of Countrywide Bank, which was recorded on August 16, 2006. By June 6, 2008, the homeowners association, (hereinafter "HOA") recorded a "notice of delinquent assessment lien." On October 10, 2009, Plaintiff Design 3.2, LLC, hereinafter ("Plaintiff hereinafter LLC") purchased the property from McKnight. The following month, on November 1, 2009, McKnight defaulted on the mortgage. Two days later, on November 3, 2009, Plaintiff LLC purchased the property at the HOA foreclosure sale for \$3,743.84.

On April 29, 2010, ReconTrust substituted as trustee when it executed a Substitution of Trustee and on the same date filed a "Notice of Default/Election to Sell Under Deed of Trust." On April 30, 2010, Defendant Bank of New York Mellon, hereinafter ("Defendant BNYM") was assigned all beneficial interest in the property. By May 5, 2010, BNYM assigned the Deed of Trust to ReconTrust, who recorded both the assignment and the substitution of trustee that same day.

On July 26, 2010, Plaintiff filed a complaint to quiet title and unjust enrichment. On September 21, 2010, a Nevada Notice of Trustee Sale was recorded by ReconTrust. On January 10, 2011, a second Nevada Notice of Trustee's Sale was recorded by ReconTrust.

On May 10, 2011, Defendant BNYM filed this Motion for Summary Judgment on Plaintiff's quiet title and unjust enrichment claims because Plaintiff LLC purchased the property subject to Defendant BNYM's first-priority recorded deed.

DISCUSSION

Defendant BNYM seeks summary judgment on the two claims in Plaintiff's Complaint: quiet title and unjust enrichment. Defendant has provided sufficient evidence

ABBI SILVER
DISTRICT JUDGE

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1 to show that it has a priority lien on the property. Furthermore, Defendant submits it has
2 not realized any unjust gain such that a claim for unjust enrichment in favor of Plaintiff is
3 appropriate.

4 Plaintiff alleges the genuine issues of material fact that preclude summary
5 judgment in favor of Defendant include (1) Whether Defendant purchased an invalid
6 interest; (2) How much Defendant paid for its title interest; and (3) Whether the
7 Assignment and Substitution are authentic and genuine documents. However, none of
8 these are genuine issues of material fact for purposes of defendant's summary judgment
9 motion.
10

11 Here, the Court finds that Defendant BNYM's lien is a priority lien. NRS 116.3116
12 controls liens against units for assessments, NRS 116.3116 (2)(b) provides:

13 **NRS 116.3116 Liens against units for assessments.**

14 1. The association has a lien on a unit for any construction penalty that is imposed
15 against the unit's owner pursuant to NRS 116.310305, any assessment levied against that
16 unit or any fines imposed against the unit's owner from the time the construction penalty,
17 assessment or fine becomes due. Unless the declaration otherwise provides, any penalties,
18 fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n),
19 inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this
20 section. If an assessment is payable in installments, the full amount of the assessment is a
21 lien from the time the first installment thereof becomes due.

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

24 (a) Liens and encumbrances recorded before the recordation of the declaration and, in a
25 cooperative, liens and encumbrances which the association creates, assumes or takes
26 subject to;

27 (b) A first security interest on the unit recorded before the date on which the
28 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against
the unit or cooperative.

➤ The lien is also prior to all security interests described in paragraph (b) to the extent of
any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
extent of the assessments for common expenses based on the periodic budget adopted by
the association pursuant to NRS 116.3115 which would have become due in the absence of
acceleration during the 9 months immediately preceding institution of an action to enforce
the lien, unless federal regulations adopted by the Federal Home Loan Mortgage
Corporation or the Federal National Mortgage Association require a shorter period of
priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage
Corporation or the Federal National Mortgage Association require a shorter period of
priority for the lien, the period during which the lien is prior to all security interests
described in paragraph (b) must be determined in accordance with those federal
regulations, except that notwithstanding the provisions of the federal regulations, the period

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of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

8. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

Here, Defendant BNYM's first security interest Deed was recorded on August 16, 2006, and is senior to the assessment lien. Furthermore, the Deed is in first priority according to common law. In the absence of countervailing equities, the order of priority depends on timing. Here, BNYM recorded first. After-acquired interests are subject to the rights of the holder of a properly recorded valid mortgage.

Further, this Court finds Plaintiff LLC is not a bona fide purchaser for value. Because Defendant BNYM's interest was recorded, thus, Plaintiff LLC was on actual or constructive notice. To allow plaintiff to prevail in its action for quiet title and extinguish BNYM's security would be a windfall and an inequity, as Plaintiff only paid \$3,743.84 for the property at the HOA foreclosure sale, where the original promissory note value was \$576,000.

ABBI SILVER
DISTRICT JUDGE

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1 Although the purchase of an invalid interest would preclude the right to encumber
 2 property with a lien, here there is no genuine issue as to whether the interest was validly
 3 purchased. Furthermore, there is no evidence to create a genuine issue of material fact
 4 regarding the authenticity and genuineness of the documents submitted by Defendant.
 5 Defendant has submitted evidence of a recorded Corporation Assignment of Deed of Trust,
 6 which transferred all beneficial interest from MERS to Defendant BNYM. Furthermore,
 7 Defendant has submitted evidence of a recorded Substitution of Trustee, certified by First
 8 American Title Insurance Company to be a copy of the official recording. Although
 9 Plaintiff makes allegations these are not authentic and genuine documents, the Nevada
 10 Supreme Court held in *Wood* that the nonmoving party may not defeat a motion for
 11 summary judgment by relying on the "gossamer threads of whimsy, speculation and
 12 conjecture." *Id.* at 731 (internal quotations omitted). Here, Plaintiff has submitted nothing
 13 more than speculation and conjecture to substantiate its claims, and summary judgment has
 14 not been defeated by Plaintiff's arguments.
 15

16 Furthermore, Plaintiff cannot defeat summary judgment based on the argument that
 17 there is a question as to the price Defendant paid for its title interest. Plaintiff apparently
 18 relies on NRS 40.451 to support the position that an assignee or transferee of interest in
 19 real property is limited in its right to collect on a debt to the amount of consideration the
 20 assignee or transferee paid for the interest. This is both inapplicable and incorrect. First,
 21 NRS 40.451 states that the definition of indebtedness only applies to NRS 40.451 to
 22 40.463, inclusive. These statutes only apply to foreclosure sales and deficiency judgments.
 23 Therefore, even if the Plaintiff's argument is correct, the limitation does not apply to the
 24 interest itself, but to an attempt to foreclose and collect a deficiency judgment. Thus, the
 25 argument is inapplicable. Second, Plaintiff misconstrues the statute. The statute states that
 26 the amount constituting a lien is limited to the amount of consideration paid by the
 27
 28

1 lienholder. This does not mean each successor-in-interest must pay the full amount of the
2 lien; such a construction would burden the alienability of property, including gift transfers
3 and assignments. Rather, because each successor-in-interest is put in the same position as
4 the original lienholder, their right to a lien is equal to that of the original lienholder.
5 Therefore, the argument is incorrect. Accordingly, summary judgment has not been
6 defeated by Plaintiff's second argument.

7 Finally, Plaintiff makes a general allegation that Defendant is perpetrating a fraud.
8 However, Plaintiff has done nothing to substantiate its claim as a genuine issue of material
9 fact. Accordingly, this allegation does not preclude summary judgment.

10 Summary judgment is also appropriate on the unjust enrichment claim. Such a
11 claim is appropriate where there is no legal contract but the person sought to be charged is
12 in possession of property, which in good conscience belongs to another.
13

14 Unjust enrichment is the "unjust retention of a benefit to the loss of another, or the
15 retention of money or property of another against the fundamental principles of justice or
16 equity and good conscience." *Nevada Industrial Dev.*, 103 Nev. at 363 n. 2. The essential
17 elements of unjust enrichment include: 1) a benefit conferred on the defendant by the
18 plaintiff; 2) appreciation by the defendant of such benefit; 3) and acceptance and retention
19 by the defendant of such benefit." *Unionamerica Mtg.*, 97 Nev. at 212 (1981).
20

21 Here, Plaintiff can only meet the element that there is lack of a contract. Thus,
22 Plaintiff has failed to show there is any genuine issue of material fact to preclude summary
23 judgment. The Court finds the Defendant has shown it has a valid interest in the property.
24 Plaintiff has failed to put forth any facts to genuinely question the validity of the
25 documents or to show there was a benefit conferred on the Defendant by the Plaintiff; that
26 Defendant appreciated such a benefit; or that there was acceptance and retention by the
27

28
ABBI SILVER
DISTRICT JUDGE

DEPARTMENT FIFTEEN
LAS VEGAS NV 89155

1 Defendant of the benefit. Accordingly, summary judgment is appropriate in favor of
2 Defendant.

3 Plaintiff has not raised other genuine issues of material fact. Accordingly
4 Defendant BNYM's Motion for Summary Judgment is granted.

5 Next, pursuant to NRCP 37, Plaintiff's Motion for Sanctions and Defendant's
6 Countermotion for Sanctions are denied. NRCP 37 states that the Court may compel
7 disclosure or sanction a party for failure to comply with discovery. The request must be
8 accompanied by a certification that the movant, in good faith, conferred or attempted to
9 confer with the other party to secure the discovery prior to court action. NRCP
10 37(a)(2)(A). Under NRCP 37(a)(4)(A), a prevailing movant is entitled to fees and costs
11 unless Plaintiff did not first make a good faith effort to obtain the discovery without court
12 action. Under NRCP 37(a)(4)(B), if the motion is denied, the Court shall, after affording
13 an opportunity to be heard, require the movant to pay the defending party the reasonable
14 expenses incurred in opposing the motion, unless the Court finds the motion was
15 substantially justified or that other circumstances make an award of expenses unjust.
16
17

18 Here, Plaintiff LLC has failed to comply with the requirement of NRCP
19 37(a)(2)(A), as Plaintiff LLC did not provide a certification that it conferred or attempted
20 to confer with the Defendant in an effort to secure the disclosure without court action.
21 Furthermore, none of the claims rises to the level of sanctionable behavior. Accordingly,
22 the motion is advanced and denied.
23


24 The Defendant has requested sanctions pursuant to NRCP 37(a)(4)(B). Although
25 the Court found that Plaintiff LLC failed to comply with the certification requirement of
26 NRCP 37(a)(2)(A), the Plaintiff's actions do not rise to the level of sanctionable behavior,
27 despite the vagueness of some of the submitted discovery. Accordingly, Defendant
28 BNYM's Countermotion for Sanctions is denied.

ABBI SILVER
DISTRICT JUDGE

DEPARTMENT FIFTEEN
LAS VEGAS NV 89156

1 Based on the foregoing reasons, defendant's motion for summary judgment is
2 granted. Plaintiff's motion for sanctions and defendant's countermotion for sanctions is
3 denied.

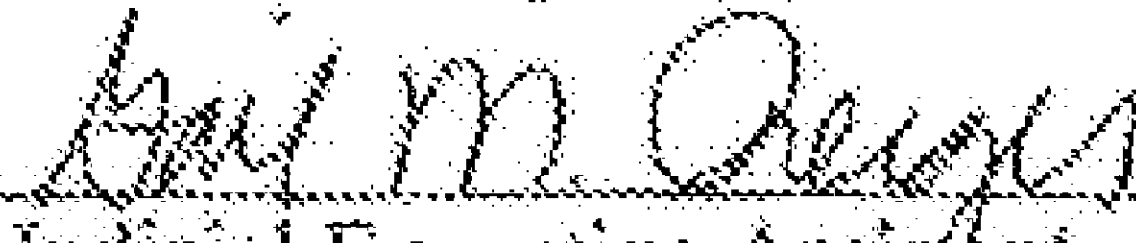
4 DATED this 8th day of April, 2013.

5
6 
7 JUDGE ABBI SILVER
8 EIGHTH JUDICIAL COURT XV
9

10 CERTIFICATE OF SERVICE

11 I hereby certify that on the date filed, I placed a copy of this Order in the attorney's
12 folder in the Clerk's Office, mailed or faxed a copy to:

13 Alan Needham, Esq. Needham Law Firm
14 Kevin Hahn, Esq. Malcolm & Cisneros

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16 Judicial Executive Assistant
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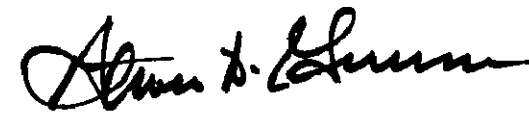
ABBI SILVER
DISTRICT JUDGE

DEPARTMENT FIFTEEN
LAS VEGAS NV 89155

TAB 16

Richard Vilkin, Esq.
Nevada Bar No. 8301
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
Email: richard@vilkinlaw.com
*Attorney for third-party defendant Nevada
Association Services, Inc.*

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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, a Nevada non-
profit corporation and LUCIA PARKS, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, NV West
Servicing, LLC, a Nevada limited liability
company as Trustee for NASHVILLE TRUST
2270; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Case No.: A-13-678814-C (consolidated with
A-13-688734-C)

Dept.: XXXI

JOINDER OF NEVADA ASSOCIATION
SERVICES, INC. TO MOTIONS FOR
SUMMARY JUDGMENT BY SFR
INVESTMENT POOL 1, LLC AND COPPER
RIDGE HOA

1 Defendants.

2
3 U.S. BANK, N.A., a national banking
4 association as Trustee for the Certificate
5 Holders of U.S. Bank Asset Securities
6 Corporation, Mortgage Pass-Through
7 Certificates, Series 2006-AR4,

8 Counterclaimant,

9 vs.

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

12 Counter Defendant.

13 U.S. BANK, N.A., a national banking
14 association as Trustee for the Certificate
15 Holders of U.S. Bank Asset Securities
16 Corporation, Mortgage Pass-Through
17 Certificates, Series 2006-AR4,

18 Third-Party Plaintiff,

19 vs.

20 NEVADA ASSOCIATION SERVICES, INC.,
21 a Nevada corporation; COPPER RIDGE
22 COMMUNITY ASSOCIATION, a Nevada
23 non-profit corporation;

24 Third-Party Defendants.

25 ///

26 ///

27 ///

1 JOINDER OF NEVADA ASSOCIATION SERVICES, INC. TO MOTIONS FOR SUMMARY
2 JUDGMENT BY SFR INVESTMENT POOL 1, LLC AND COPPER RIDGE COMMUNITY
3 ASSOCIATION

4 Third-party defendant Nevada Association Services, Inc. ("NAS") hereby joins in the
5 Motions for Summary Judgment, and all documents attached thereto, filed on January 24, 2017
6 by SFR Investment Pool 1, LLC and Copper Ridge Community Association.
7

8 Date: February 2, 2017

LAW OFFICES OF RICHARD VILKIN, P.C.

9
10 By: 

11 Richard Vilkin, Esq.
12 Nevada Bar No. 8301
13 1286 Crimson Sage Ave.
14 Henderson, NV 89012
15 *Attorneys for third-party defendant Nevada*
16 *Association Services, Inc.*
17
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Certificate of E-Service

I hereby certify that on February 2, 2017, I caused to be served electronically a copy of the foregoing JOINDER OF NEVADA ASSOCIATION SERVICES, INC. TO MOTIONS FOR SUMMARY JUDGMENT BY SFR INVESTMENT POOL 1, LLC AND COPPER RIDGE HOA when filing said document on the court's Wiznet electronic filing system and requesting therein that it be E-Served to all persons who are listed for E-Service on that system for this case as follows:

Alverson Taylor Mortensen & Sanders

Name	Email		Select
Adam Knecht	aknecht@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kurt R. Bonds	efile@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kurt R. Bonds	kbonds@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Trevor R. Waite	twait@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Kim Gilbert Ebron

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E-Service for Kim Gilbert Ebron	eservice@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Michael L. Sturm	mike@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tomas Valerio	staff@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

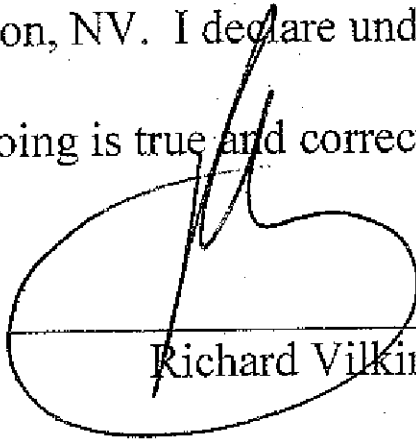
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NAS

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Snell & Wilmer L.L.P.		
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Daniel Ivie	dive@swlaw.com	<input checked="" type="checkbox"/>
Docket	Docket_LAS@swlaw.com	<input checked="" type="checkbox"/>
Gaylene Kim	gkim@swlaw.com	<input checked="" type="checkbox"/>
John Delikanakis	jdelikanakis@swlaw.com	<input checked="" type="checkbox"/>
Lyndsey Luxford	lluxford@swlaw.com	<input checked="" type="checkbox"/>
Maricris Williams	mawilliams@swlaw.com	<input checked="" type="checkbox"/>
Richard C. Gordon	rgordon@swlaw.com	<input checked="" type="checkbox"/>
Robin Perkins	rperkins@swlaw.com	<input checked="" type="checkbox"/>

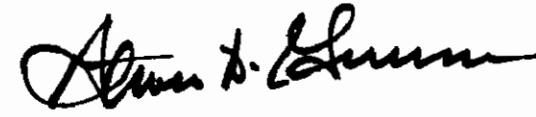
Executed this 2nd day of February, 2017 at Henderson, NV. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.


Richard Vilkin

TAB 17

Richard Vilkin, Esq.
Nevada Bar No. 8301
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1286 Crimson Sage Ave.
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Phone: (702) 476-3211
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*Attorney for third-party defendant Nevada
Association Services, Inc.*

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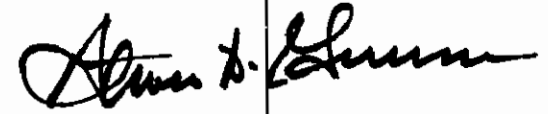


CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA



CLERK OF THE COURT

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, a Nevada non-
profit corporation and LUCIA PARKS, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-678814-C (consolidated with
A-13-688734-C)

Dept.: XXXI

OPPOSITION OF NEVADA ASSOCIATION
SERVICES, INC. TO MOTION FOR
SUMMARY JUDGMENT BY U.S. BANK
(PART 1)

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, NV West
Servicing, LLC, a Nevada limited liability
company as Trustee for NASHVILLE TRUST
2270; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

1 Defendants.

2
3 U.S. BANK, N.A., a national banking
4 association as Trustee for the Certificate
5 Holders of U.S. Bank Asset Securities
6 Corporation, Mortgage Pass-Through
7 Certificates, Series 2006-AR4,

8 Counterclaimant,

9 vs.

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

12 Counter Defendant.

13 U.S. BANK, N.A., a national banking
14 association as Trustee for the Certificate
15 Holders of U.S. Bank Asset Securities
16 Corporation, Mortgage Pass-Through
17 Certificates, Series 2006-AR4,

18 Third-Party Plaintiff,

19 vs.

20 NEVADA ASSOCIATION SERVICES, INC.,
21 a Nevada corporation; COPPER RIDGE
22 COMMUNITY ASSOCIATION, a Nevada
23 non-profit corporation;

24 Third-Party Defendants.

25 ///

26 ///

27 ///

OPPOSITION OF NEVADA ASSOCIATION SERVICES, INC. TO MOTION FOR
SUMMARY JUDGMENT BY U.S. BANK (PART 1)

Third-party defendant Nevada Association Services, Inc., ("NAS") hereby provides Part 1 of its Opposition to the Motion for Summary Judgment filed by Third-Party plaintiff U.S. Bank on some issues relative to NAS. However, NAS will likely join in the anticipated Oppositions to U.S. Bank's MSJ by SFR Investments Pool 1, LLC and Copper Ridge Community Association and that will constitute Part 2 of NAS' Opposition.

U.S. Bank moves for summary judgment in part based on an alleged violation of the bankruptcy stay by NAS. Motion filed Jan. 24, 2017, p 1, lines 4-6; p. 3, line 10 to p. 7, line 18. However, there are absolutely *no allegations* in the Third-Party Complaint filed by U.S. Bank on September 10, 2015 (which NAS Answered on Nov. 11, 2015 and which, together, constitute the current operative pleadings in this case involving U.S. Bank and NAS) mentioning anything about a bankruptcy case or issue or a violation of the bankruptcy stay by NAS. No such allegations exist in any form in said Third-Party Complaint. "A complaint must set forth sufficient facts to establish all necessary elements of a claim for relief, Johnson v. Travelers Ins. Co., 89 Nev. 467, 472, 515 P.2d 68, 71 (1973), so that the adverse party has adequate notice of the nature of the claim and relief sought. Branda v. Sanford, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981)." Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). NAS was not given any facts about a bankruptcy issue nor any notice of a claim relating to a violation of bankruptcy rules or law. Consequently, U.S. Bank is now precluded from raising that issue in this case, or moving for summary judgment on that basis. It has not been pled and NAS did not receive any notice of this claim in the operative pleading.

In addition, U.S. Bank has six causes of action alleged against NAS. Nowhere does U.S. Bank set forth the facts and law applicable to NAS as to any cause of action. In short, U.S. Bank

1 has not given NAS fair notice of the facts and law supporting its claim for summary judgment as
2 to each cause of action against NAS. While U.S. Bank did provide facts in its Motion, it does
3 not segregate those facts as to which apply to NAS (the foreclosure agent), as opposed to the
4 buyer in this case, SFR, or the HOA, nor does it segregate those facts supporting each cause of
5 action against NAS. NAS believes this is a violation of NRCP 56(c), which requires a party
6 moving for summary judgment to "include a concise statement setting forth each fact material to
7 the disposition of the motion which the party claims is or is not genuinely in issue . . . " NRCP
8 56(c). U.S. Bank is moving against several parties in one Motion -- the buyer of the property,
9 the HOA and the foreclosure agent, and it is required to set forth the facts that apply to each
10 cause of action against each party separately, as the conduct of the buyer, foreclosure agent and
11 the HOA -- and the law applicable to each -- are different. What is U.S. Bank alleging factually
12 and legally that NAS did to satisfy the elements of each cause of action against it? In order to
13 fulfill the requirements of a Motion for Summary Judgment pursuant to NRCP 56(c), U.S. Bank
14 should have detailed that but it didn't. The Motion should be denied on that ground alone.
15
16

17 Date: February 3, 2017

LAW OFFICES OF RICHARD VILKIN, P.C.

18
19
20 By: 

Richard Vilkin, Esq.

Nevada Bar No. 8301

1286 Crimson Sage Ave.

Henderson, NV 89012

*Attorneys for third-party defendant Nevada
Association Services, Inc.*

Certificate of E-Service

I hereby certify that on February 3, 2017, I caused to be served electronically a copy of the foregoing OPPOSITION OF NEVADA ASSOCIATION SERVICES, INC. TO MOTION FOR SUMMARY JUDGMENT BY U.S. BANK (PART 1) when filing said document on the court's Wiznet electronic filing system and requesting therein that it be E-Served to all persons who are listed for E-Service on that system for this case as follows:

Alverson Taylor Mortensen & Sanders

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Adam Knecht	aknecht@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kurt R. Bonds	efile@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kurt R. Bonds	kbonds@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Trevor R. Waite	twait@alversontaylor.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Kim Gilbert Ebron

Name	Email		Select
Diana Cline Ebron	diana@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
E-Service for Kim Gilbert Ebron	eservice@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Michael L. Sturm	mike@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tomas Valerio	staff@kgelegal.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Law Offices of Richard Vilkin, P.C.

Name	Email		Select
Richard Vilkin	richard@vilkinlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

NAS

Name	Email		Select
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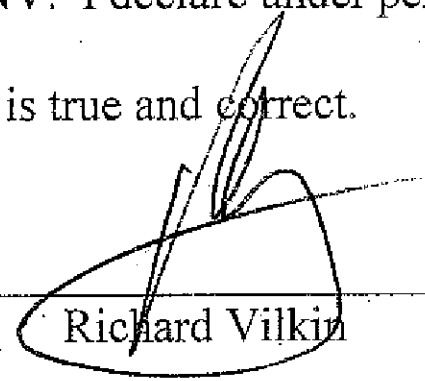
1 Brandon E. Wood brandon@nas-inc.com ☒ ☒

2 Susan E. Moses susanm@nas-inc.com ☒ ☒

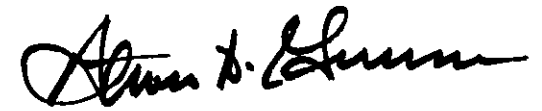
3
4 **Snell & Wilmer L.L.P.**

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Docket	Docket_LAS@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Gaylene Kim	gkim@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
John Delikanakis	jdelikanakis@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lyndsey Luxford	lluxford@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Maricris Williams	mawilliams@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Richard C. Gordon	rgordon@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Robin Perkins	rperkins@swlaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

16
17 Executed this 3rd day of February, 2017 at Henderson, NV. I declare under penalty of
18 perjury under the laws of the State of Nevada that the foregoing is true and correct.

19
20
21 
22 Richard Vilkin
23
24
25
26
27
28

TAB 18



CLERK OF THE COURT

ALVERSON, TAYLOR,
MORTENSEN & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ.
Nevada Bar #13779
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Las Vegas, NV 89117
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efile@alversontaylor.com
Attorneys for Third-Party Defendant
Copper Ridge Community Association

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, a Nevada non-
profit corporation and LUCIA PARKS, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4; NV West
Servicing, LLC, a Nevada limited liability
company, as Trustee for NASHVILLE TRUST

Consolidated Case Nos.
A-13-678814-C
A-13-688734-C

Dept No.: XXXI

THIRD-PARTY DEFENDANT
COPPER RIDGE COMMUNITY
ASSOCIATION'S JOINDER TO
THE OPPOSITION OF NEVADA
ASSOCIATION SERVICES, INC.
TO MOTION FOR SUMMARY
JUDGMENT BY U.S. BANK
(PART 1)

2270; DOES I-X; and ROE CORPORATIONS
I-X, inclusive,

Defendants.

U.S. BANK, N.A., a national association, as
Trustee for the Certificate Holders of U.S.
Bank Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-AR4,

Counterclaimant,

vs.

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

Counter Defendant.

U.S. BANK, N.A., a national association, as
Trustee for the Certificate Holders of U.S.
Bank Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-AR4,

Third-Party Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation; COPPER RIDGE
COMMUNITY ASSOCIATION, a Nevada
non-profit corporation;

Third-Party Defendants.

**THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S
JOINDER TO THE OPPOSITION OF NEVADA ASSOCIATION SERVICES, INC. TO
MOTION FOR SUMMARY JUDGMENT BY U.S. BANK (PART 1)**

Third-Party Defendant Copper Ridge Community Association, by and through their
attorneys of record, Kurt R. Bonds, Esq., and Trevor R. Waite, Esq., of the law firm Alverson,
Taylor, Mortensen & Sanders, hereby joins in the Opposition of Nevada Association Services,

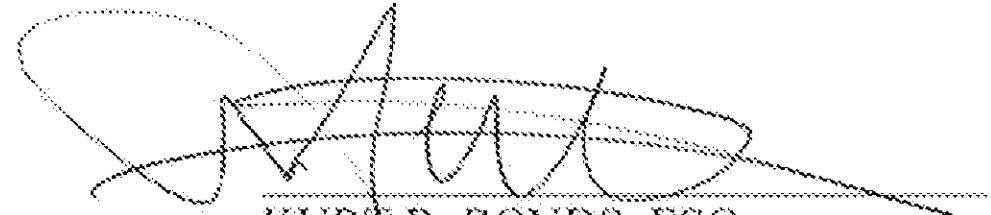
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Inc. To Motion For Summary Judgment By U.S. Bank (Part 1), and all documents attached thereto, filed on February 3, 2017.

DATED this 3 day of February, 2017.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ.
Nevada Bar #13779
7401 W. Charleston Blvd.
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(702) 384-7000
*Attorneys for Third-Party Defendant
Copper Ridge Community Association*

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 3rd day of February, 2017, I did serve, via Case Management/Electronic Case Filing, a copy of the above **THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S JOINDER TO THE OPPOSITION OF NEVADA ASSOCIATION SERVICES, INC. TO MOTION FOR SUMMARY JUDGMENT BY U.S. BANK (PART 1)** and foregoing addressed to:

Kim Gilbert Ebron		
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Diana Cline Ebron	diana@kgelegal.com	
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Michael L. Sturm	mike@kgelegal.com	
Tomas Valerio	staff@kgelegal.com	
Jacqueline A. Gilbert	jackie@kgelegal.com	
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An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

CERTIFICATE OF MAILING

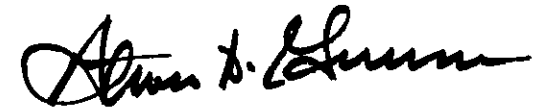
I hereby certify that on this 19th day of January, 2017, service of the foregoing **THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S JOINDER TO THE OPPOSITION OF NEVADA ASSOCIATION SERVICES, INC. TO MOTION FOR SUMMARY JUDGMENT BY U.S. BANK (PART 1)** was made this date by depositing a true copy of the same for mailing, United States Postal mail at Las Vegas, Nevada, addressed as follows:

Howard C. Kim
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

N:\kurt.grp\CLIENTS\23100\23108\pleading\Copper Ridge - Joinder to NAS opposition to USB Motion for Summary Judgment.doc

TAB 19



CLERK OF THE COURT

1 OMSJ
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6 jdelikanakis@swlaw.com
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7
8 *Attorneys for Defendant U.S. BANK, N.A., a national*
9 *banking association as Trustee for the Certificate*
10 *Holders of Wells Fargo Asset Securities Corporation,*
11 *Mortgage Pass-Through Certificates, Series 2006-AR4*

12
13 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 vs.

19 U.S. BANK, N.A., a national banking
20 association as Trustee for the Certificate
21 Holders of U.S. Bank Asset Securities
22 Corporation, Mortgage Pass-Through
23 Certificates, Series 2006-AR4; LUCIA
24 PARKS, an individual; DOES I through X; and
25 ROE CORPORATIONS I through X, inclusive,

26 Defendants.

27 AND ALL RELATED MATTERS.

Consolidated Case Nos.
A-13-678814-C
A-13-688734-C

Dept. XXXI

**U.S. BANK'S OPPOSITION TO SFR
INVESTMENTS POOL 1, LLC'S
MOTION FOR SUMMARY
JUDGMENT**

28 Defendant 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 ("U.S. Bank"), by and through its attorneys at the law firm of Snell & Wilmer, L.L.P.,
hereby submits the following Opposition to Plaintiff SFR Investments Pool 1, LLC's ("Plaintiff"
or "SFR") Motion for Summary Judgment (the "Motion")

1 The following Opposition is based upon the following Memorandum of Points and
2 Authorities, the papers and pleadings on file herein, and any oral argument the Court may permit
3 at the time of hearing.

4 **I. INTRODUCTION**

5 SFR is not entitled to summary judgment on any of its claims for numerous reasons. First,
6 the HOA sale is void *ab initio* because it violated the automatic stay of the bankruptcy court.
7 Because the HOA foreclosed on the property in violation of the bankruptcy stay, as a matter of
8 law, the HOA's foreclosure sale never happened. As a consequence, SFR is not entitled to the
9 declaration it seeks; indeed, it does not have, nor has it ever had, an interest in the subject
10 property.

11 Second, the undisputed evidence demonstrates that U.S. Bank never had notice of the
12 HOA Foreclosure Sale in this matter. SFR, whether accidentally or intentionally, cites a
13 transcript from a deposition given by U.S. Bank's witness in a *separate and unrelated matter* to
14 claim that U.S. Bank had actual notice of the HOA Foreclosure Sale. In reality, the testimony of
15 U.S. Bank's representative in *this matter* demonstrates conclusively that U.S. Bank did not
16 receive any of the HOA foreclosure notices and was completely unaware of the HOA Foreclosure
17 Sale. U.S. Bank has rebutted the presumption that the recitals in the HOA Foreclosure Deed
18 regarding the delivery of the notices are correct. They are not.

19 Third, SFR's Motion also fails because SFR cannot establish that the sale was
20 commercially reasonable, or that U.S. Bank is not entitled to equitable relief justifying the setting
21 aside of the sale. Here, the Property was sold for \$14,000, just 6 percent of the Property's fair
22 market value of \$228,000. Pursuant to the Nevada Supreme Court's ruling in *Shadow Wood v.*
23 *Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, the sales price is grossly inadequate as
24 a matter of law and is sufficient on its own to justify the setting aside of the sale.

25 However, even if the sales price were not considered grossly inadequate, the HOA
26 Foreclosure Sale must still be set aside because the inadequate price was occasioned by fraud,
27 unfairness and oppression. Not only was U.S. Bank precluded from protecting its interest in the
28 Property because it did not receive any notice of the sale, the sale also violated the automatic stay

1 put in place by the borrower Lucia Parks' bankruptcy filing. U.S. Bank properly sought relief
2 from the automatic stay to conduct its own foreclosure sale, but neither SFR nor the HOA sought
3 or obtained such relief. The sales price of the Property was necessarily and significantly
4 depressed by Parks' bankruptcy filing, which justifies a finding of commercial unreasonableness
5 and the setting aside of the sale.

6 Fourth, SFR is not entitled to quiet title in its name because it is not a bona fide purchaser.
7 SFR had constructive and record notice of U.S. Bank's Deed of Trust on the Property. SFR
8 acknowledged through deposition testimony that purchasing the Property would bring a
9 significant risk of litigation to quiet title. It thus knew of and appreciated that U.S. Bank would
10 claim an interest in the Property that survived the HOA Foreclosure Sale. Indeed, SFR itself had
11 been filing lawsuits for several months prior to the HOA Foreclosure Sale in an effort to
12 extinguish banks' security interests. SFR cannot claim that it was unaware of U.S. Bank's
13 competing interest in the Property.

14 Finally, SFR is not entitled to summary judgment on U.S. Bank's intentional interference
15 with contractual relations claim because the undisputed evidence shows that U.S. Bank has
16 established all the elements of the claim. SFR does not dispute that U.S. Bank had a contractual
17 relationship with Parks, that SFR was aware of that contract, that the HOA Foreclosure Sale
18 caused an actual disruption of the contract or that U.S. Bank has suffered damages as result.
19 SFR's argument that it did not "intentionally" disrupt the contract is without merit. By
20 purchasing the Property at the HOA Foreclosure Sale, SFR necessarily intended to obtain the
21 Property free and clear of U.S. Bank's security interest. Indeed, extinguishing the Deed of Trust
22 is the very purpose of this suit. U.S. Bank has established all of the elements of this claim and
23 SFR is not entitled to summary judgment in its favor.

24 For all of these reasons, U.S. Bank requests that the Court deny SFR's Motion.

25 ///

26 ///

27 ///

28 ///

1 **II. FACTUAL BACKGROUND**

2 U.S. Bank incorporates its statement of undisputed material facts as outlined in its
3 Renewed Motion for Summary Judgment previously filed on January 24, 2017.

4 **III. ARGUMENT**

5 **A. The HOA Foreclosure Sale Is *Void ab Initio* because it Violated the Automatic**
6 **Bankruptcy Stay.**

7 SFR cannot bear its burden of proving that title should be quieted in its name because SFR
8 never acquired a valid interest in the Property. To the contrary, the HOA Foreclosure Sale, and
9 by extension SFR's claimed interest in the Property, is void because the HOA Foreclosure Sale
10 violated the provisions of 11 U.S.C. § 362, which precludes "any act to create, perfect, or enforce
11 any lien against property of the estate" and "any act to create, perfect, or enforce against property
12 of the debtor any lien to the extent that such lien secures a claim that arose before the
13 commencement of the [bankruptcy] case." 11 U.S.C.A. § 362(a)(4)-(5).

14 Generally, the automatic stay arises at the filing of the bankruptcy petition and continues
15 with respect to an action against property of the estate until the property is no longer property of
16 the estate. With respect to other actions, the stay continues until the earlier of the closure of the
17 case, the dismissal of the case, or the grant or denial of a discharge. 11 U.S.C. § 362(c). As the
18 Ninth Circuit has explained, "the automatic stay is self-executing" and "sweeps broadly,
19 enjoining the commencement or continuation of any judicial, administrative, or other proceedings
20 against the debtor." *In re Wardrobe* (quoting *In re Gruntz*, 202 F.3d 1074, 1081-82 (9th Cir.
21 2000) (en banc)). Through its broad scope, the stay not only provides the debtor with protection
22 from its creditors, it "gives the bankruptcy court an opportunity to harmonize the interests of both
23 debtor and creditors while preserving the debtor's assets for repayment and reorganization of his
24 or her obligations." *Id.* (internal quotation and citation omitted).

25 In light of the above, the Ninth Circuit has long held that acts taken in violation of the
26 automatic stay in bankruptcy are *void ab initio*. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir.
27 1992). Critically, the voidness of the act is not dependent upon intent or willfulness. *Id.* To the
28 contrary, the act is void by operation of law. *Id.* The rule is self-executing, such that it is not

1 necessary for the bankruptcy court to declare the act in question void. *Id.* The party relying on
2 the challenged act instead bears the burden of seeking a determination from the bankruptcy court
3 that the stay did not preclude it. *Id.* at 572.

4 There is no dispute that Parks filed her bankruptcy petition on August 23, 2010, or that
5 she remained in bankruptcy until September 27, 2014—more than 18 months after the HOA sold
6 the Property in violation of 11 U.S.C. § 362(a). Nor is there any dispute that despite the pending
7 bankruptcy, the HOA recorded the HOA Lien without seeking relief from the automatic stay, or
8 that the HOA, through its agent, NAS, went on to record the HOA Notice of Default, record the
9 HOA Sale Notice, and even purportedly sell the Property through foreclosure without ever
10 seeking, much less obtaining, relief from the bankruptcy stay. Nor did SFR seek a determination
11 from the bankruptcy court that the HOA Foreclosure Sale through which it claims to have
12 acquired title to the Property did not violate the automatic stay; to the contrary, SFR never
13 attempted to determine whether the Property was subject to the stay. Tr. of Deposition of Paulina
14 Kelso, as Rule 30(b)(6) designee for SFR, May 17, 2016 (“Kelso Dep.”) at 27:8-20, attached as
15 Exhibit 4 to U.S. Bank’s Mot. for Summ. J. Had it done so, SFR would have discovered that
16 Parks was in bankruptcy and that the HOA’s efforts to sell the Property violated 11 U.S.C. §
17 362(a). But regardless of SFR’s diligence, or lack thereof, the sale is void.

18 As a matter of law; SFR never obtained valid title to the Property, and SFR is not entitled
19 to a declaration quieting title in its name or to any of the other relief it seeks in this Consolidated
20 Action. SFR’s Motion should be denied for this reason alone.

21 **B. The Foreclosure Deed Recitals Are Not Conclusive Proof of Statutory**
22 **Compliance.**

23 Plaintiff is not entitled to rely on the Foreclosure Deed’s recitals and the Foreclosure Deed
24 is not conclusive proof of compliance with the notice requirements of NRS 116.3116, *et seq.* (the
25 “Statute”). In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, the Nevada Supreme Court noted
26 that only a “proper foreclosure . . . will extinguish a first deed of trust.” *SFR Investments Pool 1,*
27 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 419 (2014). The Supreme Court further noted that in order
28 for an HOA foreclosure to be valid, “a Nevada HOA must notify the owner of delinquent

assessments,” “must provide the homeowner notice of default and election to sell,” and “must give notice of the sale to the owner . . .” *SFR Investments*, 334 P.3d at 411.

Plaintiff’s assertion that it entitled to rely on the deed recitals is undermined by the Nevada Supreme Court’s decision in *Shadow Wood Homeowners Ass’n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016). In *Shadow Wood*, the Nevada Supreme Court reaffirmed that “courts retain the power to grant equitable relief from a defective foreclosure sale when appropriate despite NRS 116.31166.” *Id.* at 1110-11, citing *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (adopting inadequate price plus fraud, oppression or unfairness standard); *Nev. Land & Mortg. Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) (“In the proper case, the trial court may set aside a trustee’s sale upon the grounds of fraud or unfairness.”). The Court further clarified that recitals in statutes such as NRS 116.31166 “do not defeat equitable relief in a proper case; rather, such recitals are ‘conclusive, in the absence of grounds for equitable relief.’” *Shadow Wood*, 366 P.3d at 1112, quoting *Holland v. Pendleton Mortg. Co.*, 61 Cal.App.2d 570, 143 P.2d 493, 496 (1943) (emphasis in original).

For the reasons shown below, U.S. Bank is entitled equitable relief justifying the setting aside of the HOA foreclosure sale.

1. U.S. Bank is entitled to equitable relief because it did not receive actual notice of the HOA sale.

The Court should set aside the HOA Foreclosure Sale because the evidence conclusively demonstrates that U.S. Bank did not receive any of the HOA foreclosure notices in this case. SFR’s Motion incorrectly asserts that U.S. Bank received actual notice of the HOA Foreclosure Sale. (Mot. for Summ. J., 5:8-17.) This is false. In support of this contention, Plaintiff has, either inadvertently or intentionally, cited a deposition transcript¹ from a different case involving a separate property as “evidence” that U.S. Bank received notice of the HOA foreclosure sale. (Mot. for Summ. J., 5:8-12; Exhibit 3 to Mot.) Instead, U.S. Bank’s corporate representative,

¹ The deposition transcript cited by a Plaintiff and attached to its Motion for Summary Judgment is from an unrelated matter filed in the U.S. District Court and styled *Wells Fargo Bank, N.A. v. SFR Investments Pool 1, LLC* and bears case no. 3:15-cv-00240-MMD-VPC. Although the deponent, Robert Ferguson, testified in both cases, his testimony in the transcript attached to Plaintiff’s Motion is not applicable to this case.

1 Robert Ferguson, testified that U.S. Bank did not receive *any* HOA foreclosure notices prior to
2 the date of the HOA foreclosure:

3 Q. I'm asking if [U.S. Bank] knew, from any -- from any document,
4 phone call, any type of notification, not just receipt of a notice
5 from -- directly from the association, **did you know about the**
association foreclosure sale before the date of the association
foreclosure sale?

6 A. No.

7 ***

8 Q. Was Wells Fargo -- or, sorry -- U.S. Bank aware that the
9 association had a lien against the property before the date of
the association foreclosure sale?

10 A. No.

11 Deposition of Robert Ferguson ("Ferguson Depo."), 61:10-16; 62:1-5, a copy of which is attached
12 as **Exhibit A** (emphasis added).

13 Additionally, Plaintiff's Motion ignores U.S. Bank's discovery responses on this same
14 issue:

15 **REQUEST FOR ADMISSION NO. 1:**

16 Admit that you were aware of the Association's lien on the
17 Property before March 1, 2013.

18 **RESPONSE:**

19 Deny.

20 **REQUEST FOR ADMISSION NO. 2:**

21 Admit that you were aware of the Association foreclosure sale
22 before March 1, 2013.

23 **RESPONSE:**

24 Deny.

25 **REQUEST FOR ADMISSION NO. 3:**

26 Admit that you did not attend the Association foreclosure sale on
27 March 1, 2013.

28

RESPONSE:

Admit, as U.S. Bank cannot attend something for which it was not notified or had no knowledge of.

See U.S. Bank's Responses to SFR Investments Pool 1, LLC's First Request for Admissions, attached hereto as **Exhibit B**.

Similarly, this evidence rebuts the presumptions in NRS 47.250 that a mailed document was received in the regular course. Here, the testimony from Mr. Ferguson proves that none of the notices that were claimed to be mailed were received by U.S. Bank. **Ex. A**, Ferguson Depo., 61:10-16; 62:1-5.

Plaintiff has produced no evidence to establish that U.S. Bank received the notice of default or notice of sale. To the contrary, all evidence establishes that U.S. Bank never received any notice of the HOA foreclosure and had no knowledge of the HOA lien prior to the sale. By establishing that it did not receive any of the notices required by NRS 116, U.S. Bank has rebutted the presumption that recitals in the foreclosure deed are correct. The truth is that U.S. Bank received none of the required notices.

2. *The HOA Foreclosure Sale was unfair and improper because the property was subject to Parks' active bankruptcy case.*

As is discussed more fully above, the HOA sale was unfair and improper because it violated the automatic bankruptcy stay. The sale is therefore void *ab initio*. *In re Schwartz*, 954 F.2d at 571. Because the rule is self-executing, there is no need for the bankruptcy court to declare the HOA Foreclosure Sale void. *Id.* Instead, the sale is void by operation of law. *Id.*

Even if the Court were to rule that the automatic stay somehow did not void the HOA sale, the existence of Parks' bankruptcy constitutes sufficient unfairness and oppression as to depress the sales price and result in a grossly inadequate sales price. Parks' bankruptcy was a matter of public record, and the Property was included as an asset in the bankruptcy estate. See Schedule A – Real Property and Schedule D – Creditors Holding Secured Claims, attached hereto as **Exhibit C**. The very existence of the bankruptcy stay is sufficient to cause a depression in the

1 sales price, as potential bidders would have reasonably expected that the HOA sale would be void
2 for violating the automatic bankruptcy stay.

3 U.S. Bank, understanding the impact and importance of the automatic stay, properly
4 moved in the bankruptcy court for an order for relief from the stay in order to secure its security
5 interest in the Property. No other party, including SFR and the HOA, sought or obtained relief
6 from the automatic bankruptcy stay.

7 It was patently unfair and oppressive for the HOA to sell the Property while it was subject
8 to the automatic bankruptcy stay. That unfairness and oppression resulted in a severely
9 inadequate sales price. The Court is therefore justified in setting aside the sale for equitable
10 reasons.

11 **B. The HOA Sale Was Commercially Unreasonable.**

12 *1. The sale price was grossly inadequate as a matter of law.*

13 SFR's argument that title is presumed valid is a red herring. (Mot. for Summ. J., 8:22-
14 10:28.) In any event, U.S. Bank offered evidence to overcome any presumption that SFR's title is
15 valid. The evidence shows that the sale price of \$14,000 for a property with a value of \$228,000²
16 was far less than 20 percent of the Property's value³, and the Nevada Supreme Court recently
17 made clear that such "gross" inadequacy renders a foreclosure defective. *See Shadow Wood*
18 *Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, *Shadow Wood*, 366 P.3d at 1112-13
19 (relying on the Restatement (Third) of Property: Mortgages § 8.3, which provides that a
20 "foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly
21 conducted in compliance with applicable law does not render the foreclosure defective unless the
22 price is grossly inadequate."). In other words, under the Restatement, a sufficiently low price
23 alone can render a sale commercially unreasonable. *See id.* The Restatement provides guidance
24 about what constitutes "gross inadequacy," advising that while "[g]ross inadequacy cannot be
25 precisely defined in terms of a specific percentage of fair market value[, g]enerally ... a court is
26

27 ² This figure, which represents the only evidence of the property's value at the time of the foreclosure sale, was
28 provided by U.S. Bank's expert appraiser, Scott R. Dugan. *See* Exhibit 1 to U.S. Bank's Mot. for Summ. J. SFR did
not disclose an initial expert witness to opine on the fair market value of the Property.

³ SFR's \$14,000 purchase price represents only 6 percent of the \$228,000 fair market value.

1 warranted in invalidating a sale where the price is less than 20 percent of fair market value.” *Id.*
2 (quoting Restatement (Third) of Property: Mortgages § 8.3, cmt. b).

3 *Centeno v. JPMorgan Chase Bank, N.A.*, cited by SFR, does not state anything to the
4 contrary. Consistent with *Shadow Wood*, the Court in *Centeno* stated that a “low” sales price also
5 requires a showing of fraud, unfairness, or oppression, but does not mention a “grossly
6 inadequate” price, which *Shadow Wood* distinguished. Had *Shadow Wood* required a showing of
7 fraud, oppression, or unfairness, even for sales for less than 20 percent of the fair market value, it
8 would not have divided its analysis as it did: first determining whether the price was grossly
9 inadequate as a matter of law, following the Restatement, and second, determining whether fraud,
10 oppression, or unfairness existed to support a finding of commercial unreasonableness where the
11 purchase price exceeded that threshold. Thus, under *Shadow Wood*, a sale for less than 20
12 percent of the fair market value should be set aside as commercially unreasonable, while a sale in
13 excess of 20 percent of the fair market value may be set aside only upon a showing of fraud,
14 oppression, or unfairness.

15 When the Supreme Court of Arizona adopted section 8.3, it explicitly synthesized the
16 Restatement’s 20 percent rule with the earlier precedent and majority rule that inadequate price
17 “standing alone would not justify setting aside [a] trustee’s sale[.] there must be in addition proof
18 of some element of fraud, unfairness, or oppression as accounts for and brings about the
19 inadequacy of price.” *In re Krohn*, 52 P.3d 774, 781 (Ariz. 2002). The Arizona Supreme Court,
20 however, concluded that “gross inadequacy” is “more than inadequacy,” and sufficient to justify
21 setting aside a sale without any additional showing of fraud, unfairness, or oppression. *Id.* Many
22 other jurisdictions are in accord. See, e.g., *Burge v. Fid. Bond & Mortgage Co.*, 648 A.2d 414,
23 419 (Del. 1994) (holding that, while mere inadequacy of price is an insufficient ground for setting
24 aside a judicial sale, a grossly inadequate price is sufficient); *Arsali v. Chase Home Fin., LLC*, 79
25 So. 3d 845, 847 (Fla. Dist. Ct. App. 2012) approved as clarified, 121 So. 3d 511, 518 (Fla. 2013)
26 (holding that the court should vacate a foreclosure sale if there was *either* fraud or irregularity in
27 the sale *or* if the foreclosure sale bid was grossly or startlingly inadequate); *Baskurt v. Beal*, 101
28 P.3d 1041, 1045 (Alaska 2004) (adopting the Restatement, and recognizing that a foreclosure sale

1 is voidable where *either* the price is grossly inadequate *or*, “where the foreclosure sale price is not
2 grossly inadequate, a low price coupled with some other irregularity in the foreclosure
3 proceeding”); *Schweitzer v. Stroh*, 30 S.E.2d 689, 692 (Va. 1944) (holding that sale is voidable
4 based either on grossly inadequate price or additional circumstances of unfairness).

5 So construed, *Shadow Wood* brings Nevada in line with the many States that set aside
6 sales for prices of less than 20 percent of fair market value. *See, e.g., Will v. Mill Condominium*
7 *Owners’ Ass’n*, 848 A.2d 336 (Vt. 2004) (voiding an HOA super-priority foreclosure sale,
8 holding that a price of \$3,510 was not commercially reasonable when the fair market value was
9 \$70,000); *see also Allied Steel Corp v. Cooper*, 607 So.2d 113, 120 (Miss. 2006) (a sale for less
10 than 40 percent of fair market value “shocks the conscience”); *Armstrong v. Csurilla*, 817 P.2d
11 1221, 1234 (N.M. 1991) (foreclosure sales that fall into the 10-40 percent range should not be
12 confirmed absent good reasons to do so); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.
13 1990) (approximately 20 percent of fair market value); *Ballentyne v. Smith*, 205 U.S. 285 (1907)
14 (14 percent of fair market value); *First Nat. Bank of York v. Critel*, 555 N.W.2d 773 (Neb. 1996)
15 (reversing trial court’s confirmation of foreclosure sale that yielded 14% of the appraised value).

16 Because the \$14,000 purchase price here is only 6 percent of the \$228,000 fair market
17 value on the sale date, and thus far below the 20 percent threshold, the price was grossly
18 inadequate as a matter of law.

19 2. *The 20 percent threshold takes into account the economics of a forced*
20 *sale.*

21 Fair market value should not be disregarded simply because a foreclosure is a “forced
22 sale,” as SFR suggests. (Mot. for Summ. J., 13:13-15:10.) The Restatement’s 20 percent
23 threshold for gross inadequacy was defined in the context of a forced sale, and acknowledges the
24 fact that prices are lower as the result of such sales. Accordingly, the authors of the Restatement
25 reached that percentage in light of forced sales, and by its adoption in *Shadow Wood*, the Court
26 did as well. Indeed, the Restatement acknowledges that the “foreclosure process commonly fails
27 to produce the fair market value for foreclosed real estate.” Restatement (Third) of Property:
28 Mortgages § 8.3, cmt. a (citing *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 539 (1994)). The

1 Comment further notes the well-accepted reasons for low bids at foreclosure sales. *Id.* However,
2 it nonetheless sets a threshold for a grossly inadequate price in the context of a forced sale. The
3 entirety of § 8.3 concerns forced sales; if it did not to apply to forced sales, it would be a nullity.

4 3. *There is significant evidence of fraud, unfairness and oppression sufficient*
5 *to result in an inadequate sales price.*

6 Even if Nevada law required evidence of fraud, oppression, or unfairness in addition to a
7 grossly inadequate sale price in order to set aside an HOA foreclosure sale as commercially
8 unreasonable, there is significant evidence of unfairness here.

9 First, the sale was unfair because U.S. Bank did not any of the foreclosure notices and had
10 no notice of the foreclosure proceedings. Ex. A, Ferguson Depo., 61:10-16; 62:1-5. U.S. Bank
11 cannot be charged with failing to act to protect its interest in the Property when it had no notice
12 whatsoever that its interest might be in jeopardy in this case. This resulted in a significantly
13 lower sales price, because the bidders at the sale knew that the Property was encumbered by a
14 deed of trust.

15 Second, even if U.S. Bank had received all of the notices, none of the notices contained
16 any evidence or information that the HOA was foreclosing on any super-priority portion of the
17 HOA lien. And unlike the warning to the homeowner that failure to pay the HOA lien could
18 result in a loss of the home, the Notice of Default did not provide warning that the sale could
19 extinguish a first deed of trust. Thus, not even the Notice of Default nor the Notice of Sale put
20 U.S. Bank on notice that any action was needed to protect the Deed of Trust. Therefore, even if
21 evidence of unfairness is required to set aside an HOA foreclosure sale as unfair, that evidence
22 exists in this case and the sale should be set aside.

23 Finally, as described above, the HOA foreclosure sale was unfair, fraudulent and
24 oppressive because it violated the bankruptcy court's automatic stay. Parks' bankruptcy was a
25 matter of public record and therefore served as constructive notice to all bidders that purchasing
26 the Property at the sale carried a significant risk. The sales price was necessarily depressed due to
27 the likelihood that the sale would be voided due to the automatic stay.

28 ///

4. *U.S. Bank is not precluded from seeking an equitable remedy.*

Without citing authority, SFR contends that U.S. Bank is not entitled to equitable relief even where there is a showing of fraud, unfairness, or oppression because it is a lienholder and not a homeowner. (Mot. for Summ. J., 11:1-14.) SFR seeks to negate *Shadow Wood* by arguing that equitable relief is available to a homeowner but not a lienholder, but the *Shadow Wood* court made no such distinction. 132 Nev. Adv. Op. 5, 366 P.3d 1105.

SFR also contends that U.S. Bank cannot seek equity because it has an adequate remedy at law in the form of money damages. (Mot. for Summ. J., at 11:15-22.) However, as made clear in *Munger v. Moore*, cited by SFR, a party seeking to “attack” a sale of real property may seek either an equitable remedy or a remedy at law. 89 Cal. Rptr. 323, at *6 (Cal. Ct. App. 1970) (allowing damages for wrongful sale while noting that the “traditional method by which [a sale of real property] is attacked is by suit in equity to set aside the sale”). It is unclear against whom SFR is suggesting U.S. Bank has a damages remedy; if SFR would prefer to pay damages than take title subject to the Deed of Trust or have the sale set aside, that would be fine, though U.S. Bank believes SFR is suggesting U.S. Bank has a remedy against the borrower. Of course, the contractual remedy of foreclosure is included in a deed of trust is to ensure U.S. Bank would have a remedy in the event of this precise situation where the borrower is not making payments and pursuing damages would be futile. If the Deed of Trust is extinguished, U.S. Bank *cannot* seek the remedy of foreclosure and, thus, does not have an adequate remedy.

C. SFR Is Not A Bona Fide Purchaser Because It Had Notice Of The Deed of Trust and Did Not Pay Valuable Consideration.

As SFR acknowledges, a bona fide purchaser is one who purchases (1) for valuable consideration and (2) without notice of a competing or superior interest in the same property. See *Berge v. Fredericks*, 95 Nev. 183, 187 (1979); Mot. for Summ. J., 17:28-18:1. The purchaser, however, is required to demonstrate that “the purchase was made in good faith, for a valuable consideration.” *Berge*, 95 Nev. at 186, 591 P.2d at 247.

While SFR paid a small amount for its purchase, the amount was grossly inadequate as a matter of law, as explained *supra*, and therefore, was not valuable consideration.

Moreover, SFR purchased the Property knowing that the Deed of Trust holder would claim a competing interest. In arguing that fair market value is inapplicable, SFR argues that the value of the property was reduced due to "[t]he nature of the litigation taking place at the time ... and the resulting inability to obtain title insurance." (Mot. for Summ. J., 13:20-21.) Additionally, SFR's corporate representative admitted during her deposition that SFR knew that purchasing this property carried a significant risk of litigation. See Deposition of Paulina Kelso ("Kelso Depo."), 62:12-63:8, 64:22-23, attached hereto as **Exhibit D**. With regard to the specific property at issue in this case, Ms. Kelso stated the following:

Q. Okay. So let's talk about the risk of litigation. You mentioned that was one of the risks that SFR undertakes when bidding on one of these houses. What are the risks of litigation? What are the known risks to SFR when they go to bid on this house, for instance? What were the known risks of litigation with regard to this house?

MS. HANKS: Objection. Scope.

THE WITNESS:

A. Specific to this house, the fact that they're purchasing the house at an HOA foreclosure sale, that would be the risk of litigation.

BY MR. DELIKANAKIS:

Q. Why is there a risk of litigation?

MS. HANKS: Objection. Scope.

THE WITNESS:

A. The reason that there's a risk of litigation is for one, SFR has — at this time for this house, had known — had some experience in — and knew probably that there was chance that there could be litigation.

Ex. D, Kelso Depo., 65:22-66:16 (emphasis added). Ms. Kelso further testified:

Q. When SFR purchases a property encumbered by a deed of trust at an HOA sale, does it know even before the sale it's more likely than not going to end up in litigation?

MS. HANKS: Objection. Scope.

THE WITNESS:

A. I wouldn't say more likely than not, but SFR does know that there is a risk.

Ex. D, Kelso Depo., 70:17-23.

1 SFR cannot have it both ways – arguing both that it had no notice of a competing interest,
2 and that its purchase price was justified because it was basically buying a title dispute.
3 Additionally, by the time SFR purchased the Property in March 2013, it had already filed lawsuits
4 for properties it had purchased where banks took the position that the deed of trust was not
5 extinguished. *See, e.g., SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (2014) (where SFR
6 filed an action to quiet title and enjoin deed of trust trustee’s sale in December, 2012). Because
7 SFR knew the status of the Deed of Trust would be at issue, SFR is not a bona fide purchaser.

8 **D. U.S. Bank States a Valid Claim for Intentional Interference with Contract.**

9 Summary judgment on U.S. Bank’s intentional interference claim is not appropriate here
10 because U.S. Bank has established all of the elements of the claim. Intentional interference with
11 contractual relations requires the claimant to establish: (1) the existence of “a valid and existing
12 contract; (2) the defendant’s knowledge of the contract; (3) intentional acts intended or designed
13 to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting
14 damage.” *J.J. Industries, LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

15 SFR produces no evidence to refute the elements of this claim. Instead, U.S. Bank has
16 shown that the irregularities with the HOA’s foreclosure sale induced a breach of the Deed of
17 Trust by removing Parks’ ability to tender the Property as security for the loan. SFR is not
18 entitled to summary judgment on this claim.

19 First, U.S. Bank has a “valid and existing” contract with Parks via the Deed of Trust. SFR
20 does not dispute this. Nor does SFR dispute that Parks breached its contract with U.S. Bank
21 when the Property, and thus U.S. Bank’s security, was sold.

22 Second, SFR does not argue that it was unaware of the contractual relationship with Parks.
23 Nor could SFR make such an argument. Nevada has long recognized the “well-known principle
24 that the public recording of real estate deeds constitutes constructive notice of the transaction.”
25 *Bemis v. Estate of Bemis*, 114 Nev. 1021, n. 2, 967 P.2d 437 (1998), *citing Allen v. Webb*, 87 Nev.
26 261, 269, 485 P.2d 677, 682 (1971). The law, therefore, recognizes that prior to purchasing the
27 Property, SFR had notice of the Deed of Trust, and therefore the contract, between U.S. Bank and
28 Parks.

1 Third, U.S. Bank has shown evidence of SFR's intentional acts designed to disrupt the
2 contract. In arguing that it did not intend to induce a breach of the Deed of Trust, SFR ignores
3 the purpose of the Deed of Trust. Parks was required to be "lawfully seised of the estate hereby
4 conveyed and has the right to grant and convey the Property" See Deed of Trust at p. 3,
5 Exhibit 1-D to Plaintiff's Mot. f. Summ. J. There is no doubt that Parks' ability to grant and
6 convey the Property, an ability SFR intended to eliminate by purchasing the Property and filing
7 the instant lawsuit, was an essential covenant of the Deed of Trust. SFR intended to, and in fact
8 did, cause Parks to breach that covenant of the Deed of Trust.

9 Additionally, SFR's knowingly interfered with the contract between U.S. Bank and the
10 Borrower by wrongfully obtaining possession of the Property in violation of the bankruptcy stay.
11 SFR never sought relief from the automatic stay in bankruptcy court. Ex. D, Kelso Depo., 57:20-
12 58:15. U.S. Bank, on the other hand, appeared in Parks' bankruptcy case and moved for relief
13 from the automatic stay in order to exercise its rights under the Deed of Trust. In contrast, SFR
14 violated the stay, of which it had constructive notice, by purchasing the Property at the HOA sale.
15 SFR's purchase of the Property disrupted U.S. Bank's ability to foreclose on the Property, which
16 was its right under the Deed of Trust. SFR wrongfully obtained possession of the Property and
17 has attempted to extinguish U.S. Bank's security interest.

18 Finally, U.S. Bank has been damaged by the loss of its security interest, which is a direct
19 consequence of SFR's actions. SFR does not dispute this. Indeed, extinguishing U.S. Bank's
20 Deed of Trust is the central objective of SFR's lawsuit.

21 **E. SFR Is not Entitled to Summary Judgment on U.S. Bank's Quiet Title or**
22 **Wrongful Foreclosure Claims.**

23 For the reasons more fully described above, the undisputed facts in this case preclude an
24 order quieting title to the Property in SFR and rather support U.S. Bank's claim for wrongful
25 foreclosure. For the same reasons, SFR is not entitled to summary judgment on its own claim for
26 wrongful foreclosure.

27 First, as demonstrated above in Section A.1., the undisputed facts establish that U.S. Bank
28 did not receive any of the HOA foreclosure notices. Moreover, U.S. Bank has rebutted the

1 presumptions contained in the Foreclosure Sale regarding compliance with the HOA Foreclosure
2 Statute. Ex. A, Ferguson Depo., 61:10-16; 62:1-5. Second, U.S. Bank established that the HOA
3 Foreclosure Sale was wrongful because it was commercially unreasonable. The price obtained by
4 the HOA and paid by SFR is, by law, grossly inadequate because it resulted in a sales price that
5 was only 6 percent of the fair market value of the Property. The HOA Sale was also unfair and
6 wrongful because it violated the bankruptcy court's automatic stay. Because the HOA
7 Foreclosure Sale was wrongful, U.S. Bank's Deed of Trust survived and U.S. Bank's later
8 foreclosure sale was valid.

9 **IV. CONCLUSION**

10 For the foregoing reasons, U.S. Bank respectfully requests that this Court DENY Plaintiff
11 SFR Investments Pool 1, LLC's Motion for Summary Judgment in its entirety.

12 DATED February 7, 2017.

SNELL & WILMER LLP.

13
14 By: /s/ Daniel S. Ivie
15 John S. Delikanakis, Esq.
16 Daniel S. Ivie, Esq.
17 3883 Howard Hughes Parkway, Ste. 1100
18 Las Vegas, Nevada 89169
19 Attorneys for Defendant U.S. BANK, N.A., a
20 national banking association as Trustee for
21 the Certificate Holders of Wells Fargo Asset
22 Securities Corporation, Mortgage Pass-
23 Through Certificates, Series 2006-AR4
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On February 7, 2017, I caused to be served a true and correct copy of the foregoing **U.S. BANK'S OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** by submitting it to the above-entitled Court for electronic filing and/or service upon the Court's Service list pursuant to the Eighth Judicial District Court's Administrative Order 14-2 dated May 9, 2014.

DATED: February 7, 2017

/s/ Gaylene Kim

An Employee of Snell & Wilmer L.L.P.

25720625

EXHIBIT A

EXHIBIT A

In The Matter Of:
SFR Investments Pool 1, LLC vs.
U.S. Bank, N.A., et al.

30(b)(6) Robert Ferguson
February 10, 2016



Mira-U-Script® with Word Index

30(b)(6) Robert Ferguson - February 10, 2016
SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.

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<p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,) Plaintiff,) vs.) CASE NO: A-13-678814-C) CONSOLIDATED WITH) CASE NO: A-13-688734-C US BANK, N.A., a national banking) DEPT NO: XXXI association as Trustee for the) Certificate Holders of Wells Fargo) Asset Securities Corporation,) Mortgage Pass-Through Certificates,) Series 2006-AR4 and LUCIA PARKS,) an individual, DOES I through X,) and ROE CORPORATIONS I through X,) inclusive,) Defendants.)</p> <p>SFR INVESTMENTS POOL 1, LLC, a) DEPOSITION OF: Nevada limited liability company,) ROBERT FERGUSON Plaintiff,) PURSUANT TO NRCP 30(B)(6) vs.) PERSON MOST KNOWLEDGEABLE) U.S. BANK US BANK, N.A., a national banking) Taken at: association as Trustee for the) The Law Offices of Certificate Holders of Wells Fargo) Kim Gilbert Ebron Asset Securities Corporation,) Suite 110 Mortgage Pass-Through Certificates,) 7625 Dean Martin Drive Series 2006-AR4; NV WEST SERVICING,) Las Vegas, Nevada 89139 LLC, a Nevada limited liability) company, as Trustee for NASHVILLE) on Wednesday, TRUST 2270; DOES I-X;) February 10, 2016 and ROES 1-10, inclusive) at 3:21 p.m. Defendants.)</p>	<p>1 APPEARANCES:</p> <p>2 For Plaintiffs SFR Investments Pool 1, LLC:</p> <p>3 LAW OFFICES OF KIM GILBERT EBRON 4 BY: DIANA S. CLINE EBRON, ESQ. Suite 110 5 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 6 TEL: (702) 485-3300 FAX: (702) 485-3301 7 E-mail: Diana@hkimlaw.com</p> <p>8 For Third-Party Defendants Copper Ridge Community 9 Association:</p> <p>10 ALVERSON, TAYLOR, MORTENSEN & SANDERS 11 TAYLOR L. WAITE, ESQ. 7401 West Charleston Boulevard 12 Las Vegas, Nevada 89117-1401 TEL: (702) 384-7000 13 FAX: (702) 385-7000 E-mail: TWaite@alversontaylor.com</p> <p>14 For Third-Party Defendant Nevada Association 15 Services, Inc:</p> <p>16 THE LAW OFFICES OF RICHARD VILKIN, P.C. 17 BY: RICHARD J. VILKIN, ESQ. 1286 Crimson Sage Avenue 18 Henderson, Nevada 89012 TEL: (702) 476-3211 19 FAX: (702) 476-3212 E-mail: Richard@vilkinlaw.com</p> <p>20 For Defendant U.S. Bank:</p> <p>21 SNELL & WILMER, LLP 22 BY: JOHN S. DELIKANAKIS, ESQ. 3883 Howard Hughes Parkway 23 Suite 1100 Las Vegas, Nevada 89169 24 TEL: (702) 784-5200 FAX: (702) 784-5252 E-mail: JDelidanakis@swlaw.com</p> <p>25 Also Present: Brian O'Laughlin</p>
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<p>NV WEST SERVICING, LLC, a Nevada) limited company, as Trustee for) NASHVILLE TRUST 2270,) Cross-Claimant,) vs.) NATIONAL DEFAULT SERVICING) CORPORATION, an Arizona) Corporation; DOES XI through XX,) inclusive,)</p> <p>DEPOSITION OF ROBERT FERGUSON PURSUANT TO NRCP 30(B)(6) PERSON MOST KNOWLEDGEABLE U.S. BANK</p> <p>Taken at The Law Offices of Kim Gilbert Ebron 7625 Dean Martin Drive Suite 110 Las Vegas, Nevada</p> <p>on Wednesday, February 10, 2016 3:21 p.m.</p> <p>Job No. 21227 Depo International - Las Vegas Reported by: Andrea Martin, CSR, RPR, NV CCR 887 Certified Realtime Reporter</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION: PAGE</p> <p>4 EXAMINATION BY MS. EBRON 7</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 Las Vegas, Nevada; Wednesday, February 10, 2016

2 3:21 p.m.

3 -oOo-

4 (In an off-the-record discussion held

5 prior to the commencement of the

6 proceedings, counsel agreed to waive the

7 court reporter's requirements under Rule

8 30(b)(4) of the Nevada Rules of Civil

9 Procedure.)

10 ROBERT FERGUSON,

11 having been first duly sworn by the court reporter

12 to testify to the truth, the whole truth, and

13 nothing but the truth, was examined and testified

14 under oath as follows:

15 EXAMINATION

16 BY MS. EBRON:

17 Q Good afternoon. I'm Diana Cline Ebron. I

18 represent SFR Investments Pool 1, LLC, in this

19 matter, as well as the last one.

20 Can you please state your name for the

21 record.

22 A Robert Ferguson, F-E-R-G-U-S-O-N.

23 Q And you're employed by Wells Fargo Bank,

24 N.A.?

25 A I am.

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1 MS. EBRON: I'm going to let counsel go

2 ahead and represent themselves so we know who all is

3 here.

4 MR. WAITE: Trevor Waite on behalf of

5 Third-Party Defendants Copper Ridge Community

6 Association.

7 MR. VILKIN: Richard Vilkin on behalf of

8 Third-Party Defendant, Nevada Association Services,

9 Inc.

10 SPEAKER1: Brian O'Laughlin, in-house with

11 Wells, Fargo.

12 MR. DELIKANAKIS: John Delikanakis with

13 Snell & Wilmer on behalf of U.S. Bank.

14 BY MS. EBRON:

15 Q Before we started today, we discussed with

16 counsel that we would incorporate background

17 information, your employment history, that type of

18 thing, from a deposition taken on March 24th,

19 2015, Case No. A-13-686489-C.

20 Are you okay with that?

21 A Yes.

22 Q Is there anything you wanted to update?

23 A In the deposition transcript you just

24 referenced, I used to be a notary with the state of

25 Oregon, and I did not renew that, so I'm no longer a

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1 notary.
2 Q Thank you.
3 (Deposition Exhibit 1 was marked for
4 identification.)
5 **BY MS. EBRON:**
6 Q Can you please take a look at what's been
7 marked as Exhibit 1.
8 A Okay.
9 Q Do you recognize this document?
10 A I do.
11 Q What is it?
12 A This is a notice of deposition for today's
13 deposition.
14 Q This is for the deposition of U.S. Bank,
15 N.A., a National Banking Association, as Trustee for
16 the Certificate Holders of Wells Fargo, Asset
17 Securities Corporation, Mortgage Pass-Through
18 Certificate, Series 2006-AR4.
19 Whenever I refer to "U.S. Bank," I'm going
20 to be referring to it as "the trustee." Okay?
21 A Okay.
22 Q If I refer to "the trust," I'll be
23 referring to the trust known as Wells Fargo Asset
24 Securities Corporation, Mortgage Pass-Through
25 Certificate, Series 2006-AR4. Okay?

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1 A Okay.
2 Q In addition, there's some other
3 definitions. On Page 3, there's a definition of
4 "property." It's the real property located at
5 2270 Nashville Avenue, Henderson, Nevada 89052,
6 Parcel No. 178-19-712-012.
7 For the purposes of this deposition,
8 whenever I talk about "the property," I'm referring
9 to the one on Nashville Avenue. Okay?
10 A Okay.
11 Q In addition, there's a definition of
12 "association," referring to Copper Ridge Community
13 Association. So unless otherwise specified, when I
14 talk about "the association," I'm referring to the
15 Copper Ridge Community Association. Okay?
16 A Okay.
17 Q There's also a reference to "the
18 association foreclosure sale." When I talk about
19 that, I'm talking about the auction held on
20 March 1st, 2013, by Nevada Association Services,
21 Inc., on behalf of the association. Okay?
22 A Okay.
23 Q From time to time during the deposition, I
24 may refer to Nevada Association Services as NAS.
25 All right?

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1 A Okay.
2 Q There are topics that start on Page 3 and
3 go to Page 23. Have you had a chance to review
4 those before today?
5 A I've reviewed the 23 topics.
6 Q And are you the person that U.S. Bank has
7 designated to testify on its behalf for these
8 topics?
9 A Yes.
10 Q What is the relationship between U.S. Bank
11 and Wells Fargo such that you would be designated as
12 the witness?
13 A Wells Fargo Bank, N.A., is the servicer
14 for the loans on behalf of the trustee, which is
15 U.S. Bank.
16 (Deposition Exhibit 2 was marked for
17 identification.)
18 **BY MS. EBRON:**
19 Q Can you please look at what's been marked
20 as Exhibit 2.
21 A (Complies.) Okay.
22 Q Do you recognize this document?
23 A I do.
24 Q What is it?
25 A This is a note the borrower executed on

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1 December 30th, 2005.
2 Q When you talk about "the borrower," are
3 you referring to Lucia Parks?
4 A I am.
5 Q Do you know what information was redacted
6 from the top left-hand corner of the first page of
7 the note?
8 A A mortgage loan number.
9 Q Do you know what this stamp at the bottom
10 right-hand corner that says "Exhibit 1" is referring
11 to?
12 **MR. DELIKANAKIS:** (Indicating.)
13 A I do not.
14 **BY MS. EBRON:**
15 Q Did you have a chance to look at the
16 original wet-ink signature note?
17 A I did not.
18 Q Do you know where that note is located?
19 A This note is in our vaults in Minneapolis,
20 Minnesota.
21 Q How do you know that?
22 A I looked in our servicing platform and
23 determined that the custodian of the collateral
24 documents was Wells Fargo Bank and that the address
25 of the particular vault that this loan -- these loan

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1 documents are housed is in is in Minneapolis.
2 Q Do you know who input that information
3 into the place that you looked?
4 A The data would have been input into our
5 system of record by someone who worked while
6 onboarding this loan into our loan servicing
7 platform.
8 Q When was this loan onboarded into your
9 servicing platform?
10 A At the time of origination in December of
11 2005.
12 (Deposition Exhibit 3 was marked for
13 identification.)
14 BY MS. EBRON:
15 Q Can you look at what has been marked as
16 Exhibit 3, please.
17 A (Complies.) Okay.
18 Q Do you recognize this document?
19 A I do.
20 Q What is it?
21 A This is a deed of trust regarding the
22 property in question in this matter, with the
23 borrower of Lucia Parks.
24 Q And is this the deed of trust that was
25 executed to secure the note that we marked as

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1 Exhibit 2?
2 A It is.
3 Q Who originated this loan?
4 A Wells Fargo Bank.
5 Q When did U.S. Bank obtain an interest in
6 this loan?
7 A This loan was sold to -- shortly after
8 origination, I would say within four or five months
9 of origination, back in 2006.
10 Q Are there documents that evidence the
11 transfer from Wells Fargo to U.S. Bank?
12 MR. DELIKANAKIS: Objection: Form of the
13 question.
14 A This loan was included in a pool of loans
15 that was securitized, and U.S. Bank was named the
16 trustee of the pool of loans.
17 MS. EBRON: Off the record.
18 (Pause in proceedings.)
19 MS. EBRON: Back on the record.
20 BY MS. EBRON:
21 Q Do you know how much the trust paid to
22 purchase the loan?
23 A The practice would be for the transaction
24 to include nearly dollar for dollar for the
25 principal balance of the loan at the time the loan

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1 was transferred to the trust.
2 Q How do you know that?
3 A Just the general banking practice of
4 transactions such as these.
5 Q In Exhibit 3, can you look at the page
6 that's Bates Stamped USB000021.
7 A (Complies.) Okay.
8 Q Do you recognize this?
9 A I do.
10 Q What is it?
11 A It's a planned unit development rider.
12 Q Why did Wells Fargo include it in the deed
13 of trust?
14 A It informs the borrowers of their
15 responsibility to keep in compliance and current
16 with their requirements under the PUD.
17 Q Is it fair to say that Wells Fargo was
18 aware of the homeowners association when it
19 originated this loan?
20 MR. DELIKANAKIS: Objection: Form of the
21 question; also calls for a legal conclusion.
22 A Wells Fargo was aware that the loan was --
23 that the property was located within a PUD.
24 (Deposition Exhibit 4 was marked for
25 identification.)

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1 BY MS. EBRON:
2 Q Can you look at what's been marked as
3 Exhibit 4, please.
4 A (Complies.)
5 Q I'm going to represent to you that this is
6 just a portion of the Declaration of Covenants,
7 Conditions, and Restrictions for Copper Ridge
8 Community, with the title page and the Table of
9 Contents, because the entire document is voluminous.
10 Have you seen this document before?
11 A I have not.
12 Q Do you know if this is something that is
13 contained in U.S. Bank's business records?
14 A I did not see this within their records.
15 (Deposition Exhibit 5 was marked for
16 identification.)
17 BY MS. EBRON:
18 Q Look at what has been marked as Exhibit 5,
19 please.
20 A (Complies.) Okay.
21 Q Do you recognize this document?
22 A I do.
23 Q What is it?
24 A It is a grant, bargain, sale deed between
25 Albert and Mary Brandelli and the borrower of the

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1 loan we originated, Lucia Parks.
2 Q Is this something that's part of
3 U.S. Bank's business records?
4 A I'm not sure if the copy that I've seen
5 has -- is the recorded copy of this document or not.
6 Q Is there a copy that is not recorded in
7 U.S. Bank's business records?
8 A I believe there is.
9 (Deposition Exhibit 6 was marked for
10 identification.)
11 BY MS. EBRON:
12 Q Can you look at what has been marked as
13 Exhibit 6.
14 A (Complies.)
15 Q Do you recognize this document?
16 A I don't respect -- I don't specifically
17 recognize this document. I don't remember seeing
18 it.
19 (Deposition Exhibit 7 was marked for
20 identification.)
21 BY MS. EBRON:
22 Q Can you look at what's been marked as
23 Exhibit 7, please.
24 A Okay.
25 Q Do you recognize this document?

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1 A I do not.
2 (Deposition Exhibit 8 was marked for
3 identification.)
4 BY MS. EBRON:
5 Q Take a look at what has been marked as
6 Exhibit 8, please.
7 A (Complies.) Okay.
8 Q Do you recognize this document?
9 A I do not.
10 (Deposition Exhibit 9 was marked for
11 identification.)
12 BY MS. EBRON:
13 Q Look at what has been marked as Exhibit 9.
14 A (Complies.) Okay.
15 Q Do you recognize this document?
16 A I do not.
17 (Deposition Exhibit 10 was marked for
18 identification.)
19 BY MS. EBRON:
20 Q Can you please look at what has been
21 marked as Exhibit 10.
22 A (Complies.)
23 Q Do you recognize this document?
24 A I do.
25 Q What is it?

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1 A It is a notice of default and election to
2 sell regarding the first deed of trust, what was
3 Exhibit 3.
4 Q Who is National Default Servicing
5 Corporation?
6 A They are the trustee for the deed of
7 trust.
8 Q If you look on the page that is Bates
9 Stamped USB000039 --
10 A Okay.
11 Q -- the second paragraph from the bottom
12 discusses the failure to pay.
13 Do you see that?
14 MR. DELIKANAKIS: Can you point which
15 section you're looking at? What sentence does it
16 begin with?
17 MS. EBRON: Starts with, "That a breach
18 of, and default in, the obligations for which such
19 Deed of Trust security has occurred in that payment
20 has not been made of: Failure to pay the
21 installments of principal interest and impounds
22 which became due on November 1st, 2009."
23 A I see that.
24 BY MS. EBRON:
25 Q Do you know if Lucia Parks made any

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1 payments on the loan after November 1st, 2009?
2 A Not without looking at the payment
3 history, but I believe she did.
4 (Deposition Exhibit 11 was marked for
5 identification.)
6 BY MS. EBRON:
7 Q Can you look at what has been marked as
8 Exhibit 11.
9 A (Complies.)
10 Q Do you recognize this document?
11 A I don't remember reviewing this in
12 preparation for today.
13 (Deposition Exhibit 12 was marked for
14 identification.)
15 BY MS. EBRON:
16 Q Can you look at what has been marked as
17 Exhibit 12.
18 A (Complies.)
19 Q Do you recognize this document?
20 A Yes.
21 Q What is it?
22 A It's an assignment of deed of trust.
23 Q Who is it from and who is it to?
24 A It is assigning to -- from Wells Fargo to
25 the U.S. Bank National Association, as Trustee for

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1 Wells Fargo Asset Securities Corporation, Mortgage
2 Pass-Through Certificate, Series 2006-AR4.
3 Q When was this executed?
4 A July 1st of 2010.
5 MR. DELIKANAKIS: Just to note for the
6 record, there's actually two executions on this
7 document.
8 BY MS. EBRON:
9 Q Here?
10 A It appears to be a --
11 MR. DELIKANAKIS: -- a notary.
12 THE WITNESS: -- signature and a notary.
13 MR. DELIKANAKIS: A notary.
14 MS. EBRON: Oh, okay.
15 MR. DELIKANAKIS: A notary signed that,
16 executed by the president.
17 MS. EBRON: What am I missing?
18 MR. DELIKANAKIS: It's okay.
19 BY MS. EBRON:
20 Q Do you know who Olivia A. Todd is?
21 A I do not.
22 Q Above the signature line, it says,
23 "Wells Fargo Bank, N.A., Successor by Merger to
24 Wells Fargo Home Mortgage, Inc., by its attorney in
25 fact National Default Servicing Corporation."

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1 Do you see that?
2 A I do.
3 Q Is National Default Servicing Corporation
4 Wells Fargo Bank, N.A.'s attorney in fact?
5 MR. DELIKANAKIS: Objection: Form of the
6 question; calls for a legal conclusion.
7 A For this specific assignment, so National
8 Default Servicing Corporation had the ability to
9 sign this particular document as Wells Fargo Bank,
10 N.A.'s attorney in fact.
11 (Deposition Exhibit 13 was marked for
12 identification.)
13 BY MS. EBRON:
14 Q Can you please look at what has been
15 marked as Exhibit 13.
16 A (Complies.) Okay.
17 Q Do you recognize this document?
18 A I do.
19 Q What is it?
20 A It is a notice of trustee's sale.
21 Q Does this notice of trustee's sale relate
22 to the deed of trust marked as Exhibit 3?
23 A It does.
24 Q Was it National Default Servicing
25 Corporation that caused this to be recorded?

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1 A Yes.
2 Q Was that on behalf of U.S. Bank?
3 A Correct.
4 I should say on behalf of U.S. Bank as
5 Trustee for the pool.
6 Q Right. Thank you.
7 Can you look at the page Bates Stamped
8 USB000044, the paragraph that starts, "Said sale
9 will be made, in 'as is' condition, without covenant
10 or warranty, expressed or implied, regarding title,
11 possession or encumbrances to satisfy the
12 indebtedness" of the -- sorry -- "indebtedness
13 secured by said Deed of Trust."
14 Do you see that?
15 A I see -- I do.
16 Q Do you know why that was included in this
17 notice of sale?
18 MR. DELIKANAKIS: Objection: Form of the
19 question calls for a legal conclusion.
20 A I can only see the words that you just
21 read out into the record exists on this document as
22 you read them.
23 BY MS. EBRON:
24 Q Have you seen other notices of trustee's
25 sales that relate to deeds of trust?

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1 MR. DELIKANAKIS: Objection: Scope.
2 A I have.
3 BY MS. EBRON:
4 Q Do you know if that language is generally
5 included --
6 MR. DELIKANAKIS: Same --
7 BY MS. EBRON:
8 Q -- in notices of trustee's sale?
9 MR. DELIKANAKIS: Same objection: Scope.
10 A I believe it is a typical language used.
11 (Deposition Exhibit 14 was marked for
12 identification.)
13 BY MS. EBRON:
14 Q Can you look at what's been marked as
15 Exhibit 14, please.
16 A (Complies.)
17 Q Do you recognize this document?
18 A I do.
19 Q What is it?
20 A It's the substitution of trustee.
21 Q Is this something that is contained in
22 U.S. Bank's business records?
23 A Yes.
24 Q Do you know if there was a different
25 substitution of trustee executed before the date on

Page 25

1 this one?

2 **MR. DELIKANAKIS:** Objection: Form of the

3 question.

4 Do you understand the question?

5 **THE WITNESS:** I think I do.

6 **A** I can't recall seeing a different

7 substitution of trustee prior to this one, in my

8 review.

9 **BY MS. EBRON:**

10 **Q** Going back to Exhibit 13 --

11 **A** Okay.

12 **Q** -- the paragraph that begins, "Notice is

13 hereby given."

14 **A** On which exhibit?

15 **Q** Sorry. On 13.

16 **A** Okay.

17 **Q** It states that it will sell on

18 August 3rd, 2010, at 10 a.m.

19 Do you see that?

20 **A** I do.

21 **Q** Did the sale go forward on that date?

22 **A** It did not.

23 **Q** Do you know why not?

24 **A** I believe the borrower filed for

25 Chapter 11 bankruptcy, causing a stay.

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1 **Q** Is there a document that you reviewed that

2 makes you believe that?

3 **A** The -- yes. There's bankruptcy documents

4 in our imaging system related to Parks' bankruptcy

5 filing.

6 **Q** Do you know when the bankruptcy stay was

7 lifted or was no longer in effect?

8 **A** Not off the top of my head. I can't

9 recall the date.

10 (Deposition Exhibit 15 was marked for

11 identification.)

12 **BY MS. EBRON:**

13 **Q** Look at what has been marked as

14 Exhibit 15, please.

15 **A** (Complies.) Okay.

16 **Q** Do you recognize this document?

17 **A** I specifically don't recall this exact

18 document, but I did see notices of trustee's sale in

19 our file.

20 **Q** In that second paragraph, where it says it

21 will sell on July 19th, 2011, at 10 a.m., do you

22 see that?

23 **A** I do.

24 **Q** Did the sale go forward on that date?

25 **A** I don't believe so.

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1 **Q** Do you know why not?

2 **MR. DELIKANAKIS:** I'll caution the witness

3 not to speculate.

4 **A** Yeah, not without looking at the business

5 records to determine.

6 **BY MS. EBRON:**

7 **Q** What business records would you look at to

8 determine why the sale did not go forward on

9 July 19th, 2011?

10 **MR. DELIKANAKIS:** Objection: Form of the

11 question.

12 **A** I would look at the foreclosure process

13 notes and the bankruptcy process notes and the loss

14 mitigation process notes.

15 **BY MS. EBRON:**

16 **Q** Do you know if the bankruptcy stay was

17 either lifted or no longer in effect when this

18 notice of trustee's sale was recorded?

19 **A** Not without looking at the order granting

20 the relief from stay to be able to tell what the

21 time period was.

22 **Q** On the next page Bates Stamped USB000049,

23 do you see that same language about, 'as is'

24 condition without covenant or warranty, expressed or

25 implied," as we did in the last notice of sale?

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1 **A** Yes, I see the same language.

2 (Deposition Exhibit 16 was marked for

3 identification.)

4 **BY MS. EBRON:**

5 **Q** Can you look at what has been marked as

6 Exhibit 16, please.

7 **A** (Complies.)

8 **Q** Do you recognize this document?

9 **A** I don't believe I have seen this before.

10 (Deposition Exhibit 17 was marked for

11 identification.)

12 **BY MS. EBRON:**

13 **Q** Would you please look at what has been

14 marked as Exhibit 17.

15 **MR. VILKIN:** I'm sorry. Which one are you

16 on: 17?

17 **MS. EBRON:** Seventeen. It's Bates Stamped

18 USB --

19 **MR. VILKIN:** Yeah.

20 **MS. EBRON:** -- 000053.

21 **MR. VILKIN:** Thank you.

22 **A** Okay.

23 **BY MS. EBRON:**

24 **Q** Do you recognize this document?

25 **A** Looks to be an assignment of mortgage.

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1 Q When was this executed?
2 A June 7th of 2012.
3 Q Who is this from and who is it to?
4 A Wells Fargo Bank to the U.S. Bank National
5 Association as Trustee for the pool of loans.
6 Q Do you know why the deed of trust was
7 assigned from Wells Fargo Bank to U.S. Bank two
8 times, like the one here in Exhibit 17 and then also
9 in Exhibit 12?
10 MR. DELIKANAKIS: Objection: Form of the
11 question.
12 A No, I do not.
13 (Deposition Exhibit 18 was marked for
14 identification.)
15 BY MS. EBRON:
16 Q Look at what has been marked as
17 Exhibit 18.
18 A (Complies.) Okay.
19 Q Do you recognize this document?
20 A I apologize. I've reviewed so many
21 documents, I can't remember if I specifically have
22 seen this before today or not.
23 Q In your review of the file, you looked for
24 foreclosure notices; correct?
25 A I did.

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1 Q Do you recall seeing any foreclosure
2 notices from homeowners associations?
3 MR. DELIKANAKIS: Objection to the form of
4 the question.
5 Are you -- do you understand the scope of
6 foreclosure notices?
7 MS. EBRON: Okay.
8 BY MS. EBRON:
9 Q Foreclosure notices, including a notice of
10 default or notice of sale from a homeowners
11 association --
12 MR. DELIKANAKIS: Thank you, Counsel.
13 BY MS. EBRON:
14 Q -- in relation to this property. And I'm
15 looking for ones that would have been included in
16 U.S. Bank's business records, not ones provided by
17 counsel or through litigation.
18 A I did see -- I believe it was a notice of
19 sale and then a -- another notice regarding -- but I
20 don't know if it was a recorded document that was
21 sent to Wells Fargo.
22 I do want to say that the notice of sale
23 was received -- or in our imaging system
24 March 5th, so -- what? -- four days after the HOA
25 foreclosure sale.

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1 Q March 5th of 2013?
2 A Correct.
3 Q What about the other notice you mentioned?
4 Do you know when that was uploaded to your imaging
5 system?
6 A I can't recall the date that the other one
7 was uploaded.
8 Q Did you review servicing notes in
9 preparation for your deposition?
10 A I did.
11 Q And in the servicing notes, was there a
12 corresponding note to the imaged notice of sale
13 received -- or imaged on March 5th, 2013?
14 A Right. And just so the record's clear,
15 the document that we received on March 5th, 2013,
16 it is either a notice of sale or a notice of default
17 and election to sell.
18 As I sit here today, I can't tell -- I
19 can't remember which one was which.
20 Q Okay.
21 A So to answer your question, yes, there is
22 a corresponding business record on the 5th of
23 March, 2013, from the trustee that indicates the
24 document was sent to Wells Fargo for upload into our
25 system.

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1 Q When you say "from the trustee," who is
2 the trustee?
3 A National Default.
4 Q Okay. So the entity that was conducting
5 the foreclosure sale of the deed of trust?
6 A Correct.
7 (Deposition Exhibit 19 was marked for
8 identification.)
9 BY MS. EBRON:
10 Q Can you look at what has been marked as
11 Exhibit 19.
12 MR. VILKIN: 19?
13 MS. EBRON: Yes.
14 A (Complies.) Okay.
15 BY MS. EBRON:
16 Q Do you recognize this document?
17 A I do not.
18 (Deposition Exhibit 20 was marked for
19 identification.)
20 BY MS. EBRON:
21 Q Can you look at what has been marked as
22 Exhibit 20, please.
23 A (Complies.) Okay.
24 Q Do you recognize this document?
25 A I do not, and I'm -- I'm just going to say

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1 right now it looks like the recorded date of this
2 document was 3/6/2013, which is after the date of
3 the HOA foreclosure sale.
4 So the review of my system of record and
5 the reviewing of the imaged documents contained in
6 our system, our image system, I conducted that
7 review from originations to the HOA foreclosure
8 sale. So a lot -- any of the documents that are
9 dated after that I probably have not looked at.
10 MR. DELIKANAKIS: It's outside the scope
11 of the deposition anyway. I mean, if you want to --
12 you're just trying to authenticate documents. I'm
13 not sure what the purpose of the exercise is for
14 these events after the sale.
15 MS. EBRON: I am just seeing what he
16 recalls seeing in the file.
17 MR. DELIKANAKIS: The objection will be
18 that it's outside the scope of the deposition.
19 (Deposition Exhibit 21 was marked for
20 identification.)
21 BY MS. EBRON:
22 Q Can you look at what has been marked as
23 Exhibit 21.
24 A (Complies.) Okay.
25 Q Do you recognize this document?

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1 A I do not.
2 Q Is this another notice of trustee's sale
3 that relates to the deed of trust marked as
4 Exhibit 3?
5 A It is referencing the deed of trust that
6 is marked as Exhibit 3, yes.
7 Q Do you know if a foreclosure sale took
8 place on April 1st, 2013?
9 MR. DELIKANAKIS: Objection: Scope.
10 A Not as I sit here today. I'd have to look
11 at our servicing records in and around that time.
12 (Deposition Exhibit 22 was marked for
13 identification.)
14 BY MS. EBRON:
15 Q Can you look at what has been marked as
16 Exhibit 22.
17 MR. DELIKANAKIS: Same objection: Outside
18 the scope.
19 A (Complies.) Okay.
20 BY MS. EBRON:
21 Q Do you recognize this document?
22 A I do not.
23 (Deposition Exhibit 23 was marked for
24 identification.)
25 BY MS. EBRON:

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1 Q Can you look at what has been marked as
2 Exhibit 23.
3 A (Complies.)
4 MS. EBRON: Just note there's -- on the
5 last page of that, Bates Stamp USB00076, should not
6 be included.
7 A Okay.
8 MR. VILKIN: I'm sorry. I'm a
9 little confused.
10 Twenty-three is what: Trustee deed?
11 MS. EBRON: It is the trustee's deed upon
12 sale --
13 MR. VILKIN: Okay. Thank you.
14 MS. EBRON: -- and it relates to the deed
15 of trust.
16 BY MS. EBRON:
17 Q Have you seen this document before?
18 A I have not.
19 (Deposition Exhibit 24 was marked for
20 identification.)
21 BY MS. EBRON:
22 Q Can you look at what has been marked as
23 Exhibit 24.
24 A (Complies.) Okay.
25 Q Do you recognize this document?

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1 A I do not.
2 MR. DELIKANAKIS: Objection: Outside the
3 scope.
4 (Deposition Exhibit 25 was marked for
5 identification.)
6 BY MS. EBRON:
7 Q Can you look at what has been marked as
8 Exhibit 25.
9 A (Complies.)
10 Q This is a document that was produced
11 separately by U.S. Bank, outside of recorded
12 documents.
13 Have you seen this before?
14 A I don't believe I've seen this before.
15 Q Do you know where this was -- like, what
16 portion of U.S. Bank's business records this came
17 from or if it came from U.S. Bank's business
18 records?
19 A It did not come from the business records
20 from U.S. Bank from the origination of the -- from
21 the date of the origination of the original deed of
22 trust to the date of the HOA foreclosure sale,
23 because I looked at every one of those documents,
24 and this was not one of those.
25 So if it did come from U.S. Bank's

1 records, it would have been a document that we
2 received after the date of the foreclosure, if that
3 makes sense.
4 (Deposition Exhibit 26 was marked for
5 identification.)
6 BY MS. EBRON:
7 Q Look at what has been marked as
8 Exhibit 26.
9 A (Complies.) Okay.
10 Q Do you recognize this document?
11 A I do.
12 Q What is it?
13 A It's a letter to Wells Fargo from
14 Green Valley Ranch Community Association.
15 Q And was this something that was received
16 by U.S. Bank?
17 A Yes. It was -- just to clarify the
18 record, it was received by Wells Fargo Bank as
19 Servicer on behalf of U.S. Bank.
20 Q Do you know when it was received by
21 Wells Fargo?
22 A I think it was received in July of 2012.
23 But, actually, I'm going to walk that
24 back. I'm -- without looking at our imaging system,
25 I can't tell you an exact date, but I do know that

1 we received this.
2 Q Towards the bottom of the letter on the
3 first page Bates Stamped USB000111, there is a
4 reference to an enclosure.
5 Do you see that?
6 A Okay.
7 Q And it says "Notice of Default and
8 Election to Sell (copy.)"
9 A Okay.
10 Q Do you know if the document marked as
11 Exhibit 25 was received with this letter that's
12 marked as Exhibit 26?
13 A I believe it was.
14 Q Were there any corresponding notes in the
15 servicing records about when this was received?
16 A And you say "this." Exhibit 26 --
17 Q Exhibit 26. Thank you.
18 A -- and 25 or just 26?
19 Q Either or both.
20 A I can't remember the exact date that we
21 received this. The borrower's loan was in our
22 foreclosure process, so we would have anticipated
23 paying any type of delinquencies from the HOA out of
24 the proceeds of our foreclosure sale at this point.
25 Q I understand if you don't remember the

1 exact date, but do you remember if there was a
2 servicing note about receipt of the letter?
3 A I don't recall a servicing note specific
4 to this letter.
5 (Deposition Exhibit 27 was marked for
6 identification.)
7 BY MS. EBRON:
8 Q Can you look at what has been marked as
9 Exhibit 27. It's Bates Stamped USB000112. And,
10 again, this was disclosed right after the letter
11 that was in Exhibit 26 and separate from the
12 recorded documents.
13 A When you say "disclosed," I guess I don't
14 understand that.
15 Q Sorry. Disclosed by your counsel in that
16 order.
17 A Okay.
18 Q And since I don't have the originals, I
19 can't tell how they were put together or where they
20 came from.
21 Do you know where this came from?
22 A Exhibit 27?
23 Q Yes.
24 A Right, and I think I briefly spoke about
25 this earlier in the deposition. This showed -- and

1 when I'm saying "this," I'm going to say Exhibit 27
2 shows up in our imaging system as of March 5th,
3 2013.
4 There is a corresponding note in our
5 foreclosure processing platform identifying the
6 receipt of this notice of foreclosure sale.
7 Q Who would have input that note?
8 A The note was input via our LPS system,
9 which is the interface that the trustees use to
10 communicate with Wells Fargo, and the trustees would
11 be the trustees responsible for conducting the
12 nonjudicial foreclosure sales.
13 Q In this case, that would have been
14 National Default Servicing Corporation?
15 A At that time, that is correct, yes.
16 Q So is it your understanding that this
17 notice of foreclosure sale was received by National
18 Default Servicing Corporation and a note was made
19 about it in LPS?
20 A On March 5th, 2013, a note was entered
21 into our mortgage service platform via LPS by the
22 trustee.
23 Q So the note was from March 5th, 2013.
24 Was the image saved on that same date?
25 A Yes.

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1 Q Where did it -- how did the image come to
2 Wells Fargo or U.S. Bank?

3 A There is a section in LPS that allows the
4 trustees to upload documents, and that was the
5 vehicle in which the document was sent from the
6 trustee to Wells Fargo. And it was just a one-page
7 document this -- as it appears here, on Exhibit 27.

8 Q And so it didn't include any envelope or
9 fax cover sheet or anything like that?

10 A No. It was just a one-page document.
11 (Deposition Exhibit 28 was marked for
12 identification.)

13 BY MS. EBRON:

14 Q Can you look at what has been marked
15 Exhibit 28.

16 A (Complies.) Okay.

17 Q Do you recognize these documents -- well,
18 this -- I think this may be several different screen
19 shots or notes, but I'm not sure.

20 A I think they're maybe in reverse
21 chronological order. The dates are weird
22 because -- I --

23 Okay. To answer your question, yes, this
24 is a screen capture from our loss mitigation process
25 note section of MSP.

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1 Q So on the page that is Bates Stamped
2 USB000113, that is something from loss mitigation?

3 A Yes.

4 Q Are there any references to the
5 association on this page?

6 A There's not.

7 Q Do you know when this was generated?

8 MR. DELIKANAKIS: Are we referring to
9 USB113?

10 MS. EBRON: Yes.

11 MR. DELIKANAKIS: Okay.

12 A This particular screen capture was printed
13 on November 26th, 2013, and shows notes on -- from
14 February 26, 2010, to March 3rd, 2010, in our loss
15 mitigation process section of our servicing
16 platform.

17 BY MS. EBRON:

18 Q On the second line, it starts "L. Parks."
19 Is that referring to the borrower?

20 A It is.

21 Q And then do you know what "ODD INV."
22 stands for?

23 A I do not.

24 Q Do you know what "S/S" stands for?

25 A That would be "short sale."

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1 Q What about "MKWLE"?

2 A Do not know.

3 Q Do you know what this date is referring
4 to, 12/1/09?

5 A Do not.

6 Q Can you look at the page Bates stamped
7 USB000114.

8 A (Complies.) Okay.

9 Q Do you know what screen capture this is
10 from?

11 A This is from our bankruptcy process notes.
12 It was printed again on November 26, 2013, and shows
13 notes from the bankruptcy process platform between
14 May 30th, 2012, and June 4th, 2012.

15 Q Do you know if there's any reference to
16 the association or association lien on this page?

17 A There's not.

18 Q Do you know who Pite Duncan, LLP, is?

19 A The firm Wells Fargo engaged related to
20 the bankruptcy.

21 Q Is there anything on this page that tells
22 you when or if the bankruptcy stay was lifted or no
23 longer in effect?

24 A No.

25 Q Does Wells Fargo allege that the

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1 foreclosure, the association foreclosure, was
2 invalid because of a bankruptcy stay?

3 MR. DELIKANAKIS: Objection: Form of the
4 question; calls for a legal conclusion.

5 He's here as a fact PMK, not to testify as
6 to allegations or claims or defenses, legal claims
7 and legal defenses.

8 A And your question again?
9 (Record read by reporter.)

10 MR. DELIKANAKIS: I'm going to direct him
11 not to answer that question.

12 MS. EBRON: Why?

13 MR. DELIKANAKIS: Because it's a legal
14 conclusion. He's here as a PMK witness. It's
15 outside the scope of the deposition notice.

16 MR. VILKIN: She's not asking for a
17 conclusion.

18 MR. DELIKANAKIS: Let me finish my
19 objection. She asked me a question. I'm going to
20 answer it. She's asking what Wells Fargo is
21 alleging.

22 Now, if you want to know facts that might
23 underpin that allegation, go ahead and ask the facts
24 you want.

25 If you are asking for a conclusion, which

1 is what an allegation is, I'm directing him not to
2 answer.

3 **MR. VILKIN:** An allegation is not a
4 conclusion. An allegation is a claim that's made.
5 She's not asking for a legal conclusion. She's not
6 asking for his opinion, legal opinion, about the
7 legal effect of certain facts. She's just asking
8 what claims or claim is being made.

9 It's an improper instruction, and I think
10 we should call the discovery commissioner if we
11 can't get it resolved.

12 **MR. DELIKANAKIS:** That sounds good. Why
13 don't we do that.

14 **MS. EBRON:** Are you alleging that? I
15 mean, it's one of the --

16 **MR. DELIKANAKIS:** I'm not the one on
17 deposition here.

18 **MS. EBRON:** It is Topic No. 22.

19 **BY MS. EBRON:**

20 Q Let me ask it this way: Is there anything
21 in U.S. Bank's business records that show that there
22 was a bankruptcy stay in place at the time of the
23 association foreclosure sale?

24 A As I sit here today, I can't answer that
25 question. I would need to look at the entire

1 bankruptcy process notes and cross-reference that to
2 the date of the HOA's foreclosure sale, to see if
3 there was a stay or not.

4 Q But it wasn't something that you looked at
5 in preparation for your deposition today?

6 A It was not.

7 Q What did you do to prepare for
8 Topic No. 22?

9 A I looked at the origination documents, the
10 note, the deed of trust, and the title policy that
11 was issued at the time of the origination of the
12 mortgage.

13 Q Anything else?

14 A I also re- -- well, specific to that
15 question, I think that would be all that I reviewed.

16 Q What other documents did you review in
17 preparation for your deposition, not just for that
18 but for the whole...

19 A I reviewed every document that was in our
20 imaging system from the date of the loan origination
21 to March 1st -- actually, March 5th of 2013. I
22 reviewed the origination -- that included the
23 origination documents, electronic versions of those.

24 I reviewed the loan servicing platform,
25 the foreclosure process notes, loss mitigation

1 process notes, and loan pay history. I also
2 reviewed the delinquency history on the mortgage as
3 well.

4 Q Anything else?

5 A That's all I can remember.

6 Q Did you speak to anyone in preparation for
7 your deposition besides your attorney?

8 A Just the attorneys.

9 Q Did you e-mail with anyone to find
10 information in preparation for your deposition?

11 A I did not.

12 Q Did you communicate in any other way,
13 besides speaking and e-mailing, with anyone in
14 preparation for your deposition?

15 A No. I'll just say that all of the
16 communications I've had in preparation for this
17 deposition was in the presence of Wells Fargo
18 counsel, both in and out -- in and -- inside counsel
19 and Snell & Wilmer.

20 Q You're saying "in the presence of,"
21 meaning you spoke with other people but your counsel
22 was there?

23 A No. All the communications that we've had
24 regarding the deposition was solely in the presence
25 of counsel, without any other party.

1 Q So you had conversations with your counsel
2 and in the presence of other counsel? I'm just
3 not --

4 A No. Just --

5 Q -- understanding by the way you're
6 answering.

7 A Just to be clear, in preparation for this
8 deposition, I personally, on my own, reviewed all
9 the documents I previously stated in my response.
10 And in addition to that, I've met with our counsel
11 to discuss this deposition, both internal counsel
12 for Wells Fargo and outside counsel, Snell & Wilmer,
13 and that's it.

14 Q Okay. At any of those meetings with
15 counsel, was there anyone who was not your counsel
16 present?

17 A No.

18 Q Did you speak to anybody at U.S. Bank in
19 preparation for your deposition?

20 A No, I did not.

21 Q Does U.S. Bank know that you are here on
22 its behalf?

23 **MR. DELIKANAKIS:** Objection: Form of the
24 question; speculative.

25 A I do not know.

1 **BY MS. EBRON:**
2 Q How do you know that you are the one who
3 has been designated by U.S. Bank if you have not
4 spoken with anyone from U.S. Bank?
5 A Wells Fargo is the servicer of this
6 mortgage. Our duties of servicer include responding
7 to and appearing at depositions that involve loans
8 that are within this trust.
9 Q How do you know that?
10 A We're the responsible party, as outlined
11 in the agreement between U.S. Bank and Wells Fargo.
12 Q What agreement?
13 A The pooling and servicing agreement.
14 Q Did you review the pooling and servicing
15 agreement in preparation for the deposition?
16 A I did.
17 MS. EBRON: Counsel, is that something
18 that's been produced?
19 MR. DELIKANAKIS: No.
20 MS. EBRON: Are you going to produce it?
21 MR. DELIKANAKIS: No.
22 MS. EBRON: Why?
23 MR. DELIKANAKIS: It's irrelevant. If you
24 submit a request, I can give you more detailed
25 reasons --

1 MS. EBRON: I have.
2 MR. DELIKANAKIS: -- why it's irrelevant.
3 MS. EBRON: I have.
4 MR. DELIKANAKIS: It's not going to be
5 produced. If you want to ask some foundational
6 questions, I think you'll realize it's irrelevant.
7 **BY MS. EBRON:**
8 Q In the pooling and servicing agreement,
9 does it contain any references to how Wells Fargo
10 should handle association liens?
11 A Yes.
12 Q What does it say?
13 A There is a section in the servicing
14 agreement that says Wells Fargo should keep records
15 when properties are in REO process for amounts we
16 pay to associations for dues.
17 Q Anything else?
18 A No.
19 Q Is there any information in that agreement
20 that discusses what type of information -- strike
21 that.
22 Is there anything in that agreement that
23 contains other references to associations?
24 A Other references to associations?
25 Q Yeah, homeowners associations.

1 A I only studied the servicing agreement as
2 it pertained to association dues. So there may be
3 other things in the servicing agreement that have to
4 do with insurance requirements, for an example.
5 Q Why didn't you look at anything else
6 related to associations besides dues?
7 A I did. I reviewed the document for every
8 instance for the word "association," every instance
9 of the combination of "association" and "dues,"
10 "homeowners," and similar terms, and the only
11 instance that it brings up specifically "homeowners
12 dues" is in the section governing how Wells Fargo
13 has to handle REO properties.
14 Q Well, what about the other sections that
15 you mentioned that were not just relating to dues?
16 What were those?
17 A There were requirements for the types of
18 insurance that would have to be proven to be on the
19 property in HOAs, loss insurance.
20 Q Anything else?
21 A Not that I can remember.
22 Q Does the pooling and servicing agreement
23 contain any reporting requirements for Wells Fargo
24 to report information to U.S. Bank?
25 A Yes.

1 Q What type of reporting is done from
2 Wells Fargo to U.S. Bank?
3 A The reporting is around the performance of
4 the pool of loans in terms of delinquencies and
5 foreclosures and the like.
6 Q Do you know if the pooling and servicing
7 agreement is something that was provided to the SEC?
8 A I did not check the SEC to see if the
9 agreement is listed there.
10 Q Is that something that's common for these
11 types of pools?
12 A Yes.
13 Q So it's not a confidential document?
14 MR. DELIKANAKIS: Objection: Form of the
15 question; calls for a legal conclusion.
16 A It could be, but, generally, the SEC will
17 have a copy of the agreement.
18 **BY MS. EBRON:**
19 Q Those are generally posted on the website?
20 A On the SEC's website, correct.
21 Q Can you look at the page in Exhibit 28
22 that is Bates Stamped USB000115.
23 A (Complies.) Okay.
24 Q Do you recognize this document?
25 A This is a screen capture from our loss

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1 mitigation process notes printed on November 26,
2 2013.
3 Q Is there any reference to associations on
4 this page?
5 A There is not.
6 Q Right under the part that says "Process
7 Notes" it says "01/29/13, 17:25:04."
8 Do you know what that "Q8B" stands for?
9 A That is the team member that entered that
10 notation.
11 Q Okay. So the same person would have
12 entered that note on January 29th, 2013, as on
13 December 21st, 2012?
14 A That's correct.
15 Q And then those other -- each of the other
16 ones on that page refer to someone else?
17 A Yes.
18 Q Is there a way to find out the actual
19 identity of the person from that code?
20 A The codes are sometimes recycled, because
21 there's only three digits, and there's several
22 thousand servicing team members. So I can't be
23 100 percent sure if today's Q8B, Bravo, would be the
24 same as the Q8B that's entered the note on January
25 of 2013, but, yes, I can look up the code.

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1 Q Okay. And do you know what it means
2 "A3P"?
3 A "Authorized third party."
4 Q What is that?
5 A The borrower has sent in written
6 authorization that the person they designate can
7 speak to Wells Fargo regarding the mortgage loan.
8 Q So it requires -- if somebody were to call
9 in to get information about the loan, it would have
10 to either be the borrower or someone who the
11 borrower has authorized in writing?
12 A Yes.
13 Q What does "liquidation loss mitigation"
14 mean?
15 A This is a loan that's being reviewed for
16 short sale, and it's in loss mitigation, so the
17 liquidation would be a review for something that, at
18 the end of it, the borrower will no longer own the
19 property, so a deed in lieu or a short sale or a
20 short payoff.
21 Q In the note that's 1/15/13, that same one,
22 a couple lines down, the "A3P" is "authorized third
23 party," so that would refer to Brian Goodman; right?
24 A Correct.
25 Q Calls for a status update, and then does

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1 ADVS means that the person "M6M" advised Mr. Goodman
2 that file -- I don't know what that says -- that
3 file reviewed and also advise -- something about a
4 BPO.
5 Is that "broker's price opinion"?
6 A Yes.
7 Q And then, "Advised authorized third party
8 to call back for follow-up"?
9 A That's correct.
10 MS. EBRON: Okay.
11 MR. VILKIN: Very good.
12 MR. DELIKANAKIS: Off the record.
13 (Discussion held off the record.)
14 BY MS. EBRON:
15 Q Do you know what -- in the next note it
16 says, "Working PROC Project."
17 Do you know what that is?
18 A I do not.
19 Q Do you know what -- in the note for
20 1/7/13, what "PAS-DB" means?
21 A It means that the vendor has completed the
22 BPO for us as of 1/5/13, and the value was -- is
23 listed there.
24 Q So a BPO completed on January 5th of
25 2013 valued the property at \$187,050?

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1 A Yes.
2 Q Do you know if there are any other
3 valuations that were done on the property?
4 MR. DELIKANAKIS: Objection: Scope.
5 MS. EBRON: Well, and if you want, I can
6 ask the other question first.
7 MR. DELIKANAKIS: Yeah.
8 BY MS. EBRON:
9 Q Does U.S. Bank allege that the price paid
10 at the association foreclosure was not commercially
11 reasonable?
12 MR. DELIKANAKIS: Objection: Form of the
13 question; calls for a legal conclusion.
14 BY MS. EBRON:
15 Q I'm looking at Topic No. 19. Do you want
16 to go back to the --
17 Do you know if U.S. Bank is alleging the
18 price paid by SFR Investments Pool 1, LLC, was
19 inadequate?
20 A I believe that those arguments are made in
21 the complaint or in the pleadings.
22 Q Are you aware of any other BPOs besides
23 the one referenced here on the page Bates Stamped
24 USB000115?
25 MR. DELIKANAKIS: Objection: Scope.

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1 MS. EBRON: It's in Topic 19.
2 MR. DELIKANAKIS: Scope as to the form of
3 the question; in other words, what time frame are
4 you speaking of?
5 A There was not another valuation done after
6 January 7th, 2013, and before the foreclosure sale
7 on March 1st, 2013.
8 BY MS. EBRON:
9 Q Were there any done before this BPO that
10 was completed on January 5th, 2013?
11 A There would have been the originations
12 valuation, and as I sit here today, I do not know if
13 there was an additional valuation done before
14 January 7th, 2013.
15 Q Do you know what the valuation was at
16 origination?
17 A I would have to look at the -- it's part
18 of the mortgage file, but I don't know sitting here
19 today. I'll just -- just to -- I will say that it
20 would have been more than \$331,500.
21 Q Thank you.
22 Back in Exhibit 28, looking at the page
23 Bates Stamped USB000116, do you recognize this?
24 A Again, this is a screen print from our
25 loss mitigation process section of our servicing

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1 platform on November 26, 2013.
2 Q Is there any reference to associations on
3 this page?
4 A There's not.
5 Q In the first note -- well, the note dated
6 2/6/13, it says "working select short task in
7 equator."
8 Do you know what that means?
9 A "Equator" is the means by which
10 Wells Fargo communicates with outside real estate
11 agents involved in short sales.
12 Q What's a "select short sale task"?
13 A I do not know.
14 Q And the next note says "working HAFA
15 filter report."
16 Do you know what that means?
17 A It's the government short sale program,
18 HAFA.
19 Q Do you know what "HAFA" -- "filter
20 complete bankruptcy denied HAFA" means?
21 A This loan was not approved for a HAFA.
22 Q Does it mean that it was not approved
23 because there had been a bankruptcy?
24 A I don't know.
25 Q In the next note, on that same day,

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1 February 5th, 2013, is this another PBO that was
2 different than the one we looked at on the previous
3 page?
4 A Yes.
5 Q Do you know why it jumped from 187.050 to
6 200,000 in a month?
7 A I do not know.
8 Q In your review of the records, did you see
9 the actual BPO or just reference in the notes?
10 A I saw the BPO, but I didn't look through
11 the BPO, aside from looking at what value was
12 assigned.
13 (Deposition Exhibit 29 was marked for
14 identification.)
15 BY MS. EBRON:
16 Q Can you look at what has been marked as
17 Exhibit 29, please.
18 A (Complies.) Okay.
19 Q Do you recognize this document?
20 A I do.
21 Q What is it?
22 A It is a trustee's sale guarantee.
23 Q Is this something that you've seen in
24 U.S. Bank's business records?
25 A For this particular loan, I do not recall

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1 seeing TSG...
2 Q I'll represent to you that this is a
3 document that I received pursuant to a subpoena to
4 National Default Servicing Corporation, so it wasn't
5 produced by your counsel.
6 I'm wondering -- we were talking about LPS
7 before and the interface that you have with the
8 trustees, including National Default Servicing.
9 Is a trustee's sale guarantee something
10 that the trustee would normally upload to the
11 system?
12 A I have seen them in our imaging system
13 before.
14 Q Does U.S. Bank dispute that it had actual
15 notice of the association foreclosure before the
16 date of the association foreclosure sale?
17 MR. DELIKANAKIS: I'm going to make the
18 same objection. It's asking for a legal conclusion.
19 If you're asking factually if he's aware
20 of any notice being received, that's why he's here
21 is testify, as to the facts that you outlined in
22 there.
23 MS. EBRON: That's what I asked.
24 MR. DELIKANAKIS: That isn't what you
25 asked.

1 BY MS. EBRON:

2 Q Do you dispute having notice of the sale
3 before the date of the association foreclosure sale?

4 A We received what's already an exhibit
5 here, so -- we received Exhibit 26 prior to the HOA
6 foreclosure sale, so that specific document was
7 received by Wells Fargo prior to the sale of the
8 property by the HOA.

9 Q What I'm asking is not that.

10 I'm asking if Wells Fargo knew, from
11 any -- from any document, phone call, any type of
12 notification, not just receipt of a notice from --
13 directly from the association, did you know about
14 the association foreclosure sale before the date of
15 the association foreclosure sale?

16 A No.

17 Q Did Wells Fargo know about the CC&Rs
18 before the date of the association foreclosure sale?

19 MR. DELIKANAKIS: Objection: Form of the
20 question.

21 Do you understand the question?

22 A The CC&Rs -- we were aware there were
23 CC&Rs related to the property upon origination of
24 the loan.

25 BY MS. EBRON:

1 Q Was Wells Fargo -- or, sorry -- U.S. Bank
2 aware that the association had a lien against the
3 property before the date of the association
4 foreclosure sale?

5 A No.

6 Q Did U.S. Bank know that the homeowner was
7 not paying association dues before the date of the
8 association foreclosure sale?

9 A We received a letter indicating the
10 borrower was past due on their homeowners
11 association dues prior to the sale.

12 Q Once that letter was received, did
13 U.S. Bank take any action to either encourage the
14 borrower to pay association dues or to pay them
15 itself?

16 A The loan was -- at the time of receipt of
17 the letter indicating the borrower was behind on the
18 association dues, the borrower was in the process of
19 Wells Fargo's own foreclosure process. So
20 Wells Fargo would have expected to pay any past-due
21 amount required through the proceeds of our
22 foreclosure sale.

23 Q How long was the borrower in default
24 before the date of the association foreclosure sale?

25 A I don't know exactly the level of default

1 as of March 1st, 2013.

2 Q How long -- or when did the borrower --
3 when was the borrower first put into the foreclosure
4 process under the deed of trust?

5 A Back in 2010.

6 Q So it was Wells Fargo's or U.S. Bank's
7 position that it would not pay and not encourage the
8 borrower to pay for those three years, or as the
9 association goes?

10 MR. DELIKANAKIS: Object to the form of
11 the question.

12 Do you understand what she's asking?

13 A The -- Wells Fargo's process or practice
14 was to anticipate paying HOA delinquency issues out
15 of the proceeds of our foreclosure sale.

16 The -- between the borrower's initial
17 entry into Wells Fargo's foreclosure process in
18 2010, there was a subsequent bankruptcy filing, and
19 then there was also a loss mitigation process that
20 was ongoing with the borrower regarding her attempt
21 to short sell the property.

22 So that's what Wells Fargo was doing
23 between first initiating foreclosure in 2010 and
24 when the HOA foreclosed on the property in March of
25 2013.

1 Q Did any of the documents that went back
2 and forth between U.S. Bank or Wells Fargo, as the
3 servicer, and the borrower during that loss
4 mitigation process or short sale process include
5 references to the association?

6 A I do not know if any of the loss
7 mitigation documents specifically mention the HOA
8 delinquency.

9 Q Do any of them request information from
10 the borrower about delinquencies for the
11 association?

12 A A request for mortgage assistance has a
13 section in it that asks for delinquencies/issues.

14 Q And did any of the information provided by
15 the borrower in those forms include information
16 about delinquencies to the association?

17 A Not that I recall.

18 Q Was there documentation required for the
19 borrower's application for the HAFA we looked at
20 before in Exhibit No. -- what was that? -- 28?

21 There was a reference to a HAFA denial. Maybe I'm
22 saying that wrong. Yes, on the page Bates Stamped
23 USB000116, Exhibit No. 28.

24 A So what's your question? I'm sorry.

25 Q Did the documentation required for that

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1 application of HAFA include anything about
2 homeowners associations?
3 **A That would be included on the request for**
4 **mortgage assistance, which would be part of a HAFA**
5 **review.**
6 Q In your preparation for the deposition,
7 did you look for a trustee's sale guarantee?
8 **A I did.**
9 Q And you didn't find one?
10 **A I did not.**
11 Q When Wells Fargo originated this loan, did
12 it request or find out the amount of the association
13 dues before funding the loan?
14 **A That information would have been provided**
15 **on the mortgage application by the borrower.**
16 Q Is that a "yes"?
17 **A Yes.**
18 Q So at that time, Wells Fargo would have
19 been aware of the amount of the association dues?
20 **A That would have been disclosed to**
21 **Wells Fargo as part of the borrower's application**
22 **for a mortgage.**
23 Q Is that a "yes"?
24 **A I believe so.**
25 Q Did Wells Fargo create an escrow for taxes

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1 and insurance for this property?
2 **A I don't recall if the taxes and insurance**
3 **were impounded or not.**
4 Q Were the homeowners association dues?
5 **A No.**
6 Q Do you know why not?
7 **A Not standard practice to impound those.**
8 Q Back in the loss mitigation efforts, was
9 there ever a requirement to get information directly
10 from the homeowners association about delinquencies,
11 like a certificate or anything like that?
12 **A At times, there's requirements that the**
13 **borrower provide proof of payment, canceled checks**
14 **and the like, to show that they've paid association**
15 **dues.**
16 Q What do you mean "at times"?
17 **A If they are past due and need to be**
18 **brought current.**
19 Q So if the dues are past due and need to be
20 brought current, then the borrower would be required
21 to provide proof that they paid?
22 **A In some cases, yes.**
23 Q What about in this case?
24 **A We did not ever receive that proof from**
25 **the borrower.**

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1 Q Did you ever ask for that proof from the
2 borrower?
3 **A Not that I can see.**
4 Q Did U.S. Bank ever communicate with the
5 association about this property?
6 **A No.**
7 Q Did U.S. Bank ever communicate with NAS
8 about this property before the date of the
9 association foreclosure sale?
10 **A No.**
11 Q Did U.S. Bank ever communicate with the
12 borrower about association dues, besides the planned
13 unit development rider that's included in the deed
14 of trust?
15 That wouldn't have been U.S. Bank; that
16 would have been Wells Fargo.
17 So back to the original question.
18 **A Not --**
19 Q Did U.S. Bank ever communicate with them?
20 **A Not that I saw.**
21 Q Did Wells Fargo ever communicate with
22 U.S. Bank about the association lien or association
23 foreclosure?
24 **A No.**
25 Q Are there any other entities besides

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1 U.S. Bank that claim an interest in the first deed
2 of trust?
3 **A No.**
4 Q Are there any other entities besides
5 U.S. Bank that claim an interest in the promissory
6 note?
7 **A No.**
8 Q Does Fannie Mae have an interest in this
9 loan?
10 **A No.**
11 Q Does Freddie Mac have an interest in this
12 loan?
13 **A No.**
14 Q Is this loan FHA insured?
15 **A It is not.**
16 Q Is there any references to SFR Investments
17 Pool 1, LLC, in your file before the date of
18 litigation?
19 **A Before the date of the foreclosure sale or**
20 **litigation?**
21 Q Before litigation.
22 **MR. DELIKANAKIS: Scope.**
23 **A Not that I can remember.**
24 **BY MS. EBRON:**
25 Q Did U.S. Bank make any payments to the

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1 association on behalf of this property?
2 **A No.**
3 **Q** Did U.S. Bank attend or participate in the
4 association foreclosure sale?
5 **A No.**
6 **Q** Did U.S. Bank participate in any civil or
7 administrative action challenging the association
8 lien or association foreclosure sale before the date
9 of the association foreclosure sale?
10 **A No.**
11 **Q** Were there any internal communications
12 that mentioned the association's lien, what
13 association assessments, or association foreclosure
14 sale as it relates to the property before the date
15 of the association foreclosure sale?
16 **A The one letter indicating the borrower was**
17 **past due on their dues.**
18 **Q** Has U.S. Bank ever communicated with the
19 FHFA regarding this loan?
20 **A No.**
21 **Q** What is U.S. Bank's factual basis for its
22 allegation that the deed of trust was not
23 extinguished by the association foreclosure sale?
24 **A That the first deed of trust was recorded**
25 **in first position at the time of origination and**

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1 **remains there to date.**
2 **Q** Anything else?
3 **A No.**
4 **MS. EBRON:** Counsel, do you want to ask
5 questions?
6 **MR. VILKIN:** Are you done?
7 **MS. EBRON:** I believe I am.
8 **MR. VILKIN:** Okay. So I have --
9 **MS. EBRON:** I might have follow-ups.
10 **MR. VILKIN:** Can we go off the record for
11 a second?
12 (Recess taken.)
13 **MR. DELIKANAKIS:** This is
14 John Delikanakis. We've had a conversation amongst
15 counsel to continue this deposition, and what's been
16 proposed and agreed upon by counsel is that we will
17 look at two dates when the PMK deponent is supposed
18 to be in Las Vegas, March 25th of 2016 and
19 April 8th of 2016.
20 I will check with the client and our
21 scheduling and see if he's, in fact, available to
22 take another -- what? -- two-and-a-half, two hours
23 of deposition?
24 Is that correct, Counsel?
25 **MR. VILKIN:** Yes.

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1 **MR. DELIKANAKIS:** About two hours of
2 deposition so we can finish this PMK deposition.
3 I'll report back to counsel his availability and see
4 if that works.
5 **MR. VILKIN:** And if it doesn't work, we
6 discussed the possibility of finishing the depo by
7 telephone.
8 **MR. DELIKANAKIS:** Agreed.
9 **MS. EBRON:** Agreed.
10 **MR. WAITE:** That's fine.
11 **THE WITNESS:** Thank you.
12 **THE REPORTER:** And for your copies,
13 Counsel, do you prefer electronic or hard copy?
14 **MR. DELIKANAKIS:** Electronic.
15 **THE REPORTER:** Just electronic?
16 **MR. DELIKANAKIS:** Right now, electronic.
17 **THE REPORTER:** And yours?
18 **MR. VILKIN:** Well, I hadn't ordered one
19 yet, but I will, yes.
20 **THE REPORTER:** Electronic?
21 **MR. VILKIN:** Yes. Thank you.
22 **THE REPORTER:** And yours?
23 **MR. WAITE:** I don't think we're ordering
24 one.
25 **THE REPORTER:** Okay.

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1 **MR. VILKIN:** Actually, you know what?
2 I'll take a hard copy as well.
3 (Discussion held off the record.)
4 **MR. DELIKANAKIS:** Send me a hard copy as
5 well, E-Tran, disc.
6 **THE REPORTER:** Read and sign through your
7 office?
8 **MR. DELIKANAKIS:** Yes.
9 **THE REPORTER:** Thank you.
10 (Proceedings concluded at 5:13 p.m.)
11 -oOo-
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25

EXHIBIT B

EXHIBIT B

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*Attorneys for U.S. Bank, N.A. as Trustee for the Certificate
Holders of U.S. Bank Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-AR4.*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, a Nevada
non-profit corporation and LUCIA PARKS,
an individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Consolidated Case Nos.
A-13-678814-C
A-13-688734-C

Dept. XXXI

**U.S. BANK, N.A.'S RESPONSES TO SFR
INVESTMENTS POOL 1, LLC'S FIRST
REQUEST FOR ADMISSIONS**

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4; NV West

Servicing, LLC, Nevada limited liability company, as Trustee for NASHVILLE TRUST 2270; DOES I-X; and ROE CORPORATIONS I-X, inclusive,

Defendants.

U.S. BANK, N.A., a national association, as Trustee for the Certificate Holders of U.S. Bank Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4,

Counterclaimant,

vs.

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

Counter Defendant.

U.S. BANK, N.A., a national association, as Trustee for the Certificate Holders of U.S. Bank Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4,

Third-Party Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC., a Nevada corporation; COPPER RIDGE COMMUNITY ASSOCIATION, a Nevada non-profit corporation;

Third-Party Defendants.

Defendant, Counterclaimant and Third-Party Defendant U.S. Bank, N.A., as Trustee for the Certificate Holders of U.S. Bank Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 (“U.S. Bank”), responds to Plaintiff Investments Pool 1, LLC’s (“Plaintiff”) First Request for Admissions as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

The Responses herein to the Plaintiff’s Requests for Admissions (the “Responses”) are subject to the following general objections (the “General Objections”). The General Objections

1 may be specifically referred to in the Responses for the purpose of clarity. The failure to
2 specifically incorporate a General Objection, however, should not be construed as a waiver of the
3 General Objections.

4 1. U.S. Bank will make reasonable efforts to respond to each request for admission,
5 to the extent that is has not been objected to, as U.S. Bank understands and interprets the request
6 for admission. If Plaintiff subsequently asserts an interpretation of any request for admission
7 which differs from that of U.S. Bank, U.S. Bank reserves the right to supplement its responses
8 accordingly.

9 2. U.S. Bank hereby objects to the definitions of Plaintiff insofar as they are
10 oppressive, overbroad, and burdensome, and insofar as they are vague and ambiguous.

11 3. U.S. Bank objects to each and every request for admission to the extent that and
12 insofar as Plaintiff attempts to purport to impose requirements or obligations beyond those
13 imposed by the Nevada Rules of Civil Procedure.

14 4. U.S. Bank objects to Plaintiff's requests for admission to the extent that the request
15 for admission requests any information that is protected by any absolute or qualified privilege or
16 exception, including, but not limited to, the attorney-client privilege, the attorney work-product
17 exemption, and the consulting-expert exemption. Specifically, U.S. Bank objects to Plaintiff's
18 request for admission of documents on the following grounds:

19 a. U.S. Bank objects to Plaintiff's requests for admission to the extent they
20 seek documents or disclose information that is protected from disclosure by the attorney-client
21 privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and NRS Chapter
22 49 of the Nevada Rules of Evidence.

23 b. U.S. Bank objects to Plaintiff's request for admission to the extent they
24 seek documents or disclosure of information that is protected from disclosure by the work-
25 product exemption in accordance with Rule 16(b)(1), (3) and (4) of the Nevada Rules of Civil
26 Procedure and applicable case law.

27 c. U.S. Bank objects to Plaintiff's request for admission to the extent they
28 seek documents or information protected from disclosure pursuant to the consultant/expert

1 exemption in accordance with Rule 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and
2 applicable case law.

3 5. U.S. Bank will supplement its responses to these requests as required by Rule
4 26(e) of the Nevada Rules of Civil Procedure.

5 6. All answers and responses will be made solely for the purpose of this action. Each
6 response will be subject to all objections as to competence, relevance, materiality, propriety and
7 admissibility, and to any and all other objections on any ground which would require the
8 exclusion from evidence of any statement herein if any such statements were made by a witness
9 present and testifying at trial, all of which objections and grounds are expressly reserved and may
10 be imposed at such hearing or trial.

11 7. U.S. Bank adopts by reference the above objections and incorporates each
12 objection as if it were fully set forth below in each of U.S. Bank's responses below.

13 8. The following Objections and Responses are based upon the information,
14 contentions, and documents presently available to and known by U.S. Bank. It is anticipated that
15 further discovery, independent investigation, legal research and analysis will supply additional
16 facts, add meaning to known facts, as well as establish entirely new factual conclusions and legal
17 contentions, all of which may lead to substantial additional to, change in, and variations from
18 these contentions and responses. U.S. Bank herein reserves the right to change any of these
19 Objections and Responses as additional facts are recalled or ascertained, analyses are made, legal
20 research is completed and contentions are made. These Answers and Responses are made in
21 good faith to supply as much information and specifications as is presently known.

22
23 **RESPONSE TO REQUEST FOR ADMISSIONS**

24 **REQUEST FOR ADMISSION NO. 1:**

25 Admit that you were aware of the Association's lien on the Property before March 1,
26 2013.

27 **RESPONSE:**

28 Deny.

REQUEST FOR ADMISSION NO. 2:

Admit that you were aware of the Association foreclosure sale before March 1, 2013.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 3:

Admit that you did not attend the Association foreclosure sale on March 1, 2013.

RESPONSE:

Admit, as U.S. Bank cannot attend something for which it was not notified or had no knowledge of.

REQUEST FOR ADMISSION NO. 4:

Admit that you are the current holder of the beneficial interest in the First Deed of Trust.

RESPONSE:

U.S. Bank objects as “current holder” and “beneficial interest” are vague, ambiguous and undefined. Without waiving any objections, U.S. Bank admits that it is the current record beneficiary and owner of the promissory note and First Deed of Trust.

REQUEST FOR ADMISSION NO. 5:

Admit that you or your predecessor in interest to the First Deed of Trust received a notice of default from the Association or its agents.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 6:

Admit that you have not transferred your interest in the First Deed of Trust to HUD.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 7:

Admit that the Trust paid less than the face value of the note for its interest in the First Deed of Trust.

RESPONSE:

U.S. Bank objects to this request as the term “face value” is vague and undefined. U.S. Bank objects that this request seeks information that is not relevant or likely to lead to the discovery of relevant information, as it is neither a material fact, nor does it tend to make any material fact more or less likely to be true.

REQUEST FOR ADMISSION NO. 8:

Admit that you or your predecessor in interest to the First Deed of Trust received a notice of sale from the Association or its agents.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 9:

Admit that you did not make any payment to the Association towards the Association’s lien on the Property.

RESPONSE:

Admit. However, U.S. Bank cannot make payment for something of which it was not aware. Additionally, U.S. Bank asserts that based on its analysis of NRS 116, the determination that an HOA Sale does not extinguish U.S. Bank’s Deed of Trust, the mortgage protection clause in the CC&Rs, the state and general understanding of Nevada law at the time of the Association foreclosure sale and issues of “notice” of the HOA foreclosure sale.

REQUEST FOR ADMISSION NO. 10:

Admit that you did not take any steps to ensure the Association received assessments owed by the Borrower.

RESPONSE:

U.S. Bank objects to this Request on the ground that it assumes that U.S. Bank has a legal obligation to the Association to ensure the Association received assessments, which it does not. U.S. Bank also objects to this Request on the ground that it assumes that U.S. Bank had knowledge that the Borrower was delinquent in its assessments, which it did not. Without waiving and subject to the foregoing objections, U.S. Bank responds as follows: Deny.

REQUEST FOR ADMISSION NO. 11:

Admit that you did not attempt to contact the Association or its agents to determine the super priority portion of the Association's lien on the Property.

RESPONSE:

U.S. Bank objects to this Request on the ground that it assumes that U.S. Bank had knowledge of the Association's lien prior to the Association's foreclosure sale, which U.S. Bank did not. Without waiving any objections, U.S. Bank responds as follows: Admit; however, U.S. Bank asserts that U.S. Bank did not tender any payment to the Association based on its analysis of NRS 116, the determination that an HOA Sale does not extinguish U.S. Bank's Deed of Trust, the mortgage protection clause in the CC&Rs, the state and general understanding of Nevada law at the time of the Association foreclosure sale and issues of "notice" of the HOA foreclosure sale.

REQUEST FOR ADMISSION NO. 12:

Admit that you failed to cure the super priority portion of the Association's lien before the Association foreclosure sale.

RESPONSE:

U.S. Bank objects to this Request on the ground that it assumes that U.S. Bank has a legal obligation to the Association to cure any portion of the Association's lien, which it does not. U.S. Bank also objects to this Request on the ground that it assumes that U.S. Bank had knowledge of the Association's lien before the Association foreclosure sale, which it did not. Without waiving and subject to the foregoing objections, U.S. Bank responds as follows: Admit.

REQUEST FOR ADMISSION NO. 13:

Admit that you were aware that the Property was located within the Association and was subject to the Association's declaration of covenants, conditions and restrictions before you obtained an interest in the Property.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 14:

Admit that you were aware that the Borrower had not paid the Association assessments as required by the Association's declaration of CC&Rs before you obtained an interest in the Property.

RESPONSE:

U.S. Bank objects to this Request on the ground that the phrase "before you obtained an interest in the Property" is vague and confusing in context of the Request. Without waiving any objections, U.S. Bank responds as follows: Deny.

REQUEST FOR ADMISSION NO. 15:

Admit that you were aware before you took an interest in the Property that your security interest could be extinguished if a lien with a higher priority foreclosed.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 16:

Admit that the portion of an association's lien representing up to nine months' worth of common assessments has priority over first security interests you have in Nevada.

RESPONSE:

U.S. Bank objects to this Request on the grounds that it impermissibly calls for a legal conclusion. *Smith v. Emery*, 856 P.2d 1386, 1389-90 (Nev. 1993); *Morgan v. Demille*, 799 P.2d 561, 564 (1990). Without waiving any objections, U.S. Bank responds as follows: Deny, for the reasons set forth in U.S. Bank's Answer and affirmative defenses, Counterclaim, and Third-Party Complaint.

REQUEST FOR ADMISSION NO. 17:

Admit that a portion of the Association's lien had priority over your First Deed of Trust.

RESPONSE:

U.S. Bank objects to this Request on the grounds that it impermissibly calls for a legal conclusion. *Smith v. Emery*, 856 P.2d 1386, 1389-90 (Nev. 1993); *Morgan v. Demille*, 799 P.2d 561, 564 (1990). Without waiving any objections, U.S. Bank responds as follows: Deny, for the

1 reasons set forth in U.S. Bank's Answer and affirmative defenses, Counterclaim, and Third-Party
2 Complaint.

3 **REQUEST FOR ADMISSION NO. 18:**

4 Admit that you have servicing guidelines requiring you and your agents to protect your
5 lien priority by paying association liens.

6 **RESPONSE:**

7 Objection. U.S. Bank objects to this Request because it seeks information not relevant to
8 this litigation, it is not reasonably calculated to lead to the discovery of admissible, relevant,
9 evidence, and it is unlimited in scope and over broad, unduly burdensome and oppressive. U.S.
10 Bank objects to this Request because it deals with the rights of third parties and U.S. Bank does
11 not have the express authority to release the third-party information. U.S. Bank also objects to
12 this Request because it impermissibly calls for a legal conclusion. *Smith v. Emery*, 856 P.2d 1386,
13 1389-90 (Nev. 1993); *Morgan v. Demille*, 799 P.2d 561, 564 (1990). Without waiving any
14 objections, U.S. Bank responds as follows: Deny.

15 **REQUEST FOR ADMISSION NO. 19:**

16 Admit that the federal government has no contractual interest in the First Deed of Trust.

17 **RESPONSE:**

18 Admit.

19 **REQUEST FOR ADMISSION NO. 20:**

20 Admit that the federal government has no beneficial interest in the First Deed of Trust.

21 **RESPONSE:**

22 Admit.

23 **REQUEST FOR ADMISSION NO. 21:**

24 Admit the federal government does not insure the loan secured by the First Deed of Trust.

25 **RESPONSE:**

26 U.S. Bank admits that the loan secured by the First Deed of Trust is not insured by either
27 the Department of Veterans' Affairs or the Federal Housing Administration.

28

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,

Respondents.

Electronically Filed
May 22 2018 08:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANT'S APPENDIX VOLUME 3

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SFR Investments Pool 1, LLC

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7196 9008 9111 9084 3578

TO:
LUCIA PARKS
2270 NASHVILLE AVE.
HENDERSON, NV 89052-2337

SENDER: TS No.: N71222

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	5.21
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
Total Postage & Fees		

POSTMARK OR DATE

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Receipt for
Certified Mail™

No Insurance Coverage Provided
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7196 9008 9111 9084 3578

TO:
State of Nevada
Ombudsman for Common-Interest Con
2501 East Sahara Avenue, #102
Las Vegas, Nevada 89104

SENDER: TS No.: N71222

REFERENCE:

PS Form 3800, January 2005

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	Restricted Delivery	
Total Postage & Fees		

POSTMARK OR DATE

USPS®

Receipt for
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No Insurance Coverage Provided
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TO:
LUCIA PARKS
P.O. BOX 7029
CAPISTANO BEACH, CA 92624-7029

SENDER:

TS No.: N71222

REFERENCE:

PS Form 3800, January 2005

RETURN
RECEIPT
SERVICE

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Certified Fee	
Return Receipt Fee	
Restricted Delivery	
Total Postage & Fees	

5.21

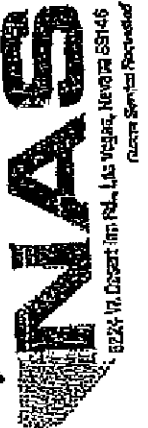
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Certified Mail™

No Insurance Coverage Provided
Do Not Use for International Mail

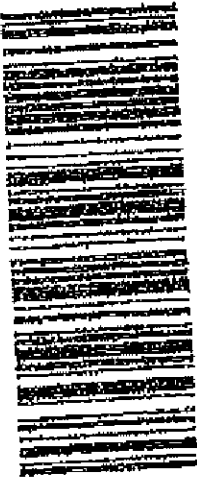
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Notice of Sale:
Sent by First Class Mail &
Certified Mail with a Return
Receipt requested.

7022

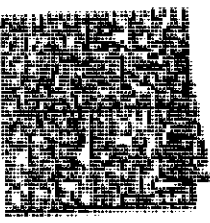


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FEB 11 2013

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TS No.: N71222

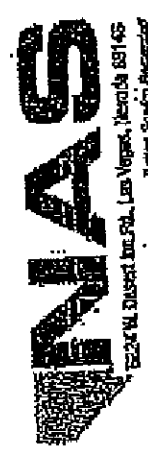
REAL ESTATE OFFICER
CITY OF BOULDER CITY
P.O. BOX 61350
BOULDER CITY, NV 8

RETURN TO SENDER
CITY OF BOULDER CITY
P.O. BOX 61350
BOULDER CITY, NV 89005-2650

RETURN TO SENDER

33 LFFD 89146 888025

RECEIVED



7022-07-10 253 LV. 1000



02 1R
0006554859 FEB 06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

FEB 11 2013

TS No.: N71222

WELLS FARGO BANK, N.A.
LOAN # 0061777934
P.O. BOX 10304
DES MOINES, IA

WELLS FARGO BANK
P.O. BOX 10304
DES MOINES, IA 50319-0304
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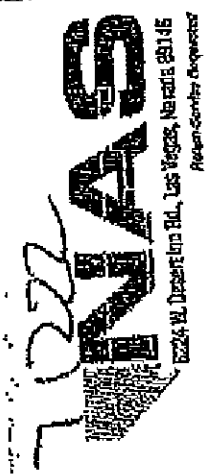
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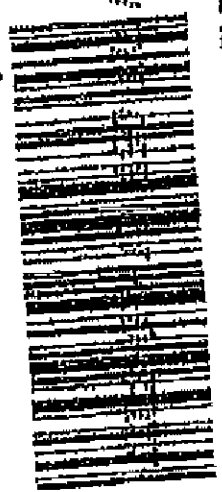
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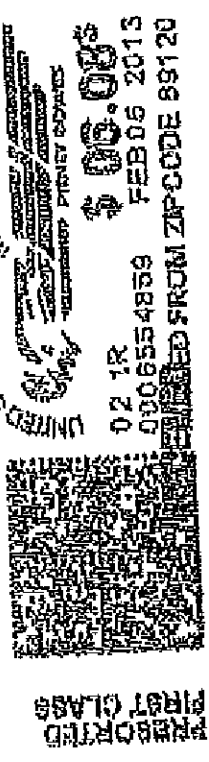
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FEB 11 2013

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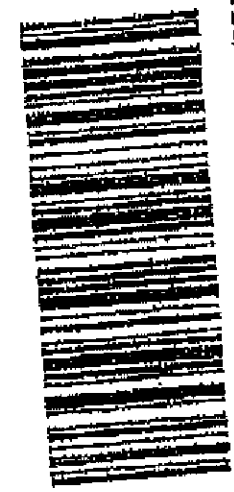
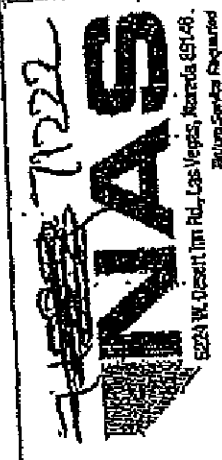
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P.O. BOX 10304
DES MOINES, IA 50306-0304

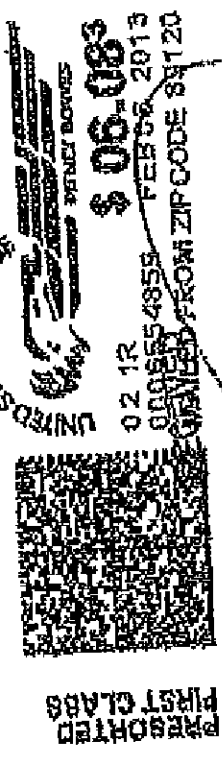
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WELLS FARGO BANK
DES MOINES, IA 50306-0304
BC: 89146661224
#0194-01053-08-35

2 LRD 7196 7008 9113 7034 3563

VERIFIED MAIL



7196 7008 9113 7034 3563



APR 08 2013

NEVADA ASSN SERVICES

TS No.: N71222

LUCIA PARKS
2270 NASHVILLE AVE
HENDERSON, NV 89122

891 CE 1 84 04/04/13
RETURN TO SENDER
UNCLAIMED
WELLS FARGO BANK

BC: 89146661224
#0194-05007-04-38

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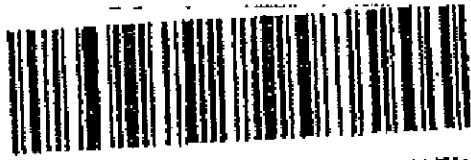
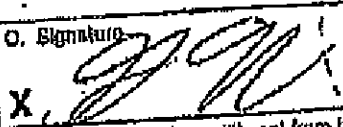
1. Article Addressed to:
State of Nevada
Ombudsman for Common-Interest Communities
2501 East Sahara Avenue, #102
Las Vegas, Nevada 89104

1. Article Addressed to:
GREEN VALLEY RANCH COMMUNITY
C/O ASSESSMENT MGMT SERVICES
ACCT. # AMS1085-95371
8655 W. CIMARRON RD., #201
LAS VEGAS, NV 89113

1. Article Addressed to:
Copper Ridge Community
c/o Diane Kelley
Colonial
8595 S. Eastern Avenue
Las Vegas, NV 89123

1. Restricted Delivery: (Leave only)
1. Article Addressed to:
LUCIA PARKS
P.O. BOX 7029
CAPISTANO BEACH, CA 92524-7029

Domestic Return Receipt
JAN 11 2005

2. Article Number		COMPLETE THIS SECTION ON DELIVERY	
		A. Received by (Please Print Clearly) _____ Date of Delivery FEB 11 2013	
7196 9008 9111 9084 3547		C. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
3. Service Type CERTIFIED MAIL™		D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		If YES, enter delivery address below:	
1. Article Addressed to:			
U.S. BANK NA, TRUSTEE 60 LIVINGSTON AVE. ST. PAUL, MN 55107		RECEIVED FEB 15 2013 TS No.: N71222 Parks Copper Ridge Community NEVADA ASSN SERVICES	
PS Form 3811, January 2005		Domestic Return Receipt	


2. Article Number 71222		COMPLETE THIS SECTION ON DELIVERY	
		A. Received by (Please Print Clearly) _____ Date of Delivery FEB 18 2013	
7196 9008 9111 9084 3554		C. Signature  <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
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1. Article Addressed to:			
NATIONAL DEFAULT SERVICING CORP. NDSC FILE # 10-40866-WF-NV 7720 N. 16TH ST., #300 PHOENIX, AZ 85020		RECEIVED FEB 18 2013 TS No.: N71222 Parks Copper Ridge Community NEVADA ASSN SERVICES	
PS Form 3811, January 2005		Domestic Return Receipt	

EXHIBIT J

Priority Posting & Publishing
Order # P1019611
TS # N71222

AFFIDAVIT OF POSTING NOTICE OF TRUSTEE'S 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 2/7/2013, I posted a copy of the Notice of Trustee's Sale pursuant to NRS 107.080, concerning Trustee Sale N71222, 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

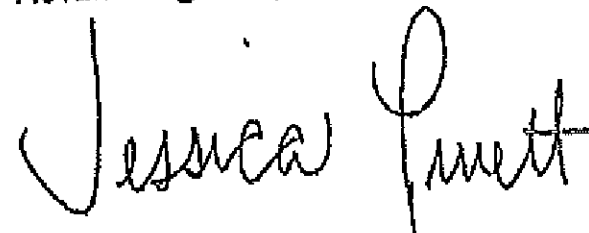
The purported owner and address of the property contained in the Notice of Trustee's Sale being:

Lucia Parks, 2270 Nashville Avenue, Henderson NV 89052.

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

Dated 2/7/2013

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# 431269 82
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
NEVADA ASSOCIATION

Priority Posting & Publishing
Order # P1019611
TS # N71222

AFFIDAVIT OF POSTING NOTICE OF TRUSTEE'S SALE

State of Nevada)
County of Clark)

I, Jeanette Vignale, 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 2/7/2013, I posted a copy of the Notice of Trustee's Sale pursuant to NRS 107.080, concerning Trustee Sale N71222, in a public place in the county where the property is situated, to wit:

CITY HALL, 240 WATER ST, HENDERSON
PASEO VERDE LIBRARY, 280 S GREEN VALLEY PKWY, HENDERSON
LIBRARY, 280 SO. WATER ST, HENDERSON

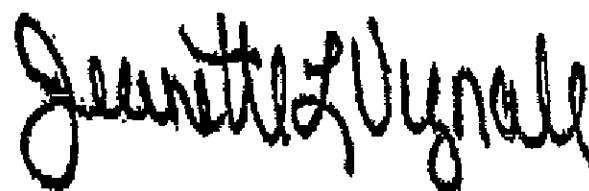
The purported owner and address of the property contained in the Notice of Trustee's Sale being:

Lucia Parks, 2270 Nashville Avenue, Henderson NV 89052.

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

Dated 2/7/2013

Nevada Legal Support Services LLC



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

NVLSS ID# 431269 82
COUNTY OF SERVICE: CLARK
SERVER: Jeanette Vignale
NEVADA ASSOCIATION

AFFP
P1019611

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:

Feb 08, 2013
Feb 16, 2013
Feb 22, 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: Feb 22, 2013


Rosalie Qualls

APN # 178-19-712-012 NAB # N71222 Copper Ridge Community NOTICE OF FORECLOSURE 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 NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-820-9807 IMMEDIATELY. YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, May 21, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER. NOTICE IS HEREBY GIVEN THAT on 3/1/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenant conditions and restrictions recorded on July 1, 1997 as Instrument number 01212 Book 970701 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on May 24, 2012 as document number 0002436 Book 20120824 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 2270 Nashville Ave, Henderson, NV 89052. Said property is legally described as: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 88, LOT 5, BLOCK 5, official records of Clark County, Nevada. The owner(s) of said property as of the date of the recording of said lien is purported to be: Lucia Parks The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. 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 \$3,132.62. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 7/19/2012 as Instrument number 0001228 Book 20120719 in the official records of Clark County, Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. February 5, 2013 Nevada Association Services, Inc. 6224 W. Desert Inn Road, Suite A Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544 By: Eileen Hollander, Agent for Association and employee of Nevada Association Services, Inc. When Recorded Mail To: Nevada Association Services, Inc. 6224 W. Desert Inn Road, Suite A Las Vegas, NV 89146 P1019611 2/6, 2/15, 02/22/2013

04107370 00343667

PRIORITY POSTING & PUBLISHING-2013
17501 IRVINE BLVD. SUITE 1
TUSTIN, CA 92780

EXHIBIT K



Phone (702) 804-8885 Fax (702) 804-8887
Toll Free (888) 627-6544
6224 W. Desert Inn Road, Suite A Las Vegas, NV 89146

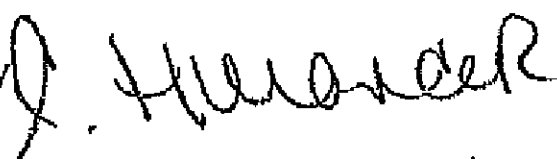
CERTIFICATE OF SALE

TS Number : N71222

On Friday, March 1, 2013 at 10:00 AM, the undersigned appeared at the location described in the Notice of Trustee Sale and conducted a Trustee's Sale as agent for Copper Ridge Community.

At said sale, the property described in the Notice of Trustee Sale was sold to: S F R Investments Pool 1, LLC for the sum of \$14,000.00.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

By 

Nevada Association Services, Inc.

Dated this 1st day of March, 2013

EXHIBIT L

Please mail tax statement and
when recorded mail to:
SFR Investments Pool 1, LLC
5030 Paradise Rd., B-214
Las Vegas, NV 89119

Inst #: 201303080001614
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$71.40 Ex: #
03/06/2013 11:33:13 AM
Recalpt #: 1522795
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

FORECLOSURE DEED

APN # 178-19-712-012
North American Title #37570

NAS # N71222

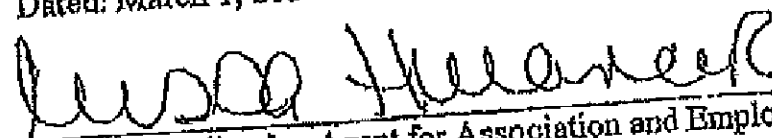
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Copper Ridge Community), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded May 24, 2012 as instrument number 0002436 Book 20120524, in Clark County. The previous owner as reflected on said lien is Lucia Parks. Nevada Association Services, Inc. as agent for Copper Ridge Community does hereby grant and convey, but without warranty expressed or implied to: SFR Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Copper Ridge Community governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 7/19/2012 as instrument # 0001226 Book 20120719 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Copper Ridge Community at public auction on 3/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$14,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 1, 2013



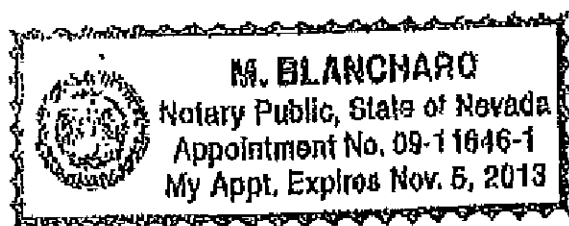
By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA
COUNTY OF CLARK

)
)
On March 1, 2013, before me, M. Blanchard, personally appeared Blissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

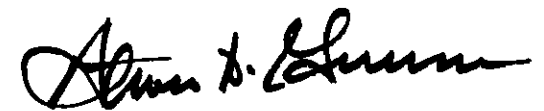
(Seal)

(Signature)



M. Blanchard

TAB 14



CLERK OF THE COURT

ALVERSON, TAYLOR,
MORTENSEN & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
7401 W. Charleston Boulevard
Las Vegas, NV 89117
(702) 384-7000
efile@alversontaylor.com
*Attorneys for Third-Party Defendant
Copper Ridge Community Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate Holders
of U.S. Bank Asset Securities Corporation,
Mortgage Pass-Through Certificates, Series
2006-AR4, a Nevada non-profit corporation and
LUCIA PARKS, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

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

Plaintiff,

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate Holders
of U.S. Bank Asset Securities Corporation,
Mortgage Pass-Through Certificates, Series
2006-AR4; NV West Servicing, LLC, a Nevada
limited liability company, as Trustee for
NASHVILLE TRUST 2270; DOES I-X; and
ROE CORPORATIONS I-X, inclusive,

Consolidated Case Nos.

A-13-678814-C

A-13-688734-C

Dept No.: XXXI

**THIRD-PARTY DEFENDANT
COPPER RIDGE COMMUNITY
ASSOCIATION'S SUBSTANTIVE
JOINDER TO SFR INVESTMENTS
POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

Defendants.

U.S. BANK, N.A., a national association, as
Trustee for the Certificate Holders of U.S. Bank
Asset Securities Corporation, Mortgage Pass-
Through Certificates, Series 2006-AR4,

Counterclaimant,

vs.

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

Counter Defendant.

U.S. BANK, N.A., a national association, as
Trustee for the Certificate Holders of U.S. Bank
Asset Securities Corporation, Mortgage Pass-
Through Certificates, Series 2006-AR4,

Third-Party Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC., a
Nevada corporation; COPPER RIDGE
COMMUNITY ASSOCIATION, a Nevada non-
profit corporation;

Third-Party Defendants.

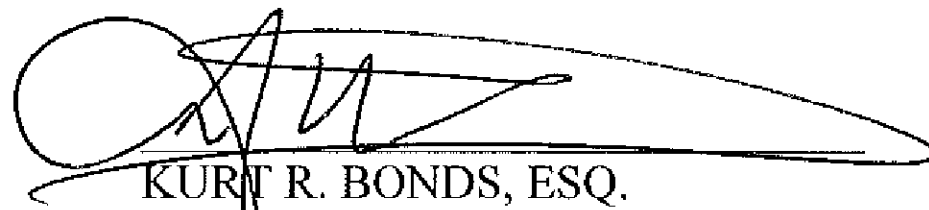
**THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S
SUBSTANTIVE JOINDER TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

Third-Party Defendant Copper Ridge Community Association, by and through their
attorneys of record, Kurt R. Bonds, Esq., and Trevor R. Waite, Esq., of the law firm Alverson,
Taylor, Mortensen & Sanders, hereby join in, adopt, and affirm the Point and Authorities, the

1 legal argument, and any and all exhibits in support of SFR Investments Pool 1, LLC's Motion for
2 Summary Judgment. This Joinder is made and based upon the papers and pleading on file herein,
3 the attached Memorandum of Points and Authorities, attached exhibits, as well as any argument
4 the Court may entertain.
5

6 DATED this 24 day of January, 2017.

7 ALVERSON, TAYLOR,
8 MORTENSEN & SANDERS

9
10 

KURT R. BONDS, ESQ.

Nevada Bar #6228

TREVOR R. WAITE, ESQ.

Nevada Bar #13779

7401 W. Charleston Blvd.

Las Vegas, NV 89117

(702) 384-7000

Attorneys for Third-Party Defendant

Copper Ridge Community Association

16 **CERTIFICATE OF SERVICE VIA CM/ECF**

17 I hereby certify that on this 24 day of January, 2017, I did serve, via Case
18 Management/Electronic Case Filing, a copy of the above **THIRD-PARTY DEFENDANT**
19 **COPPER RIDGE COMMUNITY ASSOCIATION'S SUBSTANTIVE JOINDER TO SFR**
20 **INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** and foregoing
21 addressed to:

22 Richard C. Gordon, Esq.
23 Robin E. Perkins, Esq.
24 Daniel S. Ivie, Esq.
25 SNELL & WILMER L.L.P.
26 3883 Howard Hughes Pkwy., Suite 1100
27 Las Vegas, NV 89169
28 Attorneys for U.S. Bank, N.A. as Trustee for the
Certificate Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through Certificates,
Series 2006-AR4

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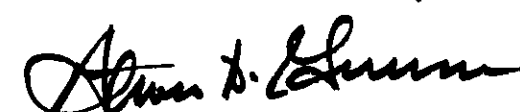
Gregory L. Wilde, Esq.
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Attorneys for Third-Party
Defendant National Default
Servicing Corp.



An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

N:\kurt.grp\CLIENTS\23100\23108\pleading\Copper Ridge - Joinder to Motion for Summary Judgment.doc

TAB 15



CLERK OF THE COURT

John S. Delikanakis, Esq.
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Daniel S. Ivie, Esq.
Nevada Bar No. 10090
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*Attorneys for Defendant 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*

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4; LUCIA
PARKS, an individual; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED MATTERS.

Consolidated Case Nos.
A-13-678814-C
A-13-688734-C

Dept. XXXI

**U.S. BANK'S RENEWED MOTION
FOR SUMMARY JUDGMENT**

Date of Hearing:

Time of Hearing:

Pursuant to Rule 56 of the Nevada Rules of Civil Procedure and the Court's minute order dated November 22, 2016, U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 ("U.S. Bank"), hereby files this Renewed Motion for Summary Judgment¹ on Plaintiff SFR Investments

¹ U.S. Bank previously filed a Motion for Summary Judgment on August 10, 2016. On August 31, 2016, the Court entered the parties' Stipulation and Order to stay this litigation pending the issuance of a mandate in the Ninth Circuit case of *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.* The stay was lifted by the Court at a status hearing held on November 22, 2016. At that time, the Court directed the parties to file new or amended dispositive motions. U.S.

Pool 1, LLC's ("SFR" or Plaintiff) claims for declaratory relief and quiet title, and U.S. Bank's claims against SFR, Nevada Association Services, Inc. ("NAS") and the Copper Ridge Community Association (the "HOA") for declaratory relief, wrongful foreclosure, and quiet title.

This motion is supported by the pleadings and papers on file in this case, the following memorandum of points and authorities, the exhibits attached hereto, and any oral argument as the Court may entertain on behalf of U.S. Bank.

DATED January 24, 2017.

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie

John S. Delikanakis, Esq.

Daniel S. Ivie, Esq.

3883 Howard Hughes Parkway, Ste. 1100
Las Vegas, Nevada 89169

Attorneys for Defendant 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

Bank's instant Motion has been updated accordingly and therefore takes the place of its original Motion for Summary Judgment previously filed on August 10, 2016.

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD.

YOU, and each of you, will please take notice that U.S. Bank will bring on for hearing in Department 31 of the above-entitled Court their **U.S. BANK'S MOTION FOR SUMMARY JUDGMENT** on the 28 day of FEBRUARY, 2017, at the hour of 9:30 A.m., or as soon thereafter as counsel may be heard, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

DATED January 24, 2017.

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie
John S. Delikanakis, Esq.
Daniel S. Ivie, Esq.
3883 Howard Hughes Parkway, Ste. 1100
Las Vegas, Nevada 89169

*Attorneys for Defendant 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*

1 vast majority of decisions in both state and federal court, the Nevada Supreme Court held by a 4-
2 3 vote that the foreclosure of an HOA lien under the Statute can extinguish a first deed of trust.
3 *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014). Notably, the Nevada
4 Legislature unanimously and promptly overruled *SFR v. U.S. Bank* during its next session—
5 amending the Statute to give holders of deeds of trust a right to notice before an HOA foreclosure
6 sale, and a right of redemption after the sale. Going forward, the problem is fixed. But for untold
7 hundreds or thousands of Nevada homes (and mortgages) trapped in the bubble of ambiguity
8 created by *SFR v. U.S. Bank*, the problem persisted until the Ninth Circuit issued its decision in
9 *Bourne Valley*.

10 The Statute is unconstitutional. Merely calling what the HOA exploits at the foreclosure
11 sale a “lien” does not make it constitutional. It is well-settled that state laws creating liens violate
12 the Due Process Clause if they impair or extinguish property rights without requiring notice to the
13 party whose rights are impaired. The Statute’s answer to the constitutional notice requirement—a
14 weak species of opt-in notice—fails under United States Supreme Court and other controlling
15 authority. Equally troubling, case law shows that the Statute effects a taking by its delegation to
16 the HOA of the power to destroy a private property right—here, a first lien—without
17 compensation to the Deed of Trust owner. If the Court reaches these issues (which is unnecessary
18 in light of the other deficiencies in the HOA Foreclosure Sale), this Court should find the Statute
19 facially unconstitutional for violating the Due Process Clause and Takings Clauses, and hold that
20 the any interest SFR obtained through the HOA Foreclosure is subject to the Deed of Trust.

21 For these reasons, summary judgment should be entered in favor of U.S. Bank.

22 II. STATEMENT OF UNDISPUTED FACTS

23 On or about December 30, 2005, Lucia Parks obtained a loan in the amount of
24 \$331,500.00 from Wells Fargo Bank, N.A. (the “Loan”), for the purchase of a residential property
25 identified as 2270 Nashville Avenue, Henderson, Nevada 89052 (the “Property”). The Loan was
26 secured by a deed of trust, which was recorded on January 5, 2006 (the “Deed of Trust”). A
27 certified copy of the Deed of Trust is attached as Exhibit A to the Request for Judicial Notice
28 filed contemporaneously with this motion (“RJN”).

1 Thereafter, Parks defaulted on the Loan and also allegedly stopped paying her HOA
2 assessments. *See generally* exhibits attached to RJN. On February 24, 2010, a Notice of Default
3 and Election to Sell Under Deed of Trust was recorded against the Property in relation to the
4 Deed of Trust ("DOT Notice of Default"). A certified copy of the DOT Notice of Default is
5 attached as Exhibit B to the RJN. On July 1, 2010, Wells Fargo executed an Assignment of
6 Mortgage, transferring the beneficial interest in the Deed of Trust to U.S. Bank ("Assignment").
7 A certified copy of the Assignment is attached as Exhibit C to the RJN. On July 9, 2010,
8 National Default Servicing Corp. ("NDSC"), then the trustee under the Deed of Trust, recorded a
9 Notice of Trustee's Sale ("2010 DOT Notice of Sale"). A certified copy of the 2010 DOT Notice
10 of Sale is attached as Exhibit D to the RJN. On August 23, 2010, Parks filed for Chapter 11
11 bankruptcy protection, bringing foreclosure proceedings to a halt. Voluntary Petition,
12 Bankruptcy Case No. 8:10-bk-21738-TA, C.D. Cal. ("In re Parks"), attached as Exhibit E to the
13 RJN.

14 On May 24, 2012, while Parks remained in bankruptcy, the Copper Ridge Community
15 Association (the "HOA"), through its agent, Nevada Association Services, Inc. ("NAS"),
16 recorded a Notice of Delinquent Assessment Lien ("HOA Lien"). A certified copy of the HOA
17 Lien is attached as Exhibit F to the RJN. On July 16, 2012, NAS recorded a Notice of Default
18 and Election to Sell Under HOA Lien ("HOA Notice of Default"). A certified copy of the HOA
19 Notice of Default is attached as Exhibit G to the RJN. On February 5, 2013, NAS recorded a
20 Notice of Foreclosure Sale ("HOA Sale Notice"). A certified copy of the HOA Sale Notice is
21 attached as Exhibit H to the RJN. The HOA Sale Notice set the HOA's foreclosure sale of the
22 Property for March 1, 2013. On or about March 1, 2013, NAS, acting on behalf of the HOA and
23 without first seeking leave of the bankruptcy court, held a foreclosure sale at which it purported to
24 sell the Property to SFR Investments Pool 1, LLC ("SFR") for the total amount of \$14,000.00
25 ("HOA Foreclosure Sale"). Docket, In re Parks, (Final Decree 9/19/2014), attached as Exhibit I
26 to the RJN. The HOA Foreclosure Sale is evidenced by a Foreclosure Deed recorded on March 6,
27 2013 ("HOA Foreclosure Deed"). A certified copy of the HOA Foreclosure Deed is attached as
28 Exhibit J to the RJN. At the time of the HOA Foreclosure Sale, the Property had a fair market

1 value of \$228,000.00. Report of S. Dugan, Appraisal Report, attached hereto as **Exhibit 1**. The
2 records of Wells Fargo, which serviced the loan on behalf of U.S. Bank, reflect that Wells Fargo
3 did not receive notice of the HOA Foreclosure Sale until four (4) days after the sale had taken
4 place. Tr. of Deposition of Robert Ferguson, as Rule 30(b)(6) designee for U.S. Bank, Feb. 10,
5 2016 ("Ferguson Dep. vol. 1") at 61:2-16, attached as **Exhibit 2**; Tr. of Deposition of Robert
6 Ferguson, as Rule 30(b)(6) designee for U.S. Bank, March 23, 2016 ("Ferguson Dep. vol. 2") at
7 85:5-22; 99:9-23, attached as **Exhibit 3**.

8 On July 2, 2012, U.S. Bank filed a motion in Parks' bankruptcy case seeking relief from
9 the automatic stay so it could resume proceedings to foreclose on the Property. Motion for Relief
10 from Automatic Stay, *In re Parks*, attached as Exhibit K to the RJN. The bankruptcy court
11 granted that motion on August 7, 2012. Order Granting Motion for Relief from the Automatic
12 Stay, *In re Parks*, attached as Exhibit L to the RJN. On March 8, 2013, just two days after the
13 Foreclosure Deed was recorded, NDSC recorded a Notice of Trustee's Sale ("2013 DOT Notice
14 of Sale"). A certified copy of the 2013 DOT Notice of Sale is attached as Exhibit M to the RJN.
15 The 2013 DOT Notice of Sale stated that the Property would be sold on April 1, 2013, under the
16 Deed of Trust, of which U.S. Bank was, and is, the beneficiary of record (the "DOT Foreclosure
17 Sale").

18 SFR filed a Complaint for Quiet Title and Injunctive Relief on March 22, 2013, naming
19 U.S. Bank and Parks (the "First Action").² SFR filed a Notice of Lis Pendens against the
20 Property that same day. A certified copy of SFR's Notice of Lis Pendens is attached as Exhibit N
21 to the RJN. On March 27, 2013, SFR moved for a temporary restraining order and preliminary
22 injunction to stop the DOT Foreclosure Sale from proceeding on April 1, 2013. The Court
23 granted the TRO, but denied SFR's request for preliminary injunction on May 17, 2013. An
24 order denying the motion for preliminary injunction was filed on June 10, 2013, and on June 11,
25 2013, the Court granted U.S. Bank's motion to dismiss SFR's complaint and expunge SFR's Lis
26

27 ² On or about September 16, 2013, SFR filed a second lawsuit (the "Second Action"), naming U.S. Bank and NV
28 West, alleging causes of action for declaratory relief/quiet title, wrongful foreclosure (against U.S. Bank only), and
injunctive relief. On January 6, 2015, following the Nevada Supreme Court's remand of the First Action, the parties
stipulated to consolidate the First and Second Actions.

1 Penders. SFR filed a notice of appeal challenging both the denial of the motion for preliminary
2 injunction and the grant of the motion to dismiss on July 12, 2013. On November 3, 2014, the
3 Nevada Supreme Court issued its order vacating and reversing the previous dismissal, and
4 remanding the case for further proceedings.

5 While the First Action was on appeal, U.S. Bank foreclosed on the Property. On July 18,
6 2013, Nashville Trust #2270, through its trustee, NV West Servicing, purchased the Property at
7 the DOT Foreclosure Sale for \$170,000.00. A certified copy of the Trustee's Deed Upon Sale is
8 attached as Exhibit O to the RJN.

9 Parks remained in bankruptcy until September 17, 2014, more than 18 months after the
10 HOA foreclosed on the Property without first seeking relief from the automatic stay.

11 **III. LEGAL ARGUMENT**

12 **A. Legal Standard.**

13 Summary judgment is appropriate when the moving party demonstrates that no genuine
14 issue of material fact exists, and it is entitled to judgment as a matter of law. N.R.C.P. 56(c).
15 Summary judgment is not to be treated as a disfavored procedural shortcut, but instead as an
16 integral part of the rules, "which are designed to secure the just, speedy, and inexpensive
17 determination of every action." *Wood v. Safeway*, 121 Nev. 724, 730, 121 P.3d 1026, 1031
18 (2005) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Indeed, the "purpose of
19 summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance
20 that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter
21 of law.'" *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 214, 984
22 P.2d 164, 166 (1999). Thus, Rule 56 requires entry of summary judgment against a party "who
23 fails to make a showing sufficient to establish the existence of an element essential to that party's
24 case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477
25 U.S. 317, 322 (1986).

26 As demonstrated below, no genuine issues of material fact exist precluding judgment for
27 U.S. Bank and against SFR in this case because: (1) the HOA Foreclosure Sale, under which SFR
28 allegedly took title to the Property, is *void ab initio*; (2) the HOA Foreclosure Sale was

1 commercially unreasonable; and (3) the statute under which the HOA attempted to foreclose on
2 the Property is unconstitutional.

3 **B. The HOA Foreclosure Sale Is *Void ab Initio* Because It Took Place in**
4 **Violation of the Automatic Bankruptcy Stay.**

5 SFR cannot bear its burden of proving that title should be quieted in its name because SFR
6 never acquired a valid interest in the Property. To the contrary, the HOA Foreclosure Sale, and
7 by extension SFR's claimed interest in the Property, is void because the HOA Foreclosure Sale
8 violated the provisions of 11 U.S.C. § 362, which precludes "any act to create, perfect, or enforce
9 any lien against property of the estate" and "any act to create, perfect, or enforce against property
10 of the debtor any lien to the extent that such lien secures a claim that arose before the
11 commencement of the [bankruptcy] case." 11 U.S.C.A. § 362(a)(4)-(5).

12 Generally, the automatic stay arises at the filing of the bankruptcy petition and continues
13 with respect to an action against property of the estate until the property is no longer property of
14 the estate. With respect to other actions, the stay continues until the earlier of the closure of the
15 case, the dismissal of the case, or the grant or denial of a discharge. 11 U.S.C. § 362(c). As the
16 Ninth Circuit has explained, "the automatic stay is self-executing" and "sweeps broadly,
17 enjoining the commencement or continuation of any judicial, administrative, or other proceedings
18 against the debtor." *In re Wardrobe* (quoting *In re Gruntz*, 202 F.3d 1074, 1081-82 (9th Cir.
19 2000) (en banc)). Through its broad scope, the stay not only provides the debtor with protection
20 from its creditors, it "gives the bankruptcy court an opportunity to harmonize the interests of both
21 debtor and creditors while preserving the debtor's assets for repayment and reorganization of his
22 or her obligations." *Id.* (internal quotation and citation omitted).

23 In light of the above, the Ninth Circuit has long held that acts taken in violation of the
24 automatic stay in bankruptcy are *void ab initio*. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir.
25 1992). Critically, the voidness of the act is not dependent upon intent or willfulness. *Id.* To the
26 contrary, the act is void by operation of law. *Id.* The rule is self-executing, such that it is not
27 necessary for the bankruptcy court to declare the act in question void. *Id.* The party relying on
28

1 the challenged act instead bears the burden of seeking a determination from the bankruptcy court
2 that the stay did not preclude it. *Id.* at 572.

3 There is no dispute that Parks filed her bankruptcy petition on August 23, 2010, or that
4 she remained in bankruptcy until September 27, 2014—more than 18 months after the HOA sold
5 the Property in violation of 11 U.S.C. § 362(a). Nor is there any dispute that despite the pending
6 bankruptcy, the HOA recorded the HOA Lien without seeking relief from the automatic stay, or
7 that the HOA, through its agent, NAS, went on to record the HOA Notice of Default, record the
8 HOA Sale Notice, and even purportedly sell the Property through foreclosure without ever
9 seeking, much less obtaining, relief from the bankruptcy stay. Nor did SFR seek a determination
10 from the bankruptcy court that the HOA Foreclosure Sale through which it claims to have
11 acquired title to the Property did not violate the automatic stay; to the contrary, SFR attempt to
12 determine whether the Property was subject to the stay. Tr. of Deposition of Paulina Kelso, as
13 Rule 30(b)(6) designee for SFR, May 17, 2016 (“Kelso Dep.”) at 27:8-20, attached as Exhibit 4.
14 Had it done so, SFR would have discovered that Parks was in bankruptcy and that the HOA’s
15 efforts to sell the Property violated 11 U.S.C. § 362(a). But regardless of SFR’s diligence, or lack
16 thereof, the sale is void. As a matter of law, SFR never obtained valid title to the Property, and
17 SFR is not entitled to a declaration quieting title in its name or to any of the other relief it seeks in
18 this Consolidated Action.

19 **C. The HOA Foreclosure Sale Is Also Void Because It Was Not Conducted in a**
20 **Commercially Reasonable Manner.**

21 Even if the HOA Foreclosure Sale had not directly violated the automatic bankruptcy stay,
22 U.S. Bank is entitled to summary judgment because the HOA Foreclosure Sale was commercially
23 unreasonable. The failure to sell the Property in a commercially reasonable manner renders an
24 HOA foreclosure sale voidable. Recent Nevada case law clarifies that a foreclosure sale for less
25 than 20% of fair market value should be set aside as commercially unreasonable, especially when
26 paired with even a minor defect in the sale process, while a sale in excess of 20% of the fair
27 market value may only be set aside upon a showing of fraud, oppression, or unfairness. *Shadow*
28 *Wood Homeowners Ass’n, Inc. v. New York Cmty. Bancorp, Inc.*, No. 63180, 132 Nev. Adv. Op.

1 5, 366 P.3d 1105 (2016); *ZYZZX2 v. Dizon*, 2016 WL 1181666 (D. Nev. 2016). The sale price
2 paid by SFR—only 6.1% of the Property’s fair market value at the time of the sale—is grossly
3 inadequate as a matter of law and the Court should set the sale aside on that basis alone.

4 But even if the meager sale price were not sufficient to set aside the sale, unfairness
5 abounds in this case. Foremost, it was patently unfair for the HOA and its agents to circumvent
6 the bankruptcy court and race to the front of the creditor’s line while Parks’ other creditors
7 obtained relief from the stay and worked within the court’s rules to exercise their rights.
8 Compounding that unfairness, the evidence in this case shows that U.S. Bank did not receive
9 notice of the HOA Foreclosure Sale until four days after the sale had taken place. Ex. 2,
10 Ferguson Dep. vol. 1 at 61:2-16; Ex. 3, Ferguson Dep. vol. 2 at 85:5-22; 99:9-23.

11 *1. The Court Should Set Aside the HOA Foreclosure Sale Because the*
12 *Price SFR Paid for the Property, Just 6.1% of Fair Market Value, Was*
13 *Grossly Inadequate as a Matter of Law.*

14 SFR paid just \$14,000.00 for the Property. Ex. J to RJN, Foreclosure Deed. At the time
15 of the HOA Foreclosure Sale, the Property had a fair market value of nearly sixteen times that
16 amount. Ex. 1, Appraisal. Such a low sale price—far less than 20% of the fair market value—
17 supports setting aside the sale without any further showing of inequity.

18 The Restatement (Third) of Property: Mortgages § 8.3,³ on which the Nevada Supreme
19 Court recently relied, provides that a “foreclosure sale price obtained pursuant to a foreclosure
20 proceeding that is otherwise regularly conducted in compliance with applicable law does not
21 render the foreclosure defective unless the price is grossly inadequate.” *Shadow Wood*
22 *Homeowners Ass’n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105
23 (2016) (emphasis added). In other words, under the Restatement, a sufficiently low price alone
24 can render a sale commercially unreasonable. *See id.* The Restatement also gives guidance about
25 what constitutes “gross inadequacy,” advising that while “[g]ross inadequacy cannot be precisely
26 defined in terms of a specific percentage of fair market value, [g]enerally ... a court is warranted

27 ³ The Court’s reliance on the Restatement in *Shadow Wood* is consistent with its previous reliance on the
28 Restatement. *See, e.g., American Sterling Bank v. Johnny Management LV, Inc.*, 126 Nev. 423, 425, 245 P.3d 535,
537 (2010) (acknowledging the Court’s adoption of the Restatement (Third) of Property: Mortgages, section 7.6 and
comments); *Huston v. Bank of America Federal Sav. Bank*, 119 Nev. 485, 490, 491, 78 P.3d 71, 74 (2003) (same).

1 in invalidating a sale where the price is less than 20 percent of fair market value.” *Id.* at 1112-13
2 (quoting Restatement (Third) of Property: Mortgages § 8.3, cmt. b).

3 The Court did not have occasion to apply the Restatement directly in *Shadow Wood*
4 because the sale price in that case exceeded the Restatement’s 20% threshold. The Court’s
5 reasoning, however, reflects an adoption the Restatement’s standard. In evaluating the
6 reasonableness of the sale in *Shadow Wood* the Court first looked to whether the purchase price
7 exceeded 20%. Because it did, the Court, relying on the Restatement, concluded that the price
8 was “therefore not obviously inadequate.” A corollary to that conclusion is that a sales price less
9 than 20% of the fair market value *is obviously inadequate*. Thus, only after determining that the
10 sale price exceeded 20% was it necessary for the Court to analyze whether the sale included
11 fraud, unfairness, or oppression.

12 No such two-part analysis was necessary had the Court intended to require a showing of
13 fraud, oppression, or unfairness, even for a sale for less than 20% of the fair market value. The
14 Court would simply have started its analysis with a review of whether fraud, oppression, or
15 unfairness had tainted the sale process. The need for a two-part analysis derives wholly from that
16 distinction between a “merely inadequate” price, which requires a showing of something more,
17 and “grossly inadequate” price, which does not. Thus, under *Shadow Wood*, a sale for less than
18 20% of the fair market value may be set aside as commercially unreasonable based on the grossly
19 inadequate price alone, while a sale in excess of 20% of the fair market value may only be set
20 aside upon a showing of fraud, oppression, or unfairness.

21 Many other courts also distinguish between a merely inadequate price, and a grossly
22 inadequate price in determining whether a foreclosure sale is voidable. Without question, the
23 majority rule, and the law in Nevada, is that mere inadequacy of price, standing alone, is an
24 insufficient basis for setting aside a foreclosure sale. Even against the backdrop of that rule,
25 courts recognize that *gross* inadequacy of price (alone) is a sufficient basis for setting aside a sale
26 without any additional showing of fraud, oppression, or unfairness. Indeed, the 20% rule
27 provides an exception to that general rule. Without it, there would be no material distinction
28 between grossly inadequate and merely inadequate.

1 For example, when the Arizona Supreme Court adopted section 8.3, it explicitly
2 recognized the majority rule, but concluded that “gross inadequacy” is itself something “more
3 than inadequacy,” and as such is sufficient on its own to set aside a sale. *In re Krohn*, 52 P.3d
4 774, 781 (Ariz. 2002). Courts in many other jurisdictions agree. *See, e.g., Burge v. Fid. Bond &*
5 *Mortgage Co.*, 648 A.2d 414, 419 (Del. 1994) (holding that, while mere inadequacy of price is an
6 insufficient ground for setting aside a judicial sale, a grossly inadequate price is sufficient); *Arsali*
7 *v. Chase Home Fin., LLC*, 79 So. 3d 845, 847 (Fla. Dist. Ct. App. 2012) approved as clarified,
8 121 So. 3d 511, 518 (Fla. 2013) (holding that the court should vacate a foreclosure sale if there
9 was *either* fraud or irregularity in the sale *or* if the foreclosure sale bid was grossly or startlingly
10 inadequate); *Baskurt v. Beal*, 101 P.3d 1041, 1045 (Alaska 2004) (adopting the Restatement, and
11 recognizing that a foreclosure sale is voidable where *either* the price is grossly inadequate *or*,
12 “where the foreclosure sale price is not grossly inadequate, a low price coupled with some other
13 irregularity in the foreclosure proceeding”); *Schweitzer v. Stroh*, 30 S.E.2d 689, 692 (Va. 1944)
14 (holding that sale is voidable based either on grossly inadequate price or additional circumstances
15 of unfairness).

16 So construed, *Shadow Wood* brings Nevada in line with the many states where a sale for
17 less than 20% of fair market value may be set aside without any further showing. *See, e.g., Will*
18 *v. Mill Condominium Owners’ Ass’n*, 848 A.2d 336 (Vt. 2004) (voiding an HOA super-priority
19 foreclosure sale, holding that a price of \$3,510 was not commercially reasonable when the fair
20 market value was \$70,000); *see also Allied Steel Corp v. Cooper*, 607 So. 2d 113, 120 (Miss.
21 2006) (a sale for less than 40% of fair market value “shocks the conscience”); *Armstrong v.*
22 *Csurilla*, 817 P.2d 1221, 1234 (N.M. 1991) (foreclosure sales that fall into the 10-40% percent
23 range should not be confirmed absent good reasons to do so); *United Oklahoma Bank v. Moss*,
24 793 P.2d 1359 (Okla. 1990) (approximately 20% of fair market value); *Crown Life Ins. Co. v.*
25 *Candlewood, Ltd.*, 818 P.2d 411 (N.M. 1991) (15% of fair market value); *Rife v. Woolfolk*, 289
26 S.E.2d 220 (W. Va. 1982) (14% of fair market value); *Ballentyne v. Smith*, 205 U.S. 285 (1907)
27 (14% of fair market value); *First National Bank of York v. Critel*, 555 N.W.2d 773 (Neb. 1996)

1 (reversing trial court's confirmation of a foreclosure sale that yielded 14% of the appraised
2 value).

3 In addition to the legal soundness of Section 8.3, it is also good policy. A sale is not
4 commercially reasonable where the result is so flagrantly detrimental to Nevada's homeowners
5 and to the local real estate market. See, e.g., *Golden v. Tomiyasu*, 79 Nev. 503, 513 (1963);
6 *Runkle v. Gaylord*, 1 Nev. 123, 129 (1865). As the Arizona Supreme Court recognized, "[t]o the
7 extent that judicial oversight to prevent gross inadequacy of bidding at trustee's sales may
8 actually increase prices realized, both lenders and borrowers would benefit." *In re Krohn*, 203
9 Ariz. 205, 210, 52 P.3d 774, 779 (2002). That court also correctly concluded that "[w]indfall
10 profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not
11 serve the public interest and do no more than legally enrich speculators." *Id.* The 20% rule
12 protects the public interest from "those waiting for opportunities based on individual misfortune"
13 and works to ensure "not only procedural but fundamental fairness." *Id.*

14 In this case, SFR bought the Property for just \$14,000.00. Ex. J to RJN, Foreclosure
15 Deed. The fair market value of the Property on the day of the sale was \$228,000.00. Ex. 1,
16 Appraisal. SFR's purchase price, 6.1% of the fair market value, is not just inadequate. It is
17 grossly inadequate; unconscionable even. Thus, the HOA Foreclosure Sale should be set aside as
18 commercially unreasonable without need for a further showing of fraud, oppression, or
19 unfairness.

20 **2. *The HOA Foreclosure Sale Was Unfair and Oppressive Because the***
21 ***HOA and NAS Failed to Obtain Approval from the Bankruptcy Court***
and Failed to Provide Adequate Notice to Interested Parties.

22 Though the grossly low sales price obviates the need for a showing of unfairness, there is
23 ample evidence of unfairness to set aside the sale in this case. Where the price "inadequacy is
24 palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to
25 authorize the granting of the relief sought." *Golden*, 79 Nev. at 515, 387 P.2d at 995 (internal
26 citation omitted). Stated another way, "if there be great inadequacy, slight circumstances of
27 unfairness in the conduct of the party benefitted by the sale will be sufficient to justify setting it
28 aside." *ZYZZX2*, at *4 (citing *Ballentyne*, 205 U.S. at 290).

1 There are substantial grounds to set aside the sale in this case, especially given the very
2 great inadequacy in the sale price obtained at the HOA Foreclosure Sale. As discussed above, the
3 HOA and NAS sold the Property in violation of the bankruptcy stay. But even if the HOA
4 Foreclosure Sale were not void for that reason, it would be unfair to allow the HOA's and NAS's
5 circumvention of the bankruptcy court's limitations to stand. This is particularly true where, as
6 here, U.S. Bank had itself sought relief from the automatic stay and was proceeding to foreclosure
7 with the bankruptcy court's approval—a foreclosure from which the HOA would ultimately have
8 received its alleged super-priority claim without violating federal law. And it would be doubly
9 unfair to allow the sale to stand because U.S. Bank, which understood the property to be subject
10 to a bankruptcy stay, did not even receive notice of the HOA's improper efforts to foreclose until
11 four days after the HOA Foreclosure Sale. Ex. 2, Ferguson Dep. vol. 1 at 61:2-16; Ex. 3,
12 Ferguson Dep. vol. 2 at 85:5-22; 99:9-23.

13 **3. *SFR Is Not a Bona Fide Purchaser Because It Had Notice of the Deed of***
14 ***Trust and Because It Did Not Provide Valuable Consideration.***

15 SFR cannot assert the bona fide purchaser defense in this matter because it had
16 constructive, if not actual, notice of the Deed of Trust and because it did not provide valuable
17 consideration for the Property. “The bona fide doctrine protects a subsequent purchaser's title
18 against competing legal or equitable claims of which the purchaser had no notice at the time of
19 the conveyance.” *25 Corp., Inc. v. Eisenman Chemical Co.*, 101 Nev. 664, 675, 709 P.2d 164,
20 172 (1985). The purchaser, however, is required to demonstrate that “the purchase was made in
21 good faith, for a valuable consideration.” *Berge v. Fredericks*, 95 Nev. 183, 186, 591 P.2d 246,
22 247 (1979). SFR cannot establish either of these requirements in this case.

23 First, SFR cannot show that it did not have notice of the Deed of Trust at the time it
24 purchased the Property. “Very little information is necessary to give actual or constructive
25 knowledge to a purchaser sufficient to defeat a bona fide purchaser defense.” *Time Warner v.*
26 *Steadfast Orchard Park, L.P.*, 2008 WL 4350054, *10 (C.D. Cal. Sept. 23, 2008). Indeed,
27 “proper recording of a property interest is generally sufficient under state law to provide
28

1 constructive notice sufficient to defeat a bona fide purchaser.” *Wonder-Bowl Properties v. Kim*,
2 161 B.R. 831, 836 (B.A.P. 9th Cir. 1993).

3 Here, SFR undoubtedly had notice of the Deed of Trust because it was properly recorded
4 against the Property more than seven years before the HOA Foreclosure Sale. SFR cannot
5 reasonably claim that, even though the Deed of Trust was properly recorded against the Property
6 long before the HOA Foreclosure Sale, it did not have notice of the competing claim. Moreover,
7 SFR knew when it purchased the Property that there was a risk it would end up in litigation for
8 that very reason. *See* Ex. 4, Kelso Dep. at 63:6-8; 64:16-17:-1; 65:22-66:16; 70:17-23. Indeed,
9 that risk was of greater concern to SFR than even the prevailing market value of the Property in
10 deciding whether to purchase the Property at the HOA Foreclosure Sale. *Id.* at 64:17-24(“it was
11 the risks that he takes in purchasing the properties at these foreclosure sales that is more of a
12 concern to” SFR’s decision maker, Chris Hardin, including that “he doesn’t know how long it
13 could go into litigation...”).

14 Second, SFR is precluded from raising the bona fide purchaser defense because it did not
15 provide valuable consideration for the Property. Other courts in this district have addressed these
16 issues and found that similar sales did not constitute “valuable consideration.” In *SFR*
17 *Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, the Court found that a \$7,000 purchase
18 price was one factor in determining that the plaintiff buyer was not a bona fide purchaser, because
19 the plaintiff did not provide valuable consideration for the property. *Exhibit 5*, Order in *SFR*
20 *Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, Case No. A-13-684596-C, at 13-15 & n.
21 9, (August 5, 2013). Another department likewise held that the purchaser at an HOA foreclosure
22 sale was not a bona fide purchaser, in part because plaintiff purchased for only \$3,743.84 and the
23 deed of trust was \$576,000. *Exhibit 6*, Order in *Design 3.2 LLC v. Bank of New York Mellon*,
24 Case No. A-10-621628-C, at 4 (April 8, 2013).

25 Here, the HOA Foreclosure Sale purchase price of \$14,000 is 6.1% of the fair market
26 value of the property at the time of the sale, \$228,000. And SFR knew the sale price was grossly
27 below the fair market value; indeed, HOA sale properties were selling so far below market value
28 that SFR was utterly unconcerned with market value in assessing whether to buy a property. *See*,

1 e.g., Ex. 4, Kelso Dep. at 62:15-20 (“As to market value of the property? It’s my understanding
2 that when I’ve talked to [Chris Hardin] about value in the market and those kind of conversations,
3 it doesn’t – it’s not something that he necessarily is looking at when he’s going to purchase these
4 properties...”); 63:9-64:3 (discussing SFR’s lack of investigation into value of properties,
5 including that SFR does not “do appraisals or anything like that” to obtain an estimate of value
6 prior to a sale). In other words, the sale price was so good that SFR knew without even
7 evaluating the value of the property that it would multiply its investment many times over,
8 regardless of any litigation risk.

9 In sum, the \$14,000 purchase price was grossly inadequate. And SFR knew it was paying
10 a tiny fraction of the property’s market value; just as it had, at least, constructive knowledge of
11 U.S. Bank’s Deed of Trust. Accordingly, and also because the HOA and NAS acted unfairly in
12 foreclosing on the Property without first obtaining approval from the bankruptcy court or
13 providing notice to U.S. Bank, the HOA Foreclosure Sale should be set aside as void.

14 **D. The Sale Is Void Under the Ninth Circuit’s Recent Decision in *Bourne Valley*,**
15 **Which Correctly Held That the Statute Facially Violates the United States**
16 **Constitution.**

17 The Ninth Circuit recently determined that the Statute is facially unconstitutional under
18 the U.S. Constitution. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.* 2016 WL 4254983
19 (9th Cir. August 12, 2016). U.S. Bank has specifically challenged the constitutionality of the
20 Statute under the U.S. Constitution and the Ninth Circuit’s decision in *Bourne Valley* governs
21 those claims. (See U.S. Bank’s Counterclaim at ¶¶ 23, 49-57, 62-68, 72, and 90.) Because this
22 Court has been asked to resolve federal constitutional questions, the *Bourne Valley* decision is
23 important authority for this Court to evaluate before rendering its decision.

24 Furthermore, *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014)
25 never decided the due process issues addressed in *Bourne Valley*. In a subsequent opinion, the
26 Nevada Supreme Court stated that the SFR decision did not address all issues concerning the
27 Statute. Instead, it primarily addressed only two narrow questions: “whether an HOA
28 superpriority lien foreclosure extinguishes a first deed of trust, and whether it can be foreclosed
nonjudicially. SFR did not resolve all disputes surrounding an HOA superpriority lien

1 *foreclosure* . . .” *Wells Fargo Bank, N.A. v. Premier One Holdings, Inc.*, Case No. 67873, 2016
2 WL 3481164, *2 (Nev. Jun. 22, 2016) (internal citation omitted) (emphasis added). The *Bourne*
3 *Valley* decision itself, which was issued post *SFR Investments* and which evaluated *SFR*
4 *Investments*, concluded that the *SFR Investments* opinion did not address the facial
5 constitutionality of the Statute. Significantly, the Nevada Supreme Court declined to reach the
6 constitutional issues raised in the *Premier One Holdings* case and remanded for further
7 proceedings. *Id.* at n.2.

8 At least four Departments within the Eighth Judicial District have ruled that the Statute is
9 facially invalid. On May 7, 2015, Judge Delaney ruled that the Statute is unconstitutional on its
10 face because its “opt-in” notice provisions violate lenders’ Due Process rights. *Cano-Martinez v.*
11 *HSBC Bank, USA, et al.*, Case No. A-13-692027, (reh’g filed).⁴ Three other departments of the
12 Eighth Judicial District agree with Judge Delaney: Judge Israel, Department 28, (*Saticoy Bay LLC*
13 *Series 350 Durango v. Wells Fargo Home Mortgage, et al.*, Case No. A-13-688410-C, on
14 appeal); Judge Cory, Department 1 (*LN Management LLC Series 855 Rhinegold v. Chase, et al.*,
15 Case No. A-14-694748-C); and Judge Walsh, Department 10 (*Zaisan Enterprises, LLC v. Green*
16 *Tree Servicing, et al.*, Case No. A-13-690281-C). U.S. Bank recognizes that this Department, and
17 others, have found that the Statute is constitutional under a motion to dismiss standard. *See, e.g.*,
18 *SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A., et al.*, Case No. A-13-677140, on
19

20 ⁴ *Cano-Martinez v. HSBC et. al.*, A-13-692207-C, Dept. XXV Order Granting Def’s Motion for Summary Judgment;
21 *LN Mgmt. LLC Series 5204 Painted Sands v. Wells Fargo Bank, N.A.*, 2:13-cv-1200-LDG-PAL, Opinion, 2013 WL
22 6535247 at *1 (D. Nev. Dec. 12, 2013) (“this court considers the lack of mandatory notice to prior lienholders to be
23 relevant . . . to a due process analysis”); *Premier One Holdings, Inc. v. BAC Home Loans Servicing LP*, 2:13-cv-895-
24 JCM-GWF, Order Granting Motion to Dismiss, 2013 WL 4048573 at *4 (D. Nev. Aug. 9, 2013) (granting motion to
25 dismiss because permitting an HOA super priority lien to extinguish a first deed of trust “potentially violate[s] due
26 process”); *First 100, LLC v. Wells Fargo Bank, N.A.*, 2:13-cv-00431-JCM-PAL, Def’s Order Den. Pl’s Emergency
27 Mot. For TRO 3:5-7 (Apr. 30, 2013) (holding that extinguishment of a lender’s first-in-time deed of trust under the
28 Statute “would be a violation of [the lender’s] State and Federal due process rights”); *Paradise Harbor Place Trust v.*
Deutsche Bank National Trust Co., Case No. A-13-687846, Dept. XX, Am. Order on Def’s Mot. to Dismiss or in the
Alternative For Summ. J. 5:20-22, entered on January 22, 2014 (holding that NRS 116.3116 “is unconstitutional
because it facially permits subordinate interests to be erased without proper notice or any opportunity to
object”); *Thunder Properties, Inc. v. Greater Nevada Mortgage Services, LLC*, Case No. CV13-01840, Dept. 7,
Order Granting Def’s Mot. to Dismiss 8:24-9:2, entered on January 13, 2014 (granting motion to dismiss because
“allowing an HOA to expedite foreclosure, eject the homeowners, engage relaxed notice requirements and extinguish
the first deed of trust . . . is expressly contrary to Nevada’s public policy regarding foreclosures”); *SFR Investments*
Pool 1, LLC v. Nationstar Mortgage, LLC, Case No. A-13-684596-C, Dept. XXXI, Order Den. Appl. for TRO n. 8,
entered on August 5, 2013 (holding that any assertion that notice is not required “would be a violation of Defendant’s
due process rights . . . [and] would be Unconstitutional and hence unenforceable.”)

1 appeal. However, this Court should now follow the highly persuasive decision of Ninth Circuit
2 Court of Appeals, as well as Judges Delaney, Israel, Cory and Walsh and grant U.S. Bank's
3 requested declaratory relief that the Statute is facially unconstitutional under the Due Process
4 Clause of the United States Constitution.

5 U.S. Bank is also entitled to summary judgment on its wrongful foreclosure claim because
6 the Statute was facially unconstitutional. "To prevail on a wrongful foreclosure tort claim, a
7 plaintiff must prove that the foreclosing party did not have a legal right to foreclose on the
8 property." *Hines v. Nat'l Default Servicing Corp.*, Case No. 62128, 2015 WL 4611941, at *2
9 (Nev. July 31, 2015) (citing *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d
10 610, 623 (1983)). U.S. Bank specifically pled as part of its wrongful foreclosure claim that the
11 facially unconstitutionality of the Statute under the Due Process Clause of the United States
12 Constitution made the HOA sale wrongful. (U.S. Bank's Counterclaim at ¶ 72(a).) As the
13 Statute the HOA purported to foreclose under is unconstitutional under the United States
14 Constitution as a matter of law, U.S. Bank should also be granted summary judgment for its
15 wrongful foreclosure claim as a matter of law.

16 **E. The Statute Is Facially Unconstitutional Because It Violates Due Process.⁵**

17 There is no question that "state procedures for creating and enforcing attachments, as with
18 liens, 'are subject to the strictures of due process.'" *Connecticut v. Doeher*, 501 U.S. 1, 12 (1991)
19 (citations omitted). Many cases holding lien statutes unconstitutional where they empower
20 lienholders to impair property rights without requiring notice or the need for a hearing make clear
21 that the Statute violates the Due Process Clause.

22 **1. The Statute Violates Due Process Because It Doesn't Require Prior**
23 **Notice to Those Whose Property Rights Are Impaired by a Later-Arising**
24 **HOA Lien.**

25 Lien statutes are unconstitutional when, like the Statute, they do not provide for notice and
26 a chance to be heard. Maryland's highest court struck down the nation's oldest mechanic's lien
27 law because the statute created liens that "temporarily deprive[d] a debtor of a significant

28 ⁵ Pursuant to NRS 30.130, U.S. Bank served notice of its constitutional challenge of NRS 116.3116 to the Nevada Attorney General's Office, as indicated in the Certificate of Service.

1 property interest" without notice to the party whose rights were impaired or a prior hearing.
2 *Barry Properties v. Fick Bros.*, 353 A.2d 222, 232 (Md. 1976). Deprivation of a property interest
3 without notice or a hearing meant the lien statute violated the Due Process Clause, and was
4 unconstitutional. *Id.* The *Barry* court was clear that there was state action, implicating the Due
5 Process Clause: "[w]e think it clear that mechanics' liens involve state action since they are
6 created, regulated and enforced by the State. *Id.* at 227 (citations omitted).

7 Many other courts have likewise invalidated lien statutes that, like the Statute, conferred
8 power on private actors to impair other persons' property rights without requiring notice or a
9 hearing. *See, e.g., Roundhouse Const. Corp. v. Telesco Masons Supplies Co.*, 170 Conn. 155,
10 157, 365 A.2d 393, 394 (1976) (finding law that allowed mechanic's liens to be perfected without
11 right to hearing for the party whose property was lien violated Due Process Clause). The
12 District of Nevada held Nevada's landlord lien laws unconstitutional to the extent they allowed
13 deprivation of property by a landlord against a tenant without notice or a hearing. *Adams v.*
14 *Joseph F. Sanson Inv. Co.*, 376 F. Supp. 61, 68-69 (D. Nev. 1974). California's Innkeeper's Lien
15 Law proved unconstitutional under the Due Process Clause where it permitted a private party to
16 create a lien without a hearing before the lien was imposed. *Klim v. Jones*, 315 F. Supp. 109, 122
17 (N.D. Cal. 1970). *Klim* correctly emphasized the state action in fashioning this private lien,
18 calling it "action encouraged, indeed only made possible, by explicit state action." *Id.* at 114.
19 Finally, Georgia's statute authorizing all liens on personalty was held unconstitutional because it
20 did not require notice or a hearing before the lienor deprived someone of their interest in their
21 property, and thus did not provide due process. *Mason v. Garriss*, 360 F. Supp. 420, 423 (N.D.
22 Ga.) *amended*, 364 F. Supp. 452 (N.D. Ga. 1973).

23 Lien statutes that require notice and a chance to be heard are constitutional, such as
24 Maryland's condominium lien statute that gives interested parties notice and an opportunity to
25 object. *Golden Sands Club Condo., Inc. v. Waller*, 313 Md. 484, 495-96, 545 A.2d 1332, 1338
26 (1988). And while Washington and Nevada alone permit HOA liens to extinguish prior recorded
27 property interests, such as a lender's under a mortgage, both only permit extinguishment where
28 there is notice to the deed of trust holder, and a right to redeem. *Compare* Wash. Rev. Code

1 §§ 64.34.364(4), (7) with *BAC Home Loans Servicing, L.P. v. Fulbright*, 328 P.3d 895, 901
2 (Wash. 2014). See NRS 116.3116 (amended effective October 1, 2015) (requiring service of
3 Notice of Default and Election to Sell and Notice of Sale upon all lienholders, and giving
4 property owner and first lien holder a 60 day right of redemption). Significantly, Nevada's
5 Legislature *unanimously* repealed the features of the Statute that violated due process in its first
6 session after the *SFR v. U.S. Bank* opinion, underscoring that the Statute was being used in a way
7 that violates constitutional and national due process norms.⁶

8 The pre-2015 version of the Statute, as interpreted in *SFR v. U.S. Bank*, is even worse than
9 the examples noted above. It doesn't *temporarily* deprive lenders of a property interest -- it
10 extinguished those interests *forever*. *SFR*, 334 P.3d at 418. All without requiring require notice
11 or a hearing before extinguishment, as the Due Process Clause mandates. And, the Statute is state
12 action, as drafted by Nevada's Legislature and construed by its courts. See *Barry*, 353 A.2d at
13 227; *Stop the Beach Renourishment, Inc. v. Florida Dep't of Env'tl. Prot.*, 560 U.S. 702, 715
14 (2010) ("But the particular state actor is irrelevant. If a legislature or a court declares that what
15 was once an established right of private property no longer exists, it has taken that property...").

16 In sum, the Statute here is unconstitutional because it allows HOAs to place liens and
17 extinguish outright and in perpetuity property interests without a requirement of notice or a
18 hearing. As a consequence, the Deed of Trust must survive the HOA Foreclosure Sale, and any
19 interest SFR obtained in the Property is subject to the Deed of Trust.

20 **2. The Statute's Answer to the Notice Requirement—a Weak Opt-In**
21 **Provision—Does Not Provide Constitutionally Due Process.**

22 The Constitutional law of liens requires notice before property rights are impaired. The
23 Statute makes an attempt to meet that notice requirement, albeit a weak attempt that fails to pass
24 constitutional muster. This weak answer is housed within NRS 116.31163, .31165, and .31168,
25 which together, instead of requiring affirmative notice to lenders, provide "opt-in" notice by
26 permitting persons with an interest in the property, like U.S. Bank, to *request* notice in advance of
27 a foreclosure sale by submitting written notices of their own to the HOA. And as a district court

28 ⁶ That no other state in America has a HOA lien law operating like the Statute did (until it was amended) strongly suggests that it cannot fit within the fabric of American lien law at all.

1 recently noted: “the Nevada Supreme Court either reads NRS 116.31168 not to incorporate the
2 automatic notice provisions of NRS 107.090(3)-(4) or ... reads the opt-in provisions of NRS
3 116.31163 and 116.31165 to supersede NRS 107.090(3)-(4)’s automatic notice provisions as to
4 HOA foreclosures even if NRS 107.090 is otherwise incorporated into Chapter 116 foreclosures
5 generally via NRS 116.31168.” *U.S. Bank, N.A. v. SFR Investments Pool I, LLC*, 124 F. Supp.
6 3d 1063, 1080 (D. Nev. 2015) (citing *SFR*, 334 P.3d at 411).

7 The Supreme Court has made clear that such haphazard and half-hearted gestures in the
8 direction of notice are not constitutionally sufficient. *See, e.g., Mennonite Bd. of Missions v.*
9 *Adams*, 465 U.S. 791, 798 (1983) (finding tax lien statute unconstitutional: “Notice by mail or
10 other means as certain to ensure actual notice is a minimum constitutional precondition to a
11 proceeding which will adversely affect the liberty or property interests of any party, whether
12 unlettered or well versed in commercial practice.” (emphasis added)). In *Mennonite*, the Supreme
13 Court struck down an Indiana statute that merely provided notice by publication to lienholders
14 whose first liens on property would be extinguished by the sale of a tax lien sale of the property in
15 question. 465 U.S. at 798. The dissenters defended the statute on the grounds that notice by
16 publication and posting would give sophisticated commercial actors constructive notice of tax
17 sales. 465 U.S. at 808 (O’Connor, J., dissenting) (arguing for constructive notice standard, noting
18 “approximately 95% of the mortgage debt outstanding in the United States is held” by large,
19 sophisticated commercial actors). But the Court rejected that reasoning decisively, finding
20 “actual notice is a minimum constitutional precondition to a proceeding which will adversely
21 affect the liberty or property interests of any party, whether unlettered or well versed in
22 commercial practice...” 465 U.S. at 800 (emphasis added). Just as the tax sale statute in
23 *Mennonite* violated the Due Process Clause, so does the Statute, given its lack of any requirement
24 to give actual notice. *See also Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
25 (1950) (“when notice is a person’s due, process which is a mere gesture is not due process.”)

26 Courts following *Mennonite* have specifically rejected “opt-in” notice as constitutionally
27 insufficient just as this Court should. *See Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 893
28 (5th Cir. 1989); *see also Davis Oil Co. v. Mills*, 873 F.2d 774, 787-88 (5th Cir. 1989). In *Small*

1 *Engine Shop*, the United States Court of Appeals for the Fifth Circuit conducted an in-depth
2 analysis of the “opt-in” clause in Louisiana’s real property foreclosure statute, which—like the
3 Statute—did not require notice to interested parties unless they affirmatively requested it
4 beforehand. *Id.* at 885-886. On appeal, the Fifth Circuit recognized that Louisiana’s burden-
5 shifting – from the party impairing property rights to the party whose rights stood to be impaired
6 – was at the center of the controversy. The court analyzed the validity of the statute through the
7 lenses of *Mennonite* and *Mullane*. *Id.* at 888. The court ultimately held that the statute “as
8 interpreted by the district court, cannot be squared with *Mennonite*’s allocation of notice
9 burdens.” *Id.* at 890; *see also Davis Oil Co.*, 873 F.2d at 787-88 (reaching an identical
10 conclusion). Specifically, because in *Mennonite* “the Supreme Court held that any owner of
11 property subject to deprivation must receive ‘notice by mail or other means as certain to ensure
12 actual notice,’” the state by statute may not “prospectively shift the entire burden of ensuring
13 adequate notice to the property owner regardless of the circumstances.” *Small Engine Shop, Inc.*,
14 878 F.2d at 883-84 (citing *Mennonite*, 462 U.S. at 797). The Statute here is no different, and
15 allows those with property interests the right only to be heard “on demand,” which it cannot do.
16 The Statute’s opt-in notice provisions violate due process, and this Court should declare them,
17 and the Statute, unconstitutional.

18 3. *The Form of the Notice of Default and Notice of Sale Is not Calculated*
19 *to Apprise U.S. Bank of the Danger to its Deed of Trust.*

20 Even if the Statute were not facially unconstitutional for failure to provide notice and a
21 hearing as stated in *Bourne Valley*, the content of the Notices in this case are not designed to
22 provide the best notice under the circumstances. The Statute simply does not require
23 constitutionally adequate content in either the notice of default or notice of sale and is therefore
24 unconstitutional for a second reason.

25 Constitutional notice is that which apprises “interested parties of the pendency of the
26 action and afford[s] them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.
27 Additionally, “[t]he notice must be of such nature as reasonably to convey the required
28 information . . .” *Id.* Even where a mortgagee had actual knowledge of a delinquent payment of

1 taxes, such knowledge was insufficient to satisfy due process because the mortgagee had to be
2 notified that a tax sale was pending. *Menmonite*, 462 U.S. at 800. Thus, the content of the notice
3 “requires the best notice practical under the circumstances . . .” *In re Drexel Burnham Lambert*
4 *Gp. Inc.*, 995 F.2d 1138, 1144 (2nd Cir. 1993) citing *Mullane*, 339 U.S. at 315. Courts have
5 employed a balancing of the competing interests involved to determine whether the content of the
6 notice meets due process standards. E.g. *Thomas V. Bd. of Trustees of Galveston Indep. School*
7 *Dist.*, 515 F. Supp. 280, 287 (S.D. Tex. 1981), citing *Morrissey v. Brewer*, 408 U.S. 471 (1972).

8 Here, neither the Notice of Default nor the Notice of Sale was reasonably calculated to
9 notify U.S. Bank that its Deed of Trust could be extinguished if the HOA foreclosed. See Notice
10 of Default, Exhibit G to the RJN; Notice of Sale, Exhibit H to the RJN. Both Notices were
11 addressed solely to the homeowner. *Id.* Although the Notices mention the Borrower is in
12 jeopardy of losing his home, neither notice makes a reference to the priority of U.S. Bank’s deed
13 of trust. Nothing in the notice would inform a lender that the HOA was foreclosing on a super-
14 priority lien.

15 Notably, U.S. Bank’s interest in the Property is equivalent at least to the amount of the fair
16 market value at the time of the sale. However, the burden of including a simple statement in the
17 notices to a mortgagee advising that an HOA is foreclosing on a super-priority lien is extremely
18 small. The Statute, however, does not provide for it. And the HOA does not provide such a
19 notice. Even if U.S. Bank received the HOA’s notices, they were not designed to put U.S. Bank
20 on notice that its Deed of Trust could be extinguished. The Legislature, apparently recognizing
21 this due process flaw, has now revised the Statute, but too late to protect U.S. Bank’s due process
22 rights in this case. The Statute, as it was written, is unconstitutional.

23 **E. The Statute Effects a Delegated Private-Actor Taking That Entirely Ousts**
24 **U.S. Bank, in Violation of the Takings Clause of the United States and Nevada**
Constitutions.

25 The United States and Nevada Constitutions prohibit the taking of private property for
26 public use without just compensation. U.S. Const. amend. V.; Nev. Const., art. I, Section 8. The
27 Takings Clause of the Nevada Constitution is more protective of property rights than the U.S.
28 Constitution. *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006).

1 1. *There Is No Question in the Law that a Lien Is "Property" Under the*
2 *Takings Clause Which, if Taken or Destroyed by a Statute, as Happened*
3 *Here, Requires the State To Pay Compensation.*

4 Supreme Court case law could hardly be clearer that the lien here is "property," which if
5 taken or destroyed, must be compensated under the Fifth Amendment. *See United States v. Sec.*
6 *Indus. Bank*, 459 U.S. 70, 76-77 (1982); *Armstrong v. United States*, 364 U.S. 40, 48 (1960). It is
7 beyond dispute that a lien -- including the first lien on the Comstock home at issue here -- is
8 "property" within the meaning of the Clause. *Sec. Indus. Bank*, 459 U.S. at 76-77. As such, the
9 extinguishment or destruction of that lien by government is a taking under the Clause. *Id.* at 77-
10 78. And this taking was "unconditional and permanent." *Lucas v. South Carolina Coastal*
11 *Council*, 505 U.S. 1003, 1012 (1992). Given that the Statute effected the destruction of U.S.
12 Bank's property, it thus was a taking. *Sec. Indus. Bank*, 459 U.S. at 76-77.

13 But the Statute's taking of U.S. Bank's property becomes even more clear in the
14 remarkably applicable *Armstrong* case. There, the Supreme Court found a statute that destroyed
15 the entire value of a lien to be a taking. *Armstrong*, 364 U.S. at 48. In *Armstrong*, where
16 materialmen delivered materials to a contractor for use in constructing navy boats and obtained
17 liens in the vessels pursuant to state law, the Court held that the government committed a taking
18 when it took title to and possession of the property and made it impossible for the materialmen to
19 enforce their liens. *Id.* There, the statute gave the United States government the right to recover
20 all unfinished work, including materials, free of encumbrances, to protect the government's
21 property interests. The Supreme Court explained that the "total destruction by the Government of
22 all value of these liens, which constitute compensable property, has every possible element of a
23 Fifth Amendment 'taking'...." *Id.* In other words, the lienholders had compensable property, but
24 "[i]mmediately afterwards, they had none." *Id.* And, "[t]his was not because their property
25 vanished into thin air," but rather because the value of the liens had been destroyed by statutory
26 fiat. *Id.* The Statute here likewise effected the complete destruction of the interest of U.S. Bank
27 as a first lien holder. *Armstrong* compels the conclusion that the Statute effects an
28 unconstitutional taking.

1 Finally, underscoring the taking present here, the Supreme Court struck down as
2 prohibited a regulatory taking a law that, like the Statute, took banks' security interest in their
3 collateral. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935). The *Radford*
4 Court held the Frazier-Lemke Act, which allowed farmers to buy their property at its current
5 appraised value on a deferred payment plan, unconstitutional. *Id.* at 580-581. The Act's
6 infringement of a mortgagee's right to recover full payment before being forced to abandon its
7 security interest was impermissible because that is "the essence" of a mortgage. *Id.* The Court
8 held that that the Act impaired substantive property rights and held that Fifth Amendment
9 eminent domain proceedings and compensation were required to alter the mortgagee's interest in
10 that way. *Id.* The Court concluded:

11 For the Fifth Amendment commands that, however great the
12 nation's need, private property shall not be thus taken even for a
13 wholly public use without just compensation. If the public interest
14 requires, and permits, the taking of property of individual
15 mortgagees in order to relieve the necessities of individual
mortgagors, resort must be had to proceedings by eminent domain;
so that, through taxation, the burden of the relief afforded in the
public interest may be borne by the public.

16 *Id.* at 601-602. Decided during the Great Depression, *Radford* remains the law. *See Sec.*
17 *Indus. Bank*, 459 U.S. at 78 (citing *Radford* for approval); *Dewsnup v. Timm*, 502 U.S. 410, 419
18 (1992) (same). The Statute's taking of U.S. Bank's property is total and not partial, for its right
19 was destroyed by the HOA foreclosure sale and not merely infringed, as in *Radford*. But *Radford*
20 is a powerful reminder of the limitations of state power, and that the Fifth Amendment is a
21 bulwark against laws that alter or destroy the property of mortgagees.

22 **2. *By the Statute, Nevada Authorizes the Destruction of First Liens, and***
23 ***Authorized the HOA Here to Take and Destroy U.S. Bank's Property.***

24 Nevada authorizes the destruction of first liens in the Statute. *SFR*, 334 P.3d at 418.
25 Specifically, when an HOA forecloses on its lien under the statute, the result is the
26 extinguishment of the first lien. *Id.* Thus, under the Statute as construed in *SFR v. U.S. Bank*, the
27 HOA foreclosure sale necessarily destroyed U.S. Bank's property interest in the Razo home as a
28 matter of Nevada law.

1 3. *The Statute Is a Taking Because It Fits Within the Tradition in*
2 *American Law of Delegated Private Takings, Stretching From the*
3 *Railroads of the Nineteenth Century to the Supreme Court's Decision in*
4 *Loretto*

5 The fact that Nevada has reposed the power to destroy liens in HOAs in no way makes
6 their destruction any less a taking.

7 American law has a "long and distinguished" tradition of delegated private takings,
8 meaning exercises of the power to condemn or take property by private actors to whom the state
9 has delegated that power for a limited purpose. *See Rancho de Calistoga v. City of Calistoga*,
10 800 F.3d 1083, 1092 (9th Cir. 2015) (citing Abraham Bell, *Private Takings*, 76 U. Chi. L. Rev.
11 517, 545 (2009)). The most well-known example was that of the railroad, to which states often
12 delegated powers of eminent domain in the nineteenth century. *See id.* Yet as Professor Bell
13 points out in his excellent treatment of this point, this doctrine is alive and well, as many
14 American states confer limited powers to take on private actors today. *Id.* To cite examples he
15 provides, Alabama grants electrical cooperatives eminent domain power. Ala. Code § 37-6-3(15)
16 (Michie). Arkansas grants the power to electric utilities. *Ark. Power & Light Co. v. Harper*, 460
17 S.W.2d 75, 76 (Ark. 1970). Illinois grants it to cable television companies as they lay wiring.
18 *Times Mirror Cable Television of Springfield v. First Nat'l Bank*, 582 N.E.2d 216, 218 (Ill. App.
19 1991). Indiana grants it for the laying of electric transmission lines. *Hagemeier v. Ind. & Mich.*
20 *Elec. Co.*, 457 N.E.2d 590, 591 (Ind. App. 1983). Kansas grants it for fiber optic cables used in
21 telecommunications. *Williams Telecomm. Co. v. Gragg*, 750 P.2d 398, 401 (Kan. 1988). Texas
22 and Oklahoma grant it for laying gas pipelines. *Aquila Sw. Pipeline Corp. v. Gupton*, 886 S.W.2d
23 497, 499 (Tex. App. 1994); *McInturff v. Okla. Natural Gas Transmission Co.*, 475 P.2d 160, 162
24 (Okla. 1970). Oregon lets logging and mining companies condemn land for roads, chutes, and
25 other passages used in their activities. Or. Rev. Stat. § 772.410 (2007).

26 One of the Supreme Court's most-cited and leading takings cases shows that delegated
27 private takings are alive and well. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S.
28 419, 426, 438 (1982) (concluding that installation of cable plates, boxes, and wires, bolts and
 screws on an apartment building by a cable company pursuant to a statutory authorization

1 constitutes a permanent physical taking). In *Loretto* the taking was the use by a cable company of
2 a statutory permission to place cable facilities on a New York apartment building, whether the
3 owner wanted the facilities there or not. New York State did not place the cables on Jean
4 Loretto's Upper West Side Manhattan walk-up any more than Nevada officials personally
5 foreclosed the HOA lien. But that does not matter. Legislatures delegate to cable companies,
6 railroads, power companies, and gas companies the power to destroy property rights. And when a
7 state empowers private actors to do that, there is a taking that must be compensated.

8 Finally, it would be no answer for the HOAs or their business partners in the speculator
9 community to retreat to a shell-game form of analysis, questioning what department of Nevada's
10 government is the "state actor." Nevada's determination to extinguish U.S. Bank's property right,
11 whether one locates it in the Statute the Legislature drafted in 1991 or in the court construing it in
12 2014, is a taking. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702,
13 715 (2010) ("[T]he particular state actor is irrelevant. If a legislature *or a court* declares that
14 what was once an established right of private property no longer exists, it has taken that property,
15 no less than if the State had physically appropriated it or destroyed its value by regulation. A
16 State, by *ipse dixit*, may not transform private property into public property without
17 compensation.") (emphasis added).

18 **4. *The Taking Here Was Without Just Compensation, Because it Is***
19 ***Undisputed that No One Paid U.S. Bank for Loss of the Property Rights***
that the HOA Foreclosure Extinguished.

20 It is undisputed that U.S. Bank has not been compensated for the loss of its property
21 interest occasioned by the HOA foreclosure sale. Thus, if this Court finds that there has been a
22 taking of any sort, it must grant summary judgment for U.S. Bank, for takings must be
23 compensated. U.S. Const. amend. V; *see, e.g., Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l*
24 *Planning Agency*, 535 U.S. 302, 322, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002) (citing "a
25 categorical duty to compensate the former owner"). Given that there is an uncompensated taking,
26 there is no need to argue about whether there is a public purpose in the taking, because the
27 presence of a public purpose does not relieve Nevada of its responsibility – unfulfilled here and
28 under the Statute in general – to justly compensate takings.

IV. CONCLUSION

For the foregoing reasons, U.S. Bank respectfully requests this court to order summary judgment in its favor, and against SFR, NAS, and the HOA pursuant to N.R.C.P. 56(c).

DATED January 24, 2017.

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie

John S. Delikanakis, Esq.

Daniel S. Ivie, Esq.

3883 Howard Hughes Parkway, Ste. 1100

Las Vegas, Nevada 89169

*Attorneys for Defendant 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*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On January 24, 2017, I caused to be served a true and correct copy of the foregoing U.S. BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT by submitting it to the above-entitled Court for electronic filing and/or service upon the Court's Service list pursuant to the Eighth Judicial District Court's Administrative Order 14-2 dated May 9, 2014.

DATED: January 24, 2017

/s/ Gaylene Kim

An Employee of Snell & Wilmer L.L.P.

25576139

EXHIBIT 1

EXHIBIT 1

APPRAISAL OF REAL PROPERTY



LOCATED AT

2270 Nashville Ave
Henderson, NV 89052
Green Valley Ranch Phase 3 Parcel 40 Plat Book 71 Page 68 Lot 5 Block 5

FOR

Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway , Suite 100
Las Vegas, NV 89169

AS OF

3/1/2013

BY

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Co., Inc.
8930 W Tropicana Ave. Suite 1
Las Vegas, NV 89147
(702) 876-2000
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February 01, 2016

Richard Gordon
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway , Suite 100
Las Vegas, NV 89169

Re: Property: 2270 Nashville Ave
Henderson, NV 89052
Borrower: N/A
File No.: 178-19-712-012

Opinion of Value: 228,000
Effective Date: 3/1/2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

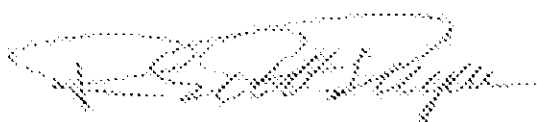
The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

This was a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the client's specific assignment conditions.

The value opinion reported is as of the stated Effective Date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Sincerely,



R. Scott Dugan, SRA
SRA
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2017
scott@rsdugan.com

Client	Snell & Wilmer L.L.P.			File No. 178-19-712-012	
Property Address	2270 Nashville Ave				
City	Henderson	County	Clark	State	NV Zip Code 89052
Appraiser	R. Scott Dugan, SRA				

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RESIDENTIAL APPRAISAL REPORT

File No.: 178-19-712-012

SUBJECT

Property Address: 2270 Nashville AveCity: HendersonState: NVZip Code: 89052
County: ClarkLegal Description: Green Valley Ranch Phase 3 Parcel 40 Plat Book 71 Page 68 Lot 5 Block 5Assessor's Parcel #: 178-19-712-012
Tax Year: 2013R.E. Taxes: \$ 1,731Special Assessments: \$ 0Borrower (if applicable): N/A
Current Owner of Record: Lucia ParksOccupant: ☐ Owner☐ Tenant☒ Vacant☐ Manufactured Housing
Project Type: ☒ PUD☐ Condominium☐ Cooperative☐ Other (describe)HOA: \$ 66.00☐ per year☒ per month
Market Area Name: Green Valley RanchMap Reference: 86-B2Census Tract: 0053.50

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☒ Market Value (as defined), or ☐ other type of value (describe)
This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date)☒ Retrospective☐ Prospective
Approaches developed for this appraisal: ☒ Sales Comparison Approach☐ Cost Approach☒ Income Approach(See Reconciliation Comments and Scope of Work)
Property Rights Appraised: ☒ Fee Simple☐ Leasehold☐ Leased Fee☐ Other (describe)
Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property.
For definitions, refer to the Residential Certifications Addendum.
Intended User(s) (by name or type): Snell & Wilmer L.L.P. and or the legal professionals involved in this case
Client: Snell & Wilmer L.L.P.Address: 3883 Howard Hughes Parkway , Suite 100, Las Vegas, NV 89169
Appraiser: R. Scott Dugan, SRAAddress: 8930 W Tropicana Ave. Suite 1, Las Vegas, NV 89147

MARKET AREA DESCRIPTION

Location:	<input type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Predominant Occupancy	One-Unit Housing			Present Land Use		Change in Land Use		
Built up:	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%		PRICE	AGE	One-Unit	61 %	<input checked="" type="checkbox"/> Not Likely	* To: _____		
Growth rate:	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow		\$ (000)	(yrs)	2-4 Unit	0 %	<input type="checkbox"/> Likely *			<input type="checkbox"/> In Process *
Property values:	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining		100	Low	0	Multi-Unit	2 %			
Demand/supply:	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply		3,200	High	18	Comm'l	4 %			
Marketing time:	<input checked="" type="checkbox"/> Under 3 Mos.	<input type="checkbox"/> 3-6 Mos.	<input type="checkbox"/> Over 6 Mos.		240	Pred	12	Golf/Vac/Pub	33 %			

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): The market area boundaries are I-215 north, I-515 east, Black Mountain Range south and Eastern Avenue west. This area covers about 9+/- square miles and includes multiple master-planned projects of Green Valley Ranch, MacDonald Ranch (upper tier tract and custom homes around a private golf course community) and Sun City (age restricted golf course community) which serve as anchor communities. The area has good freeway and surface street access to other valley locations via the I-515 and I-215 beltways. This is a well established area with a compatible mixture of housing. The areas south of Horizon Ridge have view of the Las Vegas Valley and Resort Corridor city lights. 4+/- miles west of the Henderson CBD and 10+/- miles southeast of the Las Vegas Strip Resort Corridor (key employment centers).

SITE DESCRIPTION

Dimensions: Irregular - see plat mapSite Area: 6,534 SF

Zoning Classification: RS-6 Single Family ResidentialDescription: Residential - 6 units per acre

Zoning Compliance: ☒ Legal☐ Legal nonconforming (grandfathered)☐ Illegal☐ No zoning

Are CC&Rs applicable? ☒ Yes☐ No☐ UnknownHave the documents been reviewed? ☐ Yes☒ NoGround Rent (if applicable) \$ N/A/

Highest & Best Use as improved: ☒ Present use, or☐ Other use (explain) _____

Actual Use as of Effective Date: Single family residentialUse as appraised in this report: Single family residential

Summary of Highest & Best Use: The highest and best use is limited to residential via zoning, masterplan and CC&Rs.

Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private	Topography	Built Up Pad
Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy	Street	Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Size	Typical for Area
Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas	Curb/Gutter	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shape	Rectangular
Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD	Sidewalk	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drainage	Appears Adequate
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Street Lights	Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	View	Residential
Storm Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Alley	None	<input type="checkbox"/>	<input type="checkbox"/>		

Other site elements: ☐ Inside Lot☒ Corner Lot☐ Cul de Sac☒ Underground Utilities☐ Other (describe)

FEMA Spec'l Flood Hazard Area ☐ Yes☒ NoFEMA Flood Zone XFEMA Map # 32003C2590FFEMA Map Date 11/16/2011

Site Comments: Slightly larger than typical corner lot.

DESCRIPTION OF THE IMPROVEMENTS

General Description	Exterior Description	Foundation	Basement	<input checked="" type="checkbox"/> None	Heating	Central
# of Units <u>One</u> <input type="checkbox"/> Acc.Unit	Foundation <u>Concrete/Avg</u>	Slab <u>Concrete</u>	Area Sq. Ft. _____		Type <u>FAU</u>	
# of Stories <u>Two</u>	Exterior Walls <u>Stucco/Avg</u>	Crawl Space <u>None</u>	% Finished _____		Fuel <u>Gas</u>	
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/>	Roof Surface <u>Tile/Avg</u>	Basement <u>None</u>	Ceiling _____			
Design (Style) <u>Rambler/2-Story</u>	Gutters & Dwnspts. <u>None</u>	Sump Pump <input type="checkbox"/> None	Walls _____		Cooling	Central
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.	Window Type <u>Insulated/Avg</u>	Dampness <input type="checkbox"/> None	Floor _____		Central <u>FAU</u>	
Actual Age (Yrs.) <u>15</u>	Storm/Screens <u>None</u>	Settlement <u>None</u>	Outside Entry _____		Other <u>None</u>	
Effective Age (Yrs.) <u>12</u>		Infestation <u>None</u>				

Interior Description	Appliances	Attic <input type="checkbox"/> None	Amenities	Car Storage <input type="checkbox"/> None
Floors <u>Exterior Only</u>	Refrigerator <input type="checkbox"/>	Stairs <input type="checkbox"/>	Fireplace(s) # <u>0</u>	Garage # of cars (<u>4</u> Tot.)
Walls <u>Exterior Only</u>	Range/Oven <input checked="" type="checkbox"/>	Drop Stair <input type="checkbox"/>	Patio <u>Small</u>	Attach. _____
Trim/Finish <u>Exterior Only</u>	Disposal <input checked="" type="checkbox"/>	Scuttle <input checked="" type="checkbox"/>	Deck <u>None</u>	Detach. _____
Bath Floor <u>Exterior Only</u>	Dishwasher <input checked="" type="checkbox"/>	Doorway <input type="checkbox"/>	Porch <u>Yes</u>	Blt.-In <u>2</u>
Bath Wainscot <u>Exterior Only</u>	Fan/Hood <input checked="" type="checkbox"/>	Floor <input type="checkbox"/>	Fence <u>Yes</u>	Carport _____
Doors <u>Exterior Only</u>	Microwave <input checked="" type="checkbox"/>	Heated <input type="checkbox"/>	Pool <u>None</u>	Driveway <u>2</u>
	Washer/Dryer <input type="checkbox"/>	Finished <input type="checkbox"/>	Spa <u>None</u>	Surface <u>Concrete</u>

Finished area above grade contains: 7 Rooms 4 Bedrooms 3 Bath(s) 2,078 Square Feet of Gross Living Area Above Grade

Additional features: The unit is assumed to have standard features.

Describe the condition of the property (including physical, functional and external obsolescence): No external obsolescence noted, unless indicated in this report. As an exterior-only street inspection was made and that this is a retrospective assignment, the appraiser invokes the following Extraordinary Assumptions: 1) appraiser assumes both the SF and physical components were equal to those stated in the MLS and or assessor records, 2) condition of the exterior (not viewed) and interior are at minimum average, 3) no obsolescence affected the interior improvements (layout was unknown-tandem room, missing kitchen appliances or bath fixtures, no AC, etc.), 4) subject was consistent in design, layout, amenities, etc. with its competition. If any of these are found to be false, it could alter the value opinion and or other conclusions in this report.

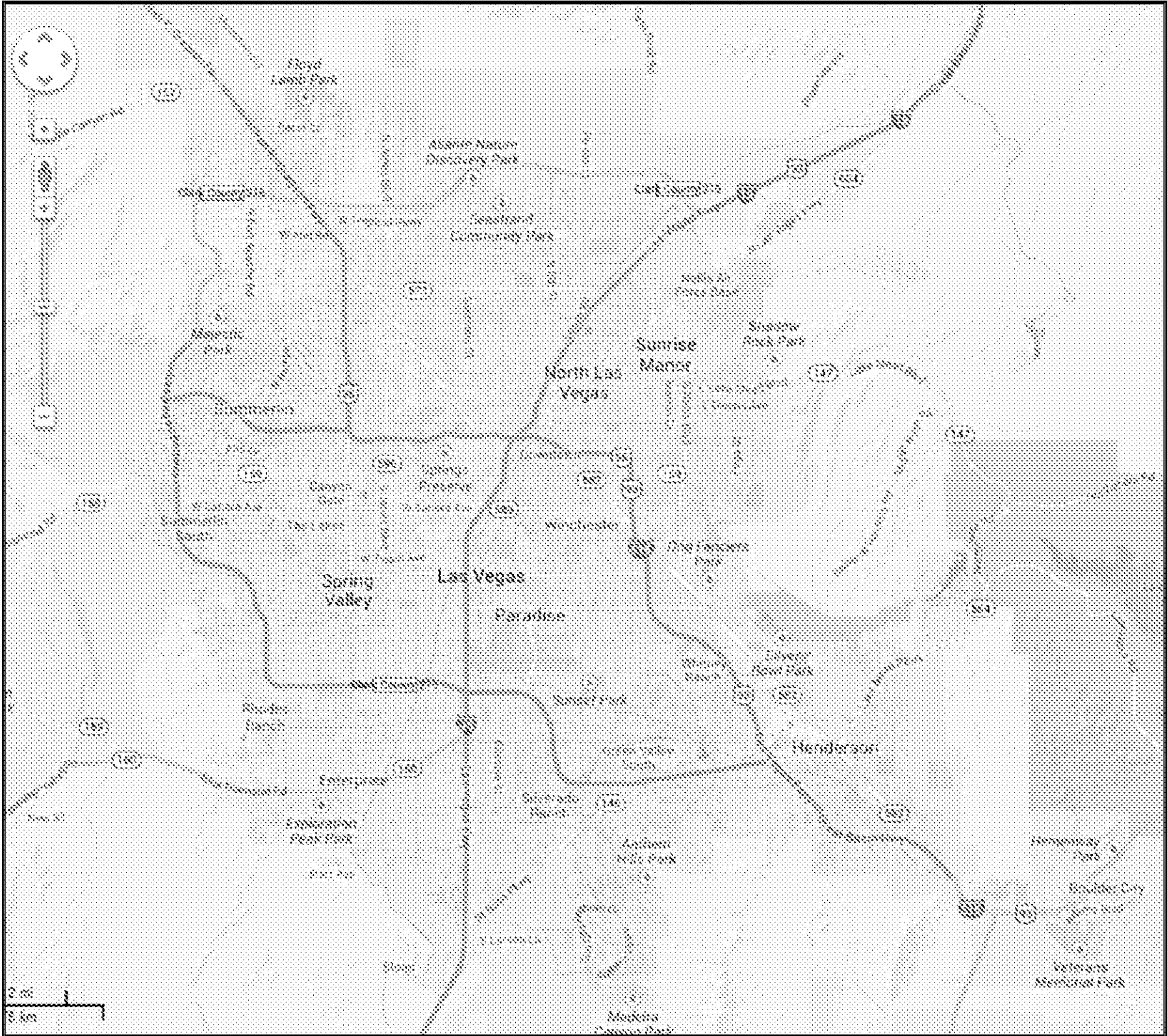
RESIDENTIAL APPRAISAL REPORT

File No.: 178-19-712-012

COST APPROACH	COST APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal. Provide adequate information for replication of the following cost figures and calculations. Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): <u>The cost approach was not completed as part of this assignment for the reasons stated below.</u>				
	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW		OPINION OF SITE VALUE _____=\$		
	Source of cost data:		DWELLING Sq.Ft. @ \$ _____=\$		
	Quality rating from cost service: Effective date of cost data:		Sq.Ft. @ \$ _____=\$		
	Comments on Cost Approach (gross living area calculations, depreciation, etc.): The cost approach was not considered reliable due to the age of the improvements and the inability to reproduce these improvements with the economy of scale associated with development of production homes within a PUD setting with various amenities.		Sq.Ft. @ \$ _____=\$		
			Sq.Ft. @ \$ _____=\$		
INCOME APPROACH	Estimated Remaining Economic Life (if required): _____ Years INDICATED VALUE BY COST APPROACH _____=\$				
	INCOME APPROACH TO VALUE (if developed) <input type="checkbox"/> The Income Approach was not developed for this appraisal.				
	Estimated Monthly Market Rent \$ 1,600 X Gross Rent Multiplier 140 = \$ 224,000 Indicated Value by Income Approach				
	Summary of Income Approach (including support for market rent and GRM): <u>Rents range from \$1500 to \$1700 for similar homes with the subject expected to command mid-range or \$1,600. GRMs were widespread (130 to 177 with a 140 average) and inconsistent. Units were being purchased as fix and flips with little emphasis on fix and hold as the market continued to correct. For these reasons, the income approach was not considered as reliable as the sales comparison approach.</u>				
	PUD	PROJECT INFORMATION FOR PUDs (if applicable) <input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development.			
Legal Name of Project: <u>Green Valley Ranch Phase 3 Parcel 40 (Copper Ridge)</u>					
Describe common elements and recreational facilities: <u>Perimeter fencing, electric key-pad entry gate, monument entry, community park and enforcement of CC&R's. The subject is part of the Green Valley Ranch MPC which includes community facilities (senior center, pavilions, parks, library, etc. along with jogging trails and landscaped streets.</u>					
RECONCILIATION	Indicated Value by: Sales Comparison Approach \$ 228,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ 224,000				
	Final Reconciliation <u>The cost approach was not completed or required to develop a credible report. The income approach was not weighted for the reasons state, but was within range of the final value opinion. The sales comparison approach produced adjusted sales that had a potential value range from \$224,000 to \$230,000 with a central tendency of \$228,000 supported by four of the six sales.</u>				
	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: <u>This is a retrospective value opinion based upon a drive-by inspection only and assumes a concurrent marketing time and exposure period of 30 to 90 days, and marketing effort by a licensed real estate professional.</u>				
	<input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.				
	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ 228,000 , as of: 3/1/2013 , which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.				
ATTACHMENTS	A true and complete copy of this report contains <u>22</u> pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.				
	Attached Exhibits:				
	<input checked="" type="checkbox"/> Scope of Work <input checked="" type="checkbox"/> Limiting Cond./Certifications <input checked="" type="checkbox"/> Narrative Addendum <input checked="" type="checkbox"/> Photograph Addenda <input checked="" type="checkbox"/> Sketch Addendum				
	<input checked="" type="checkbox"/> Map Addenda <input checked="" type="checkbox"/> Additional Sales <input type="checkbox"/> Cost Addendum <input type="checkbox"/> Flood Addendum <input type="checkbox"/> Manuf. House Addendum				
	<input checked="" type="checkbox"/> Hypothetical Conditions <input checked="" type="checkbox"/> Extraordinary Assumptions <input type="checkbox"/> <input type="checkbox"/>				
SIGNATURES	Client Contact: <u>Richard Gordon</u> Client Name: <u>Snell & Wilmer L.L.P.</u>				
	E-Mail: <u>rgordon@swlaw.com</u> Address: <u>3883 Howard Hughes Parkway , Suite 100, Las Vegas, NV 89169</u>				
	APPRAISER				
	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)				

Market Area Overview

Client	Snell & Wilmer L.L.P.			
Property Address	2270 Nashville Ave			
City	Henderson	County	Clark	State NV Zip Code 89052
Appraiser	R. Scott Dugan, SRA			



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

Key Factors influencing Housing Market Trends in the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators

Client	Snell & Wilmer L.L.P.					
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The key indicators below show the relationships between employment, housing prices, affordability and movement in the ma housing demand is a combination of supply, price and monthly payment.

LAS VEGAS VALLEY MARKET OVERVIEW - June 2013						
	2008	2009	2010	2011	2012	2013-YTD
Job Growth - Annual	12,300	-38,051	-10,384	-8,179	27,009	17,200
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.37
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$652
PI with 95% LTV-with MI	\$1,398	\$794	\$744	\$628	\$671	\$871
3 BR Metro Avg. Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$946
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,098
GLVAR MLS SFR Annual Activity - 2013 is YTD through June						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	20,041
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	3,828
Sales	24,924	38,127	34,434	38,153	36,609	16,975
List to Sale Ratio	41%	67%	61%	69%	91%	85%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$169,000
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Average DOM	68	61	64	72	69	56
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Mar 114.61

Recent Trends: There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

2010: The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

2011: There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

2012: Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

2013: Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market

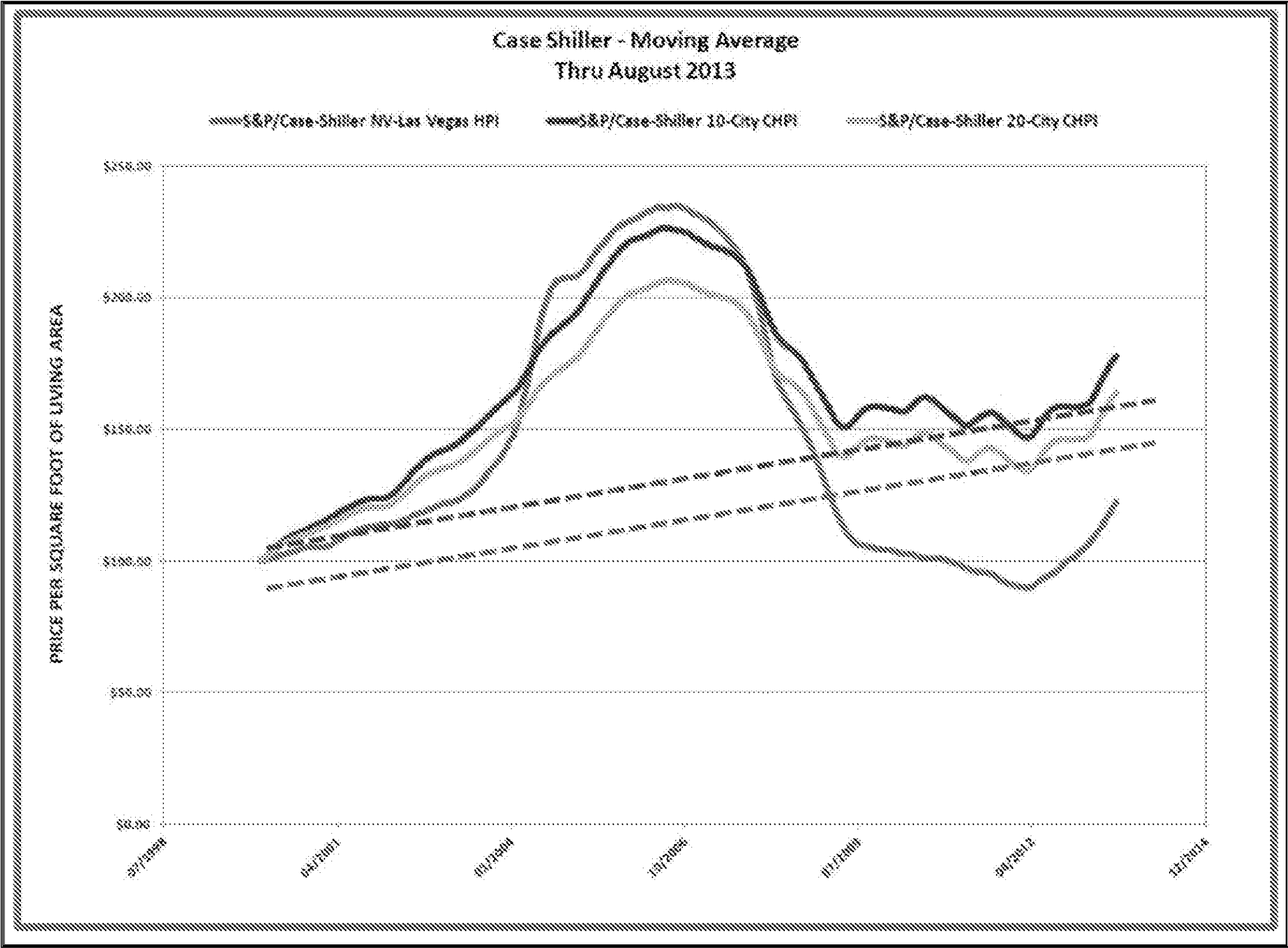
Observations and Conclusions: Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

Economic correction of prices requires a significant increase in employment. You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Rentals are up 20% over 2011 and 34% over 2010. Employment is improving, but lagging behind other areas. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.

Case Shiller

Client	Snell & Wilmer L.L.P.				
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The Case Shiller Index compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 Averages, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and during 2010 - 2013 is correcting back to market norms.



As shown above, Las Vegas still is well below the 10 City and 20 City averages. Effectively, the housing market in Las Vegas remains well below where it should be if the housing market did not spin out of control in the mid 2000's. What we are seeing (current market conditions), is the market's attempt to correct. The two trend lines (red for the composites and blue for Las Vegas) illustrate the normal relationship between Las Vegas and the 10 and 20 City Composites.

The gap between the current Las Vegas market average and the blue Las Vegas trend line show the over-correction in the Las Vegas housing prices (based on buyer affordability) and the market's or recognition of over-correction during 2012 (based upon median income and housing affordability). This is what investors recognized and why investors made significant purchases of REO and short-sale properties in the Las Vegas market over the past several years.

Investors dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas "economically under-valued." The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could by an "unoccupiable REO" for \$100,000, invest an additional \$25,000 in to it for repairs and sell it for \$150,000, all within 90 days and make a \$25,000 profit. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return. This is why the majority of sales in many markets have been "all cash."

With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

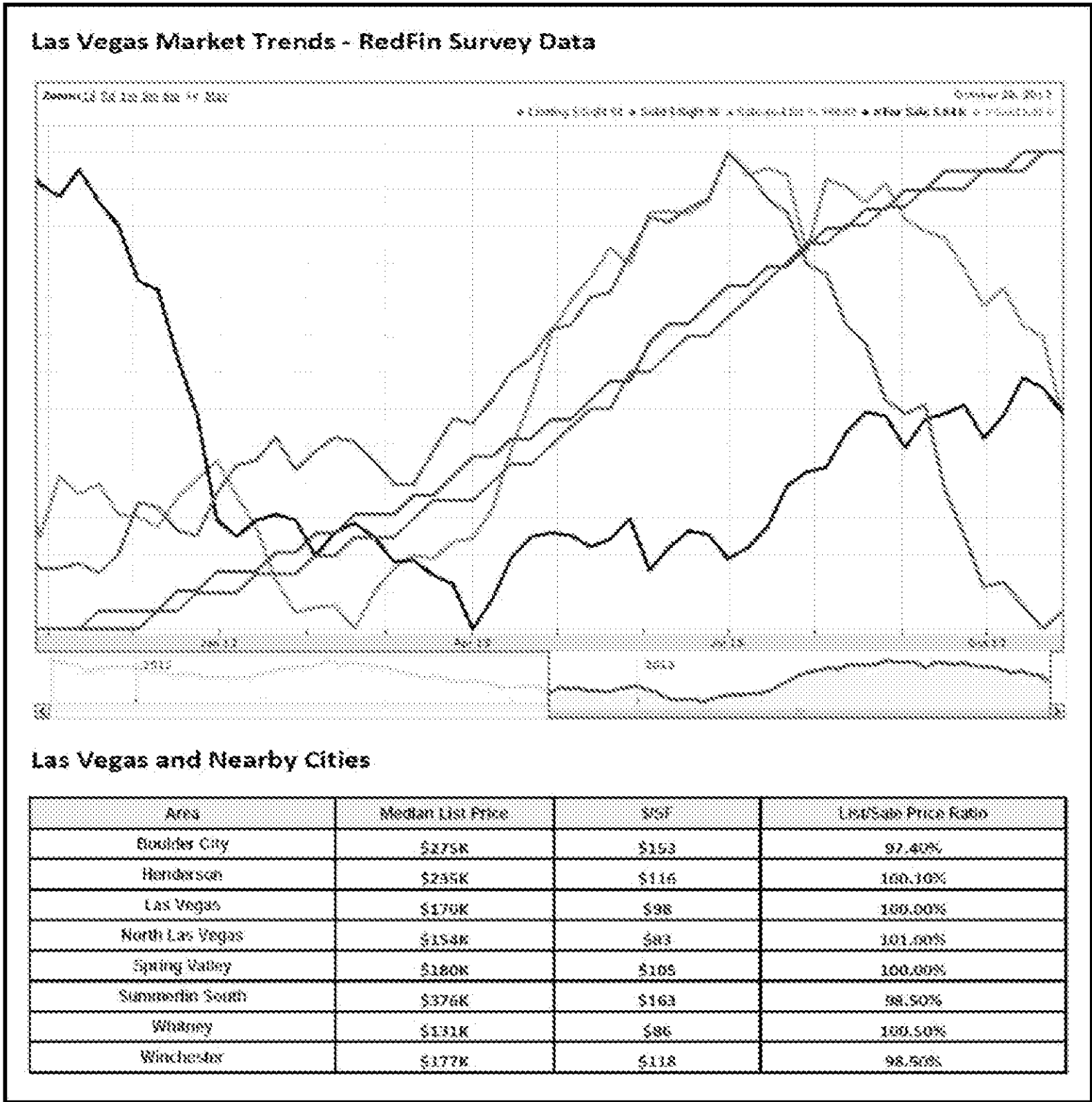
Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2013, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

Redfin - Las Vegas Market Overview

Client	Snell & Wilmer L.L.P.			
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The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



Measuring and Reporting Market Conditions: The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply is being held off the market.

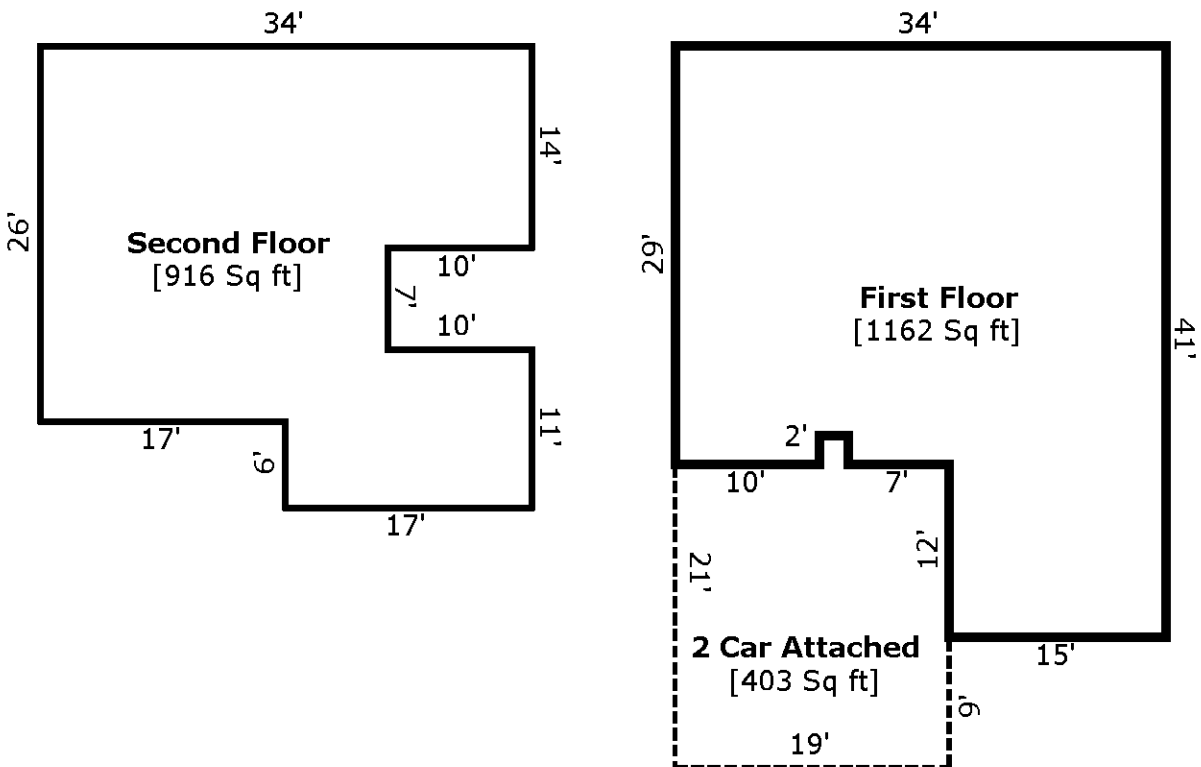
This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index. The market is not in balance, therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria upon which this value opinion is based.

The intended user or anyone relying upon the value opinion should consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. There is a difference between market value and investment value. Investors are active in this market area and effect current market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

Market movement and motivation: During a correction, sales may not reflect the actions of the "collective market" (as required by the definition of "market value"). Until equilibrium is reached, the market is not acting collectively, therefore, over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

Building Sketch

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TOTAL Sketch by a la mode, inc.

Area Calculations Summary

Living Area		Calculation Details	
First Floor	1162 Sq ft	15 × 12 = 180	
		34 × 27 = 918	
		2 × 10 = 20	
		2 × 22 = 44	
Second Floor	916 Sq ft	14 × 10 = 140	
		11 × 10 = 110	
		24 × 26 = 624	
		6 × 7 = 42	
Total Living Area (Rounded):		2078 Sq ft	
Non-living Area			
2 Car Attached	403 Sq ft	19 × 21 = 399	
		2 × 2 = 4	

Plat Map

Client	Snell & Wilmer L.L.P.			
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Location Map

Client	Snell & Wilmer L.L.P.		
Property Address	2270 Nashville Ave		
City	Henderson	County	Clark State NV Zip Code 89052
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Subject Photos

Client	Snell & Wilmer L.L.P.				
Property Address	2270 Nashville Ave				
City	Henderson	County	Clark	State	NV Zip Code 89052
Appraiser	R. Scott Dugan, SRA				



Subject Front

2270 Nashville Ave
Sales Price N/A
Gross Living Area 2,078
Total Rooms 7
Total Bedrooms 4
Total Bathrooms 3
Location GV Ranch
View Residential
Site 6,534 SF
Quality Fr/Stucco/Tile
Age 15



Subject Rear/Side



Subject Street

Comparable Photos 1-3

Client	Snell & Wilmer L.L.P.			
Property Address	2270 Nashville Ave			
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Appraiser	R. Scott Dugan, SRA			



Comparable 1

271 New River Circle
Prox. to Subject 0.26 miles SW
Sales Price 240,000
Gross Living Area 2,056
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2
Location GV Ranch
View Residential
Site 5,663 SF
Quality Fr/Stucco/Tile
Age 15



Comparable 2

296 Fancrest Street
Prox. to Subject 0.07 miles SE
Sales Price 238,000
Gross Living Area 2,078
Total Rooms 7
Total Bedrooms 4
Total Bathrooms 3
Location GV Ranch
View Residential
Site 4,792 SF
Quality Fr/Stucco/Tile
Age 16



Comparable 3

279 Fancrest Street
Prox. to Subject 0.03 miles NE
Sales Price 216,000
Gross Living Area 1,774
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2
Location GV Ranch
View Residential
Site 6,098 SF
Quality Fr/Stucco/Tile
Age 14

Comparable Photos 4-6

Client	Snell & Wilmer L.L.P.			
Property Address	2270 Nashville Ave			
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Comparable 4

1933 Thunder Ridge Circle
Prox. to Subject 0.83 miles E
Sales Price 205,000
Gross Living Area 1,704
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2.5
Location GV Ranch
View Residential
Site 4,792 SF
Quality Fr/Stucco/Tile
Age 15



Comparable 5

501 Short Crest Court
Prox. to Subject 0.71 miles SW
Sales Price 260,000
Gross Living Area 2,084
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 2
Location GV Ranch
View Residential
Site 6,970 SF
Quality Fr/Stucco/Tile
Age 14



Comparable 6

217 Cimarron Village Way
Prox. to Subject 0.72 miles NE
Sales Price 237,500
Gross Living Area 2,325
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 2.5
Location GV Ranch
View Residential
Site 5,663 SF
Quality Fr/Stucco/Tile
Age 18

Clarification of Scope of Work

File No. 178-19-712-012

Client	Snell & Wilmer L.L.P.			
Property Address	2270 Nashville Ave			
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CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an “imperfect market” and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume “knowledgeable buyers and sellers” or “no special motivations,” when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a “benchmark” in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user’s requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is “the type and extent of research and analysis in an assignment.” This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this “clarification of scope of work” (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the “non-inspection” and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. “Neighborhood” boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once

Clarification of Scope of Work

File No. 178-19-712-012

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Appraiser	R. Scott Dugan, SRA			

distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes “informed buyer” and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer’s knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the “replacement cost estimate.” If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for “valuation purposes.” Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of “market value” used within this report is not consistent with the definition of “insurable value.”

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the “as measured” GLA by the appraiser and the “as reported” GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be “market recognized” and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be

Clarification of Scope of Work

File No. 178-19-712-012

Client	Snell & Wilmer L.L.P.			
Property Address	2270 Nashville Ave			
City	Henderson	County	Clark	State NV Zip Code 89052
Appraiser	R. Scott Dugan, SRA			

negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 178-19-712-012

Property Address:	2270 Nashville Ave	City:	Henderson	State:	NV	Zip Code:	89052
Client:	Snell & Wilmer L.L.P.	Address:	3883 Howard Hughes Parkway , Suite 100, Las Vegas, NV 89169				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 W Tropicana Ave. Suite 1, Las Vegas, NV 89147				

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 178-19-712-012

Property Address:	2270 Nashville Ave	City:	Henderson	State:	NV	Zip Code:	89052
Client:	Snell & Wilmer L.L.P.	Address:	3883 Howard Hughes Parkway , Suite 100, Las Vegas, NV 89169				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 W Tropicana Ave. Suite 1, Las Vegas, NV 89147				

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value () Other Value



Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

Retrospective Date of Value: is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

SIGNATURES	Client Contact:	Richard Gordon	Client Name:	Snell & Wilmer L.L.P.
	E-Mail:	rgordon@swlaw.com	Address:	3883 Howard Hughes Parkway , Suite 100, Las Vegas, NV 89169
	APPRAISER		SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)	
				
	Appraiser Name: R. Scott Dugan, SRA		Supervisory or Co-Appraiser Name: Patrick Egger	
	Company: R. Scott Dugan Appraisal Co., Inc.		Company: R. Scott Dugan Appraisal Co., Inc.	
	Phone: (702) 876-2000 Fax: (702) 253-1888		Phone: (702) 324-6652 Fax: (702) 253-1888	
	E-Mail: scott@rsdugan.com		E-Mail: LVREQA@COX.NET	
	Date Report Signed: February 01, 2016		Date Report Signed: February 01, 2016	
	License or Certification #: A.0000166-CG State: NV		License or Certification #: A.0000154-CG State: NV	
Designation: SRA		Designation:		
Expiration Date of License or Certification: 05/31/2017		Expiration Date of License or Certification: 05/31/2017		
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection: 1/29/2016		Date of Inspection: 1/29/2016		

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AA_0562

EXHIBIT 2

EXHIBIT 2

In The Matter Of:
SFR Investments Pool 1, LLC vs.
U.S. Bank, N.A., et al.

30(b)(6) Robert Ferguson
February 10, 2016



Min-U-Script® with Word Index

30(b)(6) Robert Ferguson - February 10, 2016
SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.

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<p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,) Plaintiff,) vs.) CASE NO: A-13-678814-C) CONSOLIDATED WITH) CASE NO: A-13-688734-C US BANK, N.A., a national banking) DEPT NO: XXXI association as Trustee for the) Certificate Holders of Wells Fargo) Asset Securities Corporation,) Mortgage Pass-Through Certificates,) Series 2006-AR4 and LUCIA PARKS,) an individual, DOES I through X,) and ROE CORPORATIONS I through X,) inclusive,) Defendants.)</p> <p>SFR INVESTMENTS POOL 1, LLC, a) DEPOSITION OF: Nevada limited liability company,) ROBERT FERGUSON Plaintiff,) PURSUANT TO NRCP 30(B)(6) vs.) PERSON MOST KNOWLEDGEABLE) U.S. BANK</p> <p>US BANK, N.A., a national banking) Taken at: association as Trustee for the) The Law Offices of Certificate Holders of Wells Fargo) Kim Gilbert Ebron Asset Securities Corporation,) Suite 110 Mortgage Pass-Through Certificates,) 7625 Dean Martin Drive Series 2006-AR4; NV WEST SERVICING,) Las Vegas, Nevada 89139 LLC, a Nevada limited liability) company, as Trustee for NASHVILLE) on Wednesday, TRUST 2270; DOES I-X;) February 10, 2016 and ROES 1-10, inclusive) at 3:21 p.m. Defendants.)</p>	<p>1 APPEARANCES:</p> <p>2 For Plaintiffs SFR Investments Pool 1, LLC:</p> <p>3 LAW OFFICES OF KIM GILBERT EBRON 4 BY: DIANA S. CLINE EBRON, ESQ. Suite 110 5 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 6 TEL: (702) 485-3300 FAX: (702) 485-3301 7 E-mail: Diana@hkimlaw.com</p> <p>8 For Third-Party Defendants Copper Ridge Community 9 Association:</p> <p>10 ALVERSON, TAYLOR, MORTENSEN & SANDERS 11 TAYLOR L. WAITE, ESQ. 7401 West Charleston Boulevard 12 Las Vegas, Nevada 89117-1401 TEL: (702) 384-7000 13 FAX: (702) 385-7000 E-mail: TWaite@alversontaylor.com</p> <p>14 For Third-Party Defendant Nevada Association 15 Services, Inc:</p> <p>16 THE LAW OFFICES OF RICHARD VILKIN, P.C. 17 BY: RICHARD J. VILKIN, ESQ. 1286 Crimson Sage Avenue 18 Henderson, Nevada 89012 TEL: (702) 476-3211 FAX: (702) 476-3212 19 E-mail: Richard@vilkinlaw.com</p> <p>20 For Defendant U.S. Bank:</p> <p>21 SNELL & WILMER, LLP 22 BY: JOHN S. DELIKANAKIS, ESQ. 3883 Howard Hughes Parkway 23 Suite 1100 Las Vegas, Nevada 89169 24 TEL: (702) 784-5200 FAX: (702) 784-5252 E-mail: JDelidanakis@swlaw.com</p> <p>25 Also Present: Brian O'Laughlin</p>
Page 2	Page 4
<p>NV WEST SERVICING, LLC, a Nevada) limited company, as Trustee for) NASHVILLE TRUST 2270,) Cross-Claimant,) vs.)</p> <p>NATIONAL DEFAULT SERVICING) CORPORATION, an Arizona) Corporation; DOES XI through XX,) inclusive,)</p> <p>DEPOSITION OF ROBERT FERGUSON PURSUANT TO NRCP 30(B)(6) PERSON MOST KNOWLEDGEABLE U.S. BANK</p> <p>Taken at The Law Offices of Kim Gilbert Ebron 7625 Dean Martin Drive Suite 110 Las Vegas, Nevada</p> <p>on Wednesday, February 10, 2016 3:21 p.m.</p> <p>Job No. 21227 Depo International - Las Vegas Reported by: Andrea Martin, CSR, RPR, NV CCR 887 Certified Realtime Reporter</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION: PAGE</p> <p>4 EXAMINATION BY MS. EBRON 7</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

30(b)(6) Robert Ferguson - February 10, 2016
SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.

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1	Las Vegas, Nevada; Wednesday, February 10, 2016	
2	3:21 p.m.	
3	-oOo-	
4	(In an off-the-record discussion held	
5	prior to the commencement of the	
6	proceedings, counsel agreed to waive the	
7	court reporter's requirements under Rule	
8	30(b)(4) of the Nevada Rules of Civil	
9	Procedure.)	
10	ROBERT FERGUSON,	
11	having been first duly sworn by the court reporter	
12	to testify to the truth, the whole truth, and	
13	nothing but the truth, was examined and testified	
14	under oath as follows:	
15	EXAMINATION	
16	BY MS. EBRON:	
17	Q Good afternoon. I'm Diana Cline Ebron. I	
18	represent SFR Investments Pool 1, LLC, in this	
19	matter, as well as the last one.	
20	Can you please state your name for the	
21	record.	
22	A Robert Ferguson, F-E-R-G-U-S-O-N.	
23	Q And you're employed by Wells Fargo Bank,	
24	N.A.?	
25	A I am.	

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1	MS. EBRON: I'm going to let counsel go	
2	ahead and represent themselves so we know who all is	
3	here.	
4	MR. WAITE: Trevor Waite on behalf of	
5	Third-Party Defendants Copper Ridge Community	
6	Association.	
7	MR. VILKIN: Richard Vilkin on behalf of	
8	Third-Party Defendant, Nevada Association Services,	
9	Inc.	
10	SPEAKER1: Brian O'Laughlin, in-house with	
11	Wells, Fargo.	
12	MR. DELIKANAKIS: John Delikanakis with	
13	Snell & Wilmer on behalf of U.S. Bank.	
14	BY MS. EBRON:	
15	Q Before we started today, we discussed with	
16	counsel that we would incorporate background	
17	information, your employment history, that type of	
18	thing, from a deposition taken on March 24th,	
19	2015, Case No. A-13-686489-C.	
20	Are you okay with that?	
21	A Yes.	
22	Q Is there anything you wanted to update?	
23	A In the deposition transcript you just	
24	referenced, I used to be a notary with the state of	
25	Oregon, and I did not renew that, so I'm no longer a	

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1 notary.
2 Q Thank you.
3 (Deposition Exhibit 1 was marked for
4 identification.)
5 **BY MS. EBRON:**
6 Q Can you please take a look at what's been
7 marked as Exhibit 1.
8 A Okay.
9 Q Do you recognize this document?
10 A I do.
11 Q What is it?
12 A This is a notice of deposition for today's
13 deposition.
14 Q This is for the deposition of U.S. Bank,
15 N.A., a National Banking Association, as Trustee for
16 the Certificate Holders of Wells Fargo, Asset
17 Securities Corporation, Mortgage Pass-Through
18 Certificate, Series 2006-AR4.
19 Whenever I refer to "U.S. Bank," I'm going
20 to be referring to it as "the trustee." Okay?
21 A Okay.
22 Q If I refer to "the trust," I'll be
23 referring to the trust known as Wells Fargo Asset
24 Securities Corporation, Mortgage Pass-Through
25 Certificate, Series 2006-AR4. Okay?

Page 10

1 A Okay.
2 Q In addition, there's some other
3 definitions. On Page 3, there's a definition of
4 "property." It's the real property located at
5 2270 Nashville Avenue, Henderson, Nevada 89052,
6 Parcel No. 178-19-712-012.
7 For the purposes of this deposition,
8 whenever I talk about "the property," I'm referring
9 to the one on Nashville Avenue. Okay?
10 A Okay.
11 Q In addition, there's a definition of
12 "association," referring to Copper Ridge Community
13 Association. So unless otherwise specified, when I
14 talk about "the association," I'm referring to the
15 Copper Ridge Community Association. Okay?
16 A Okay.
17 Q There's also a reference to "the
18 association foreclosure sale." When I talk about
19 that, I'm talking about the auction held on
20 March 1st, 2013, by Nevada Association Services,
21 Inc., on behalf of the association. Okay?
22 A Okay.
23 Q From time to time during the deposition, I
24 may refer to Nevada Association Services as NAS.
25 All right?

Page 11

1 A Okay.
2 Q There are topics that start on Page 3 and
3 go to Page 23. Have you had a chance to review
4 those before today?
5 A I've reviewed the 23 topics.
6 Q And are you the person that U.S. Bank has
7 designated to testify on its behalf for these
8 topics?
9 A Yes.
10 Q What is the relationship between U.S. Bank
11 and Wells Fargo such that you would be designated as
12 the witness?
13 A Wells Fargo Bank, N.A., is the servicer
14 for the loans on behalf of the trustee, which is
15 U.S. Bank.
16 (Deposition Exhibit 2 was marked for
17 identification.)
18 **BY MS. EBRON:**
19 Q Can you please look at what's been marked
20 as Exhibit 2.
21 A (Complies.) Okay.
22 Q Do you recognize this document?
23 A I do.
24 Q What is it?
25 A This is a note the borrower executed on

Page 12

1 December 30th, 2005.
2 Q When you talk about "the borrower," are
3 you referring to Lucia Parks?
4 A I am.
5 Q Do you know what information was redacted
6 from the top left-hand corner of the first page of
7 the note?
8 A A mortgage loan number.
9 Q Do you know what this stamp at the bottom
10 right-hand corner that says "Exhibit 1" is referring
11 to?
12 MR. DELIKANAKIS: (Indicating.)
13 A I do not.
14 **BY MS. EBRON:**
15 Q Did you have a chance to look at the
16 original wet-ink signature note?
17 A I did not.
18 Q Do you know where that note is located?
19 A This note is in our vaults in Minneapolis,
20 Minnesota.
21 Q How do you know that?
22 A I looked in our servicing platform and
23 determined that the custodian of the collateral
24 documents was Wells Fargo Bank and that the address
25 of the particular vault that this loan -- these loan

Page 13

1 documents are housed is in is in Minneapolis.
2 Q Do you know who input that information
3 into the place that you looked?
4 A The data would have been input into our
5 system of record by someone who worked while
6 onboarding this loan into our loan servicing
7 platform.
8 Q When was this loan onboarded into your
9 servicing platform?
10 A At the time of origination in December of
11 2005.
12 (Deposition Exhibit 3 was marked for
13 identification.)
14 BY MS. EBRON:
15 Q Can you look at what has been marked as
16 Exhibit 3, please.
17 A (Complies.) Okay.
18 Q Do you recognize this document?
19 A I do.
20 Q What is it?
21 A This is a deed of trust regarding the
22 property in question in this matter, with the
23 borrower of Lucia Parks.
24 Q And is this the deed of trust that was
25 executed to secure the note that we marked as

Page 14

1 Exhibit 2?
2 A It is.
3 Q Who originated this loan?
4 A Wells Fargo Bank.
5 Q When did U.S. Bank obtain an interest in
6 this loan?
7 A This loan was sold to -- shortly after
8 origination, I would say within four or five months
9 of origination, back in 2006.
10 Q Are there documents that evidence the
11 transfer from Wells Fargo to U.S. Bank?
12 MR. DELIKANAKIS: Objection: Form of the
13 question.
14 A This loan was included in a pool of loans
15 that was securitized, and U.S. Bank was named the
16 trustee of the pool of loans.
17 MS. EBRON: Off the record.
18 (Pause in proceedings.)
19 MS. EBRON: Back on the record.
20 BY MS. EBRON:
21 Q Do you know how much the trust paid to
22 purchase the loan?
23 A The practice would be for the transaction
24 to include nearly dollar for dollar for the
25 principal balance of the loan at the time the loan

Page 15

1 was transferred to the trust.
2 Q How do you know that?
3 A Just the general banking practice of
4 transactions such as these.
5 Q In Exhibit 3, can you look at the page
6 that's Bates Stamped USB000021.
7 A (Complies.) Okay.
8 Q Do you recognize this?
9 A I do.
10 Q What is it?
11 A It's a planned unit development rider.
12 Q Why did Wells Fargo include it in the deed
13 of trust?
14 A It informs the borrowers of their
15 responsibility to keep in compliance and current
16 with their requirements under the PUD.
17 Q Is it fair to say that Wells Fargo was
18 aware of the homeowners association when it
19 originated this loan?
20 MR. DELIKANAKIS: Objection: Form of the
21 question; also calls for a legal conclusion.
22 A Wells Fargo was aware that the loan was --
23 that the property was located within a PUD.
24 (Deposition Exhibit 4 was marked for
25 identification.)

Page 16

1 BY MS. EBRON:
2 Q Can you look at what's been marked as
3 Exhibit 4, please.
4 A (Complies.)
5 Q I'm going to represent to you that this is
6 just a portion of the Declaration of Covenants,
7 Conditions, and Restrictions for Copper Ridge
8 Community, with the title page and the Table of
9 Contents, because the entire document is voluminous.
10 Have you seen this document before?
11 A I have not.
12 Q Do you know if this is something that is
13 contained in U.S. Bank's business records?
14 A I did not see this within their records.
15 (Deposition Exhibit 5 was marked for
16 identification.)
17 BY MS. EBRON:
18 Q Look at what has been marked as Exhibit 5,
19 please.
20 A (Complies.) Okay.
21 Q Do you recognize this document?
22 A I do.
23 Q What is it?
24 A It is a grant, bargain, sale deed between
25 Albert and Mary Brandelli and the borrower of the

Page 17

1 loan we originated, Lucia Parks.
2 Q Is this something that's part of
3 U.S. Bank's business records?
4 A I'm not sure if the copy that I've seen
5 has -- is the recorded copy of this document or not.
6 Q Is there a copy that is not recorded in
7 U.S. Bank's business records?
8 A I believe there is.
9 (Deposition Exhibit 6 was marked for
10 identification.)
11 BY MS. EBRON:
12 Q Can you look at what has been marked as
13 Exhibit 6.
14 A (Complies.)
15 Q Do you recognize this document?
16 A I don't respect -- I don't specifically
17 recognize this document. I don't remember seeing
18 it.
19 (Deposition Exhibit 7 was marked for
20 identification.)
21 BY MS. EBRON:
22 Q Can you look at what's been marked as
23 Exhibit 7, please.
24 A Okay.
25 Q Do you recognize this document?

Page 18

1 A I do not.
2 (Deposition Exhibit 8 was marked for
3 identification.)
4 BY MS. EBRON:
5 Q Take a look at what has been marked as
6 Exhibit 8, please.
7 A (Complies.) Okay.
8 Q Do you recognize this document?
9 A I do not.
10 (Deposition Exhibit 9 was marked for
11 identification.)
12 BY MS. EBRON:
13 Q Look at what has been marked as Exhibit 9.
14 A (Complies.) Okay.
15 Q Do you recognize this document?
16 A I do not.
17 (Deposition Exhibit 10 was marked for
18 identification.)
19 BY MS. EBRON:
20 Q Can you please look at what has been
21 marked as Exhibit 10.
22 A (Complies.)
23 Q Do you recognize this document?
24 A I do.
25 Q What is it?

Page 19

1 A It is a notice of default and election to
2 sell regarding the first deed of trust, what was
3 Exhibit 3.
4 Q Who is National Default Servicing
5 Corporation?
6 A They are the trustee for the deed of
7 trust.
8 Q If you look on the page that is Bates
9 Stamped USB000039 --
10 A Okay.
11 Q -- the second paragraph from the bottom
12 discusses the failure to pay.
13 Do you see that?
14 MR. DELIKANAKIS: Can you point which
15 section you're looking at? What sentence does it
16 begin with?
17 MS. EBRON: Starts with, "That a breach
18 of, and default in, the obligations for which such
19 Deed of Trust security has occurred in that payment
20 has not been made of: Failure to pay the
21 installments of principal interest and impounds
22 which became due on November 1st, 2009."
23 A I see that.
24 BY MS. EBRON:
25 Q Do you know if Lucia Parks made any

Page 20

1 payments on the loan after November 1st, 2009?
2 A Not without looking at the payment
3 history, but I believe she did.
4 (Deposition Exhibit 11 was marked for
5 identification.)
6 BY MS. EBRON:
7 Q Can you look at what has been marked as
8 Exhibit 11.
9 A (Complies.)
10 Q Do you recognize this document?
11 A I don't remember reviewing this in
12 preparation for today.
13 (Deposition Exhibit 12 was marked for
14 identification.)
15 BY MS. EBRON:
16 Q Can you look at what has been marked as
17 Exhibit 12.
18 A (Complies.)
19 Q Do you recognize this document?
20 A Yes.
21 Q What is it?
22 A It's an assignment of deed of trust.
23 Q Who is it from and who is it to?
24 A It is assigning to -- from Wells Fargo to
25 the U.S. Bank National Association, as Trustee for

Page 21

1 Wells Fargo Asset Securities Corporation, Mortgage
2 Pass-Through Certificate, Series 2006-AR4.
3 Q When was this executed?
4 A July 1st of 2010.
5 MR. DELIKANAKIS: Just to note for the
6 record, there's actually two executions on this
7 document.
8 BY MS. EBRON:
9 Q Here?
10 A It appears to be a --
11 MR. DELIKANAKIS: -- a notary.
12 THE WITNESS: -- signature and a notary.
13 MR. DELIKANAKIS: A notary.
14 MS. EBRON: Oh, okay.
15 MR. DELIKANAKIS: A notary signed that,
16 executed by the president.
17 MS. EBRON: What am I missing?
18 MR. DELIKANAKIS: It's okay.
19 BY MS. EBRON:
20 Q Do you know who Olivia A. Todd is?
21 A I do not.
22 Q Above the signature line, it says,
23 "Wells Fargo Bank, N.A., Successor by Merger to
24 Wells Fargo Home Mortgage, Inc., by its attorney in
25 fact National Default Servicing Corporation."

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1 Do you see that?
2 A I do.
3 Q Is National Default Servicing Corporation
4 Wells Fargo Bank, N.A.'s attorney in fact?
5 MR. DELIKANAKIS: Objection: Form of the
6 question; calls for a legal conclusion.
7 A For this specific assignment, so National
8 Default Servicing Corporation had the ability to
9 sign this particular document as Wells Fargo Bank,
10 N.A.'s attorney in fact.
11 (Deposition Exhibit 13 was marked for
12 identification.)
13 BY MS. EBRON:
14 Q Can you please look at what has been
15 marked as Exhibit 13.
16 A (Complies.) Okay.
17 Q Do you recognize this document?
18 A I do.
19 Q What is it?
20 A It is a notice of trustee's sale.
21 Q Does this notice of trustee's sale relate
22 to the deed of trust marked as Exhibit 3?
23 A It does.
24 Q Was it National Default Servicing
25 Corporation that caused this to be recorded?

Page 23

1 A Yes.
2 Q Was that on behalf of U.S. Bank?
3 A Correct.
4 I should say on behalf of U.S. Bank as
5 Trustee for the pool.
6 Q Right. Thank you.
7 Can you look at the page Bates Stamped
8 USB000044, the paragraph that starts, "Said sale
9 will be made, in 'as is' condition, without covenant
10 or warranty, expressed or implied, regarding title,
11 possession or encumbrances to satisfy the
12 indebtedness" of the -- sorry -- "indebtedness
13 secured by said Deed of Trust."
14 Do you see that?
15 A I see -- I do.
16 Q Do you know why that was included in this
17 notice of sale?
18 MR. DELIKANAKIS: Objection: Form of the
19 question calls for a legal conclusion.
20 A I can only see the words that you just
21 read out into the record exists on this document as
22 you read them.
23 BY MS. EBRON:
24 Q Have you seen other notices of trustee's
25 sales that relate to deeds of trust?

Page 24

1 MR. DELIKANAKIS: Objection: Scope.
2 A I have.
3 BY MS. EBRON:
4 Q Do you know if that language is generally
5 included --
6 MR. DELIKANAKIS: Same --
7 BY MS. EBRON:
8 Q -- in notices of trustee's sale?
9 MR. DELIKANAKIS: Same objection: Scope.
10 A I believe it is a typical language used.
11 (Deposition Exhibit 14 was marked for
12 identification.)
13 BY MS. EBRON:
14 Q Can you look at what's been marked as
15 Exhibit 14, please.
16 A (Complies.)
17 Q Do you recognize this document?
18 A I do.
19 Q What is it?
20 A It's the substitution of trustee.
21 Q Is this something that is contained in
22 U.S. Bank's business records?
23 A Yes.
24 Q Do you know if there was a different
25 substitution of trustee executed before the date on

Page 25

1 this one?

2 **MR. DELIKANAKIS:** Objection: Form of the

3 question.

4 Do you understand the question?

5 **THE WITNESS:** I think I do.

6 **A** I can't recall seeing a different

7 substitution of trustee prior to this one, in my

8 review.

9 **BY MS. EBRON:**

10 **Q** Going back to Exhibit 13 --

11 **A** Okay.

12 **Q** -- the paragraph that begins, "Notice is

13 hereby given."

14 **A** On which exhibit?

15 **Q** Sorry. On 13.

16 **A** Okay.

17 **Q** It states that it will sell on

18 August 3rd, 2010, at 10 a.m.

19 Do you see that?

20 **A** I do.

21 **Q** Did the sale go forward on that date?

22 **A** It did not.

23 **Q** Do you know why not?

24 **A** I believe the borrower filed for

25 Chapter 11 bankruptcy, causing a stay.

Page 26

1 **Q** Is there a document that you reviewed that

2 makes you believe that?

3 **A** The -- yes. There's bankruptcy documents

4 in our imaging system related to Parks' bankruptcy

5 filing.

6 **Q** Do you know when the bankruptcy stay was

7 lifted or was no longer in effect?

8 **A** Not off the top of my head. I can't

9 recall the date.

10 (Deposition Exhibit 15 was marked for

11 identification.)

12 **BY MS. EBRON:**

13 **Q** Look at what has been marked as

14 Exhibit 15, please.

15 **A** (Complies.) Okay.

16 **Q** Do you recognize this document?

17 **A** I specifically don't recall this exact

18 document, but I did see notices of trustee's sale in

19 our file.

20 **Q** In that second paragraph, where it says it

21 will sell on July 19th, 2011, at 10 a.m., do you

22 see that?

23 **A** I do.

24 **Q** Did the sale go forward on that date?

25 **A** I don't believe so.

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1 **Q** Do you know why not?

2 **MR. DELIKANAKIS:** I'll caution the witness

3 not to speculate.

4 **A** Yeah, not without looking at the business

5 records to determine.

6 **BY MS. EBRON:**

7 **Q** What business records would you look at to

8 determine why the sale did not go forward on

9 July 19th, 2011?

10 **MR. DELIKANAKIS:** Objection: Form of the

11 question.

12 **A** I would look at the foreclosure process

13 notes and the bankruptcy process notes and the loss

14 mitigation process notes.

15 **BY MS. EBRON:**

16 **Q** Do you know if the bankruptcy stay was

17 either lifted or no longer in effect when this

18 notice of trustee's sale was recorded?

19 **A** Not without looking at the order granting

20 the relief from stay to be able to tell what the

21 time period was.

22 **Q** On the next page Bates Stamped USB000049,

23 do you see that same language about, 'as is'

24 condition without covenant or warranty, expressed or

25 implied," as we did in the last notice of sale?

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1 **A** Yes, I see the same language.

2 (Deposition Exhibit 16 was marked for

3 identification.)

4 **BY MS. EBRON:**

5 **Q** Can you look at what has been marked as

6 Exhibit 16, please.

7 **A** (Complies.)

8 **Q** Do you recognize this document?

9 **A** I don't believe I have seen this before.

10 (Deposition Exhibit 17 was marked for

11 identification.)

12 **BY MS. EBRON:**

13 **Q** Would you please look at what has been

14 marked as Exhibit 17.

15 **MR. VILKIN:** I'm sorry. Which one are you

16 on: 17?

17 **MS. EBRON:** Seventeen. It's Bates Stamped

18 USB --

19 **MR. VILKIN:** Yeah.

20 **MS. EBRON:** -- 000053.

21 **MR. VILKIN:** Thank you.

22 **A** Okay.

23 **BY MS. EBRON:**

24 **Q** Do you recognize this document?

25 **A** Looks to be an assignment of mortgage.

Page 29

1 Q When was this executed?
2 A **June 7th of 2012.**
3 Q Who is this from and who is it to?
4 A **Wells Fargo Bank to the U.S. Bank National**
5 **Association as Trustee for the pool of loans.**
6 Q Do you know why the deed of trust was
7 assigned from Wells Fargo Bank to U.S. Bank two
8 times, like the one here in Exhibit 17 and then also
9 in Exhibit 12?
10 **MR. DELIKANAKIS:** Objection: Form of the
11 question.
12 A **No, I do not.**
13 **(Deposition Exhibit 18 was marked for**
14 **identification.)**
15 **BY MS. EBRON:**
16 Q Look at what has been marked as
17 Exhibit 18.
18 A **(Complies.) Okay.**
19 Q Do you recognize this document?
20 A **I apologize. I've reviewed so many**
21 **documents, I can't remember if I specifically have**
22 **seen this before today or not.**
23 Q In your review of the file, you looked for
24 foreclosure notices; correct?
25 A **I did.**

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1 Q Do you recall seeing any foreclosure
2 notices from homeowners associations?
3 **MR. DELIKANAKIS:** Objection to the form of
4 the question.
5 Are you -- do you understand the scope of
6 foreclosure notices?
7 **MS. EBRON:** Okay.
8 **BY MS. EBRON:**
9 Q Foreclosure notices, including a notice of
10 default or notice of sale from a homeowners
11 association --
12 **MR. DELIKANAKIS:** Thank you, Counsel.
13 **BY MS. EBRON:**
14 Q -- in relation to this property. And I'm
15 looking for ones that would have been included in
16 U.S. Bank's business records, not ones provided by
17 counsel or through litigation.
18 A **I did see -- I believe it was a notice of**
19 **sale and then a -- another notice regarding -- but I**
20 **don't know if it was a recorded document that was**
21 **sent to Wells Fargo.**
22 **I do want to say that the notice of sale**
23 **was received -- or in our imaging system**
24 **March 5th, so -- what? -- four days after the HOA**
25 **foreclosure sale.**

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1 Q March 5th of 2013?
2 A **Correct.**
3 Q What about the other notice you mentioned?
4 Do you know when that was uploaded to your imaging
5 system?
6 A **I can't recall the date that the other one**
7 **was uploaded.**
8 Q Did you review servicing notes in
9 preparation for your deposition?
10 A **I did.**
11 Q And in the servicing notes, was there a
12 corresponding note to the imaged notice of sale
13 received -- or imaged on March 5th, 2013?
14 A **Right. And just so the record's clear,**
15 **the document that we received on March 5th, 2013,**
16 **it is either a notice of sale or a notice of default**
17 **and election to sell.**
18 **As I sit here today, I can't tell -- I**
19 **can't remember which one was which.**
20 Q Okay.
21 A **So to answer your question, yes, there is**
22 **a corresponding business record on the 5th of**
23 **March, 2013, from the trustee that indicates the**
24 **document was sent to Wells Fargo for upload into our**
25 **system.**

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1 Q When you say "from the trustee," who is
2 the trustee?
3 A **National Default.**
4 Q Okay. So the entity that was conducting
5 the foreclosure sale of the deed of trust?
6 A **Correct.**
7 **(Deposition Exhibit 19 was marked for**
8 **identification.)**
9 **BY MS. EBRON:**
10 Q Can you look at what has been marked as
11 Exhibit 19.
12 **MR. VILKIN:** 19?
13 **MS. EBRON:** Yes.
14 A **(Complies.) Okay.**
15 **BY MS. EBRON:**
16 Q Do you recognize this document?
17 A **I do not.**
18 **(Deposition Exhibit 20 was marked for**
19 **identification.)**
20 **BY MS. EBRON:**
21 Q Can you look at what has been marked as
22 Exhibit 20, please.
23 A **(Complies.) Okay.**
24 Q Do you recognize this document?
25 A **I do not, and I'm -- I'm just going to say**

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1 right now it looks like the recorded date of this
2 document was 3/6/2013, which is after the date of
3 the HOA foreclosure sale.
4 So the review of my system of record and
5 the reviewing of the imaged documents contained in
6 our system, our image system, I conducted that
7 review from originations to the HOA foreclosure
8 sale. So a lot -- any of the documents that are
9 dated after that I probably have not looked at.
10 **MR. DELIKANAKIS:** It's outside the scope
11 of the deposition anyway. I mean, if you want to --
12 you're just trying to authenticate documents. I'm
13 not sure what the purpose of the exercise is for
14 these events after the sale.
15 **MS. EBRON:** I am just seeing what he
16 recalls seeing in the file.
17 **MR. DELIKANAKIS:** The objection will be
18 that it's outside the scope of the deposition.
19 (Deposition Exhibit 21 was marked for
20 identification.)
21 **BY MS. EBRON:**
22 Q Can you look at what has been marked as
23 Exhibit 21.
24 A (Complies.) Okay.
25 Q Do you recognize this document?

Page 34

1 A I do not.
2 Q Is this another notice of trustee's sale
3 that relates to the deed of trust marked as
4 Exhibit 3?
5 A It is referencing the deed of trust that
6 is marked as Exhibit 3, yes.
7 Q Do you know if a foreclosure sale took
8 place on April 1st, 2013?
9 **MR. DELIKANAKIS:** Objection: Scope.
10 A Not as I sit here today. I'd have to look
11 at our servicing records in and around that time.
12 (Deposition Exhibit 22 was marked for
13 identification.)
14 **BY MS. EBRON:**
15 Q Can you look at what has been marked as
16 Exhibit 22.
17 **MR. DELIKANAKIS:** Same objection: Outside
18 the scope.
19 A (Complies.) Okay.
20 **BY MS. EBRON:**
21 Q Do you recognize this document?
22 A I do not.
23 (Deposition Exhibit 23 was marked for
24 identification.)
25 **BY MS. EBRON:**

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1 Q Can you look at what has been marked as
2 Exhibit 23.
3 A (Complies.)
4 **MS. EBRON:** Just note there's -- on the
5 last page of that, Bates Stamp USB00076, should not
6 be included.
7 A Okay.
8 **MR. VILKIN:** I'm sorry. I'm a
9 little confused.
10 Twenty-three is what: Trustee deed?
11 **MS. EBRON:** It is the trustee's deed upon
12 sale --
13 **MR. VILKIN:** Okay. Thank you.
14 **MS. EBRON:** -- and it relates to the deed
15 of trust.
16 **BY MS. EBRON:**
17 Q Have you seen this document before?
18 A I have not.
19 (Deposition Exhibit 24 was marked for
20 identification.)
21 **BY MS. EBRON:**
22 Q Can you look at what has been marked as
23 Exhibit 24.
24 A (Complies.) Okay.
25 Q Do you recognize this document?

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1 A I do not.
2 **MR. DELIKANAKIS:** Objection: Outside the
3 scope.
4 (Deposition Exhibit 25 was marked for
5 identification.)
6 **BY MS. EBRON:**
7 Q Can you look at what has been marked as
8 Exhibit 25.
9 A (Complies.)
10 Q This is a document that was produced
11 separately by U.S. Bank, outside of recorded
12 documents.
13 Have you seen this before?
14 A I don't believe I've seen this before.
15 Q Do you know where this was -- like, what
16 portion of U.S. Bank's business records this came
17 from or if it came from U.S. Bank's business
18 records?
19 A It did not come from the business records
20 from U.S. Bank from the origination of the -- from
21 the date of the origination of the original deed of
22 trust to the date of the HOA foreclosure sale,
23 because I looked at every one of those documents,
24 and this was not one of those.
25 So if it did come from U.S. Bank's

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1 records, it would have been a document that we
2 received after the date of the foreclosure, if that
3 makes sense.
4 (Deposition Exhibit 26 was marked for
5 identification.)
6 BY MS. EBRON:
7 Q Look at what has been marked as
8 Exhibit 26.
9 A (Complies.) Okay.
10 Q Do you recognize this document?
11 A I do.
12 Q What is it?
13 A It's a letter to Wells Fargo from
14 Green Valley Ranch Community Association.
15 Q And was this something that was received
16 by U.S. Bank?
17 A Yes. It was -- just to clarify the
18 record, it was received by Wells Fargo Bank as
19 Servicer on behalf of U.S. Bank.
20 Q Do you know when it was received by
21 Wells Fargo?
22 A I think it was received in July of 2012.
23 But, actually, I'm going to walk that
24 back. I'm -- without looking at our imaging system,
25 I can't tell you an exact date, but I do know that

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1 we received this.
2 Q Towards the bottom of the letter on the
3 first page Bates Stamped USB000111, there is a
4 reference to an enclosure.
5 Do you see that?
6 A Okay.
7 Q And it says "Notice of Default and
8 Election to Sell (copy.)"
9 A Okay.
10 Q Do you know if the document marked as
11 Exhibit 25 was received with this letter that's
12 marked as Exhibit 26?
13 A I believe it was.
14 Q Were there any corresponding notes in the
15 servicing records about when this was received?
16 A And you say "this." Exhibit 26 --
17 Q Exhibit 26. Thank you.
18 A -- and 25 or just 26?
19 Q Either or both.
20 A I can't remember the exact date that we
21 received this. The borrower's loan was in our
22 foreclosure process, so we would have anticipated
23 paying any type of delinquencies from the HOA out of
24 the proceeds of our foreclosure sale at this point.
25 Q I understand if you don't remember the

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1 exact date, but do you remember if there was a
2 servicing note about receipt of the letter?
3 A I don't recall a servicing note specific
4 to this letter.
5 (Deposition Exhibit 27 was marked for
6 identification.)
7 BY MS. EBRON:
8 Q Can you look at what has been marked as
9 Exhibit 27. It's Bates Stamped USB000112. And,
10 again, this was disclosed right after the letter
11 that was in Exhibit 26 and separate from the
12 recorded documents.
13 A When you say "disclosed," I guess I don't
14 understand that.
15 Q Sorry. Disclosed by your counsel in that
16 order.
17 A Okay.
18 Q And since I don't have the originals, I
19 can't tell how they were put together or where they
20 came from.
21 Do you know where this came from?
22 A Exhibit 27?
23 Q Yes.
24 A Right, and I think I briefly spoke about
25 this earlier in the deposition. This showed -- and

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1 when I'm saying "this," I'm going to say Exhibit 27
2 shows up in our imaging system as of March 5th,
3 2013.
4 There is a corresponding note in our
5 foreclosure processing platform identifying the
6 receipt of this notice of foreclosure sale.
7 Q Who would have input that note?
8 A The note was input via our LPS system,
9 which is the interface that the trustees use to
10 communicate with Wells Fargo, and the trustees would
11 be the trustees responsible for conducting the
12 nonjudicial foreclosure sales.
13 Q In this case, that would have been
14 National Default Servicing Corporation?
15 A At that time, that is correct, yes.
16 Q So is it your understanding that this
17 notice of foreclosure sale was received by National
18 Default Servicing Corporation and a note was made
19 about it in LPS?
20 A On March 5th, 2013, a note was entered
21 into our mortgage service platform via LPS by the
22 trustee.
23 Q So the note was from March 5th, 2013.
24 Was the image saved on that same date?
25 A Yes.

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1 Q Where did it -- how did the image come to
2 Wells Fargo or U.S. Bank?

3 A There is a section in LPS that allows the
4 trustees to upload documents, and that was the
5 vehicle in which the document was sent from the
6 trustee to Wells Fargo. And it was just a one-page
7 document this -- as it appears here, on Exhibit 27.

8 Q And so it didn't include any envelope or
9 fax cover sheet or anything like that?

10 A No. It was just a one-page document.
11 (Deposition Exhibit 28 was marked for
12 identification.)

13 BY MS. EBRON:

14 Q Can you look at what has been marked
15 Exhibit 28.

16 A (Complies.) Okay.

17 Q Do you recognize these documents -- well,
18 this -- I think this may be several different screen
19 shots or notes, but I'm not sure.

20 A I think they're maybe in reverse
21 chronological order. The dates are weird
22 because -- I --

23 Okay. To answer your question, yes, this
24 is a screen capture from our loss mitigation process
25 note section of MSP.

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1 Q So on the page that is Bates Stamped
2 USB000113, that is something from loss mitigation?

3 A Yes.

4 Q Are there any references to the
5 association on this page?

6 A There's not.

7 Q Do you know when this was generated?

8 MR. DELIKANAKIS: Are we referring to
9 USB113?

10 MS. EBRON: Yes.

11 MR. DELIKANAKIS: Okay.

12 A This particular screen capture was printed
13 on November 26th, 2013, and shows notes on -- from
14 February 26, 2010, to March 3rd, 2010, in our loss
15 mitigation process section of our servicing
16 platform.

17 BY MS. EBRON:

18 Q On the second line, it starts "L. Parks."
19 Is that referring to the borrower?

20 A It is.

21 Q And then do you know what "ODD INV."
22 stands for?

23 A I do not.

24 Q Do you know what "S/S" stands for?

25 A That would be "short sale."

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1 Q What about "MKWLE"?

2 A Do not know.

3 Q Do you know what this date is referring
4 to, 12/1/09?

5 A Do not.

6 Q Can you look at the page Bates stamped
7 USB000114.

8 A (Complies.) Okay.

9 Q Do you know what screen capture this is
10 from?

11 A This is from our bankruptcy process notes.
12 It was printed again on November 26, 2013, and shows
13 notes from the bankruptcy process platform between
14 May 30th, 2012, and June 4th, 2012.

15 Q Do you know if there's any reference to
16 the association or association lien on this page?

17 A There's not.

18 Q Do you know who Pite Duncan, LLP, is?

19 A The firm Wells Fargo engaged related to
20 the bankruptcy.

21 Q Is there anything on this page that tells
22 you when or if the bankruptcy stay was lifted or no
23 longer in effect?

24 A No.

25 Q Does Wells Fargo allege that the

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1 foreclosure, the association foreclosure, was
2 invalid because of a bankruptcy stay?

3 MR. DELIKANAKIS: Objection: Form of the
4 question; calls for a legal conclusion.

5 He's here as a fact PMK, not to testify as
6 to allegations or claims or defenses, legal claims
7 and legal defenses.

8 A And your question again?
9 (Record read by reporter.)

10 MR. DELIKANAKIS: I'm going to direct him
11 not to answer that question.

12 MS. EBRON: Why?

13 MR. DELIKANAKIS: Because it's a legal
14 conclusion. He's here as a PMK witness. It's
15 outside the scope of the deposition notice.

16 MR. VILKIN: She's not asking for a
17 conclusion.

18 MR. DELIKANAKIS: Let me finish my
19 objection. She asked me a question. I'm going to
20 answer it. She's asking what Wells Fargo is
21 alleging.

22 Now, if you want to know facts that might
23 underpin that allegation, go ahead and ask the facts
24 you want.

25 If you are asking for a conclusion, which

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1 is what an allegation is, I'm directing him not to
2 answer.

3 **MR. VILKIN:** An allegation is not a
4 conclusion. An allegation is a claim that's made.
5 She's not asking for a legal conclusion. She's not
6 asking for his opinion, legal opinion, about the
7 legal effect of certain facts. She's just asking
8 what claims or claim is being made.

9 It's an improper instruction, and I think
10 we should call the discovery commissioner if we
11 can't get it resolved.

12 **MR. DELIKANAKIS:** That sounds good. Why
13 don't we do that.

14 **MS. EBRON:** Are you alleging that? I
15 mean, it's one of the --

16 **MR. DELIKANAKIS:** I'm not the one on
17 deposition here.

18 **MS. EBRON:** It is Topic No. 22.

19 **BY MS. EBRON:**

20 Q Let me ask it this way: Is there anything
21 in U.S. Bank's business records that show that there
22 was a bankruptcy stay in place at the time of the
23 association foreclosure sale?

24 A As I sit here today, I can't answer that
25 question. I would need to look at the entire

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1 bankruptcy process notes and cross-reference that to
2 the date of the HOA's foreclosure sale, to see if
3 there was a stay or not.

4 Q But it wasn't something that you looked at
5 in preparation for your deposition today?

6 A It was not.

7 Q What did you do to prepare for
8 Topic No. 22?

9 A I looked at the origination documents, the
10 note, the deed of trust, and the title policy that
11 was issued at the time of the origination of the
12 mortgage.

13 Q Anything else?

14 A I also re- -- well, specific to that
15 question, I think that would be all that I reviewed.

16 Q What other documents did you review in
17 preparation for your deposition, not just for that
18 but for the whole...

19 A I reviewed every document that was in our
20 imaging system from the date of the loan origination
21 to March 1st -- actually, March 5th of 2013. I
22 reviewed the origination -- that included the
23 origination documents, electronic versions of those.

24 I reviewed the loan servicing platform,
25 the foreclosure process notes, loss mitigation

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1 process notes, and loan pay history. I also
2 reviewed the delinquency history on the mortgage as
3 well.

4 Q Anything else?

5 A That's all I can remember.

6 Q Did you speak to anyone in preparation for
7 your deposition besides your attorney?

8 A Just the attorneys.

9 Q Did you e-mail with anyone to find
10 information in preparation for your deposition?

11 A I did not.

12 Q Did you communicate in any other way,
13 besides speaking and e-mailing, with anyone in
14 preparation for your deposition?

15 A No. I'll just say that all of the
16 communications I've had in preparation for this
17 deposition was in the presence of Wells Fargo
18 counsel, both in and out -- in and -- inside counsel
19 and Snell & Wilmer.

20 Q You're saying "in the presence of,"
21 meaning you spoke with other people but your counsel
22 was there?

23 A No. All the communications that we've had
24 regarding the deposition was solely in the presence
25 of counsel, without any other party.

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1 Q So you had conversations with your counsel
2 and in the presence of other counsel? I'm just
3 not --

4 A No. Just --

5 Q -- understanding by the way you're
6 answering.

7 A Just to be clear, in preparation for this
8 deposition, I personally, on my own, reviewed all
9 the documents I previously stated in my response.
10 And in addition to that, I've met with our counsel
11 to discuss this deposition, both internal counsel
12 for Wells Fargo and outside counsel, Snell & Wilmer,
13 and that's it.

14 Q Okay. At any of those meetings with
15 counsel, was there anyone who was not your counsel
16 present?

17 A No.

18 Q Did you speak to anybody at U.S. Bank in
19 preparation for your deposition?

20 A No, I did not.

21 Q Does U.S. Bank know that you are here on
22 its behalf?

23 **MR. DELIKANAKIS:** Objection: Form of the
24 question; speculative.

25 A I do not know.

1 **BY MS. EBRON:**

2 Q How do you know that you are the one who
3 has been designated by U.S. Bank if you have not
4 spoken with anyone from U.S. Bank?

5 A Wells Fargo is the servicer of this
6 mortgage. Our duties of servicer include responding
7 to and appearing at depositions that involve loans
8 that are within this trust.

9 Q How do you know that?

10 A We're the responsible party, as outlined
11 in the agreement between U.S. Bank and Wells Fargo.

12 Q What agreement?

13 A The pooling and servicing agreement.

14 Q Did you review the pooling and servicing
15 agreement in preparation for the deposition?

16 A I did.

17 MS. EBRON: Counsel, is that something
18 that's been produced?

19 MR. DELIKANAKIS: No.

20 MS. EBRON: Are you going to produce it?

21 MR. DELIKANAKIS: No.

22 MS. EBRON: Why?

23 MR. DELIKANAKIS: It's irrelevant. If you
24 submit a request, I can give you more detailed
25 reasons --

1 MS. EBRON: I have.

2 MR. DELIKANAKIS: -- why it's irrelevant.

3 MS. EBRON: I have.

4 MR. DELIKANAKIS: It's not going to be
5 produced. If you want to ask some foundational
6 questions, I think you'll realize it's irrelevant.

7 **BY MS. EBRON:**

8 Q In the pooling and servicing agreement,
9 does it contain any references to how Wells Fargo
10 should handle association liens?

11 A Yes.

12 Q What does it say?

13 A There is a section in the servicing
14 agreement that says Wells Fargo should keep records
15 when properties are in REO process for amounts we
16 pay to associations for dues.

17 Q Anything else?

18 A No.

19 Q Is there any information in that agreement
20 that discusses what type of information -- strike
21 that.

22 Is there anything in that agreement that
23 contains other references to associations?

24 A Other references to associations?

25 Q Yeah, homeowners associations.

1 A I only studied the servicing agreement as
2 it pertained to association dues. So there may be
3 other things in the servicing agreement that have to
4 do with insurance requirements, for an example.

5 Q Why didn't you look at anything else
6 related to associations besides dues?

7 A I did. I reviewed the document for every
8 instance for the word "association," every instance
9 of the combination of "association" and "dues,"
10 "homeowners," and similar terms, and the only
11 instance that it brings up specifically "homeowners
12 dues" is in the section governing how Wells Fargo
13 has to handle REO properties.

14 Q Well, what about the other sections that
15 you mentioned that were not just relating to dues?
16 What were those?

17 A There were requirements for the types of
18 insurance that would have to be proven to be on the
19 property in HOAs, loss insurance.

20 Q Anything else?

21 A Not that I can remember.

22 Q Does the pooling and servicing agreement
23 contain any reporting requirements for Wells Fargo
24 to report information to U.S. Bank?

25 A Yes.

1 Q What type of reporting is done from
2 Wells Fargo to U.S. Bank?

3 A The reporting is around the performance of
4 the pool of loans in terms of delinquencies and
5 foreclosures and the like.

6 Q Do you know if the pooling and servicing
7 agreement is something that was provided to the SEC?

8 A I did not check the SEC to see if the
9 agreement is listed there.

10 Q Is that something that's common for these
11 types of pools?

12 A Yes.

13 Q So it's not a confidential document?

14 MR. DELIKANAKIS: Objection: Form of the
15 question; calls for a legal conclusion.

16 A It could be, but, generally, the SEC will
17 have a copy of the agreement.

18 **BY MS. EBRON:**

19 Q Those are generally posted on the website?

20 A On the SEC's website, correct.

21 Q Can you look at the page in Exhibit 28
22 that is Bates Stamped USB000115.

23 A (Complies.) Okay.

24 Q Do you recognize this document?

25 A This is a screen capture from our loss

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1 mitigation process notes printed on November 26,
2 2013.
3 Q Is there any reference to associations on
4 this page?
5 A There is not.
6 Q Right under the part that says "Process
7 Notes" it says "01/29/13, 17:25:04."
8 Do you know what that "Q8B" stands for?
9 A That is the team member that entered that
10 notation.
11 Q Okay. So the same person would have
12 entered that note on January 29th, 2013, as on
13 December 21st, 2012?
14 A That's correct.
15 Q And then those other -- each of the other
16 ones on that page refer to someone else?
17 A Yes.
18 Q Is there a way to find out the actual
19 identity of the person from that code?
20 A The codes are sometimes recycled, because
21 there's only three digits, and there's several
22 thousand servicing team members. So I can't be
23 100 percent sure if today's Q8B, Bravo, would be the
24 same as the Q8B that's entered the note on January
25 of 2013, but, yes, I can look up the code.

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1 Q Okay. And do you know what it means
2 "A3P"?
3 A "Authorized third party."
4 Q What is that?
5 A The borrower has sent in written
6 authorization that the person they designate can
7 speak to Wells Fargo regarding the mortgage loan.
8 Q So it requires -- if somebody were to call
9 in to get information about the loan, it would have
10 to either be the borrower or someone who the
11 borrower has authorized in writing?
12 A Yes.
13 Q What does "liquidation loss mitigation"
14 mean?
15 A This is a loan that's being reviewed for
16 short sale, and it's in loss mitigation, so the
17 liquidation would be a review for something that, at
18 the end of it, the borrower will no longer own the
19 property, so a deed in lieu or a short sale or a
20 short payoff.
21 Q In the note that's 1/15/13, that same one,
22 a couple lines down, the "A3P" is "authorized third
23 party," so that would refer to Brian Goodman; right?
24 A Correct.
25 Q Calls for a status update, and then does

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1 ADVS means that the person "M6M" advised Mr. Goodman
2 that file -- I don't know what that says -- that
3 file reviewed and also advise -- something about a
4 BPO.
5 Is that "broker's price opinion"?
6 A Yes.
7 Q And then, "Advised authorized third party
8 to call back for follow-up"?
9 A That's correct.
10 MS. EBRON: Okay.
11 MR. VILKIN: Very good.
12 MR. DELIKANAKIS: Off the record.
13 (Discussion held off the record.)
14 BY MS. EBRON:
15 Q Do you know what -- in the next note it
16 says, "Working PROC Project."
17 Do you know what that is?
18 A I do not.
19 Q Do you know what -- in the note for
20 1/7/13, what "PAS-DB" means?
21 A It means that the vendor has completed the
22 BPO for us as of 1/5/13, and the value was -- is
23 listed there.
24 Q So a BPO completed on January 5th of
25 2013 valued the property at \$187,050?

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1 A Yes.
2 Q Do you know if there are any other
3 valuations that were done on the property?
4 MR. DELIKANAKIS: Objection: Scope.
5 MS. EBRON: Well, and if you want, I can
6 ask the other question first.
7 MR. DELIKANAKIS: Yeah.
8 BY MS. EBRON:
9 Q Does U.S. Bank allege that the price paid
10 at the association foreclosure was not commercially
11 reasonable?
12 MR. DELIKANAKIS: Objection: Form of the
13 question; calls for a legal conclusion.
14 BY MS. EBRON:
15 Q I'm looking at Topic No. 19. Do you want
16 to go back to the --
17 Do you know if U.S. Bank is alleging the
18 price paid by SFR Investments Pool 1, LLC, was
19 inadequate?
20 A I believe that those arguments are made in
21 the complaint or in the pleadings.
22 Q Are you aware of any other BPOs besides
23 the one referenced here on the page Bates Stamped
24 USB000115?
25 MR. DELIKANAKIS: Objection: Scope.

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1 MS. EBRON: It's in Topic 19.
2 MR. DELIKANAKIS: Scope as to the form of
3 the question; in other words, what time frame are
4 you speaking of?
5 A There was not another valuation done after
6 January 7th, 2013, and before the foreclosure sale
7 on March 1st, 2013.
8 BY MS. EBRON:
9 Q Were there any done before this BPO that
10 was completed on January 5th, 2013?
11 A There would have been the originations
12 valuation, and as I sit here today, I do not know if
13 there was an additional valuation done before
14 January 7th, 2013.
15 Q Do you know what the valuation was at
16 origination?
17 A I would have to look at the -- it's part
18 of the mortgage file, but I don't know sitting here
19 today. I'll just -- just to -- I will say that it
20 would have been more than \$331,500.
21 Q Thank you.
22 Back in Exhibit 28, looking at the page
23 Bates Stamped USB000116, do you recognize this?
24 A Again, this is a screen print from our
25 loss mitigation process section of our servicing

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1 platform on November 26, 2013.
2 Q Is there any reference to associations on
3 this page?
4 A There's not.
5 Q In the first note -- well, the note dated
6 2/6/13, it says "working select short task in
7 equator."
8 Do you know what that means?
9 A "Equator" is the means by which
10 Wells Fargo communicates with outside real estate
11 agents involved in short sales.
12 Q What's a "select short sale task"?
13 A I do not know.
14 Q And the next note says "working HAFA
15 filter report."
16 Do you know what that means?
17 A It's the government short sale program,
18 HAFA.
19 Q Do you know what "HAFA" -- "filter
20 complete bankruptcy denied HAFA" means?
21 A This loan was not approved for a HAFA.
22 Q Does it mean that it was not approved
23 because there had been a bankruptcy?
24 A I don't know.
25 Q In the next note, on that same day,

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1 February 5th, 2013, is this another PBO that was
2 different than the one we looked at on the previous
3 page?
4 A Yes.
5 Q Do you know why it jumped from 187.050 to
6 200,000 in a month?
7 A I do not know.
8 Q In your review of the records, did you see
9 the actual BPO or just reference in the notes?
10 A I saw the BPO, but I didn't look through
11 the BPO, aside from looking at what value was
12 assigned.
13 (Deposition Exhibit 29 was marked for
14 identification.)
15 BY MS. EBRON:
16 Q Can you look at what has been marked as
17 Exhibit 29, please.
18 A (Complies.) Okay.
19 Q Do you recognize this document?
20 A I do.
21 Q What is it?
22 A It is a trustee's sale guarantee.
23 Q Is this something that you've seen in
24 U.S. Bank's business records?
25 A For this particular loan, I do not recall

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1 seeing TSG...
2 Q I'll represent to you that this is a
3 document that I received pursuant to a subpoena to
4 National Default Servicing Corporation, so it wasn't
5 produced by your counsel.
6 I'm wondering -- we were talking about LPS
7 before and the interface that you have with the
8 trustees, including National Default Servicing.
9 Is a trustee's sale guarantee something
10 that the trustee would normally upload to the
11 system?
12 A I have seen them in our imaging system
13 before.
14 Q Does U.S. Bank dispute that it had actual
15 notice of the association foreclosure before the
16 date of the association foreclosure sale?
17 MR. DELIKANAKIS: I'm going to make the
18 same objection. It's asking for a legal conclusion.
19 If you're asking factually if he's aware
20 of any notice being received, that's why he's here
21 is testify, as to the facts that you outlined in
22 there.
23 MS. EBRON: That's what I asked.
24 MR. DELIKANAKIS: That isn't what you
25 asked.

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1 **BY MS. EBRON:**
2 Q Do you dispute having notice of the sale
3 before the date of the association foreclosure sale?
4 A We received what's already an exhibit
5 here, so -- we received Exhibit 26 prior to the HOA
6 foreclosure sale, so that specific document was
7 received by Wells Fargo prior to the sale of the
8 property by the HOA.
9 Q What I'm asking is not that.
10 I'm asking if Wells Fargo knew, from
11 any -- from any document, phone call, any type of
12 notification, not just receipt of a notice from --
13 directly from the association, did you know about
14 the association foreclosure sale before the date of
15 the association foreclosure sale?
16 A No.
17 Q Did Wells Fargo know about the CC&Rs
18 before the date of the association foreclosure sale?
19 **MR. DELIKANAKIS:** Objection: Form of the
20 question.
21 Do you understand the question?
22 A The CC&Rs -- we were aware there were
23 CC&Rs related to the property upon origination of
24 the loan.
25 **BY MS. EBRON:**

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1 Q Was Wells Fargo -- or, sorry -- U.S. Bank
2 aware that the association had a lien against the
3 property before the date of the association
4 foreclosure sale?
5 A No.
6 Q Did U.S. Bank know that the homeowner was
7 not paying association dues before the date of the
8 association foreclosure sale?
9 A We received a letter indicating the
10 borrower was past due on their homeowners
11 association dues prior to the sale.
12 Q Once that letter was received, did
13 U.S. Bank take any action to either encourage the
14 borrower to pay association dues or to pay them
15 itself?
16 A The loan was -- at the time of receipt of
17 the letter indicating the borrower was behind on the
18 association dues, the borrower was in the process of
19 Wells Fargo's own foreclosure process. So
20 Wells Fargo would have expected to pay any past-due
21 amount required through the proceeds of our
22 foreclosure sale.
23 Q How long was the borrower in default
24 before the date of the association foreclosure sale?
25 A I don't know exactly the level of default

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1 as of March 1st, 2013.
2 Q How long -- or when did the borrower --
3 when was the borrower first put into the foreclosure
4 process under the deed of trust?
5 A Back in 2010.
6 Q So it was Wells Fargo's or U.S. Bank's
7 position that it would not pay and not encourage the
8 borrower to pay for those three years, or as the
9 association goes?
10 **MR. DELIKANAKIS:** Object to the form of
11 the question.
12 Do you understand what she's asking?
13 A The -- Wells Fargo's process or practice
14 was to anticipate paying HOA delinquency issues out
15 of the proceeds of our foreclosure sale.
16 The -- between the borrower's initial
17 entry into Wells Fargo's foreclosure process in
18 2010, there was a subsequent bankruptcy filing, and
19 then there was also a loss mitigation process that
20 was ongoing with the borrower regarding her attempt
21 to short sell the property.
22 So that's what Wells Fargo was doing
23 between first initiating foreclosure in 2010 and
24 when the HOA foreclosed on the property in March of
25 2013.

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1 Q Did any of the documents that went back
2 and forth between U.S. Bank or Wells Fargo, as the
3 servicer, and the borrower during that loss
4 mitigation process or short sale process include
5 references to the association?
6 A I do not know if any of the loss
7 mitigation documents specifically mention the HOA
8 delinquency.
9 Q Do any of them request information from
10 the borrower about delinquencies for the
11 association?
12 A A request for mortgage assistance has a
13 section in it that asks for delinquencies/issues.
14 Q And did any of the information provided by
15 the borrower in those forms include information
16 about delinquencies to the association?
17 A Not that I recall.
18 Q Was there documentation required for the
19 borrower's application for the HAFA we looked at
20 before in Exhibit No. -- what was that? -- 28?
21 There was a reference to a HAFA denial. Maybe I'm
22 saying that wrong. Yes, on the page Bates Stamped
23 USB000116, Exhibit No. 28.
24 A So what's your question? I'm sorry.
25 Q Did the documentation required for that

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1 application of HAFA include anything about
2 homeowners associations?
3 **A That would be included on the request for**
4 **mortgage assistance, which would be part of a HAFA**
5 **review.**
6 Q In your preparation for the deposition,
7 did you look for a trustee's sale guarantee?
8 **A I did.**
9 Q And you didn't find one?
10 **A I did not.**
11 Q When Wells Fargo originated this loan, did
12 it request or find out the amount of the association
13 dues before funding the loan?
14 **A That information would have been provided**
15 **on the mortgage application by the borrower.**
16 Q Is that a "yes"?
17 **A Yes.**
18 Q So at that time, Wells Fargo would have
19 been aware of the amount of the association dues?
20 **A That would have been disclosed to**
21 **Wells Fargo as part of the borrower's application**
22 **for a mortgage.**
23 Q Is that a "yes"?
24 **A I believe so.**
25 Q Did Wells Fargo create an escrow for taxes

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1 and insurance for this property?
2 **A I don't recall if the taxes and insurance**
3 **were impounded or not.**
4 Q Were the homeowners association dues?
5 **A No.**
6 Q Do you know why not?
7 **A Not standard practice to impound those.**
8 Q Back in the loss mitigation efforts, was
9 there ever a requirement to get information directly
10 from the homeowners association about delinquencies,
11 like a certificate or anything like that?
12 **A At times, there's requirements that the**
13 **borrower provide proof of payment, canceled checks**
14 **and the like, to show that they've paid association**
15 **dues.**
16 Q What do you mean "at times"?
17 **A If they are past due and need to be**
18 **brought current.**
19 Q So if the dues are past due and need to be
20 brought current, then the borrower would be required
21 to provide proof that they paid?
22 **A In some cases, yes.**
23 Q What about in this case?
24 **A We did not ever receive that proof from**
25 **the borrower.**

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1 Q Did you ever ask for that proof from the
2 borrower?
3 **A Not that I can see.**
4 Q Did U.S. Bank ever communicate with the
5 association about this property?
6 **A No.**
7 Q Did U.S. Bank ever communicate with NAS
8 about this property before the date of the
9 association foreclosure sale?
10 **A No.**
11 Q Did U.S. Bank ever communicate with the
12 borrower about association dues, besides the planned
13 unit development rider that's included in the deed
14 of trust?
15 That wouldn't have been U.S. Bank; that
16 would have been Wells Fargo.
17 So back to the original question.
18 **A Not --**
19 Q Did U.S. Bank ever communicate with them?
20 **A Not that I saw.**
21 Q Did Wells Fargo ever communicate with
22 U.S. Bank about the association lien or association
23 foreclosure?
24 **A No.**
25 Q Are there any other entities besides

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1 U.S. Bank that claim an interest in the first deed
2 of trust?
3 **A No.**
4 Q Are there any other entities besides
5 U.S. Bank that claim an interest in the promissory
6 note?
7 **A No.**
8 Q Does Fannie Mae have an interest in this
9 loan?
10 **A No.**
11 Q Does Freddie Mac have an interest in this
12 loan?
13 **A No.**
14 Q Is this loan FHA insured?
15 **A It is not.**
16 Q Is there any references to SFR Investments
17 Pool 1, LLC, in your file before the date of
18 litigation?
19 **A Before the date of the foreclosure sale or**
20 **litigation?**
21 Q Before litigation.
22 **MR. DELIKANAKIS: Scope.**
23 **A Not that I can remember.**
24 **BY MS. EBRON:**
25 Q Did U.S. Bank make any payments to the

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1 association on behalf of this property?
2 **A No.**
3 **Q** Did U.S. Bank attend or participate in the
4 association foreclosure sale?
5 **A No.**
6 **Q** Did U.S. Bank participate in any civil or
7 administrative action challenging the association
8 lien or association foreclosure sale before the date
9 of the association foreclosure sale?
10 **A No.**
11 **Q** Were there any internal communications
12 that mentioned the association's lien, what
13 association assessments, or association foreclosure
14 sale as it relates to the property before the date
15 of the association foreclosure sale?
16 **A The one letter indicating the borrower was**
17 **past due on their dues.**
18 **Q** Has U.S. Bank ever communicated with the
19 FHFA regarding this loan?
20 **A No.**
21 **Q** What is U.S. Bank's factual basis for its
22 allegation that the deed of trust was not
23 extinguished by the association foreclosure sale?
24 **A That the first deed of trust was recorded**
25 **in first position at the time of origination and**

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1 **remains there to date.**
2 **Q** Anything else?
3 **A No.**
4 **MS. EBRON:** Counsel, do you want to ask
5 questions?
6 **MR. VILKIN:** Are you done?
7 **MS. EBRON:** I believe I am.
8 **MR. VILKIN:** Okay. So I have --
9 **MS. EBRON:** I might have follow-ups.
10 **MR. VILKIN:** Can we go off the record for
11 a second?
12 (Recess taken.)
13 **MR. DELIKANAKIS:** This is
14 John Delikanakis. We've had a conversation amongst
15 counsel to continue this deposition, and what's been
16 proposed and agreed upon by counsel is that we will
17 look at two dates when the PMK deponent is supposed
18 to be in Las Vegas, March 25th of 2016 and
19 April 8th of 2016.
20 I will check with the client and our
21 scheduling and see if he's, in fact, available to
22 take another -- what? -- two-and-a-half, two hours
23 of deposition?
24 Is that correct, Counsel?
25 **MR. VILKIN:** Yes.

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1 **MR. DELIKANAKIS:** About two hours of
2 deposition so we can finish this PMK deposition.
3 I'll report back to counsel his availability and see
4 if that works.
5 **MR. VILKIN:** And if it doesn't work, we
6 discussed the possibility of finishing the depo by
7 telephone.
8 **MR. DELIKANAKIS:** Agreed.
9 **MS. EBRON:** Agreed.
10 **MR. WAITE:** That's fine.
11 **THE WITNESS:** Thank you.
12 **THE REPORTER:** And for your copies,
13 Counsel, do you prefer electronic or hard copy?
14 **MR. DELIKANAKIS:** Electronic.
15 **THE REPORTER:** Just electronic?
16 **MR. DELIKANAKIS:** Right now, electronic.
17 **THE REPORTER:** And yours?
18 **MR. VILKIN:** Well, I hadn't ordered one
19 yet, but I will, yes.
20 **THE REPORTER:** Electronic?
21 **MR. VILKIN:** Yes. Thank you.
22 **THE REPORTER:** And yours?
23 **MR. WAITE:** I don't think we're ordering
24 one.
25 **THE REPORTER:** Okay.

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1 **MR. VILKIN:** Actually, you know what?
2 I'll take a hard copy as well.
3 (Discussion held off the record.)
4 **MR. DELIKANAKIS:** Send me a hard copy as
5 well, E-Tran, disc.
6 **THE REPORTER:** Read and sign through your
7 office?
8 **MR. DELIKANAKIS:** Yes.
9 **THE REPORTER:** Thank you.
10 (Proceedings concluded at 5:13 p.m.)
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EXHIBIT 3

EXHIBIT 3

In The Matter Of:
SFR Investments Pool, LLC vs.
US Bank, N.A., et al.

30(b)(6) U.S. Bank, Robert Ferguson
March 23, 2016



Min-U-Script® with Word Index

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<p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,) Plaintiff,) vs.) CASE NO: A-13-678814-C) CONSOLIDATED WITH) CASE NO: A-13-688734-C US BANK, N.A., a national banking) DEPT NO: XXXI association as Trustee for the) Certificate Holders of Wells Fargo) Asset Securities Corporation,) Mortgage Pass-Through Certificates,) Series 2006-AR4 and LUCIA PARKS,) an individual, DOES I through X,) and ROE CORPORATIONS I through X,) inclusive,) Defendants.)</p> <hr/> <p>SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,) Plaintiff,) vs.)) US 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; NV WEST SERVICING,) LLC, a Nevada limited liability) company, as Trustee for NASHVILLE) TRUST 2270; DOES I-X;) and ROES 1-10, inclusive) Defendants.)</p>	<p>1 APPEARANCES:</p> <p>2 For Plaintiffs SFR Investments Pool 1, LLC:</p> <p>3 LAW OFFICES OF KIM GILBERT EBRON 4 BY: DIANA S. CLINE EBRON, ESQ. Suite 110 5 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 6 TEL: (702) 485-3300 FAX: (702) 485-3301 7 E-mail: Diana@hkimlaw.com</p> <p>8 For Third-Party Defendants Copper Ridge Community 9 Association:</p> <p>10 ALVERSON, TAYLOR, MORTENSEN & SANDERS 11 TREVOR R. WAITE, ESQ. 7401 West Charleston Boulevard 12 Las Vegas, Nevada 89117-1401 TEL: (702) 384-7000 13 FAX: (702) 385-7000 E-mail: TWaite@alversontaylor.com</p> <p>14 For Third-Party Defendant Nevada Association 15 Services, Inc:</p> <p>16 THE LAW OFFICES OF RICHARD VILKIN, P.C. 17 BY: RICHARD J. VILKIN, ESQ. 1286 Crimson Sage Avenue 18 Henderson, Nevada 89012 TEL: (702) 476-3211 FAX: (702) 476-3212 19 E-mail: Richard@vilkinlaw.com</p> <p>20 For Defendant U.S. Bank:</p> <p>21 SNELL & WILMER, LLP 22 BY: JOHN S. DELIKANAKIS, ESQ. 3883 Howard Hughes Parkway 23 Suite 1100 Las Vegas, Nevada 89169 24 TEL: (702) 784-5200 FAX: (702) 784-5252 25 E-mail: JDelidanakis@swlaw.com</p>
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<p>NV WEST SERVICING, LLC, a Nevada limited company, as Trustee for NASHVILLE TRUST 2270, Cross-Claimant,) vs.)) NATIONAL DEFAULT SERVICING CORPORATION, an Arizona Corporation; DOES XI through XX, inclusive,)</p> <hr/> <p>DEPOSITION OF ROBERT FERGUSON PURSUANT TO NRCP 30(B)(6) PERSON MOST KNOWLEDGEABLE U.S. BANK (Volume II, Pages 75 to 107)</p> <p>Taken at The Law Offices of Kim Gilbert Ebron 7625 Dean Martin Drive Suite 110 Las Vegas, Nevada</p> <p>on Wednesday, March 23, 2016 8:38 a.m.</p> <p>Job No. 21962 Depo International - Las Vegas Reported by: Andrea Martin, CSR, RPR, NV CCR 887 Certified Realtime Reporter</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION: PAGE</p> <p>4 EXAMINATION BY MR. VILKIN 80</p> <p>5 EXAMINATION BY MR. WAITE 103</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	E X H I B I T S	
2	MARKED	DESCRIPTION PAGE
3	EXHIBIT 30	First Amended Notice of Continued 81 30(b) (6) Deposition of U.S. Bank
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1	Las Vegas, Nevada; Wednesday, February 10, 2016
2	8:38 a.m.
3	-oOo-
4	(In an off-the-record discussion held
5	prior to the commencement of the
6	proceedings, counsel agreed to waive the
7	court reporter's requirements under Rule
8	30(b)(4) of the Nevada Rules of Civil
9	Procedure.)
10	ROBERT FERGUSON,
11	having been first duly sworn by the court reporter
12	to testify to the truth, the whole truth, and
13	nothing but the truth, was examined and testified
14	under oath as follows:
15	EXAMINATION
16	BY MR. VILKIN:
17	Q Can you state your name for the record.
18	A Robert Ferguson, F-E-R-G-U-S-O-N.
19	Q Mr. Ferguson, good morning.
20	My name is Richard Vilkin, and I represent
21	Third Party Defendant, Nevada Association Services,
22	Inc., trustee for the homeowners association for
23	closing on the property that's at issue in this
24	case.
25	We appreciate you being here today.

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1	MR. VILKIN: First, I'd like to get
2	straight how we're going to be handling the
3	exhibits, because we don't have the originals here.
4	However, Ms. Ebron has made a full set of copies
5	that have been distributed to everyone.
6	And do we have agreement of all counsel
7	that when we refer to those exhibits, we are
8	referring to what is contained in the originals?
9	MR. DELIKANAKIS: Yes.
10	MS. EBON: Yes. And that's Exhibits 1
11	through 29 from the deposition that we began on
12	February 10th, 2016, at 3 p.m.
13	MR. VILKIN: Thank you.
14	BY MR. VILKIN:
15	Q And we're going to add one exhibit, which
16	will be Exhibit 30, which is the First Amended
17	Notice of Continued 30(b)(6) Deposition of U.S. Bank
18	prepared by Ms. Ebron's office and dated
19	March 18th, 2016.
20	(Deposition Exhibit 30 was marked for
21	identification.)
22	BY MR. VILKIN:
23	Q Mr. Ferguson, at the first session of your
24	deposition, you were allowed to review Exhibit 1,
25	which I'm going to give to you again. As I recall

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1	your testimony, you stated you had reviewed that
2	document prior to the first session of your
3	deposition and that you were the person designated
4	to testify to those topics; is that correct?
5	A That's correct.
6	Q And I'll give you Exhibit 30, which I
7	believe contains the exact same topics. The only
8	change in that document is the date upon which the
9	second session of your deposition is occurring.
10	I just ask you again: Are you designated
11	to testify to the topics in Exhibit 30?
12	A Yes.
13	Q Okay. Thank you.
14	Now, the transcript of your first -- the
15	first session of your deposition that was taken on
16	February 10th, 2016 has been prepared. Have you
17	had a chance to review that yet?
18	A I have.
19	Q Have you signed it or made any changes to
20	it?
21	A I haven't signed it, and I don't plan on
22	making any changes to the testimony.
23	Q So is it fair to say that after review of
24	the transcript, there's nothing in there that you
25	would change as of the beginning of this deposition

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1 here today?

2 **A No, there's nothing I would change.**

3 Q Okay. Thank you.

4 And at the beginning of the first session

5 of your deposition, Ms. Ebron went through a series

6 of explanations of how a deposition works and the

7 ground rules, and we generally call them

8 "admonitions."

9 Would you like me to repeat those, or can

10 you recall those from the first session of your

11 deposition?

12 **A I can recall them from my first session.**

13 Q Okay. Thank you.

14 So let's get to some real questions.

15 In the first session of your deposition,

16 you were referring to a loan servicing platform.

17 I'd just like to get some more information on that

18 from you.

19 Is that a computer program that's

20 maintained to collect information about the

21 promissory note and deed of trust concerning the

22 property in this case?

23 **A Yes, it contains information from the note**

24 **and the deed of trust. That's correct.**

25 Q And am I correct that the loan servicing

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1 platform is then used to record information

2 subsequent to the promissory note and deed of trust

3 concerning those documents or related to those

4 documents?

5 **MR. DELIKANAKIS:** Objection to the form of

6 the question.

7 **A The servicing platform contains**

8 **information related to the servicing of the note and**

9 **the deed of trust.**

10 **BY MR. VILKIN:**

11 Q And so, for example, if your company was

12 to receive information related to those -- related

13 to the servicing of those promissory notes and deeds

14 of trust, you would expect that information to be

15 recorded in one form or another in your loan

16 servicing platform?

17 **A Yes.**

18 Q Let's just say, for example, you were to

19 get a notice of foreclosure sale relative to the

20 property involved with that promissory note and deed

21 of trust.

22 Does the loan servicing platform record

23 the date that document was received by your company?

24 **A It would.**

25 Q Does it also record separately the date

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1 upon which that information was entered into the

2 loan servicing platform, if that makes sense to you?

3 I can explain a little more, if you'd like.

4 **A Maybe is it -- rephrase it.**

5 Q What I'm trying to find out: Does the

6 loan servicing platform distinguish between the date

7 a document is physically received at your company,

8 as opposed to the date the information is entered

9 into the loan servicing platform?

10 **A If there's any variance in those dates, it**

11 **would be noted in the loan servicing platform.**

12 Q Typically, when is it -- let's just say

13 you receive a notice of foreclosure sale.

14 Typically, how long should it take between when the

15 document is physically received at your company when

16 the information is entered into the loan servicing

17 platform?

18 **A Within a business day of receipt. If the**

19 **loan is able to be -- if the document is able to be**

20 **identified as belonging to a specific loan, that**

21 **information should be notated within a business day**

22 **of receipt on that loan.**

23 Q And if there's some problem identifying

24 which loan it is, it could take an unknown amount of

25 time, as long as it takes to figure out which loan

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1 it pertains to? Is that what you're communicating?

2 **A Yes.**

3 Q Now, if someone were to request a copy of

4 a document from your company and you were to --

5 could you print it out from the loan servicing

6 platform?

7 **A What would be housed in the loan servicing**

8 **platform would be the notation of the receipt of the**

9 **document. The copy of the document would be housed**

10 **in a different system.**

11 Q What system was that?

12 **A Our loan imaging system.**

13 Q And is there some sort of coding or

14 linkage between the loan servicing platform and the

15 imaging system to allow you to find something?

16 **MR. DELIKANAKIS:** Objection to the form of

17 the question.

18 If you understand what he's asking.

19 **A There's a common loan number associated**

20 **with both systems, so the same loan number you would**

21 **use to look up the loan in our loan servicing**

22 **platform would be the same number you would use to**

23 **look up the loan in the loan imaging system.**

24 **BY MR. VILKIN:**

25 Q So if I wanted to find out the date upon

1 which a document was received, would you advise me
2 to ask for a printout of the information pertaining
3 to that document in the loan servicing platform or
4 the imaging platform or both?
5 **A The -- both.**
6 Q And what information -- let's just start
7 with the loan servicing platform.
8 Do I understand your prior testimony to
9 be -- correct me if I'm wrong -- that if a document
10 like a notice of sale was received and assuming it
11 could be immediately identified to match up with one
12 of your loan numbers, there would be some sort of
13 documentation or notation in the loan servicing
14 platform indicating the date received of that
15 document?
16 **A Yes.**
17 Q And can you tell me how that -- what sort
18 of information would be in the loan servicing
19 platform relative to that document?
20 **A A general description of what was**
21 **received, and then there would be the date on which**
22 **the note was entered.**
23 Q Okay. That would be on the loan servicing
24 platform; right?
25 **A Correct.**

1 Q Is there any language that says when it
2 was received?
3 **A There could be, if the rep notating**
4 **receipt of the document took the time to further**
5 **detail their note. It would be up to the individual**
6 **user, as to what they input.**
7 Q If there was some problem when a document
8 was received, in terms of identifying it or
9 connecting it to a loan number, would you expect
10 there to be a notation in the loan servicing
11 platform to that effect? For example, you know, it
12 took us two weeks to figure this one out and
13 determine which loan number this is.
14 **A I haven't seen a notation such as that, so**
15 **I'm not sure if that would be typical.**
16 What you normally see is identification of
17 a document, the date that -- date and time stamp
18 when the entry was made, and then there will be a
19 corresponding document in the imaging system, and
20 the imaging -- the image of that document would
21 contain more specifics, if there was a date stamp or
22 anything like that was placed on the document, you
23 would see it in there.
24 Q When you say "if there was a date stamp,"
25 are you talking about a date stamp applied to the

1 document when received by your company?
2 **A Correct.**
3 Q Is that a common practice of your company,
4 to date stamp documents with a stamp the date they
5 are received?
6 **A Yes, in most areas, that's common for a**
7 **stamp to be placed on it or some other type of**
8 **notation that the bank has identified the loan.**
9 Some departments use a stamp; some don't.
10 Some will write on the document; some don't.
11 Q If you could take a look at Exhibit 16.
12 Did this document come from your imaging system?
13 **A I believe it did not come from our imaging**
14 **system.**
15 Q And why do you believe that?
16 **A I reviewed the documents in the imaging**
17 **system dated from origination to the date of the**
18 **foreclosure sale, and I did not see this document in**
19 **my review.**
20 Q Did you see any reference to it in the
21 loan servicing platform?
22 **A I did not.**
23 Q If you could go to Exhibit 18. Just tell
24 me when you've had a chance to review that.
25 **A Okay.**

1 Q Was this document in your imaging system?
2 **A Not that I saw.**
3 Q Well, you looked at it. You looked at all
4 the document in your imaging system relative to this
5 loan?
6 **A Correct. Right. And I'll just say it may**
7 **be part of your imaging system now, but at the time**
8 **of the foreclosure sale to origination, it did not**
9 **exist in that population of documents.**
10 Q And how do you know that?
11 **A Because I reviewed all the documents in**
12 **the imaging system and did not see this one.**
13 Q That were received prior to March 1st of
14 2013?
15 **A Correct.**
16 Q Take a look, if you would, at Exhibit 19.
17 Just tell me when you've had a chance to familiarize
18 yourself with that.
19 **A Okay.**
20 Q Was this document received and in your
21 imaging system prior to March 1st of 2013?
22 **A It was not.**
23 Q And how do you know that?
24 **A Because I reviewed all of the documents in**
25 **the imaging system and did not see this document.**

1 Q Did you see any reference to it in the
2 loan servicing platform?

3 A I did not.

4 Q Just to go back for one second, did you
5 see any references in your loan servicing platform
6 to Exhibit 18?

7 A No.

8 Q What company do you currently work for?

9 A Wells Fargo Bank, NA.

10 Q And you are -- what's your relationship to
11 Wells Fargo, in terms of this property or this loan?

12 A I work for Wells Fargo. I'm not sure of
13 your question.

14 Typically, do you mean in relationship to
15 U.S. Bank.

16 MR. VILKIN: To U.S. Bank. Sorry.

17 A Wells Fargo Bank is the servicer on behalf
18 of U.S. Bank, as trustee for the pool of loans that
19 contain the Parks' loan.

20 BY MR. VILKIN:

21 Q So the loan servicing platform is
22 maintained and controlled by Wells Fargo?

23 A That's correct.

24 Q Now, if you could look at Exhibit 17.
25 Just tell me when you've had a chance to familiarize

1 yourself with that.

2 A Okay.

3 Q Can you just describe in general terms
4 what was happening in this document.

5 A This is a recorded document that is
6 assigning the mortgage, which has been introduced in
7 this -- in the prior exhibit as Exhibit 3, and it's
8 assigning the mortgage from Wells Fargo to U.S. Bank
9 National Association, and then there's the name of
10 the trust that follows.

11 Q And there's an address in that document
12 for Wells Fargo at One Home Campus, Des Moines,
13 Iowa. Do you see that?

14 A I do.

15 Q And then there's another address for U.S.
16 Bank, et al., at 60 Livingston Avenue in Saint Paul;
17 correct?

18 A I see that.

19 Q Now, if some third party wanted to send a
20 notice concerning this mortgage after the date of
21 this recording, on June 7th, 2012, which address
22 should it have sent it to?

23 A The address for -- that's listed in the
24 Secretary of State website for Nevada, I believe,
25 gives Wells Fargo's proper service address.

1 Q Well, if a party sent the notice to
2 60 Livingston Avenue, would it have ended up in your
3 servicing platform and imaging system -- or should
4 it have, I guess is the proper way to say it?

5 A I'm unsure what U.S. Bank's processes were
6 for dealing with mail.

7 Q Well, I believe in the first session of
8 your deposition you testified there was some sort of
9 agreement associated with this assignment between
10 Wells Fargo and U.S. Bank; is that correct?

11 MR. DELIKANAKIS: Objection --

12 BY MR. VILKIN:

13 Q Is there a separate agreement?

14 MR. DELIKANAKIS: Objection: Form of the
15 question.

16 A There is agreement governing Wells Fargo
17 role as servicer and U.S. Bank's role as trustee,
18 and it's the pooling and servicing agreement.

19 BY MR. VILKIN:

20 Q To your recollection, does the pooling and
21 servicing agreement put any obligations on behalf of
22 either party in terms of what to do with a document
23 such as notices associated with the loan?

24 A I haven't studied the servicing agreement
25 related to that question.

1 Q So the answer would be, as you sit here
2 today, you don't know?

3 A That's correct.

4 Q Why is it that, in answering my prior
5 question, you indicated that notices should be sent
6 after the recording of Exhibit 17 to Wells Fargo, as
7 opposed to U.S. Bank, since this -- since Exhibit 17
8 was an assignment from Wells Fargo to U.S. Bank?

9 A The assignment is a recorded document
10 that's done in preparation of the bank's foreclosure
11 on the first deed of trust, and so before we can
12 foreclose in the proper name of the trust, we have
13 to assign it from the servicer, who is Wells Fargo
14 in this case, and the originator of the loan to the
15 name of the trust so that we can foreclosure in the
16 proper name.

17 That's what I understand the reason is for
18 the assignment of mortgage. I don't think it has
19 anything specific to do with how third parties would
20 serve Wells Fargo with legal documents, or the like,
21 or provide notice to either entity listed on this
22 document.

23 Q Now, you're, I think, aware, as of today,
24 at least, that there was foreclosure by the HOA on
25 an assessment lien on this property; correct?

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1 **A** That's correct.

2 **Q** When you looked at your loan servicing

3 platform, did you see any reference to any kind of

4 delinquency or foreclosure by the HOA that was

5 entered into your system prior to March 1st of

6 2013, which I'll represent to you is the date of the

7 foreclosure sale by the HOA?

8 **MR. DELIKANAKIS:** Objection to the form of

9 the question.

10 **A** Not before the sale. I did see

11 information related to the HOA foreclosure sale in

12 our loan servicing platform and our image system on

13 March 5th, so four days after the sale.

14 **BY MR. VILKIN:**

15 **Q** Let's start with the loan servicing

16 platform.

17 What information did you see entered into

18 your loan servicing platform as of March 5th,

19 2013?

20 **A** I saw a notation from our trustee -- I

21 believe it was National Default -- indicating that

22 they received a notice of foreclosure sale on this

23 property, and that was the extent of the note.

24 **Q** What form was that information? Was it an

25 e-mail? Was it a document? A letter?

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1 **A** It was a notation by -- I can't think of

2 their name right now, but it was a notation by an

3 employee of the trustee --

4 **Q** National Default --

5 **A** Yes.

6 -- communicating through a system called

7 "LPS," which links the trustee, National Default, to

8 Wells Fargo servicing platform for purposes of

9 communicating.

10 **Q** What does "LPS" stand for, just for the

11 record, if you know?

12 **A** I don't know.

13 **Q** So I assume that that system, the LPS

14 system, allows, essentially, in a simplistic

15 description, electronic communications between

16 entities?

17 **A** Correct, between the trustee and

18 Wells Fargo.

19 **Q** Does that entry indicate on what date

20 National Default received the notice of the sale?

21 **A** No, just the note at which the person at

22 National Default entered it.

23 **Q** As you recall, does the note say that they

24 found out that there was a sale or a notice of a

25 sale?

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1 **A** The note just says there was a document

2 pertaining to a foreclosure on the property and that

3 they uploaded the same to our system, which I

4 believe turned into an exhibit in our first session.

5 **Q** Would that be -- if you could take a look

6 at 18 and 19, is it one of those two?

7 **A** It is not 18 or 19.

8 **Q** Is it 16 --

9 **A** I can find it.

10 **Q** -- or 20?

11 **A** It is not 16. It is not 15. Let me

12 just -- do you want me to go through them and pull

13 out --

14 **Q** Sure.

15 **MS. EBRON:** Are you looking for notes?

16 **THE WITNESS:** No.

17 **MR. VILKIN:** He's looking for the document

18 that was uploaded.

19 **BY MR. VILKIN:**

20 **Q** Correct, Mr. Ferguson --

21 **A** Yes.

22 **Q** -- the document uploaded to your system on

23 March 5th, 2013; correct?

24 **A** That's correct.

25 **Q** So your answer is the document that was

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1 uploaded to your system is a document previously

2 marked as Exhibit 27 to your deposition?

3 **A** That's correct.

4 **Q** And so if I understand what you're saying,

5 what you're testifying to, when you looked through

6 your imaging system, you saw Exhibit 27; correct?

7 **A** I did.

8 **Q** Was it date stamped in any way by your

9 company?

10 **A** No. It appears as it does on this

11 exhibit.

12 **Q** And is that because it was received

13 through LPS, as opposed to mailed or delivered to

14 your job physically?

15 **MR. DELIKANAKIS:** Objection to the form of

16 the question.

17 **A** I do not know.

18 **BY MR. VILKIN:**

19 **Q** Well, that actually raises another

20 question.

21 We were talking before about your loan

22 servicing platform and what would happen to

23 documents that were mailed to your company.

24 If something was sent electronically,

25 would you also expect it to be "Received" stamped by

1 your company?

2 **A If it's sent electronically directly to**
3 **Wells Fargo, there would be -- well, if it was**
4 **faxed, there would be a system-generated date**
5 **stamped.**

6 **If it was sent electronically via e-mail,**
7 **there would be the associated e-mail, which would,**
8 **again, be date stamped.**

9 **Q Okay. Well, in the case of Exhibit 27,**
10 **which you have indicated that you saw in your**
11 **imaging system, is there any information that you**
12 **saw in either your loan servicing platform or**
13 **imaging system that indicated when this document was**
14 **received by Wells Fargo?**

15 **A It was received by Wells Fargo on the**
16 **5th of March.**

17 **Q And again, if you would -- I'm sorry if**
18 **I'm repeating it, but how do you know that?**

19 **A It appears on our imaging system on that**
20 **date, and there's a corresponding note in our system**
21 **that was entered by National Default as a**
22 **communication to Wells Fargo referencing the same**
23 **document.**

24 **Q And just to finish up -- and if I'm**
25 **repeating, I apologize, but as I understand it now,**

1 based on your testimony, your system does not have
2 any information to indicate when National Default
3 received Exhibit 27; is that correct?

4 **A That's correct.**

5 **Q Now, when you were reviewing your**
6 **system -- and if I've asked this previously, I**
7 **apologize, but I think my understanding is -- if you**
8 **can just confirm it -- you didn't see any reference**
9 **that you ever received Exhibits 16, 18, 19, and**
10 **20 -- or, excuse me, 16, 18, and 19 prior to**
11 **March 1st of 2013; correct?**

12 **A That is correct.**

13 **Q But is it true that you did receive those**
14 **sometime after March 1st, 2013, or any of those?**

15 **A I believe all of these recorded documents**
16 **were pulled from the Clark County Records Office**
17 **sometime after March 2013, in preparation for**
18 **this -- or in the efforts regarding this particular**
19 **lawsuit.**

20 **Q So do I understand you to be saying that**
21 **you believe these documents, 16, 18, and 19, were**
22 **first received by Wells Fargo sometime after the**
23 **commencement of the current lawsuit?**

24 **A That's correct.**

25 **Q And did you see any information in the**

1 either the loan servicing platform or the imaging
2 system that had dates associated with 16, 18, or 19,
3 as to when there were first received?

4 **A I did not.**

5 **Q Are you saying it doesn't exist or you**
6 **just don't remember seeing it?**

7 **A It doesn't exist between the date of the**
8 **HOA foreclosure sale and the origination of the**
9 **mortgage.**

10 **Q So that's up to and including March 1st,**
11 **2013; correct?**

12 **A Well, and I obviously looked in our system**
13 **a view days after the sale, because that's when I**
14 **found what we've referred to as Exhibit 27 in the**
15 **corresponding note, which was on March 5th.**

16 **Q But what about the time period between**
17 **March 5th -- let's just use that date -- 2013, if**
18 **that's the date you looked at it, which I believe is**
19 **correct, and the date this lawsuit was filed?**

20 **A I wouldn't have looked at documents in our**
21 **system between those dates.**

22 **Q So they could be reflected at some point**
23 **in there; you just didn't look at them in**
24 **preparation for this deposition; is that correct?**

25 **A That's correct.**

1 **Q Since the first session of your deposition**
2 **on February 10th, 2016, did you review any**
3 **additional documents --**

4 **A The.**

5 **Q -- other than the transcript from**
6 **February 10th?**

7 **A The transcript and I re-reviewed servicing**
8 **notes in -- that were between originations and the**
9 **foreclosure sale date, but no new documents besides**
10 **the transcript.**

11 **Q Just one more topic. Almost done.**

12 **In reviewing the loan servicing platform,**
13 **did you see any references to a bankruptcy case?**

14 **A I did.**

15 **Q Can you just tell us what you recall**
16 **seeing in the notes on the loan servicing platform**
17 **relative to a bankruptcy case?**

18 **A The borrower filed, I believe, a**
19 **Chapter 11 bankruptcy, and it stuck out because**
20 **usually it's a 7 or 13; and the bank finally was**
21 **granted relief from stay in December of '12 from**
22 **that bankruptcy.**

23 **Q Is that all you can recall at this**
24 **point --**

25 **A Yes.**

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1 Q -- today?
2 MR. VILKIN: I don't have anything
3 further. Thank you.
4 EXAMINATION
5 BY MR. WAITE:
6 Q I just have one question.
7 It's the LPS system?
8 A Yes.
9 Q Who has access to that? Meaning who can
10 input into that system, and do they -- go ahead.
11 A The trustee and Wells Fargo.
12 Q Do people have to have a -- do those
13 people have to have a log-in?
14 A Yes.
15 Q And is that somehow noted in the system,
16 that this person is the person associated with this
17 note?
18 A In the LPS system, yes.
19 In the mortgage servicing platform,
20 Wells Fargo system, the note comes over as a generic
21 LPS note.
22 Q Is there anyone else that has access to
23 that system and input?
24 A Just team members at Wells Fargo that are
25 associated with default servicing, and then specific

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1 trustees that Wells Fargo has engaged to perform
2 nonjudicial foreclosures on behalf of the bank.
3 Q Once something's input into that system,
4 is that permanent or can it be deleted?
5 A It's permanent.
6 Q And so there's no way to get rid of it?
7 A That's correct.
8 MR. WAITE: That's all I have.
9 MS. EBRON: Off the record for a second.
10 (Pause in proceedings.)
11 MS. EBRON: That's it.
12 MR. DELIKANAKIS: Thank you.
13 MR. VILKIN: All right. Thank you.
14 THE REPORTER: All instructions same as
15 last time?
16 MR. VILKIN: Yes.
17 MR. DELIKANAKIS: Yes.
18 THE REPORTER: Thank you.
19 (Proceedings concluded at 9:14 a.m.)
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1 CERTIFICATE OF DEPONENT
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3 PAGE LINE CHANGE REASON
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18 * * * * *
19 I, Robert Ferguson, Deponent herein, do
20 hereby certify and declare under penalty of perjury
21 the within and foregoing transcription to be
22 Volume II of my deposition in said action; that I
23 have read, corrected, and do hereby affix my
24 signature to said deposition, under penalty of
25 perjury.

Robert Ferguson, Deponent

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1 STATE OF NEVADA)
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Andrea N. Martin, a duly commissioned and
5 licensed court reporter, Clark County, State of
6 Nevada, do hereby certify:

7 That I reported the taking of Volume II of the
8 deposition of Robert Ferguson, commencing on
9 Wednesday, March 23, 2016, at the hour of 8:38 a.m.;
10 that the witness was, by me, duly sworn to testify
11 to the truth and that I thereafter transcribed my
12 said shorthand notes into typewriting, and that the
13 typewritten transcript of said deposition is a
14 complete, true, and accurate transcription of said
15 shorthand notes; that I am not a relative or
16 employee of any of the parties involved in said
17 action, nor a relative or employee of an attorney
18 involved in nor a person financially interested in
19 said action; further, that the reading and signing
20 of the transcript was requested.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 in my office in the County of Clark, State of
23 Nevada, this 1st day of April, 2016.

24
25 ANDREA N. MARTIN, CRR, CCR NO. 887

**30(b)(6) U.S. Bank, Robert Ferguson - March 23, 2016
SFR Investments Pool, LLC vs. US Bank, N.A., et al.**

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**30(b)(6) U.S. Bank, Robert Ferguson - March 23, 2016
SFR Investments Pool, LLC vs. US Bank, N.A., et al.**

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