

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 08:14 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 4

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

Howard C. Kim, Esq.
Nevada Bar No. 10386
E-mail: howard@kgelegal.com

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

Attorneys for Appellant
SFR Investments Pool 1, LLC

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1	1	03/22/2013	SFR's Complaint for Quiet Title and Injunctive Relief	AA_0001
1	2	04/01/2013	Affidavit of Service	A_0013
1	3	04/01/2013	Affidavit of Service	A_0015
1	4	04/03/2013	Affidavit of Service	A_0017
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Dated: March 16, 2016

SNELL & WILMER L.L.P.

By: 
John S. Delikanakis, Esq.
Nevada State Bar No. 5928
Daniel S. Ivie, Esq.
Nevada Bar No. 10090
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

*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.*

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 this date, I caused to be served a true and correct copy of the foregoing **U.S. BANK, N.A.'S RESPONSES TO SFR INVESTMENTS POOL 1, LLC'S FIRST SET OF REQUESTS FOR ADMISSION** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

and addressed to the following:

Diana Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
HOWARD KIM & ASSOCIATES
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139
*Attorneys for Plaintiff SFR Investments
Pool 1, LLC*

Richard J. Vilkin, Esq.
LAW OFFICES OF RICHARD VILKIN, P.C.
1286 Crimson Sage Avenue
Henderson, NV 89012
*Attorneys for Third Party Defendant
Nevada Association Services Inc.*

David Clark, Esq.
**LIPSON, NEILSON, COLE,
SELTZER & GARIN, P.C.**
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
*Attorneys for Third Party Defendant
Copper Ridge HOA*

Kurt R. Bonds, Esq.
**ALVERSON TAYLOR
MORTENSEN & SANDERS**
7401 W. Charleston Blvd.
Las Vegas, NV 89117
*Attorneys for Third Party Defendant
Copper Ridge HOA*

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Edgar C. Smith, Esq.
WRIGHT FINLAY & ZAK
7785 W. Sahara Ave.
Las Vegas, NV 89117
*Attorneys for Defendant
NV West Servicing, LLC*

Gregory L. Wilde, Esq.
Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, P.C.
212 S. Jones Blvd.
Las Vegas, NV 89107
*Attorneys for Defendant National Default
Servicing Corporation*

DATED this 16th day of March, 2016

/s/ Gaylene Kim
An employee of SNELL & WILMER L.L.P..

EXHIBIT C

EXHIBIT C

In re RICHARD AND LUCIA PARKS
Debtor

Case No. 8:10-BK-21738
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
SEE ATTACHED SCHEDULE				
Total ►				

(Report also on Summary of Schedules.)

Property NAME	Property Address	Lender	Principal Balance	Interest	Amount Due	Loan #	Trustee Sale #	Default	Foreclosure	Sale Date
Rockland	1281 Rockland Drive, St. Helena, CA 94574	Wells Fargo	\$999,583.33	6.125%	\$54,269.00	63222236	CA 1000194075	Yes	Yes	9/16/2010
Rockland LOC	N/A	Wells Fargo	\$198,253.83	6.75%	\$8,389.99	05010478441998	CA 1000194075	Yes	Yes	N/A
Nashville	2270 Nashville Avenue, Henderson, NV 89052	Wells Fargo	\$312,600.82	6.125%	\$22,000.00	0061777934	10-40866-WF-NV	Yes	Yes	
113 stone canyon	113 Stone Canyon Court, Boulder City, NV 89005	Wells Fargo	\$694,380.12	6.125%	\$43,798.00	0062010046	10-41352-WF-NV	Yes	Yes	None
31761 Aguacate	31761 Aguacate, SJC, CA 92675	Wells Fargo	\$1,134,637.63	6.375%	\$80,348.20	0074439977	None	Yes	Yes	None
31761 LOC	n/a	Wells Fargo	\$276,841.57	4.240%	\$7,942.11	6505695697198	None	Yes	N/A	None
Black Canyon	708 Black Canyon Cove, Boulder City, NV 89005	Chase	\$419,582.48	7.500%	\$31,146.00	0675055138	140169NV	Yes	Yes	None
31751 Aguacate	31751 Aguacate, SJC, CA 92675	Chase	\$758,896.17	5.750%	\$39,120.00	80423437		Yes	Yes	None
Maple Lane	1100 Maple Lane, Callistoga, CA 94515-9626	Umpqua Bank	\$2,136,074.56	7.000%	\$149,677.00	68709816	607-058488	Yes	Yes	8/27/10
106 Stone Canyon	106 Stone Canyon Court, Boulder City NV 89005	Black Mountain	\$3,900,000.00	6.500%	\$171,480.28	131390				None
			\$10,830,850.51							
			\$608,170.58							

B 6D (Official Form 6D) (12/07)

In re Richard and Lucia Parks
Debtor

Case No. 8:10-BK-21738
(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
See attached schedule								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Subtotal ► (Total of this page)							\$	\$
Total ► (Use only on last page)							\$	\$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

Exhibit 4

B 6D (Official Form 6D) (12/07) – Cont.

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In re Richard and Lucia Parks,
Debtor

Case No. 8:10-BK-21738
(if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
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ACCOUNT NO.								
			VALUE \$					
Sheet no. _____ of _____ continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (s) ▶ (Total(s) of this page)	\$ \$
							Total(s) ▶ (Use only on last page)	\$ \$

(Report also on
Summary of Schedules.)

(If applicable,
report also on
Statistical Summary
of Certain
Liabilities and
Related Data.)

Property NAME	Property Address	Lender	Principal Balance	Interest	Amount Due	Loan #	Trustee Sale #	Default	Foreclosure	Sale Date
Rockland	1281 Rockland Drive, St. Helena, CA 94574	Wells Fargo	\$999,583.33	6.125%	\$54,269.00	63222236	CA 1000194075	Yes	Yes	9/16/2010
Rockland LOC	N/A	Wells Fargo	\$198,253.83	6.75%**	\$8,389.99	65010478441998	CA 1000194075	Yes	Yes	n/a
Nashville	2270 Nashville Avenue, Henderson, NV 89052	Wells Fargo	\$312,600.82	6.125%	\$22,000.00	0061777934	10-40866-WF-NV	Yes	Yes	
113 stone canyon	113 Stone Canyon Court, Boulder City, NV 89005	Wells Fargo	\$694,380.12	6.125%	\$43,798.00	0062010046	10-41352-WF-NV	Yes	Yes	None
31761 Aguacate	31761 Aguacate, SJC, CA 92675	Wells Fargo	\$1,134,637.63	6.375%	\$80,348.20	0074439977	None	Yes	Yes	None
31761 LOC	n/a	Wells Fargo	\$276,841.57	4.240%	\$7,942.11	6505695697198	None	Yes	N/A	None
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Maple Lane	1100 Maple Lane, Callistoga, CA 94515-9626	Umpqua Bank	\$2,136,074.56	7.000%	\$149,677.00	68709816	607-058488	Yes	Yes	8/27/10
106 Stone Canyon	106 Stone Canyon Court, Boulder City NV 89005	Black Mountain	\$3,900,000.00	6.500%	\$171,480.28	131390				None
			\$10,830,850.51							
					\$608,170.58					

EXHIBIT D

EXHIBIT D

PAULINA KELSO
SFR INVESTMENTS vs. U.S. BANK

May 17, 2016
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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 9 vs. No. A-13-678814-C 10 A-13-688734-C 11 U.S. BANK, N.A., a national 12 banking association as Trustee 13 for the Certificate Holders of 14 Wells Fargo Asset Securities 15 Corporation, Mortgage Pass-Through 16 Certificates, Series 2006-AR4; 17 LUCIA PARKS, an individual; DOES I 18 through X, and ROE CORPORATIONS I 19 through X, inclusive, 20 21 Defendants. 22 23 (Full caption on page 2) 24 25 26 DEPOSITION OF PAULINA KELSO 27 Tuesday, May 17, 2016 28 2:12 p.m. 29 30 3883 Howard Hughes Parkway, Suite 1100 31 Las Vegas, Nevada 32 33 Allyson W. Harris, NV CCR #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 8 Counterclaimant, 9 10 vs. 11 SFR INVESTMENTS POOL 1, LLC, 12 a Nevada limited liability 13 company, 14 15 Counter Defendant. 16 17 U.S. BANK, N.A., a national 18 banking association as Trustee 19 for the Certificate Holders of 20 Wells Fargo Asset Securities 21 Corporation, Mortgage Pass-Through 22 Certificates, Series 2006-AR4, 23 vs. 24 NEVADA ASSOCIATION SERVICES, INC., 25 a Nevada corporation; COPPER RIDGE COMMUNITY ASSOCIATION, a Nevada non-profit corporation, 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 8 Plaintiffs, 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 20 Defendants. 21 22 SFR INVESTMENTS POOL 1, LLC, 23 a Nevada limited liability 24 company, 25 26 Plaintiff, 27 28 vs. 29 U.S. BANK, N.A., a national 30 banking association as Trustee 31 for the Certificate Holders of 32 Wells Fargo Asset Securities 33 Corporation, Mortgage Pass-Through 34 Certificates, Series 2006-AR4; 35 NV West Servicing, LLC, a Nevada 36 limited liability company, as Trustee 37 for NASHVILLE TRUST 2270; DOES I-X; 38 and CORPORATIONS I-X, inclusive, 39 40 Defendants. 41 42 43 44 45</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@alverson-taylor.com 28 29 30 31 32 33 34 35 36 37 38 39 40</p>

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

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1 A. Yes.
2 Q. Okay. Great.
3 At the end of this deposition the transcript
4 will come to you in the form of a booklet. You'll
5 have the opportunity to review your testimony in that
6 booklet. You'll have the opportunity to also make
7 changes to your testimony; however, I have to caution
8 you that if you make substantive changes to your
9 testimony, I or any of the other counsel in this
10 matter can comment on those changes at any subsequent
11 proceedings.
12 Do you understand that?
13 A. I do.
14 Q. Got it.
15 Are you taking any medications today?
16 A. Any medications?
17 Q. Any medications.
18 A. Yes.
19 Q. Are they in any way impairing your ability
20 to give your best testimony? In other words, do you
21 feel drowsy, sleepy, erratic, anything like that?
22 A. No.
23 Q. Not bothering you at all?
24 A. No.
25 Q. Okay, good. If you need to take a break,

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1 we'll take a break, okay?
2 A. Okay.
3 Q. It's not a marathon.
4 I have to ask this question, and I don't
5 mean to embarrass you. Have you ever been convicted
6 of a felony?
7 A. No, I have not.
8 Q. Where did you receive -- what's the highest
9 level of formal education that you've received?
10 A. Highest level of education that I have
11 received is a JD.
12 Q. And you received your JD when?
13 A. In 2008.
14 Q. From what school did you receive your JD?
15 A. I received my JD from Seattle University
16 School of Law.
17 Q. Okay. And are you barred in any states to
18 practice law?
19 A. No, I am not.
20 Q. Okay. After -- other than the JD, do you
21 have any other formal degrees from a college or
22 university?
23 A. Other than the JD, I have a bachelor's
24 degree, a double bachelor's in communications and
25 political science.

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1 Q. And where did you receive this double
2 bachelor's degree?
3 A. Idaho State University.
4 Q. And what year did you receive?
5 A. I believe that was in 1994.
6 Q. Other than the degrees you've just
7 described, have you received or earned any other
8 certifications or diplomas?
9 A. Excuse me. I have to correct that. It
10 wasn't 1994. That's when I started, I believe. I
11 think I graduated from that in 2004, so took me some
12 time. And other than that, no, I do not have any
13 other certifications or anything beyond that, no.
14 Q. Okay. Are you presently employed?
15 A. Yes.
16 Q. Who is your current employer?
17 A. My current employer is SFR Investments Foot
18 1, LLC.
19 Q. And what is your job title?
20 A. I am the assistant manager.
21 Q. And can you describe what are some of the
22 duties that come under the job heading of assistant
23 manager at SFR?
24 A. Sure. My primary job duties are to prepare
25 and attend depositions like this one and then I help

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1 with discovery. So I collect documents and e-mails or
2 whatever I can about properties that are in litigation
3 and pass those on to the attorneys. I am helping with
4 trials now, and on a day-to-day basis I do office
5 work, so anything in the office that I can help with,
6 like answering phones, helping tenants, anything like
7 with the property management.
8 Q. How long have you held this title of
9 manager?
10 A. Since June of 2015.
11 Q. When you say you are helping with trials,
12 can you give me some examples of how you are helping
13 with trials?
14 A. Yes. I just meant that I attended a trial
15 recently. I think it was in the last month, and I was
16 a witness there.
17 Q. Okay. So your helping in trials is not the
18 actual preparation of the trial or preparation work
19 with the attorneys to put their case on for trial, but
20 you're appearing at trials as a witness?
21 A. Correct.
22 Q. Is that the limit of your helping with
23 trials?
24 A. Yes.
25 Q. Okay. How many times have you so far

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<p>1 appeared as a witness at trial?</p> <p>2 A. Just once so far.</p> <p>3 Q. Okay. And when did that occur?</p> <p>4 A. I believe it was the first week in May.</p> <p>5 Q. Okay. Do you recall the name of the case?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you recall the court in which the case</p> <p>8 was pending?</p> <p>9 A. It was at the justice court. I do not.</p> <p>10 Q. Do you remember the name of the judge?</p> <p>11 A. I do not.</p> <p>12 Q. Do you remember the subject property that</p> <p>13 was the subject of the case?</p> <p>14 A. It's on the tip of my tongue. Sorry. Right</p> <p>15 after that I had eight depositions the next week, so</p> <p>16 I'm trying to -- I don't recall the subject property,</p> <p>17 no.</p> <p>18 Q. Do you know how many days the trial lasted?</p> <p>19 A. I would approximate it was about a week.</p> <p>20 Q. And how long was your testimony? How long</p> <p>21 did your testimony last at the trial?</p> <p>22 A. I believe it was about two hours. With</p> <p>23 being asked questions by both parties, I think it was</p> <p>24 about two hours.</p> <p>25 Q. Direct and cross-examination?</p>	<p>1 Q. Are you familiar with the real property</p> <p>2 identified as 2270 Nashville Avenue, Henderson, Nevada</p> <p>3 89052?</p> <p>4 A. Yes.</p> <p>5 Q. And you are here today to discuss the</p> <p>6 foreclosure of that property; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. What I'd like you to do is take some</p> <p>9 time and review all the topics, okay? And there's</p> <p>10 quite a few; I see that. There's 31 topics, so if</p> <p>11 you're kind enough to take your time and read them,</p> <p>12 because I'm going to ask you to make sure that you are</p> <p>13 the person most knowledgeable regarding each of these</p> <p>14 topics. If there are any that you are not the person</p> <p>15 most knowledgeable, I'd like you to tell me. Let's do</p> <p>16 it that way. I think that's faster than me just</p> <p>17 reading off every single one.</p> <p>18 A. Sure.</p> <p>19 Q. Can we do that?</p> <p>20 A. Yes.</p> <p>21 Q. If you are not the person most knowledgeable</p> <p>22 as to any of these topics, tell me.</p> <p>23 MS. HANKS: Counsel, do you want me to put</p> <p>24 the ones that we've filed the motion for protective</p> <p>25 order on that we were talking about before we went on</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. Who was SFR's attorney at that trial?</p> <p>3 A. That would be Karen Hanks.</p> <p>4 Q. Do you know who opposing counsel was, the</p> <p>5 name of the opposing counsel?</p> <p>6 A. Yes. Well, it was Akerman, and Darren and</p> <p>7 Ariel, but I do not remember their last names.</p> <p>8 Q. Do you know what the outcome of the trial</p> <p>9 was?</p> <p>10 A. No. I believe that's still pending.</p> <p>11 Q. Okay. Thank you.</p> <p>12 So are you here in response to a 30(b)(6)</p> <p>13 deposition notice?</p> <p>14 A. Yes.</p> <p>15 MR. DELIKANAKIS: Okay. I'm going to go</p> <p>16 ahead and have the court reporter mark the deposition</p> <p>17 notice as No. 1.</p> <p>18 (Exhibit 1 was marked for identification.)</p> <p>19 BY MR. DELIKANAKIS:</p> <p>20 Q. I've handed you what's been marked as</p> <p>21 Exhibit 1, which I'll tell you is the Notice of</p> <p>22 Deposition of SFR Investments Pool 1, LLC pursuant to</p> <p>23 Nevada Rule of Civil Procedure 30(b)(6).</p> <p>24 Have you seen this document before?</p> <p>25 A. Yes, I have.</p>	<p>1 the record?</p> <p>2 MR. DELIKANAKIS: Why don't you let her</p> <p>3 testify as to whether or not she is the person most</p> <p>4 knowledgeable with regard to a particular topic and</p> <p>5 then you and I can have colloquy with regards to the</p> <p>6 motion for protective order you told me was filed</p> <p>7 today.</p> <p>8 MS. HANKS: Sure.</p> <p>9 MR. DELIKANAKIS: Thank you.</p> <p>10 THE WITNESS: So there are a couple of topic</p> <p>11 questions that I didn't prepare for be- --</p> <p>12 BY MR. DELIKANAKIS:</p> <p>13 Q. Okay. Tell me which ones they are.</p> <p>14 A. Sure.</p> <p>15 Q. I have them marked on mine.</p> <p>16 MS. HANKS: Do you need this?</p> <p>17 THE WITNESS: Yeah. So 15, 16, 17, 20, 21,</p> <p>18 22, 23, 26, 29 and 30, and some of the questions I've</p> <p>19 been asked before, generally speaking, so I might have</p> <p>20 some answers generally to that, but I didn't look at</p> <p>21 it specifically to this property because I was</p> <p>22 instructed not to.</p> <p>23 BY MR. DELIKANAKIS:</p> <p>24 Q. And I don't want to know about</p> <p>25 communications between you and your counsel, but I'm</p>

<p style="text-align: right;">Page 17</p> <p>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?</p>	<p style="text-align: right;">Page 19</p> <p>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.</p>
<p style="text-align: right;">Page 18</p> <p>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</p>	<p style="text-align: right;">Page 20</p> <p>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.</p>

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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. 4?
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?

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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?

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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.

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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

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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

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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

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1 to mark that, the original as the exhibit, 3?
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

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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, "Daniela"?
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.

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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

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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?

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<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>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>
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<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>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>

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1 A. Yes.

2 Q. What, if anything, did Chris relay to you

3 with regard to Topic No. 26? It's rather long, so I'm

4 not going to read it.

5 A. Sure. With that one I just -- we talked

6 about, generally, the information that I had about how

7 SFR had acquired their properties, and all three of

8 the situations that are listed here, which was

9 foreclosure sales from HOA directly or third parties,

10 I was aware that SFR has purchased in those three

11 different contexts, and so I read that to him to

12 verify that that was correct, and he stated it was.

13 Q. Okay. So just to recap, if I were to ask

14 you questions with regard to Topics 4, 5 -- do you

15 have Exhibit 2 in front of you?

16 A. Yes.

17 Q. Okay. If I were to ask you questions with

18 regard to Topics 4, 5, 6, 7, 8, 10, 11, 12, you've

19 been directed by counsel not to answer. Am I correct?

20 A. No.

21 MS. HANKS: No.

22 BY MR. DELIKANAKIS:

23 Q. Oh, so you will answer questions, just

24 didn't prepare?

25 A. No, we went through those.

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1 Q. Okay.

2 A. It's just --

3 Q. I'm going to look at Top- -- there we go.

4 Okay. So if I were to ask you questions about Topics

5 15, 16, 17, 20, 21, 22, 23, 26, 29 and 30, it's SFR's

6 position that you're not going to respond to questions

7 with regard to those topics. Am I correct?

8 A. I guess in some ways I think some of them

9 were answered, but I didn't prepare specifically for

10 this property, no, on those topics.

11 Q. So you were directed by counsel not to

12 prepare for those topics that I just read off. And I

13 just want to know, is it SFR's position -- maybe

14 counsel can answer this -- that you're not going to

15 answer any questions with regard to these topics or

16 will you?

17 MS. HANKS: They're not going to answer any

18 questions; correct. There's a pending motion for

19 protective order, but like I said before we got on the

20 record, Topics 15, 17, 20, 21, 22 and 23 don't even

21 apply to this property because SFR doesn't have

22 possession of it, so there are no answers to those

23 questions.

24 MR. DELIKANAKIS: I'll disagree with your

25 characterization, but go ahead if that's the basis

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1 upon which you're not going to answer, that's fine, go

2 ahead and make your record.

3 MS. HANKS: No, I'm just saying there's a

4 pending motion for protective order, but having looked

5 at the topics, there's really not even probably a

6 purpose of the protective order because SFR doesn't

7 have any information because it hasn't possessed the

8 property since the bank foreclosed.

9 MR. DELIKANAKIS: So the protective order

10 would apply to which topics then?

11 MS. HANKS: 15, 16, 17, 20, 21, 22, 23, 26

12 and 29 and 30. And 29 I just -- I'm okay if it was a

13 more pointed question about certain discovery, but

14 Commissioner Bulla has ruled when it's vague like that

15 or broad like that, we don't have to answer. And then

16 No. 30 she's ruled that that's actually -- they're

17 better suited for contention interrogatories and that

18 that's too broad and that a 30(b)(6) wouldn't have to

19 answer questions.

20 MR. DELIKANAKIS: So these are the two bank

21 protective order motions I haven't seen yet.

22 MS. HANKS: I don't know if you haven't seen

23 it, but you say you haven't seen it, but, yes --

24 MR. DELIKANAKIS: I just showed you the

25 docket. It's not even on file yet, so I don't think

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1 anybody's seen it. Okay. Great.

2 BY MR. DELIKANAKIS:

3 Q. Are you aware of any bankruptcy relating to

4 the property or its former owner?

5 MS. HANKS: Objection. Scope.

6 THE WITNESS: I do not know.

7 BY MR. DELIKANAKIS:

8 Q. Are you aware the former owner of the

9 property, Lucia Parks, filed Chapter 11 bankruptcy

10 protection -- for Chapter 11 bankruptcy protection in

11 August of 2010?

12 MS. HANKS: Objection. Scope.

13 THE WITNESS: I do not know.

14 BY MR. DELIKANAKIS:

15 Q. Are you aware that Ms. Parks listed the

16 property in her bankruptcy filing as part of the

17 estate?

18 MS. HANKS: Objection. Scope.

19 THE WITNESS: I do not know.

20 BY MR. DELIKANAKIS:

21 Q. Did SFR do any investigation before buying

22 the property to determine if the former owner had

23 filed for bankruptcy?

24 MS. HANKS: Objection. Scope.

25 THE WITNESS: I do not know.

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

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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

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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.

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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?

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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

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1 liens or encumbrances recorded against the property?

2 A. Specifically to this property, I do not
3 know, but that is something that Chris would look for
4 when he's viewing the Recorder's Web site in general.
5 If there are other liens, he's looking at those.

6 Q. Why would Chris -- why does Chris look for
7 these encumbrances or liens? Do you know why?

8 A. Yes. It's my understanding that he looks at
9 them because there are some that will stay with the
10 property even if SFR is a successful bidder and
11 purchases the property.

12 Q. And what types of liens are these?

13 A. Those would be other HOA liens, tax liens,
14 public utility liens.

15 Q. What if SFR sees a lender's deed of trust
16 recorded? Is that a red flag or not for SFR? Are
17 they concerned about it I guess I should say?

18 A. I don't believe they're concerned about it,
19 no.

20 Q. Do you know why they're not concerned about
21 it?

22 A. When I talked with Chris, it was because
23 that SFR -- or I guess the Supreme Court has said that
24 that deed -- or, I'm sorry, that first deeds of trust
25 are what we were talking about; correct? That it

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1 would be extinguished.

2 Q. Does SFR prefer to purchase a property that
3 doesn't have a deed of trust recorded?

4 MS. HANKS: Objection. Scope.

5 THE WITNESS: Does it prefer?

6 BY MR. DELIKANAKIS:

7 Q. Yeah. Have you ever had a discussion with
8 Chris like would you prefer to bid on properties that
9 don't have deeds of trust already recorded?

10 MS. HANKS: Objection. Scope.

11 THE WITNESS: I don't remember having that
12 conversation with him.

13 BY MR. DELIKANAKIS:

14 Q. Have you had that discussion with anybody at
15 SFR?

16 A. No, I don't believe so.

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

21 MS. HANKS: Objection. Scope.

22 THE WITNESS: I wouldn't say more likely
23 than not, but SFR does know that there is a risk.

24 BY MR. DELIKANAKIS:

25 Q. Right. If you had to -- if SFR had to

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1 ascribe a percentage of risk, could you do that?

2 Could SFR tell me what the percentage of risk is in
3 its experience of when they buy a property that has a
4 deed of trust already recorded on it, what percentage
5 of these sales have ended up in litigation?

6 MS. HANKS: Objection. Scope.

7 THE WITNESS: I don't know a percentage. I
8 know that SFR -- what they roughly own and roughly how
9 many of those properties have gone to litigation, but
10 I don't know if I could give a percentage of risk.

11 BY MR. DELIKANAKIS:

12 Q. Okay. Well, how many properties did they
13 own and how many of them were subject to litigation at
14 some point in time?

15 MS. HANKS: Objection. Scope.

16 THE WITNESS: Approximately 650 properties
17 SFR owns, and I believe it's around, around maybe 250
18 in litigation that I am aware of.

19 BY MR. DELIKANAKIS:

20 Q. Okay. That's about 38 percent; right?

21 A. And at a specific time that could change --

22 Q. Of course.

23 A. -- so I don't want to say anything.

24 Q. I understand, but based on figures you've
25 just given me, that's about 38 percent of the

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1 properties have been in litigation at some point in
2 time.

3 A. That I'm aware of.

4 Q. That you're aware of, of course. That's why
5 you're here. You are only here to tell me what you're
6 aware of.

7 Okay. Are you specifically aware of SFR's
8 purchase of property located at 2270 Nashville Avenue
9 in Henderson, Nevada?

10 A. I'm not sure what you're asking.

11 Q. You have particular knowledge about this
12 particular sale; correct?

13 A. For this particular sale.

14 Q. Purchase, yeah.

15 A. SFR doesn't have -- you know, Chris doesn't
16 have memory about this specific sale.

17 Q. So he doesn't know how many bidders; right?

18 A. Correct.

19 Q. He doesn't know how it was advertised?

20 A. That is my understanding.

21 Q. Did Chris tell you how he learned that this
22 property would be sold?

23 A. This specific one?

24 Q. Yes.

25 A. No, he doesn't have a memory of that.

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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

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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

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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

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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.

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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

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1 me.
2 BY MR. DELIKANAKIS:
3 Q. Sure. If I write a sentence "I served the
4 notice of foreclosure by mail," that would convey to
5 anyone reading it that I served the notice of
6 foreclosure by mail. If I write a sentence, I served
7 the notice of foreclosure by certified mail, that
8 would certainly convey to anybody reading it how the
9 notice of foreclosure was served; right?
10 A. Correct.
11 Q. I'm just asking you if -- in reading this
12 foreclosure deed, if you can point me to any place in
13 the foreclosure deed that specifically describes how
14 the notice of foreclosure was served.
15 MS. HANKS: Objection. Form.
16 THE WITNESS: It says mailing of copies of
17 Notice of Delinquent Assessment and Notice of Default
18 and the posting and publication -- so it just states
19 mailing of copies.
20 BY MR. DELIKANAKIS:
21 Q. Okay. Does it identify who the notices were
22 mailed to?
23 A. Specifically who the notices were mailed to?
24 I do not see where it specifically states a name of
25 who it was mailed to.

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1 Q. Other than the general statement that it
2 complied with the law, does the foreclosure notice,
3 foreclosure deed language contain any evidence to
4 confirm that the bidding process and auction process
5 complied with the statute?
6 MS. HANKS: Objection. Form.
7 THE WITNESS: I do not know.
8 BY MR. DELIKANAKIS:
9 Q. Do you see any such language in the
10 foreclosure deed that you can point me to?
11 MS. HANKS: Objection. Form.
12 THE WITNESS: It states that it was at a
13 public auction, it indicates the place, and it was the
14 highest bidder at the sale. I don't -- I'm not sure,
15 I guess, what you mean by that.
16 BY MR. DELIKANAKIS:
17 Q. Okay. Does the sentence confirm that all
18 the statutory time frames and deadlines were complied
19 with? Is there an affirmative statement that all the
20 statutory time frames were complied with in this
21 foreclosure deed notice?
22 MS. HANKS: Objection. Form.
23 THE WITNESS: It states that NAS has
24 complied with the requirements of law including, but
25 not limited to, the elapsing of 90 days.

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1 BY MR. DELIKANAKIS:
2 Q. So in SFR's opinion, this foreclosure deed
3 of trust provided adequate notice that all of the
4 requirements of the statute had been met?
5 MS. HANKS: Objection. Form.
6 THE WITNESS: That is my understanding.
7 BY MR. DELIKANAKIS:
8 Q. Who filled out the Declaration of Value
9 page? It's Bates stamped USB4060.
10 A. I believe that it is the name Elissa, and
11 I'm not sure about the last name. That would be an
12 employee of NAS.
13 Q. And this \$14,000 is a total value sales
14 price of the property. Who determined that \$14,000
15 was the total value sales price of the property?
16 A. That would be something that NAS would have
17 to respond to. SFR didn't prepare the Declaration of
18 Value.
19 Q. I understand that SFR didn't prepare this
20 document, but does SFR have any knowledge as to why
21 \$14,000 was listed in Section 3 of the Declaration of
22 Value?
23 A. When I have discussed the Declaration of
24 Value with Chris and when I've seen them, I've seen
25 them in two different kinds of amounts. I believe

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1 that they're provided by the Recorder's -- I want
2 to -- it used to be -- okay. So I think that there
3 was -- at one time one amount was used and another
4 time another amount was used provided on the
5 Assessor's page and then received by the Recorder. So
6 the Recorder has to -- Clark County Recorder, they
7 have to go ahead and accept the recording of it. So I
8 guess at one point they were accepting either the
9 amount that was actually paid for the property by SFR
10 or the amount that was either provided, I believe, on
11 the Assessor's Web site. And at first they weren't
12 sure as to what amount to put there and so it kind of
13 flip flopped as to the amounts. I've seen two
14 different kinds of amounts in that.
15 Q. In fact, the form actually allows for one or
16 the other, right, total value/sales price of the
17 property? So those could be two different figures;
18 correct?
19 MS. HANKS: Objection.
20 THE WITNESS: Correct. Sorry.
21 MS. HANKS: Objection. Calls for
22 speculation.
23 THE WITNESS: That's what the form says,
24 "Total value/sales of property."
25 BY MR. DELIKANAKIS:

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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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25

PAULINA KELSO
SFR INVESTMENTS vs. U.S. BANK

May 17, 2016
93-95

Page 93

1 DEPOSITION ERRATA SHEET

2

3

4 Our Assignment No. J0363544

5 Case Caption: SFR vs. U.S. Bank

6

7 DECLARATION UNDER PENALTY OF PERJURY

8 I declare under penalty of perjury that I have

9 read the entire transcript of my deposition taken in

10 the captioned matter or the same has been read to me,

11 and the same is true and accurate, save and except for

12 changes and/or corrections, if any, as indicated by me

13 on the Deposition Errata Sheet hereof, with the

14 understanding that I offer these changes as if still

15 under oath.

16 Signed on the _____ day of _____,

17 20____

18

19

20 PAULINA KELSO

21

22

23

24

25

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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: _____

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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: _____

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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

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) ss:

4 COUNTY OF CLARK)

5 I, Allyson W. Harris, a Certified Court Reporter

6 licensed by the State of Nevada, do hereby certify:

7 That I reported the deposition of PAULINA KELSO,

8 commencing on Tuesday, May 17, 2016.

9 That prior to being deposed, the witness, if any,

10 was by me duly sworn to testify to the truth. That I

11 thereafter transcribed my said stenographic notes into

12 typewritten form, and that the typewritten transcript

13 is a complete, true and accurate transcription of my

14 said stenographic notes. That review of the

15 transcript was requested.

16 I further certify that I am not a relative,

17 employee or independent contractor of counsel or of

18 any of the parties involved in the proceeding, nor a

19 person financially interested in the proceeding, nor

20 do I have any other relationship that may reasonably

21 cause my impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my

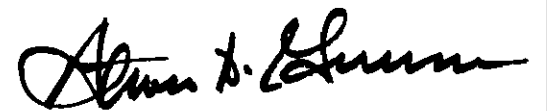
23 office in the County of Clark, State of Nevada, this

24 3rd day of June, 2016.

25

Allyson W. Harris, CCR No. 740

TAB 20



CLERK OF THE COURT

OMSJ
John S. Delikanakis, Esq.
Nevada Bar No. 5928
Daniel S. Ivie, Esq.
Nevada Bar No. 10090
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
jdelikanakis@swlaw.com
divie@swlaw.com

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 OPPOSITION TO
COPPER RIDGE COMMUNITY
ASSOCIATION'S RENEWED
MOTION FOR SUMMARY
JUDGMENT**

Defendant/Third-Party Plaintiff 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 Third-Party

1 Defendant Copper Ridge Community Association's ("Copper Ridge") Renewed Motion for
2 Summary Judgment (the "Motion").

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

6 I. INTRODUCTION

7 Copper Ridge is not entitled to summary judgment on U.S. Bank's claims for numerous
8 reasons. First, the HOA sale is void ab initio because it violated the automatic stay of the
9 bankruptcy court. Because the HOA foreclosed on the property in violation of the bankruptcy
10 stay, as a matter of law, the HOA's foreclosure sale never happened. Therefore, Copper Ridge
11 cannot argue, as it does here, that the foreclosure sale complied with the law because it is as if the
12 sale never occurred.

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

19 However, even if the sales price were not considered grossly inadequate, the HOA
20 Foreclosure Sale must still be set aside because the inadequate price was occasioned by fraud,
21 unfairness and oppression. Not only was U.S. Bank precluded from protecting its interest in the
22 Property because it did not receive any notice of the sale, Copper Ridge also violated the
23 automatic stay when it conducted the HOA foreclosure sale. U.S. Bank properly sought relief
24 from the automatic stay to conduct its own foreclosure sale, but Copper Ridge did not seek or
25 obtain such relief. The sales price of the Property was necessarily and significantly depressed by
26 Parks' bankruptcy filing, which justifies a finding of commercial unreasonableness and the setting
27 aside of the sale.

28

1 Finally, Copper Ridge is not entitled to summary judgment on U.S. Bank's intentional
2 interference with contractual relations claim because the undisputed evidence shows that U.S.
3 Bank has established all the elements of the claim. Copper Ridge does not dispute that U.S. Bank
4 had a contractual relationship with Parks, that Copper Ridge was aware of that contract, that the
5 HOA Foreclosure Sale caused an actual disruption of the contract or that U.S. Bank has suffered
6 damages as result. Copper Ridge's argument that it did not "intentionally" disrupt the contract is
7 without merit. By selling the Property at the HOA Foreclosure Sale, Copper Ridge necessarily
8 intended to sell the Property free and clear of U.S. Bank's security interest. U.S. Bank has
9 established all of the elements of this claim and Copper Ridge is not entitled to summary
10 judgment in its favor.

11 For all of these reasons, U.S. Bank requests that the Court deny Copper Ridge's Motion.

12 **II. FACTUAL BACKGROUND**

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

15 **III. ARGUMENT**

16 **A. The HOA Foreclosure Sale Is Void ab Initio because it Violated the Automatic 17 Bankruptcy Stay.**

18 As a preliminary matter, Copper Ridge's claims that the HOA Foreclosure Sale was
19 conducted according to law necessarily fail because the sale was void ab initio. The HOA
20 Foreclosure Sale is void because it violated the provisions of 11 U.S.C. § 362, which precludes
21 "any act to create, perfect, or enforce any lien against property of the estate" and "any act to
22 create, perfect, or enforce against property of the debtor any lien to the extent that such lien
23 secures a claim that arose before the commencement of the [bankruptcy] case." 11 U.S.C.A.
24 § 362(a)(4)-(5).

25 Generally, the automatic stay arises at the filing of the bankruptcy petition and continues
26 with respect to an action against property of the estate until the property is no longer property of
27 the estate. With respect to other actions, the stay continues until the earlier of the closure of the
28 case, the dismissal of the case, or the grant or denial of a discharge. 11 U.S.C. § 362(c). As the

1 Ninth Circuit has explained, “the automatic stay is self-executing’ and ‘sweeps broadly,
2 enjoining the commencement or continuation of any judicial, administrative, or other proceedings
3 against the debtor.’” In re Wardrobe (quoting In re Gruntz, 202 F.3d 1074, 1081-82 (9th Cir.
4 2000) (en banc)). Through its broad scope, the stay not only provides the debtor with protection
5 from its creditors, it “gives the bankruptcy court an opportunity to harmonize the interests of both
6 debtor and creditors while preserving the debtor’s assets for repayment and reorganization of his
7 or her obligations.” Id. (internal quotation and citation omitted).

8 In light of the above, the Ninth Circuit has long held that acts taken in violation of the
9 automatic stay in bankruptcy are void ab initio. In re Schwartz, 954 F.2d 569, 571 (9th Cir.
10 1992). Critically, the voidness of the act is not dependent upon intent or willfulness. Id. To the
11 contrary, the act is void by operation of law. Id. The rule is self-executing, such that it is not
12 necessary for the bankruptcy court to declare the act in question void. Id. The party relying on
13 the challenged act instead bears the burden of seeking a determination from the bankruptcy court
14 that the stay did not preclude it. Id. at 572.

15 There is no dispute that Parks filed her bankruptcy petition on August 23, 2010, or that
16 she remained in bankruptcy until September 27, 2014—more than 18 months after Copper Riedge
17 sold the Property in violation of 11 U.S.C. § 362(a). Nor is there any dispute that despite the
18 pending bankruptcy, Copper Ridge recorded the HOA Lien without seeking relief from the
19 automatic stay, or that Copper Ridge, through its agent, NAS, went on to record the HOA Notice
20 of Default, record the HOA Sale Notice, and even purportedly sell the Property through
21 foreclosure without ever seeking, much less obtaining, relief from the bankruptcy stay. Nor did
22 Copper Ridge seek a determination from the bankruptcy court that the HOA Foreclosure Sale did
23 not violate the automatic stay; to the contrary, Copper Ridge never attempted¹ to determine
24 whether the Property was subject to the stay. Deposition transcript of Sharon Bergeron, as Rule
25 30(b)(6) designee for Copper Ridge (“Bergeron Depo.”), 48:19-49:2, an excerpted copy of which
26

27 ¹ NAS, as agent for Copper Ridge, had a policy to search PACER to determine if the homeowner was in bankruptcy
28 prior to foreclosing. However, NAS’s corporate representative could not state in which jurisdictions NAS conducted
its PACER search or whether it followed its policy in this instance. See Deposition of Christopher Yergensen
 (“Yergensen Depo.”), 16:6-13, an excerpt of which is attached hereto as **Exhibit A**.

1 is attached hereto as **Exhibit B**. Had it done so, Copper Ridge would have discovered that Parks
2 was in bankruptcy and that the HOA's efforts to sell the Property violated 11 U.S.C. § 362(a).
3 But regardless of Copper Ridge's diligence, or lack thereof, the sale is void.

4 As a matter of law; the HOA sale never occurred and title to the Property never
5 transferred from Parks to any party. Copper Ridge is not entitled to summary judgment and its
6 Motion should be denied.

7 **B. The Foreclosure Deed Recitals Are Not Conclusive Proof of Statutory**
8 **Compliance.**

9 Copper Ridge is not entitled to rely on the Foreclosure Deed's recitals and the Foreclosure
10 Deed is not conclusive proof of compliance with the notice requirements of NRS 116.3116, et
11 seq. (the "Statute"). In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., the Nevada Supreme
12 Court noted that only a "proper foreclosure . . . will extinguish a first deed of trust." SFR
13 Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (2014). The Supreme Court
14 further noted that in order for an HOA foreclosure to be valid, "a Nevada HOA must notify the
15 owner of delinquent assessments," "must provide the homeowner notice of default and election to
16 sell," and "must give notice of the sale to the owner . . ." SFR Investments, 334 P.3d at 411.

17 Copper Ridge's assertion that it is entitled to summary judgment because it followed the
18 requirements of the Statute is undermined by the Nevada Supreme Court's decision in *Shadow*
19 *Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d
20 1105 (2016). In *Shadow Wood*, the Nevada Supreme Court reaffirmed that "courts retain the
21 power to grant equitable relief from a defective foreclosure sale when appropriate despite NRS
22 116.31166." *Id.* at 1110-11, citing *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995
23 (1963) (adopting inadequate price plus fraud, oppression or unfairness standard); *Nev. Land &*
24 *Mortg. Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) ("In the
25 proper case, the trial court may set aside a trustee's sale upon the grounds of fraud or
26 unfairness."). The Court further clarified that recitals in statutes such as NRS 116.31166 "do not
27 defeat equitable relief in a proper case; rather, such recitals are 'conclusive, in the absence of
28

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. Copper Ridge’s Motion incorrectly asserts that U.S. Bank received actual notice of the HOA Foreclosure Sale. (Mot. for Summ. J., 21:7-10.) This is false. U.S. Bank’s corporate representative, Robert Ferguson, testified that U.S. Bank did not receive any HOA foreclosure notices prior to the date of the HOA foreclosure:

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

A. **No.**

...

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

A. **No.**

Deposition of Robert Ferguson (“Ferguson Depo.”), 61:10-16; 62:1-5, an excerpted copy of which is attached as **Exhibit C** (emphasis added).

Additionally, Copper Ridge’s Motion ignores U.S. Bank’s discovery responses on this same issue:

REQUEST FOR ADMISSION NO. 1:

Admit that you were aware of the Association’s lien on the Property before the Association foreclosure sale.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 2:

Admit that you did not attend the Association foreclosure sale.

RESPONSE:

Admit, as U.S. Bank could not have attended something about which it was not notified and of which it had no knowledge.

REQUEST FOR ADMISSION NO. 4:

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:

U.S. Bank objects to this request to the extent it calls for an admission regarding the acts, omissions, or knowledge of U.S. bank's predecessor in interest. Subject to and without waiving any objections, the request is denied.

REQUEST FOR ADMISSION NO. 5:

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:

U.S. Bank objects to this request to the extent it calls for an admission regarding the acts, omissions, or knowledge of U.S. bank's predecessor in interest. Subject to and without waiving any objections, the request is denied.

See U.S. Bank's Responses to Copper Ridge's First Request for Admissions, attached hereto as **Exhibit D.**

The 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

1 the foreclosure deed are correct. The truth is that U.S. Bank received none of the required
2 notices.

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

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

9 Even if the Court were to rule that the automatic stay somehow did not void the HOA
10 sale, the existence of Parks' bankruptcy constitutes sufficient unfairness and oppression as to
11 depress the sales price and result in a grossly inadequate sales price. Parks' bankruptcy was a
12 matter of public record, and the Property was included as an asset in the bankruptcy estate. See
13 Schedule A – Real Property and Schedule D – Creditors Holding Secured Claims, attached hereto
14 as **Exhibit E**. The very existence of the bankruptcy stay is sufficient to cause a depression in the
15 sales price, as potential bidders would have reasonably expected that the HOA sale would be void
16 for violating the automatic bankruptcy stay.

17 U.S. Bank, understanding the impact and importance of the automatic stay, properly
18 moved in the bankruptcy court for an order for relief from the stay in order to secure its security
19 interest in the Property. No other party, including Copper Ridge or its agent NAS, sought or
20 obtained relief from the automatic bankruptcy stay.

21 It was patently unfair and oppressive for Copper Ridge to sell the Property while it was
22 subject to the automatic bankruptcy stay. That unfairness and oppression resulted in a severely
23 inadequate sales price. The Court is therefore justified in setting aside the sale for equitable
24 reasons.

25 **C. The HOA Sale Was Commercially Unreasonable.**

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

27 The HOA foreclosure sale was commercially unreasonable in this case because it resulted
28 in a grossly inadequate sales price. The evidence shows that the sale price of \$14,000 for a

1 property with a value of \$228,000² was far less than 20 percent of the Property's value³, and the
2 Nevada Supreme Court recently made clear that such "gross" inadequacy renders a foreclosure
3 defective. *See Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, Shadow
4 Wood, 366 P.3d at 1112-13 (relying on the Restatement (Third) of Property: Mortgages § 8.3,
5 which provides that a "foreclosure sale price obtained pursuant to a foreclosure proceeding that is
6 otherwise regularly conducted in compliance with applicable law does not render the foreclosure
7 defective unless the price is grossly inadequate."). In other words, under the Restatement, a
8 sufficiently low price alone can render a sale commercially unreasonable. *See id.* The
9 Restatement provides guidance about what constitutes "gross inadequacy," advising that while
10 "[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of fair market
11 value[, g]enerally ... a court is warranted in invalidating a sale where the price is less than 20
12 percent of fair market value." *Id.* (quoting Restatement (Third) of Property: Mortgages § 8.3,
13 cmt. b).

14 Centeno v. JPMorgan Chase Bank, N.A., cited by Copper Ridge (Mot., 28: 16), does not
15 state anything to the contrary. Consistent with Shadow Wood, the Court in Centeno stated that a
16 "low" sales price also requires a showing of fraud, unfairness, or oppression, but does not
17 mention a "grossly inadequate" price, which Shadow Wood distinguished. Had Shadow Wood
18 required a showing of fraud, oppression, or unfairness, even for sales for less than 20 percent of
19 the fair market value, it would not have divided its analysis as it did: first determining whether the
20 price was grossly inadequate as a matter of law, following the Restatement, and second,
21 determining whether fraud, oppression, or unfairness existed to support a finding of commercial
22 unreasonableness where the purchase price exceeded that threshold. Thus, under Shadow Wood,
23 a sale for less than 20 percent of the fair market value should be set aside as commercially
24 unreasonable, while a sale in excess of 20 percent of the fair market value may be set aside only
25 upon a showing of fraud, oppression, or unfairness.

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. Copper
Ridge did not disclose an expert witness to either opine on the fair market value of the Property or to rebut Mr.
Dugan's opinions.

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

1 When the Supreme Court of Arizona adopted section 8.3, it explicitly synthesized the
2 Restatement's 20 percent rule with the earlier precedent and majority rule that inadequate price
3 "standing alone would not justify setting aside [a] trustee's sale[;] there must be in addition proof
4 of some element of fraud, unfairness, or oppression as accounts for and brings about the
5 inadequacy of price." *In re Krohn*, 52 P.3d 774, 781 (Ariz. 2002). The Arizona Supreme Court,
6 however, concluded that "gross inadequacy" is "more than inadequacy," and sufficient to justify
7 setting aside a sale without any additional showing of fraud, unfairness, or oppression. *Id.* Many
8 other jurisdictions are in accord. See, e.g., *Burge v. Fid. Bond & Mortgage Co.*, 648 A.2d 414,
9 419 (Del. 1994) (holding that, while mere inadequacy of price is an insufficient ground for setting
10 aside a judicial sale, a grossly inadequate price is sufficient); *Arsali v. Chase Home Fin., LLC*, 79
11 So. 3d 845, 847 (Fla. Dist. Ct. App. 2012) approved as clarified, 121 So. 3d 511, 518 (Fla. 2013)
12 (holding that the court should vacate a foreclosure sale if there was either fraud or irregularity in
13 the sale or if the foreclosure sale bid was grossly or startlingly inadequate); *Baskurt v. Beal*, 101
14 P.3d 1041, 1045 (Alaska 2004) (adopting the Restatement, and recognizing that a foreclosure sale
15 is voidable where either the price is grossly inadequate or, "where the foreclosure sale price is not
16 grossly inadequate, a low price coupled with some other irregularity in the foreclosure
17 proceeding"); *Schweitzer v. Stroh*, 30 S.E.2d 689, 692 (Va. 1944) (holding that sale is voidable
18 based either on grossly inadequate price or additional circumstances of unfairness).

19 So construed, *Shadow Wood* brings Nevada in line with the many States that set aside
20 sales for prices of less than 20 percent of fair market value. See, e.g., *Will v. Mill Condominium*
21 *Owners' Ass'n*, 848 A.2d 336 (Vt. 2004) (voiding an HOA super-priority foreclosure sale,
22 holding that a price of \$3,510 was not commercially reasonable when the fair market value was
23 \$70,000); see also *Allied Steel Corp v. Cooper*, 607 So.2d 113, 120 (Miss. 2006) (a sale for less
24 than 40 percent of fair market value "shocks the conscience"); *Armstrong v. Csurilla*, 817 P.2d
25 1221, 1234 (N.M. 1991) (foreclosure sales that fall into the 10-40 percent range should not be
26 confirmed absent good reasons to do so); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.
27 1990) (approximately 20 percent of fair market value); *Ballentyne v. Smith*, 205 U.S. 285 (1907)

(14 percent of fair market value); First Nat. Bank of York v. Critel, 555 N.W.2d 773 (Neb. 1996) (reversing trial court's confirmation of foreclosure sale that yielded 14% of the appraised value).

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

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

This Court should not disregard the Property's fair market value simply because a foreclosure is a "forced sale." The Restatement's 20 percent threshold for gross inadequacy was defined in the context of a forced sale, and acknowledges the fact that prices are lower as the result of such sales. Accordingly, the authors of the Restatement reached that percentage in light of forced sales, and by its adoption in Shadow Wood, the Court did as well. Indeed, the Restatement acknowledges that the "foreclosure process commonly fails to produce the fair market value for foreclosed real estate." Restatement (Third) of Property: Mortgages § 8.3, cmt. a (citing BFP v. Resolution Trust Corp., 511 U.S. 531, 539 (1994)). The Comment further notes the well-accepted reasons for low bids at foreclosure sales. Id. However, it nonetheless sets a threshold for a grossly inadequate price in the context of a forced sale. The entirety of § 8.3 concerns forced sales; if it did not to apply to forced sales, it would be a nullity.

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

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

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

1 Second, even if U.S. Bank had received all of the notices, none of the notices contained
2 any evidence or information that the HOA was foreclosing on any super-priority portion of the
3 HOA lien. In her deposition, Copper Ridge's corporate witness confirmed this fact:

4 Q. And does this notice of delinquent assessment lien **identify the**
5 **superpriority amount?**

6 A. **No, it does not.**

7 ...
8 Q. And does the notice of default and election to sell **identify the**
9 **superpriority amount?**

10 A. **No, it does not.**

11 ...
12 Q. Does the notice of foreclosure sale **identify the superpriority**
13 **amount?**

14 A. **No, it does not.**

15 **Ex. B**, Bergeron Depo, 34:18-20; 35:19-21; 39:21-13 (emphasis added).

16 Additionally, unlike the warning to the homeowner that failure to pay the HOA lien could
17 result in a loss of the home, the Notice of Default did not provide warning that the sale could
18 extinguish a first deed of trust. Thus, not even the Notice of Default nor the Notice of Sale put
19 U.S. Bank on notice that any action was needed to protect the Deed of Trust. Therefore, even if
20 evidence of unfairness is required to set aside an HOA foreclosure sale as unfair, that evidence
21 exists in this case and the sale should be set aside.

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

27 **D. U.S. Bank has Established Its Claim for Intentional Interference with**
28 **Contract.**

Summary judgment on U.S. Bank's intentional interference claim is not appropriate here
because U.S. Bank has established all of the elements of the claim. Intentional interference with
contractual relations requires the claimant to establish: (1) the existence of "a valid and existing

1 contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed
2 to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting
3 damage." J.J. Industries, LLC v. Bennett, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

4 Copper Ridge produces no evidence to refute the elements of this claim. Instead, U.S.
5 Bank has shown that the irregularities with the HOA's foreclosure sale induced a breach of the
6 Deed of Trust by removing Parks' ability to tender the Property as security for the loan. Copper
7 Ridge is not entitled to summary judgment on this claim.

8 First, U.S. Bank has a "valid and existing" contract with Parks via the Deed of Trust.
9 Copper Ridge does not dispute this. Nor does Copper Ridge dispute that Parks breached its
10 contract with U.S. Bank when the Property, and thus U.S. Bank's security, was sold.

11 Second, Copper Ridge does not argue that it was unaware of the contractual relationship
12 with Parks. Nor could Copper Ridge make such an argument. Nevada has long recognized the
13 "well-known principle that the public recording of real estate deeds constitutes constructive
14 notice of the transaction." Bemis v. Estate of Bemis, 114 Nev. 1021, n. 2, 967 P.2d 437 (1998),
15 citing Allen v. Webb, 87 Nev. 261, 269, 485 P.2d 677, 682 (1971). The law, therefore, recognizes
16 that prior to purchasing the Property, Copper Ridge had notice of the Deed of Trust, and therefore
17 the contract, between U.S. Bank and Parks.

18 Third, U.S. Bank has shown evidence of Copper Ridge's intentional acts designed to
19 disrupt the contract. In arguing that it did not intend to induce a breach of the Deed of Trust,
20 Copper Ridge ignores the purpose of the Deed of Trust. Parks was required to be "lawfully
21 seised of the estate hereby conveyed and has the right to grant and convey the Property" See
22 Deed of Trust at p. 3, Exhibit 1-D to Plaintiff's Mot. F. Summ. J. There is no doubt that Parks'
23 ability to grant and convey the Property was an essential covenant of the Deed of Trust. Copper
24 Ridge intended to, and in fact did, cause Parks to breach that covenant of the Deed of Trust when
25 it violated the automatic bankruptcy stay and sold the Property to SFR without first seeking relief
26 from the bankruptcy court. U.S. Bank, on the other hand, appeared in Parks' bankruptcy case and
27 moved for relief from the automatic stay in order to exercise its rights under the Deed of Trust.

28

1 Copper Ridge's sale of the Property disrupted U.S. Bank's ability to foreclose on the
2 Property, which was its right under the Deed of Trust. Copper Ridge wrongfully sold the
3 Property which has led to an attempt to extinguish U.S. Bank's security interest.

4 Finally, U.S. Bank has been damaged by the loss of its security interest, which is a direct
5 consequence of Copper Ridge's actions. Copper Ridge does not dispute this.

6 **E. Copper Ridge Is not Entitled to Summary Judgment on U.S. Bank's Quiet**
7 **Title or Wrongful Foreclosure Claims.**

8 For the reasons more fully described above, the undisputed facts in this case support an
9 order quieting title to the Property and finding that U.S. Bank's Deed of Trust remains on the
10 Property. The undisputed facts also establish U.S. Bank's claim for wrongful foreclosure.

11 First, as demonstrated above in Section A.1., the undisputed facts establish that U.S. Bank
12 did not receive any of the HOA foreclosure notices. Moreover, U.S. Bank has rebutted the
13 presumptions contained in the Foreclosure Sale regarding compliance with the HOA Foreclosure
14 Statute. **Ex. C**, Ferguson Depo., 61:10-16; 62:1-5. Second, U.S. Bank established that the HOA
15 Foreclosure Sale was wrongful because it was commercially unreasonable. The price obtained by
16 Copper Ridge is, by law, grossly inadequate because it resulted in a sales price that was only **6**
17 **percent** of the fair market value of the Property. The HOA Sale was also unfair and wrongful
18 because it violated the bankruptcy court's automatic stay. Because the HOA Foreclosure Sale
19 was wrongful, U.S. Bank's Deed of Trust survived and U.S. Bank's later foreclosure sale was
20 valid.

21 **F. U.S. Bank Incorporates Its Constitutional Arguments from Its Motion for**
22 **Summary Judgment.**

23 In response to Copper Ridge's arguments that the Statute does not violate the United
24 States or Nevada Constitutions, U.S. Bank hereby incorporates its arguments in Sections D
25 through E on pages 14-25 of its Motion for Summary Judgment filed on January 24, 2017.

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IV. CONCLUSION

For the foregoing reasons, U.S. Bank respectfully requests that this Court DENY Third-Party Defendant Copper Ridge Community Association’s Motion for Summary Judgment in its entirety.

DATED February 7, 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 February 7, 2017, I caused to be served a true and correct copy of the foregoing **U.S. BANK’S OPPOSITION TO COPPER RIDGE COMMUNITY ASSOCIATION’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: February 7, 2017

/s/ Daniel S. Ivie

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

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EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CONSOLIDATED CASE NOS.
A-13-678814-C
A-13-688734-C

DEPT. NO. XXXI

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; LUCIA PARKS, an
individual; DOES I through
X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

~~~~~

AND RELATED CLAIMS.

DEPOSITION OF

PERSON MOST KNOWLEDGEABLE OF

NEVADA ASSOCIATION SERVICES, INC.

CHRIS YERGENSEN

Taken on Monday, July 25, 2016

At 11:34 a.m.

At 3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, Nevada

Reported by: John L. Nagle, CCR 211

1 family was in the military, NAS did not have a policy  
2 otherwise.

3 They did not go out and search on the  
4 Internet or anything like that. It was relying upon  
5 representations made to it by the association.

6 Q. Did NAS take any steps to ensure that the  
7 homeowner or the property at issue was not part of a  
8 bankruptcy?

9 A. Yes. NAS -- NAS's policy was to do a  
10 PACER search on the homeowner.

11 Q. And in what jurisdictions would NAS do a  
12 PACER search?

13 A. I think -- I do not know. Good question.

14 Q. Was it NAS's policy to obtain a trustee  
15 sale guarantee?

16 A. Yeah. I'm not so sure you want to call it  
17 a trustee sale guarantee. It was typically a property  
18 report generated by a local title company. The report  
19 simply just had a list of the recorded security  
20 interest holders in the property.

21 As far as any sale guarantee, it was very  
22 limited in scope.

23 Q. So it was information more than a  
24 guarantee?

25 A. Yeah. If you've ever tried to sue a title

# EXHIBIT B

# EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CONSOLIDATED CASE NOS.  
A-13-678814-C  
A-13-688734-C

DEPT. NO. XXXI

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; LUCIA PARKS, an  
individual; DOES I through  
X; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

~~~~~

AND RELATED CLAIMS.

DEPOSITION OF

PERSON MOST KNOWLEDGEABLE OF

COPPER RIDGE COMMUNITY ASSOCIATION

SHARON BERGERON

Taken on Monday, June 6, 2016

At 12:35 p.m.

At 3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada

Reported by: John L. Nagle, CCR 211

1 BY MR. PERKINS:

2 Q. You've been handed what's been marked as
3 Exhibit 5 to your deposition transcript.

4 Are you familiar with this document?

5 A. Yes, I am.

6 Q. And what is it?

7 A. It's NAS's initial correspondence with the
8 homeowner when a file is placed with them.

9 Q. What's the date of the document?

10 A. May 7th, 2012.

11 Q. And what is the amount due claimed in this
12 letter?

13 A. \$654.50.

14 Q. Do you know what that amount represents?

15 A. It would be what's owed the HOA, as well
16 as what's owed the collection company.

17 Q. So does that include assessments?

18 A. Assessments, correct.

19 Q. Would it also include late fees also?

20 A. Correct.

21 Q. Collection costs?

22 A. Correct.

23 Q. Any attorneys' fees, if there are any?

24 A. If there are any, and late interest and
25 any management fees as well.

1 A. Yes, I have.

2 Q. Okay. Did NAS send the notice of
3 delinquent assessment lien to the HOA before it sent it
4 out?

5 A. No, they did not.

6 Q. Does the HOA have any approval authority
7 for the notice of delinquent assessment lien?

8 A. No, they do not.

9 Q. Any review authority?

10 A. No, they do not.

11 Q. What's the amount due on the notice of
12 lien?

13 A. \$1,063.

14 Q. And that includes all of the late fees,
15 collection fees, all the things we discussed before,
16 correct?

17 A. Yes, it does.

18 Q. And does this notice of delinquent
19 assessment lien identify the superpriority amount?

20 A. No, it does not.

21 (Deposition Exhibit 8 marked.)

22 BY MR. PERKINS:

23 Q. You've been handed what's been marked as
24 Exhibit 8 to your deposition transcript.

25 Do you recognize this document?

1 A. Yes, I do.

2 Q. And what is this document?

3 A. It's a notice of default and an election
4 to sell prepared and recorded by NAS.

5 Q. Do you know who drafted it?

6 A. Other than looking at the signature line.

7 Q. Except for looking at the signature line?

8 A. No, I wouldn't know that.

9 Q. What is the total amount due stated on the
10 notice of default and election to sell?

11 A. \$1,912.50.

12 Q. And does that amount include, to your
13 knowledge, late fees, collection fees, interest, and
14 all of the other things that we talked about before?

15 A. To my knowledge, yes, it does.

16 Q. It would also include assessments,
17 correct?

18 A. Correct.

19 Q. And does the notice of default and
20 election to sell identify the superpriority amount?

21 A. No, it does not.

22 (Deposition Exhibit 9 marked.)

23 BY MR. PERKINS:

24 Q. You've been handed what's been marked as
25 Exhibit 9 to your deposition transcript.

1 BY MR. PERKINS:

2 Q. You've been handed what's been marked as
3 Exhibit 11 to your deposition transcript.

4 Do you recognize this document?

5 A. Yes, I do.

6 Q. What is it?

7 A. It's a notice of foreclosure sale that is
8 prepared and recorded by NAS on behalf of the HOA.

9 Q. And other than looking at who signed this
10 document, do you know who drafted it?

11 A. Just an employee of NAS.

12 Q. What is the amount due listed in the
13 notice of foreclosure sale?

14 A. \$3,132.52.

15 Q. And that would include assessments?

16 A. Yes, it would.

17 Q. And would that include all of the late
18 fees, collection fees, and the other things that we
19 talked about before?

20 A. Yes, it would.

21 Q. Does the notice of foreclosure sale
22 identify the superpriority amount?

23 A. No, it does not.

24 (Deposition Exhibit 12 marked.)

25 ///

1 BY MR. PERKINS:

2 Q. You've been handed Exhibit 12 to your
3 deposition transcript, which I think will be the last
4 one. Do you recognize this document?

5 A. Yes, I do.

6 Q. What is this document?

7 A. It's the foreclosure deed that's prepared
8 by NAS at the time of the HOA sale.

9 Q. Okay. Did anyone from Copper Ridge or
10 Colonial review this foreclosure deed?

11 A. No, they did not.

12 Q. Did anyone from Copper Ridge or Colonial
13 do anything to confirm that NAS complied with statutory
14 requirements?

15 A. No, they did not.

16 Q. Did Copper Ridge review its file or NAS's
17 file at any time after the HOA foreclosure sale to
18 confirm that NAS followed the appropriate procedures to
19 notice the foreclosure sale?

20 A. The board --

21 MR. KNECHT: Objection to form.

22 THE WITNESS: No, not really. Other than
23 preparing for the depo and doing the discovery, no.

24 BY MR. PERKINS:

25 Q. Outside of the litigation, nobody reviewed

1 questions at this time.

2 MR. PERKINS: I just have, I think, two
3 more questions.

4
5 FURTHER EXAMINATION

6 BY MR. PERKINS:

7 Q. Before authorizing the foreclosure sale to
8 go forward, does the board undertake any effort to
9 ensure that the homeowner is not an active duty
10 military person?

11 A. They do if -- yes, from the ability of
12 what we have, and we base that off of mailing
13 addresses. So if it is an off-site that's an APO, then
14 we believe it's military. Other than that, no, they do
15 not.

16 NAS, I believe, does that. But the HOA
17 themselves, they only base it off if it's an off-site
18 mailing address that goes to an APO.

19 Q. And before authorizing a foreclosure sale
20 to go forward, does the board, or Colonial helping the
21 board, undertake any efforts to ensure the homeowner is
22 not in bankruptcy?

23 A. Once the -- no. Because once the file is
24 at the outside collection agency, it's up to the
25 outside collection agency to make sure that they ran

EXHIBIT C

EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a)	
Nevada limited liability company,)	
)	
Plaintiff,)	
	)	CASE NO: A-13-678814-C
vs.	)	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.)	
<hr/>		
SFR INVESTMENTS POOL 1, LLC, a	)	DEPOSITION OF:
Nevada limited liability company,	)	ROBERT FERGUSON
	)	PURSUANT TO NRCP 30(B)(6)
Plaintiff,	)	PERSON MOST KNOWLEDGEABLE
	)	U.S. BANK
vs.)	
)	
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.)	
<hr/>		
)	
)	
)	
)	
)	

)
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,)
_____)

DEPOSITION OF ROBERT FERGUSON
PURSUANT TO NRCP 30(B)(6)
PERSON MOST KNOWLEDGEABLE
U.S. BANK

Taken at The Law Offices of Kim Gilbert Ebron
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada

on Wednesday, February 10, 2016
3:21 p.m.

Job No. 21227
Depo International - Las Vegas
Reported by: Andrea Martin, CSR, RPR, NV CCR 887
Certified Realtime Reporter

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**

EXHIBIT D

EXHIBIT D

1 John S. Delikanakis, Esq.
Nevada Bar No. 5928
2 Casey G. Perkins, Esq.
Nevada Bar No. 12063
3 SNELL & WILMER LLP
3883 Howard Hughes Parkway, Suite 1100
4 Las Vegas, NV 89169
Telephone: (702) 784-5200
5 Facsimile: (702) 784-5252
jdelikanakis@swlaw.com
6 cgperkins@swlaw.com

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

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

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

20 Defendants.
21

22 AND ALL RELATED MATTERS.
23

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

Dept. XXXI

**DEFENDANT U.S. BANK, N.A.'S
RESPONSE TO THIRD-PARTY
DEFENDANT COPPER RIDGE
COMMUNITY ASSOCIATION'S FIRST
SET OF REQUEST FOR ADMISSIONS**

24 U.S. BANK, N.A., a national banking association as Trustee for the Certificate Holders of
25 Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4
26 ("U.S. Bank") responds to Copper Ridge Community Association's ("HOA") First Set of Request
27 for Admissions, as follows:

28 ///

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

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

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

3. U.S. Bank objects to the HOA's definitions insofar as they are oppressive, overbroad, and burdensome, and insofar as they are vague and ambiguous.

4. U.S. Bank objects to each and every request for admission to the extent that and insofar as the HOA attempts or purports to impose requirements or obligations beyond those imposed by the Nevada Rules of Civil Procedure.

5. U.S. Bank objects to the HOA's requests for admission to the extent they seek information that is protected by any absolute or qualified privilege or exception, including, but not limited to, the attorney-client privilege, the attorney work-product exemption, and the consulting-expert exemption. Specifically, U.S. Bank objects to the HOA's requests for admissions on the following grounds:

a. U.S. Bank objects to the HOA's requests for admissions to the extent they seek documents or disclose information that is protected from disclosure by the attorney-client

///

1 privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and NRS Chapter
2 49 of the Nevada Rules of Evidence.

3 b. U.S. Bank objects to the HOA's requests for admissions to the extent they
4 seek documents or disclosure of information that is protected from disclosure by the work-
5 product exemption in accordance with Rule 16(b)(1), (3) and (4) of the Nevada Rules of Civil
6 Procedure and applicable case law.

7 c. U.S. Bank objects to the HOA's requests for admissions to the extent they
8 seek documents or information protected from disclosure pursuant to the consultant/expert
9 exemption in accordance with Rule 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and
10 applicable case law.

11 6. U.S. Bank will supplement its responses to these requests as required by Rule
12 26(e) of the Nevada Rules of Civil Procedure.

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

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

21 **RESPONSES TO REQUESTS FOR ADMISSIONS**

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

23 Admit that you were aware of the Association's lien on the Property before the
24 Association foreclosure sale.

25 **RESPONSE:**

26 Deny.

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

28 Admit that you did not attend the Association foreclosure sale.

1 **RESPONSE:**

2 Admit, as U.S. Bank could not have attended something about which it was not notified
3 and of which it had no knowledge.

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

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

6 **RESPONSE:**

7 U.S. Bank objects to this request because "current holder" and "beneficial interest" are
8 vague, ambiguous and undefined. Subject to and without waiving any objections, U.S. Bank
9 admits that it is the current beneficiary of record and owner of the subject promissory note and
10 deed of trust.

11 **REQUEST FOR ADMISSION NO. 4:**

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

14 **RESPONSE:**

15 U.S. Bank objects to this request to the extent it calls for an admission regarding the acts,
16 omissions, or knowledge of U.S. Bank's predecessor in interest. Subject to and without waiving
17 any objections, the request is denied.

18 **REQUEST FOR ADMISSION NO. 5:**

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

21 **RESPONSE:**

22 U.S. Bank objects to this request to the extent it calls for an admission regarding the acts,
23 omissions, or knowledge of U.S. Bank's predecessor in interest. Subject to and without waiving
24 any objections, the request is denied.

25 **REQUEST FOR ADMISSION NO. 6:**

26 Admit that you did not tender any payment to the Association towards the Association's
27 lien on the Property.

28 ///

1 **RESPONSE:**

2 Admit. However, U.S. Bank could not make payment for something of which it was not
3 aware. Additionally, U.S. Bank objects on the grounds that it was under no legal obligation to
4 tender such amounts, particularly given that it was never provided notice that such amounts were
5 due. Moreover, U.S. Bank had no reasonable grounds at the time for interpreting NRS 116.3116
6 *et seq.* to require any additional action on its part to secure its recorded interest in the Property
7 and had no reason to believe that the Nevada Supreme Court would interpret NRS 116.3116 *et*
8 *seq.* as it did on September 18, 2014.

9 **REQUEST FOR ADMISSION NO. 7:**

10 Admit that you did not take any steps to ensure the Association received assessments
11 owed by the Borrower during the time period that you had an interest in the "First Deed of Trust."

12 **RESPONSE:**

13 U.S. Bank objects to this Request on the ground that it assumes that U.S. Bank has a legal
14 obligation to the Association to ensure the Association received assessments, which it does not.
15 U.S. Bank also objects to this Request on the ground that it assumes that U.S. Bank had
16 knowledge that the Borrower was delinquent in its assessments, which it did not. Moreover, U.S.
17 Bank had no reasonable grounds at the time for interpreting NRS 116.3116 *et seq.* to require any
18 additional action on its part to secure its recorded interest in the Property and had no reason to
19 believe that the Nevada Supreme Court would interpret NRS 116.3116 *et seq.* as it did on
20 September 18, 2014. Subject to and without waiving any objections, the request is denied.

21 **REQUEST FOR ADMISSION NO. 8:**

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

24 **RESPONSE:**

25 U.S. Bank objects because it assumes U.S. Bank has a legal obligation to contact the
26 Association for any reason, which it does not. U.S. Bank objects because NRS 116.3116 *et seq.*
27 requires the Association or its agents to identify the super priority portion of the lien, and U.S.
28 Bank has no legal obligation to seek out or determine the super priority amount. Moreover, prior

1 to the Association foreclosure sale the state of the law was unsettled, and U.S. Bank had no
2 reasonable grounds or basis for interpreting NRS 116.3116 *et seq.* to require any action to secure
3 its recorded interest in the Property. Nor did U.S. Bank have reason to believe the Nevada
4 Supreme Court would interpret NRS 116.3116 *et seq.* as it did on September 18, 2014.

5 Without waiving and subject to the foregoing objections, U.S. Bank admits that it did not
6 attempt to contact the Association or its agents to determine the super priority portion of the
7 Association's lien, if any, because U.S. Bank never received notice that the HOA intended to sell
8 the property, and because U.S. Bank did not have any legal obligation to do so.

9 **REQUEST FOR ADMISSION NO. 9:**

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

12 **RESPONSE:**

13 U.S. Bank objects to this Request on the ground that it assumes that U.S. Bank has a legal
14 obligation to the Association to cure any portion of the Association's lien, which it does not. U.S.
15 Bank also objects to this Request on the ground that it assumes that U.S. Bank had knowledge of
16 the Association's lien before the Association foreclosure sale, which it did not. Subject to and
17 without waiving any objections, U.S. Bank admits that it did not pay the Association's lien before
18 the Association foreclosure sale.

19 **REQUEST FOR ADMISSION NO. 10:**

20 Admit that you were aware that the Property was subject to a declaration of covenants,
21 conditions and restrictions before you obtained an interest in the Property.

22 **RESPONSE:**

23 Admit.

24 **REQUEST FOR ADMISSION NO. 11:**

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

28 ///

1 **RESPONSE:**

2 U.S. Bank objects to this Request on the ground that the phrase "before you obtained an
3 interest in the Property" is vague and confusing in context of the Request. Subject to and without
4 waiving any objections, the request is denied.

5 **REQUEST FOR ADMISSION NO. 12:**

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

8 **RESPONSE:**

9 Deny.

10 **REQUEST FOR ADMISSION NO. 13:**

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

13 **RESPONSE:**

14 U.S. Bank objects to this Request on the grounds that it impermissibly calls for a legal
15 conclusion. *Smith v. Emery*, 856 P.2d 1386, 1389-90 (Nev. 1993); *Morgan v. Demille*, 799 P.2d
16 561, 564 (1990). Subject to and without waiving any objections, U.S. Bank responds as follows:
17 Deny, for the reasons set forth in U.S. Bank's Answer and affirmative defenses, Counterclaim,
18 and Third-Party Complaint.

19 **REQUEST FOR ADMISSION NO. 14:**

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

21 **RESPONSE:**

22 U.S. Bank objects to this Request on the grounds that it impermissibly calls for a legal
23 conclusion. *Smith v. Emery*, 856 P.2d 1386, 1389-90 (Nev. 1993); *Morgan v. Demille*, 799 P.2d
24 561, 564 (1990). Without waiving any objections, U.S. Bank responds as follows: Deny, for the
25 reasons set forth in U.S. Bank's Answer and affirmative defenses, Counterclaim, and Third-Party
26 Complaint.

27 ///

28 ///

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

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

4 **RESPONSE:**

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

13 **REQUEST FOR ADMISSION NO. 16:**

14 Admit that, prior to the Association foreclosure sale, you had a practice or policy not to
15 pay delinquent Association liens in Nevada.

16 **RESPONSE:**

17 Deny.

18 **REQUEST FOR ADMISSION NO. 17:**

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

20 **RESPONSE:**

21 Admit.

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

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

24 **RESPONSE:**

25 Admit.

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

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

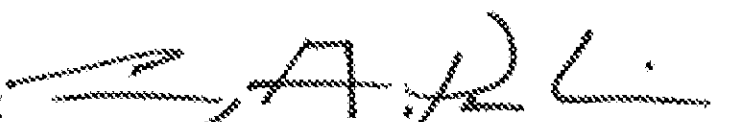
28 ///

RESPONSE:

U.S. Bank objects to this request because it is vague and ambiguous as to what it means for the "federal government" to "insure the loan." Subject to and without waiving any objections, U.S. Bank admits that the loan secured by the First Deed of Trust is not insured by either the Department of Veterans' Affairs or the Federal Housing Administration.

DATED June 7, 2016

SNELL & WILMER LLP

By: 

John S. Delikanakis, Esq.
Casey G. Perkins, 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 June 7, 2016, I caused to be served a true and correct copy of the foregoing **DEFENDANT U.S. BANK, N.A.'S RESPONSE TO THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S FIRST SET OF REQUEST FOR ADMISSIONS** by the method indicated:

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

Gregory L. Wilde, Esq.
Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, P.C.
212 S. Jones Blvd.
Las Vegas, NV 89107

*Attorneys for Defendant National Default
Servicing Corporation*

Edgar C. Smith, Esq.
WRIGHT FINLAY & ZAK
7785 W. Sahara Ave.
Las Vegas, NV 89117

*Attorneys for Defendant
NV West Servicing, LLC*

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.

☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case;

Diana Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
HOWARD KIM & ASSOCIATES
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139

*Attorneys for Plaintiff SFR Investments
Pool 1, LLC*

Richard J. Vilkin, Esq.
LAW OFFICES OF
RICHARD VILKIN, P.C.
1286 Crimson Sage Avenue
Henderson, NV 89012

*Attorneys for Third Party Defendant
Nevada Association Services Inc.*

Kurt R. Bonds, Esq.
ALVERSON TAYLOR
MORTENSEN & SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117

*Attorneys for Third Party Defendant
Copper Ridge HOA*

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

23981632

EXHIBIT E

EXHIBIT E

In re RICHARD AND LUCIA PARKS
Debtor

Case No. 8:10-BK-21738
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
SEE ATTACHED SCHEDULE				
Total ►				

(Report also on Summary of Schedules.)

Property NAME	Property Address	Lender	Principal Balance	Interest	Amount Due	Loan #	Trustee Sale #	Default	Foreclosure	Sale Date
Rockland	1281 Rockland Drive, St. Helena, CA 94574	Wells Fargo	\$999,583.33	6.125%	\$54,269.00	63222236	CA 1000194075	Yes	Yes	9/16/2010
Rockland LOC	N/A	Wells Fargo	\$190,253.03	6.75%	\$8,303.99	05010478441990	CA-1000194075	Yes	Yes	N/A
Nashville	2270 Nashville Avenue, Henderson, NV 89052	Wells Fargo	\$312,600.82	6.125%	\$22,000.00	0061777934	10-40866-WF-NV	Yes	Yes	
113 stone canyon	113 Stone Canyon Court, Boulder City, NV 89005	Wells Fargo	\$694,380.12	6.125%	\$43,798.00	0062010046	10-41352-WF-NV	Yes	Yes	None
31761 Aguacate	31761 Aguacate, SJC, CA 92675	Wells Fargo	\$1,134,637.63	6.375%	\$80,348.20	0074439977	None	Yes	Yes	None
31761 LOC	N/A	Wells Fargo	\$276,841.57	4.240%	\$7,942.11	6505695697198	None	Yes	N/A	None
Black Canyon	708 Black Canyon Cove, Boulder City, NV 89005	Chase	\$419,582.48	7.500%	\$31,146.00	0675055138	140169NV	Yes	Yes	None
31751 Aguacate	31751 Aguacate, SJC, CA 92675	Chase	\$758,896.17	5.750%	\$39,120.00	80423437		Yes	Yes	None
Maple Lane	1100 Maple Lane, Callistoga, CA 94515-9626	Umpqua Bank	\$2,136,074.56	7.000%	\$149,677.00	68709816	607-058488	Yes	Yes	8/27/10
106 Stone Canyon	106 Stone Canyon Court, Boulder City NV 89005	Black Mountain	\$3,900,000.00	6.500%	\$171,480.28	131390				None

B 6D (Official Form 6D) (12/07)

In re Richard and Lucia Parks
Debtor

Case No. 8:10-BK-21738
(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
See attached schedule								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Subtotal ► (Total of this page)							\$	\$
Total ► (Use only on last page)							\$	\$

continuation sheets
attached

(Report also on Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

Exhibit 4

B 6D (Official Form 6D) (12/07) – Cont.

2

In re Richard and Lucia Parks,
Debtor

Case No. 8:10-BK-21738
(if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

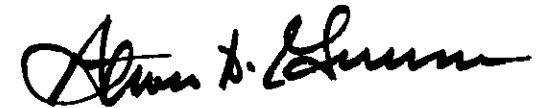
CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Sheet no. _____ of _____ continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (s) ► (Total(s) of this page)	\$ \$
							Total(s) ► (Use only on last page)	\$ \$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

Property NAME	Property Address	Lender	Principal Balance	Interest	Amount Due	Loan #	Trustee Sale #	Default	Foreclosure	Sale Date
Rockland	1281 Rockland Drive, St. Helena, CA 94574	Wells Fargo	\$999,583.33	6.125%	\$54,269.00	63222236	CA 1000194075	Yes	Yes	9/16/2010
Rockland LOC	N/A	Wells Fargo	\$198,253.83	6.75%**	\$8,389.99	65010478441998	CA 1000194075	Yes	Yes	n/a
Nashville	2270 Nashville Avenue, Henderson, NV 89052	Wells Fargo	\$312,600.82	6.125%	\$22,000.00	0061777934	10-40866-WF-NV	Yes	Yes	
113 stone canyon	113 Stone Canyon Court, Boulder City, NV 89005	Wells Fargo	\$694,380.12	6.125%	\$43,798.00	0062010046	10-41352-WF-NV	Yes	Yes	None
31761 Aguacate	31761 Aguacate, SJC, CA 92675	Wells Fargo	\$1,134,637.63	6.375%	\$80,348.20	0074439977	None	Yes	Yes	None
31761 LOC	n/a	Wells Fargo	\$276,841.57	4.240%	\$7,942.11	6505695697198	None	Yes	N/A	None
Black Canyon	708 Black Canyon Cove, Boulder City, NV 89005	Chase	\$419,582.48	7.500%	\$31,146.00	0675055138	140169NV	Yes	Yes	None
31751 Aguacate	31751 Aguacate, SJC, CA 92675	Chase	\$758,896.17	5.750%	\$39,120.00	80423437		Yes	Yes	None
Maple Lane	1100 Maple Lane, Callistoga, CA 94515-9626	Umpqua Bank	\$2,136,074.56	7.000%	\$149,677.00	68709816	607-058488	Yes	Yes	8/27/10
106 Stone Canyon	106 Stone Canyon Court, Boulder City NV 89005	Black Mountain	\$3,900,000.00	6.500%	\$171,480.28	131390				None
			\$10,830,850.51							
					\$608,170.58					

TAB 21



CLERK OF THE COURT

1 OML

John S. Delikanakis, Esq.

2 Nevada Bar No. 5928

Daniel S. Ivie, Esq.

3 Nevada Bar No. 10090

SNELL & WILMER LLP.

4 3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

5 Telephone: (702) 784-5200

Facsimile: (702) 784-5252

6 jdelikanakis@swlaw.com

dive@swlaw.com

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

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

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

24 Defendants.

25 AND ALL RELATED MATTERS.

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

Dept. XXXI

**U.S. BANK'S OPPOSITION TO HOA'S
JOINDER TO MOTION IN LIMINE
TO EXCLUDE ALL TESTIMONY
AND DOCUMENTARY EVIDENCE
AT TRIAL NOT PREVIOUSLY
DISCLOSED**

26 Defendant U.S. Bank, N.A., a national banking association as Trustee for the Certificate
27 Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series
28 2006-AR4 ("U.S. Bank"), by and through its attorneys at the law firm of Snell & Wilmer, L.L.P.,
submits the following Opposition to Plaintiff SFR Investments Pool 1, LLC's ("Plaintiff")
Motion in Limine to Exclude All Testimony and Documentary Evidence at Trial, which is Based

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
(702) 784-5200

1 Upon Evidence Not Disclosed/Produced by U.S. Bank, N.A. During Discovery; or, in the
2 Alternative, Motion to Compel Documents Intended to be Used or Relied Upon at Trial (the
3 "Motion") and Counter-Defendant Copper Ridge Homeowners Association's Joinder thereto (the
4 "Joinder").

5 The following Opposition is based upon the following Memorandum of Points and
6 Authorities, the papers and pleadings on file herein, and any oral argument on behalf of U.S.
7 Bank the Court may permit at the time of hearing.

8 I. INTRODUCTION

9 The Motion and Joinder should be denied for several reasons. First, the Court cannot
10 consider a Motion that does not seek to preclude specific and identifiable evidence. Here, the
11 Motion fails to identify any evidence which should be excluded, but rather seeks to exclude the
12 extremely broad category of all evidence that has not previously been produced. Thus, the
13 Motion and Joinder are impermissibly broad and vague.

14 Second, the Motion and Joinder must be denied because they improperly seek to exclude any
15 evidence which is not now known, but that may later be discovered. A motion in limine is not the
16 proper vehicle for challenging such evidence; rather, any such evidence should be presented to
17 the Court so that its probative value may be weighed against any potential unfairly prejudicial
18 effect. Any party opposing the introduction of such evidence may lodge an objection and
19 advance any reasons why the evidence should not be admitted at trial. However, to exclude such
20 unknown and potentially vitally relevant evidence before it has even been discovered and
21 produced is improper and would exclude potentially relevant information despite no fault from
22 any party. The Motion and Joinder should be denied.

23 II. FACTUAL BACKGROUND

24 U.S. Bank incorporates its statement of undisputed material facts as outlined in its Motion
25 for Summary Judgment previously filed on August 10, 2016.

26 ///

27 ///

28 ///

III. ARGUMENT

A. Legal Standard for Motions in Limine.

Pursuant to EDCR 2.47, any party may make a motion to exclude or admit evidence prior to the date of its trial. The Supreme Court of Nevada approved the use of motions in limine by recognizing the legitimacy of such pre-trial motion practices and the Court's authority to rule on these motions. *See State Exrel Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1996). The decision to admit or exclude evidence is within the sound discretion of the trial court. *Walker v. State*, 113 Nev. 853, 944 P.2d 762 (1997). Additionally, NRCP 16(c)(3) grants Nevada courts the authority to rule on motions in limine by allowing for advanced rulings on admissibility of evidence.

The purpose of a motion in limine is to afford the trial judge the opportunity "to deal with discrete evidentiary issues" that could arise during trial to the unfair prejudice of a party. *Graves v. District of Columbia*, 850 F. Supp. 2d 6, 11 (D.C. 2011). Motions in limine "permit more careful consideration of evidentiary issues than would take place in the heat of battle during trial" and promote judicial economy by minimizing "side-bar conferences and disruptions during trial." *Kelly v. New West Fed. Sav.*, 56 Cal. Rptr. 2d 803, 808 (1996); accord *Edwards v. Centex Real Estate Corp.*, 61 Cal Rptr. 2d 518, 524 (1997). By resolving "potentially critical issues at the outset, [motions in limine] enhance the efficiency of trials and promote settlements." *Id.* Even the Motion itself recognizes that the purpose of a motion in limine is to grant "the Court an opportunity to determine in advance whether *specific evidence* should be admitted or excluded at the time of trial." (See Plaintiff's Mot. in Limine, 7:22-25 (emphasis added) (citing *Nev. Aggregates*, 92 Nev. at 376, 551 P.2d at 1098).

B. The Motion Must Be Denied because it Does not Identify any Specific Evidence to Be Excluded.

Plaintiff's Motion, and the HOA's joinder thereto, must be denied because both fail to actually identify any specific evidence to be excluded. *Davis v. Commonwealth of Kentucky*, 147 S.W.3d 709, 722 (Ky. 2004) ("a motion in limine requests an advance ruling on a specific evidentiary fact"). Instead, the Motion and Joinder allege, without any supporting evidence, that

1 U.S. Bank “has failed to disclose or produce certain evidence, and has further failed to
2 supplement its disclosures or discovery responses upon realization of the incompleteness of its
3 discovery.” (Mot., 8:21-23.) Notably, the motion and joinder fail to actually identify what
4 “certain evidence” they seek to exclude. It does not ask this Court to address a specific
5 evidentiary issue, such as the exclusion of a specific identified witness, specific testimony, or the
6 exclusion of a particular document. Rather, the Motion asks this Court to exclude all testimony
7 and documentary evidence if not previously disclosed. Because the Motion does not identify any
8 discrete evidentiary issues to which U.S. Bank can respond and to which this Court can address,
9 this Motion must be denied. *See Graves*, 850 F. Supp. 2d at 11.

10 **C. The Motion Must Be Denied because it Improperly Precludes U.S. Bank from**
11 **Presenting to the Court Evidence that May Yet Be Discovered.**

12 The Motion is also improper to the extent that it seeks to exclude any evidence that has yet
13 to be discovered, but that may still ultimately be relevant at trial. While U.S. Bank has identified
14 and disclosed all documents and information it deems relevant to this case, no party can state with
15 absolute certainty that there is no other piece of relevant evidence which may be discovered at a
16 later date, prior to or even during trial. U.S. Bank cannot agree to exclude evidence of which it is
17 not aware.

18 Suppose, for example, that a piece of relevant evidence that was not within U.S. Bank’s
19 custody or control was discovered by U.S. Bank after the close of discovery. U.S. Bank should
20 not be precluded from at least presenting that evidence to the Court so that the Court can properly
21 weigh its probative value versus its potential unfair prejudice on other parties. In that situation,
22 the proper remedy would be for U.S. Bank to present the evidence to the Court and for any party
23 that opposed its introduction to lodge an objection with the Court. The Court would then rule
24 after considering the probative value of the evidence versus the unfair prejudice to other parties.
25 This Motion seeks to exclude such evidence simply because it was not disclosed before trial, even
26 if its existence was unknown. It would be manifestly unjust to deny U.S. Bank, and the Court, the
27 opportunity to present and consider such evidence and have its probative value weighed and
28 prejudicial effect considered. *State v. Staley*, 923 P.2d 650, 652 (Or. Ct. App. 1996) (reversing

trial court's order granting motion in limine excluding broad categories of evidence on the grounds that it precluded trial court from weighing probative value of evidence versus prejudice to opposing party.) The Motion should therefore be denied.

IV. CONCLUSION

For the foregoing reasons, U.S. Bank respectfully requests this DENY Plaintiff SFR Investments Pool 1, LLC's Motion in Limine and Defendant Copper Ridge Homeowner's Association's Joinder thereto, in their entirety.

DATED February 10, 2017.

SNELL & WILMER LLP.

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 February 10, 2017, I caused to be served a true and correct copy of the foregoing U.S. BANK'S OPPOSITION TO HOA'S JOINDER TO MOTION IN LIMINE TO EXCLUDE ALL TESTIMONY AND DOCUMENTARY EVIDENCE AT TRIAL NOT PREVIOUSLY DISCLOSED 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 10, 2017

/s/ Gaylene Kim

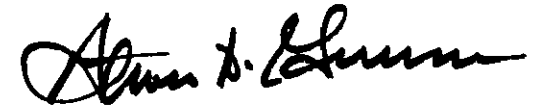
An Employee of Snell & Wilmer L.L.P.

25673091

Snell & Wilmer

L.L.P.
LAW OFFICES
1883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
(702) 394-5700

TAB 22



CLERK OF THE COURT

ALVERSON, TAYLOR,
MORTENSEN & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ.
Nevada Bar #13779
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 OPPOSITION TO
THIRD-PARTY PLAINTIFF /
COUNTER-CLAIMANT /
DEFENDANT U.S. BANK, N.A.'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
OPPOSITION TO THIRD-PARTY PLAINTIFF / COUNTER-CLAIMANT /
DEFENDANT U.S. BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Third-Party Defendant COPPER RIDGE COMMUNITY
ASSOCIATION (the "Association"), by and through its undersigned counsel of record, and
hereby submits this Opposition To Third-Party Plaintiff / Counter-Claimant / Defendant U.S.
Bank, N.A.'S ("Plaintiff Bank") Motion For Summary Judgment.

This Opposition is made and based upon the Points and Authorities attached hereto, the

papers and pleadings on file herein, and any oral arguments that may be entertained if a hearing is scheduled for this matter.

DATED this 10 day of February, 2017.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

By 

KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ
Nevada Bar #13779
7401 W. Charleston Boulevard
Las Vegas, NV 89117
(702) 384-7000
*Attorneys for Third-Party Defendant
Copper Ridge Community Association*

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. THE ASSOCIATION'S FORECLOSURE SALE WAS COMMERCIALY REASONABLE

Plaintiff Bank makes much to do about the commercial reasonableness of the HOA Foreclosure Sale, and bases its arguments primarily on the Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016). In Shadow Wood, the Nevada Supreme Court specifically stated that in order to prove a sale was not commercially reasonable, a party must show (1) low price, and (2) fraud, unfairness or oppression that accounted for and brought about the low price. Shadow Wood, 366 P.3d at 1110 (citing Long v. Towne, 639 P.2d 528, 530 (Nev. 1982) and Golden v. Tomiyasu, 79 Nev. 503, 510-11, 387 P.2d 989, 994-995 (1963) (adopting the California rule that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some

1 element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of
2 price” (internal citations omitted) (emphasis added)); see also Centeno v. JP Morgan Chase
3 Bank, N.A., Nevada Supreme Ct. Case No. 67365 (unpublished Order Vacating and Remanding)
4 (Nev. Mar. 18, 2016) (reaffirmance of the holding in Shadow Wood).

5 The Shadow Wood decision built upon current Nevada law, it did not overturn it. The
6 Court reaffirmed its reliance upon “history and basic rules” and “common law” principles of
7 equity, and urged lower courts to consider, weigh, and assess “competing equities” and the
8 “entirety of circumstances” when analyzing a foreclosure sale price. Id. at 2, 20, 24.

9 The Nevada Supreme Court has also found that “[f]air market value is generally defined
10 as the price which a purchaser, willing but not obliged to buy, would pay an owner willing but
11 not obliged to sell, taking into consideration all the uses to which the property is adapted and
12 might in reason be applied.” Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247, 249 (1980). In
13 determining the fair market value, the Nevada Supreme Court additionally held, “[t]he district
14 court could properly consider all relevant evidence in determining the value of the property.” Id.

15 It should also be noted that NRS 116.3116, et seq., is founded upon a uniform statutory
16 scheme, with scrutinized foreclosure procedures, which have long been accepted by banks and
17 other industry players alike.

18 Banking institutions deploy massive resources in these HOA foreclosure sale cases and
19 pluck quotes from background and dicta, twisting the effect of the law against the intentions of
20 the courts. Despite Plaintiff Bank’s best efforts to convince this Court otherwise, the Shadow
21 Wood Court **did not** adopt the Restatement (Third) of Property: Mortgages § 8.3, and had the
22 Shadow Wood Court intended to overturn or distinguish precedent, it would have done so
23 unequivocally. However, **it did not do so.** Shadow Wood unambiguously affirms that there
24 must be a showing of “fraud, unfairness, or oppression” to set aside an HOA foreclosure sale,
25
26
27
28

1 and rejected any blanket rule or systematic approach to analyzing the reasonableness of
2 foreclosure sale prices. *Id.* at 15 (citing, *inter alia*, Long v. Towne, 98 Nev. 11, 13, 639 P.2d.
3 528, 530 (1982); and Brunzell v. Woodbury, 85 Nev. 29, 449 P.2d 158 (1969)). Shadow Wood
4 reinforces the integrity and fairness of Nevada non-judicial foreclosure law, upon which innocent
5 HOAs and the like have relied upon for decades.
6

7 Undisputedly, the law in Nevada in this regard remains unchanged; a sale cannot be set
8 aside as commercially unreasonable based on price alone.

9 Here, Plaintiff Bank has offered no evidence that the foreclosure sale was not properly
10 conducted. Indeed, as mentioned *supra*, the Association complied with all statutory notice
11 requirements, and there is evidence that Plaintiff Bank actually received the Notice of Default
12 and Notice of Sale. Furthermore, SFR was able to purchase the property at the noticed
13 foreclosure sale based solely upon its being the highest bidder. In other words, no other buyer
14 present at the auction was willing to pay more for the Property, which is the exact definition
15 identified by the Nevada Supreme Court. All Plaintiff Bank's arguments regarding a formulaic
16 20% benchmark for commercial unreasonableness are simply unsupported by any current
17 Nevada law and are thus *Void ab Initio*.
18

19 Plaintiff Bank does, however, claim that the sale of the Property was unfair. Pltf. Bank's
20 Mot. for Summ. Judg. p.8, l. 3-9. Plaintiff Bank argues that:
21

22 [I]t is patently unfair for the HOA and its agents to circumvent the bankruptcy
23 court and race to the front of the creditor's line while Parks' other creditors
24 obtained relief from the stay and worked within the court's rules to exercise their
25 rights.

26 *Id.* The interesting thing about this argument is that it assumes the HOA was listed as a creditor
27 on the bankruptcy petition and received notice of the proceedings. As discussed *supra*, the
28 Association never received any notice of those proceedings. It should go without saying, though

1 apparently it needs to be, that the person in the best position to give notice to creditors in a
2 bankruptcy is the debtor filing the bankruptcy petition (or their bankruptcy counsel). Plaintiff
3 Bank cites no federal or state law demonstrating the Association has any affirmative duty to
4 check with all 50 states (or any state) to ensure the owner of a property is not in bankruptcy prior
5 to initiating non-judicial foreclosure under the provisions of NRS 116.3116 et., seq. This is
6 especially true where, as here, there is no evidence to suggest that the Association had any reason
7 to believe the borrower was in bankruptcy. Therefore, if there is any unfairness in this case it
8 resolves in favor of the Association for not ever receiving notice of the bankruptcy while
9 Plaintiff Bank and the borrower chose to stand by idol with full knowledge of the Bankruptcy.
10

11 Under the laws of the State of Nevada, the foreclosure sale was commercially reasonable
12 and the Associations foreclosure efforts should not be held void.
13

14 **B. SFR AS A BONA FIED PURCHASER**

15 The Association cannot, and therefore will, not opine as to whether SFR had any
16 knowledge or notice (constructive or otherwise) of the Deed of Trust in this case. However,
17 unless the U.S. Dollar had no value on or about March 1, 2013, at approximately 10:00 a.m., the
18 Fourteen Thousand Dollars (USD \$14,000) SFR paid for the Property at the Foreclosure Sale is
19 legally valuable consideration. Any argument to the contrary is nonsensical.
20

21 **C. NRS 116.3116 DOES NOT VIOLATE THE UNITED STATES OR NEVADA
22 CONSTITUTION**

23 The Nevada Supreme Court has recently held in *Satacoy Bay LLC v. Wells Fargo Home
24 Mortgage*, 133 Nev. Advanced Opinion 5 (2017), that:

- 25 • An HOA's non-judicial foreclosure pursuant to NRS 166.3116 et. seq., nor the
26 Legislature's enactment of the statutes, constitute state action;
- 27 • That NRS 116.3116 et. seq., do not implicate due process; and
28

- That an HOA's non-judicial foreclosure pursuant to NRS 1163.3116 et. seq., does not violate the Takings Clauses of the United States and Nevada Constitutions.

Inasmuch as Plaintiff Bank names only private entities in this action, and under the holding of the Nevada Supreme Court in *Satacoy Bay*, all Plaintiff Bank's claims regarding the constitutionality of the HOA's non-judicial foreclosure conducted pursuant to NRS 116.3116 et. seq., must be dismissed.

III. CONCLUSION

Based upon the foregoing, the Association respectfully requests that this Court enter an Order DENYING Plaintiff Bank's Motion for Summary Judgment.

DATED this 10 day of February, 2017.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

By 

KURT R. BONDS, ESQ.

Nevada Bar #6228

TREVOR R. WAITE, ESQ.

Nevada Bar #13779

7401 W. Charleston Boulevard

Las Vegas, NV 89117

(702) 384-7000

Attorneys for Third-Party Defendant

Copper Ridge Community Association

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 10 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 OPPOSITION TO THIRD-PARTY PLAINTIFF / COUNTER-CLAIMANT / DEFENDANT U.S. BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT and foregoing addressed to:

Kim Gilbert Ebron

Contact

Email

Diana Cline Ebron

diana@kgelegal.com

E-Service for Kim Gilbert Ebron

eservice@kgelegal.com

Michael L. Sturm

mike@kgelegal.com

Tomas Valerio

staff@kgelegal.com

Jacqueline A. Gilbert

jackie@kgelegal.com

Law Offices of Richard Vilkin, P.C.

Contact

Email

Richard Vilkin

richard@vilkinlaw.com

NAS

Contact

Email

Brandon E. Wood

brandon@nas-inc.com

Susan E. Moses

susanm@nas-inc.com

Snell & Wilmer L.L.P.

Contact

Email

Candy Charlet - Legal Secretary

ccharlet@swlaw.com

Daniel Ivie

dive@swlaw.com

Docket

Docket_LAS@swlaw.com

Gaylene Kim

gkim@swlaw.com

John Delikanakis

jdelikanakis@swlaw.com

Lyndsey Luxford

lluxford@swlaw.com

Maricris Williams

mawilliams@swlaw.com

Richard C. Gordon

rgordon@swlaw.com

Robin Perkins

rperkins@swlaw.com

Tiffany & Bosco

Contact

Email

Gregory L. Wilde

efilenv@tblaw.com

Wright, Finlay & Zak, LLP

Contact

Email

Edgar C. Smith

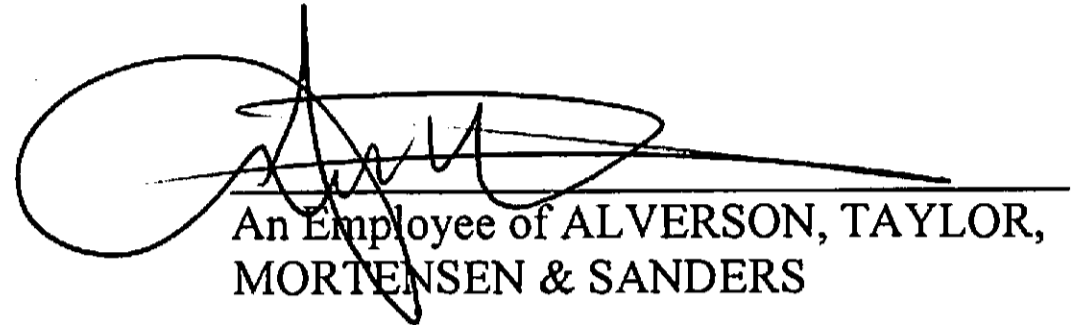
esmith@wrightlegal.net


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of February, 2017, service of the foregoing THIRD-PARTY DEFENDANT COPPER RIDGE COMMUNITY ASSOCIATION'S OPPOSITION TO THIRD-PARTY PLAINTIFF / COUNTER-CLAIMANT / DEFENDANT U.S. BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT 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:

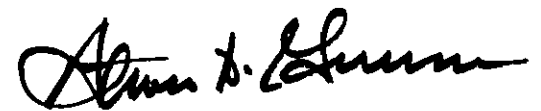
Howard C. Kim
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139



An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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TAB 23



CLERK OF THE COURT

OPPM

DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@KGElegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@KGElegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, 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 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 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.

NV WEST SERVICING, LLC, a Nevada
limited liability company, as Trustee for
NASHVILLE TUST 2270,

Case No. A-13-678814-C
Consolidated with
Case No. A-13-688734-C

Dept. No. XXXI

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

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

Cross-Claimant,
vs.
NATIONAL DEFAULT SERVICING
CORPORATION, an Arizona Corporation;
DOES XI through XX,
Third Party Defendant.

SFR Investments Pool 1, LLC (“SFR”) files its opposition to Wells Fargo Bank, N.A.’s (“the Bank”) Motion for Summary Judgment. This opposition is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court entertains.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nevada Revised Statute 116.3116¹ *et seq.* allowed homeowners’ association liens to extinguish first deeds of trust. SFR, NRED and other like-minded purchasers at the HOA foreclosure sales, thought exactly that. All seven of the Nevada Supreme Court Justices found that an association’s foreclosure of its super-priority lien pursuant to NRS 116 extinguishes a first deed of trust. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (Nev. 2014) (Gibbons, C.J., concurring in part and dissenting in part). Moreover, all seven of the Nevada Supreme Court Justices found that NRS 116 provides a mandate for associations to mail notices to the first security holders pursuant to NRS 116.31168(1), which incorporates NRS 107.090. Id. at 422. The three Justices in dissent only disagreed as to how the foreclosure must be completed—believing that the foreclosure must be done judicially to trigger the super-priority portion of the lien. Id.

The foreclosure sale of the property was commercially reasonable. This foreclosure was a forced sale. Thus, the Bank’s reliance on “fair market value” is not relevant to an adequate foreclosure price. BFP v. Resolution Trust Corporation, 511 U.S. 531 (1994). But to even prove that the sale was commercially unreasonable, the burden is on the Bank to prove that some sort of fraud, unfairness or oppression that brings about the alleged inadequate price. Shadow Wood Homeowners Assc., Inc., v. New York Cmty. Bancorp, Inc., 132 Nev. ___, 366 P.3d 1105, 1100

¹ All citations to NRS 116 are as the statutes existed at the time of the Association foreclosure sale at issue in this case unless otherwise specified.

(2016). Here, no fraud, oppression of unfairness brought about a low sales price.

Additionally, the Bank has not proven that SFR is not a Bona Fide Purchaser of the property. The evidence supports that although SFR may have been aware of the Bank's Deed of Trust, SFR paid valuable consideration for the property of an amount that was commercially reasonable and that SFR was not aware of a competing or superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). The mere fact the Bank could bring a claim in equity challenging the foreclosure does not defeat SFR's status as a Bona Fide Purchaser. Shadow Wood, 366 P.3d at 1115.

Lastly, the Bank's Due Process challenge and Takings Clause Challenge are meritless. Wells Fargo Bank, N.A. recently brought these identical arguments up to the Nevada Supreme Court who ruled that NRS 116 does not violate due process because there is no state actor and that NRS 116 does not violate the Takings Clause of the Nevada and United States Constitution. Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 133 Nev. Adv. Op. 5, ___ P.3d ___ (Nev. Jan. 26, 2017).

II. Statement of Disputed Facts

Disputed Fact #1. "At the time of Foreclosure Sale, the Property had a fair market value of \$228,000.00." (Bank's Mot., 3:28-4:1).

SFR disputes this "fact" as it calls for a legal conclusion. Further, SFR contests the manner in which the Bank's valuation is calculated. The Bank's expert, R. Scott Dugan's Appraisal report, failed to take into consideration the most important factor of this property: it was sold in a forced foreclosure sale.

Mr. Dugan's retrospective market appraisal is a typical residential appraisal that states that the Appraisal is based on the "market value" defined as follows:

[T]he 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 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.

See Expert Report of Scott Dugan Exhibit 1, at p.22 (emphasis added). Additionally, Mr. Dugan's report made the following "assumptions[.]" that (1) fee simple property rights were being transferred; and (2) "title is good and marketable." Id. at 21. Mr. Dugan also opines in his

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.

"clarification of scope of work" that foreclosures cannot be qualified or quantified in an appraisal: Id. at 20. Dugan goes on to explain that these factors may make his Market Value opinion "misleading." Id. Mr. Dugan has stated in multiple depositions that *fair market value is not applicable* in the context of an NRS 116 sale.^{2 3 4} This is consistent with the reasoning set forth herein, that market value has no applicability to a forced sale situation. BFP v. Resolution Trust Corporation, 511 U.S. 531, 537 (1994). Because Mr. Dugan testified that his Reports substantively contain the same information, the testimony contained in those depositions apply here. See July 2, 2015, Deposition (Dappled Light property), [9:3 – 11:21], attached hereto as **Exhibit 4**.

...

...

...

² See June 1, 2015 Deposition Excerpt (Rabbit Track property) at 12:5-12; 16:22-25 through 17:1-2; 18:1-4; 30:3-19; 31:5-9; 34:23-25 through 36:1-2; 38:10-25 through 42:1-11; 60:13-17; 61:24-25 through 62:1-23; 69:15-25 through 70: 1-3; 74:12-24; 82: 6-12; 97:5-8; 103:2-6; 105:11-17; 106:8-11; 22-25; 108:16-19; 126:19-22; 130:11-15; 23-25 through 131:1, attached hereto as **Exhibit 1**.

³ See June 1, 2015 Deposition Excerpt (Manorwood property) at 28:21-25 through 29:1; 29:14-25 through 30:1-9; 41:14-21; 49:16-21; 55:8-15; 67:16-19; 68:22-25 through 69:1-3; 77:3-18, attached hereto as **Exhibit 2**.

⁴ See June 16, 2015 Deposition Excerpt (Brighton Summit property) at 14:15-18; 21:2-25 through 22:1-8; 23:12-21; 26:2-13; 32:21-25 through 35:1-3; 36:3-16; 37:10-25 through 38:1-3; 15-22; 41:2-18; 48: 1-3; 15-18; 23-25 through 49:1-5; 66:6-23; 82:11-21; 84:3-7, attached hereto as **Exhibit 3**.

III. ARGUMENT

A. The Foreclosure Did not Violate the Automatic Bankruptcy Stay.

First, the issue of the borrower's bankruptcy and potential violation of the automatic stay may be moot. SFR has filed a Motion for Retroactive Relief of the Automatic Stay under 11 U.S.C. § 362, which would retroactively annul the stay to prior to the Association's alleged violations. **See Exhibit 5.** This Motion is set for hearing on February 14, 2017. **Id.** This Motion is currently unopposed and SFR will update the Court and other parties as soon as it knows the outcome of the motion.

Nonetheless, to the extent the stay may have been violated, the Bank lacks standing to enforce the stay or complain to the Court. On November 12, 2015, The Bankruptcy Court, District of Nevada, entered an order Granting SFR's Motion to Reopen the Case to Retroactively Annul the Automatic Stay [Dkt. No. 40] in Case No. 12-17610-MKN. In that order, the Court stated, "Thus, while the Ninth Circuit has held that an action taken in violation of the automatic stay may be void, it is only void as to those protected parties and a secured creditor is not a protected party." **In re Hunyady**, No. BK-12-176610-MKN, 2015 WL 9916719, at * 2 (Bankr. D. Nev. Nov. 12, 2015); **See also**, copy of order attached to Exhibit 1 at 37-42. Here, as in **In re Hunyady**, the Bank has no standing to enforce the Bankruptcy stay.

However, to the extent the stay is not retroactively annulled and this Court does consider it, it should do so in the context of **Shadow Wood**⁵ and balancing the equities, especially in light of SFR having simply purchasing the Property at a public auction without knowledge of the bankruptcy proceedings. As the Bank admits, it knew of the stay violation and did nothing in the interim by going to the Bankruptcy Court and complaining there or trying to stop the Association sale. Instead, it waits until years later to complain to this Court that its rights were somehow violated. The Bank's failure, once again, to timely protect its collateral should weigh heavily against its request for equity.

...

⁵ 366 P.3d at 1100.

1 **B. The Foreclosure Sale Was Commercially Reasonable.**

2 1. **This Court adopted the California Rule requiring a showing of fraud,**
3 **unfairness or oppression as accounts for and bring about the inadequacy of**
4 **price alleged.**

5 Shadow Wood reaffirmed that Nevada adopted the California rule that “inadequacy of
6 price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally
7 made; there must be in addition proof of some element of fraud, unfairness or oppression **as**
8 **accounts for and brings about the inadequacy of price[.]**” Shadow Wood, 366 P.3d at 1110
9 (quoting *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (Nev. 1964) (internal citations
10 omitted) (emphasis added). While the Bank wishes it were so, Shadow Wood **did not adopt** the
11 Restatement (Third) of Property: Mortgages § 8.3, which was simply mentioned in dicta. This Court
12 reaffirmed that to set aside an association foreclosure sale there must be “a showing of grossly
13 inadequate price **plus** ‘fraud, unfairness, or oppression.’”⁶ *Id.* (citing Long v. Towne, 98 Nev. 11,
14 13, 639 P.2d 528, 530 (1982))(emphasis added).

15 More recently, a panel of this Court, in an unpublished order, recognized this reaffirmance
16 in Shadow Wood “that a low sales price is not a basis for voiding a foreclosure sale absent ‘fraud,
17 unfairness, oppression” Centeno v. J.P. Morgan Chase Bank, N.A., Nevada Supreme Court
18 Case No. 67365 (Mar. 18, 2016) (unpublished Order Vacating and Remanding).⁷ Furthermore,
19 *Golden* went on to say that even when the inadequacy was so great as to “shock the conscience”
20 the California rule as stated above would still apply. See Golden 79 Nev. at 514-15, 386 P.2d at
21 955. (**In approving the rule thus stated, we necessarily reject the dictum in *Dazet v. Landry*,**
22 **... , implying that the rule requiring more than mere inadequacy of price will not be applied**

23 ⁶ In fact, other than referencing an argument made by the bank, this Court, in *Shadow Wood*, never
24 used the words “commercially unreasonable” or “commercially reasonable.” *Shadow Wood*, 366
P.3d at 1109. It referenced adequacy of price. *Id.* at 1112-1113.

25 ⁷ In *Centeno*, the price paid at the homeowners association’s auction was \$5,950.00. While the
26 district court did not establish a value for the property, on appeal the Bank argued that that the
27 deed of trust secured a loan for \$160,001.00 and the property later reverted to the Bank at its own
28 auction for \$145,550.00. *See* Case No. 67365, Response to Appellant’s Pro se Appeal Statement,
filed Feb. 17, 2016 (Doc. No. 16-04982), available at
<http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>). Thus, the price paid at the
association’s foreclosure sale in *Centeno* was approximately 4% of the credit bid by the Bank at
its subsequent auction.

1 **if ‘the inadequacy be so great as to shock the conscience.’**”(emphasis added). In applying the
2 rule even when price “shocks the conscience,” it abundantly clear that the standard to prove a sale
3 was not commercially reasonable.

4 Thus, the Bank’s reference to the Arizona case of In re Krohn, 52 P.3d 774, 781 (Ariz.
5 2002), is misplaced. What the Bank fails to account for is the state of Arizona versus Nevada law
6 on the issue. As stated in Krohn, since at least 1905 Arizona has long held that a court in equity
7 may vacate a foreclosure sale where price “inadequacy is so gross as to be proof of fraud or shocks
8 the conscience of the court.” Krohn, 52 P.3d at 776 (citing Wiesel v. Ashcraft, 549 P.2d 585, 589
9 (Ariz. 1976) (citing McCoy v. Brooks, 80 P. 365 (Ariz. 1905)). This contrasts sharply with
10 **Nevada law, which expressly rejected the “shock the conscience” standard** and any test that
11 did not require additional evidence of fraud, oppression, or unfairness in addition to low price as
12 affirmed in Shadow Wood. See Golden, 387 P.2d at 997. Nevada has not adopted the Restatement
13 of any other similar rule or law.⁸

14 **2. The Bank Has Not Provided any Evidence of Fraud, Unfairness or Oppression.**

15 The Bank has offered no evidence of any fraud, unfairness or oppression in the sale process
16 that would justify setting aside the sale. Because the sale was conducted according to statute, the
17 Association needed only to sell the Property to the highest bidder. The Association’s sale was
18 publically noticed, as required by statute, multiple bidders attended the auctions, and neither the
19 homeowner nor the Bank paid any amount to cure the lien before the foreclosure sale. Here, viewing
20 the transaction as a whole, the sale was commercially reasonable. As a matter of law, the Bank
21 cannot exclusively rely on SFR’s bid as the evidence that it was not. See id. (citing Carmen v. S.F.

22
23 ⁸ The Bank string cites to many jurisdiction that have not adopted the California rule that
24 “inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee’s
25 sale legally made; there must be in addition proof of some element of fraud, unfairness or
oppression **as accounts for and brings about the inadequacy of price[.]**”Golden 79 Nev. at 514,
387 P.2d at 995; See also Bank’s MSJ at 10:16-11:2.

26 Furthermore, any deviation from rules as outlined in Golden and reaffirmed in Shadow Wood, and
27 the adoption of the Restatement would be an announcing of a brand new rule of law, which would
28 have to have been done expressly to abrogate Golden and Long. Such an action by this Court could
only be applied prospectively, unlike SFR, which dealt with statutory interpretation of an existing
law. See Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971).

1 Unified Sch. Dist., 237 F.3d 1026, 1028-31 (9th Cir. 2001) (“a court need not ‘comb the record’
2 looking for a genuine issue of material fact if the party has not brought the evidence to the court’s
3 attention”)).

4 Additionally, nothing in the Restatement contemplates the facts and conditions surrounding
5 association foreclosure sales in Nevada at the time of this sale. Purchasers such as SFR were
6 constantly forced to litigate to defend against lenders like the Bank attempting to foreclose on their
7 extinguished deeds of trust following association foreclosure sales. See SFR Investments Pool 1,
8 LLC v. Wells Fargo Bank, N.A., No. A-13-682296-C, 205 WL 4501851 at *11 (Bell, J., Eighth Jud.
9 Dis. Ct., Nev. July 21, 2015) (order on motions for summary judgment and to dismiss). This was not
10 the typical mortgage foreclosure sale where the junior lienholder accepts that his interest will be
11 extinguished by a prior lienholder’s foreclosure. Here, the statute and every sale was under attack
12 by lenders, and remains so to this day. The Bank cannot create and perpetuate the situation that
13 bidders have to consider the high cost of litigation into their bidding, thereby keeping prices lower
14 than at NRS 107 sales, and then complain that the prices are too low. Nothing in the Restatement or
15 in Shadow Wood that would contemplate allowing such an outcome. The Restatement is not the rule
16 of law in Nevada, and the Bank must show something more than price. It has not.

17 Any reliance on ZYZZX2 v. Dizon, by the Bank is faulty. See Bank’s MSJ p. 8 citing
18 ZYZZX2 v. Dizon No. 2:13-cv-01307-JCM-PAL, 2016 WL 1181666 (D.Nev. Mar. 25, 2016). In
19 ZYZZX2, the court found that there was misrepresentation in the title that would be conveyed, due
20 to the CC&Rs having a mortgage protection clause, and that since the CC&Rs were publically
21 available, high bidders would be dissuaded from offering a higher price due to the fact that NRS
22 116 had been on the books since 1991. Id. at *4. However, this case is distinguishable in that, in
23 ZYZZX2, the association had “sent a letter to the lender and other interested parties stating that its
24 foreclosure would not affect the senior lender/mortgage holder’s lien.” Id. Here, there is no such
25 letter in the evidence. Further, and importantly, such an argument would be meritless as the Nevada
26 Supreme Court in SFR noted that such mortgage savings clauses, which contradict NRS 116, are
27 unenforceable. SFR, 334 P.3d at 419; see also NRS 116.1104. As is demonstrated above, the Bank
28

1 has proven absolutely no fraud, oppression or unfairness which accounted for and brought about
2 the price paid by SFR.

3 The fact that the Bank's self-serving testimony claims they were unaware of the sale until
4 after the sale cannot be said to be fraud, oppression or unfairness. This is especially true when the
5 Association Notice of Sale was sent to Wells Fargo, the Bank and Nation Default Servicing
6 Corporation by First Class Mail and Certified Mail to the addresses on the recorded documents for
7 all three entities. The certified mailing receipt produced by Nevada Association Services, Inc.
8 ("NAS") the Association's foreclosure agent, shows that the certified mail was received by the
9 post office February 11, 2013. See SFR's MSJ at Exhibit 1-K. If the Bank's internal document
10 handling caused this letter to not be handled until nearly a month later, this is an internal problem
11 with the Bank and not an issue of fraud, oppression or unfairness.

12 The Bankruptcy stay, if one was in place at all, did not cause the any low price of the sale.
13 First, the Bank alleges that they were not aware of the sale until four days after the foreclosure.
14 See Bank's MSJ at 12:11-12. Based on this, the Bank did not and was not attending the sale. No
15 evidence has been presented to suggest SFR knew of the Bankruptcy at the sale. As such, this
16 could not have affected the amount SFR bid on the property. Therefore, this cannot be fraud,
17 oppression or unfairness that brought about a low foreclosure price as all the parties claims to
18 either be ignorant of the bankruptcy or of the foreclosure sale itself.

19 Here, there is no evidence of fraud, oppression or unfairness that brought about any
20 inadequacy in price. The Association's sale was publicly noticed, as required by statute; multiple
21 bidders attended the auction, and it is undisputed that neither the homeowner nor the Bank paid an
22 amount necessary to cure the lien before the sale.

23 **3. The Price Paid at Auction was not "Grossly Inadequate."**

24 The price paid by SFR was adequate. When purchasing a property at a forced sale, fair
25 market value has no applicability to this situation. BFP v. Resolution Trust Corporation, 511 U.S.
26 531 (1994). While the BFP holding related to a mortgage foreclosure sale, other Courts have
27 extended the *BFP* analysis to tax-defaulted sales of real property with adherence to requirements
28

1 of state law where the statutes include requirements for public noticing of the auction and
2 provisions for competitive bidding. See In re Tracht Gut, LLC, 836 F.3d 1146, 1152-1155 (9th
3 Cir. 2016)(extending BFP analysis to California tax sales because they afford the same procedural
4 safeguards as a mortgage foreclosure sale); T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995);
5 Kojima v. Grandote Int'l Ltd. Co., 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale,
6 however, the analysis still aptly explains how market value cannot be compared to a forced sale
7 transaction.

8 Here the NRS 116 insures public notice and contains provision for competitive bidding.
9 NRS 116 requires that a Notice of Default be mailed to all interested parties and subordinate claims
10 holders.⁹ After 90 days of the recording of the Notice of Default, the Notice of Sale must be mailed
11 to all interested parties and subordinate claims holders.¹⁰ Additionally, NRS 116 requires that the
12 Notice of Sale must be posted in a public place as well as be published in a newspaper of general
13 circulation for three consecutive week, at least once a week.¹¹ Additionally, NRS 116 requires that
14 the sale take place in the County in which the property is situated.¹² As a result, all subordinate
15 interest holders, as well as the public as a whole, were made aware of an NRS 116 auction. These
16 noticing and foreclosure provisions ensured the auction was publically noticed and would create
17 competitive bidding.

18 Here, the Association did everything required of it under the law to foreclose on its lien
19 including meeting all the requirements of NRS 116. The foreclosure was properly noticed
20 including the recording and mailing of all applicable notices.¹³ Additionally, the auction was
21 publically held¹⁴ and SFR placed the winning bid of \$70,000.00 at auction.¹⁵

22 While the Bank may complain about the total amount received during the auction the

23 ⁹ NRS 116.31163; NRS 116.31168; NRS 107.090(3)-(4).

24 ¹⁰ NRS 116.311635(1)(b)(1); NRS 116.311635(1)(b)(3).

25 ¹¹ NRS 116.311635(c)

26 ¹² NRS 116.31164

27 ¹³ SFR's MSJ Ex. 1-L, 1-N, 1-O, 1-P, and 1-Q.

27 ¹⁴ SFR's MSJ Ex. 2-A.

28 ¹⁵ Id.

1 market conditions that existed, largely created by the Bank, significantly lowered the value of the
2 property. As stated in BFP “the only legitimate evidence of the property's value at the time it is
3 sold is the foreclosure-sale price itself.” BFP at 549. But given that this was a public auction if
4 the Bank disagreed with the collective public’s valuation of the property it should have bought the
5 property at the auction itself. However, it cannot be contested that the amount paid by SFR was
6 commercially reasonable given that the Association foreclosure complied with all requirements of
7 NRS 116 and that this auction was a public auction open to all entities, including the Bank.

8 It is for the above-stated reasons that the Bank’s expert’s, Mr. Dugan, market value analysis
9 of the property should be disregarded by the Court. Mr. Dugan made the assumption is that “the title
10 is good and marketable.” See Bank’s MSJ Exhibit 1; See also Disputed Fact #1. In other words, Mr.
11 Dugan assumed the exact opposite of what is true in this case. In reality, title to the Property is not
12 “good and marketable.” This very issue has engendered countless litigation costing thousands of
13 dollars, led to many Nevada Supreme Court decisions, and is still driving litigation because no buyer
14 at an Association foreclosure sale can obtain title insurance without proceeding through costly quiet
15 title litigation. The fact that Mr. Dugan had to assume the exact opposite of the position adopted by
16 the Bank to formulate his opinion is unequivocal proof that his Appraisal Report is based upon an
17 erroneous assumption.

18 In sum, because the price paid by SFR was not “grossly inadequate,” and the Bank failed
19 to demonstrate any fraud, oppression or unfairness which brought about and accounted for the
20 price paid by SFR, the Bank’s commercial unreasonableness arguments fails.

21 **C. While Not Required, Even if there were Irregularities with the Sale, these Cannot be**
22 **Imputed to SFR Because SFR is a Bona Fide Purchaser.**

23 The Bank has failed to meet its burden to prove that SFR is not a Bona Fide Purchaser (“BFP”).
24 SFR has actual title to the property pursuant to NRS 116.31164(3)(a). The Bank is seeking
25 equitable “title” or “interest” in trying to keep its lien in place. Where a party is claiming equitable
26 title, the burden is on the party claiming such equity to allege and prove that the person holding
27 legal title is not a bona fide purchaser. See First Fidelity Thrift & Loan Ass’n v. Alliance Bank,
28 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d 295 (Cal.Ct.App. 1998).

1 The Bank argues that SFR cannot be a BFP because 1) they did not pay valuable
2 consideration, 2) SFR was aware, or should have been aware, of the Bank's Deed of Trust before
3 the foreclosure and 3) that the foreclosure price was "grossly unreasonable." See Bank's MSJ at
4 12:14-14:13. These arguments all fail.

5 A BFP is a purchaser of real property: (i) for value; and (ii) without notice of a competing
6 or superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246,
7 247 (1979). A "purchaser for value" is one who has given "valuable consideration" as opposed
8 to receiving the property as a gift. Id. at 187, 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d
9 677, 680 (1971) ("A specific finding of what the consideration was may be implied from the
10 record."). Even if a purchaser may purchase a property for lower than the property's value on the
11 open market, the fact that "valuable consideration" has been paid is undisputed. Shadow Wood,
12 366 P.3d at 1115 (citing Fair v. Howard, 6 Nev. 304, 308 (1871) ("the question is not whether the
13 consideration is adequate, but whether it is valuable"); see also Poole v. Watts, 139 Wash, App.
14 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale purchaser
15 purchased the property for a "low price" did not in itself put the purchaser on notice that anything
16 was amiss with the sale)).¹⁶

17 Notice by a potential purchaser that an association is conducting a sale pursuant to NRS
18 116, and that the potential exists for challenges to the sale "post hoc[.]" does not preclude that
19 purchaser from BFP status. Shadow Wood, 366 P.3d at 1116. Thus, knowledge of a Deed of
20 Trust would have only let SFR know that the Bank may have a "post hoc" challenge.

21 Lastly, as described above, the price paid by SFR was not "grossly unreasonable." Given
22 that these sales have been under sustained attacks by the banks (and still are under attack), any

23
24 ¹⁶ In discussing "valuable consideration" the Bank's citation to District Court orders, prior to
25 Shadow Wood, and the complete avoidance Shadow Wood is simply inexcusable. See Bank's MSJ
26 at 13:14-24 citing SFR Investments Pool 1 LLC v. Nationstar Mortgage, LLC, Case No. A-13-
27 684596-C; Design 3.2 LLC v. Bank of New York Mellon, Case No. A-10-621628-C. See also
28 RPC 3.3(a)(1)-(2). The Bank is **fully** aware that Shadow Wood stated that "Even if a purchaser
may purchase a property for lower than the property's value on the open market, the fact that
"valuable consideration" has been paid is undisputed." However, the Bank conveniently forgets to
cite to this binding legal authority in its argument. While this sub-issue is relatively small in
comparison to the entirety of the parties' dueling Motions for Summary Judgment, this desperation
tactics call into question all of the Bank's other legal authorities.

1 valuation of the property must take into account these factors. BFP 511 U.S. 531 (When
2 purchasing a property at a forced sale, fair market value has no applicability to this situation).
3 Thus, the “fair market value” of the property without any negative conditions, has no relevance
4 to SFRs status as a BFP.

5 If this Court were to weigh equities, it “must consider the entirety of the circumstances
6 that bear upon the equities.” Shadow Wood, 366 P.3d at 1114. These would include not only any
7 irregularities in the sale process by the Association or Association’s agents, but the actions or
8 (in)actions by the Bank and SFR’s BFP status. Id. As the Shadow Wood court noted,
9 “[c]onsideration of harm to potentially innocent third parties is especially pertinent here where
10 [the Bank] did not use the legal remedies available to it to prevent the property from being sold
11 to a third party. . . .” Id. at 1115, n.7. The Bank has no evidence to suggest that the NOS was not
12 mailed to Wells Fargo, N.A., U.S. Bank or National Default Servicing Corporation. SFR’s MSJ
13 at Ex. 1-K. The Bank’s mere allegation that Wells Fargo, N.A., as a servicer, did not receive the
14 NOS until four days after the Association’s sale does not prove that Wells Fargo did not receive
15 the notices or that U.S. Bank, the holder of the DOT did not receive notice of the sale. Bank’s
16 Opp. 4:1-4. However, the Bank’s poor document handling cannot be weighed in a way that could
17 displace SFR’s interest in the property as a BFP.

18 In further weighing of the equities, between the dates the NOD was recorded and the date
19 of the foreclosure sale the Bank never recorded a lis pendens or other document alleging any
20 problems with the foreclosure process or the foreclosure sale. SFR’s MSJ Exhibit 2, ¶ 18.
21 Additionally, SFR has no relationship with the Association or the Association’s Agent, except as
22 a purchaser of Property. SFR’s MSJ Exhibit 2, ¶¶ 16, 17. the Bank did not (1) pay or attempt to
23 pay the lien, (2) contact the Association or the Association’s agent prior to the sale, (2) attend the
24 sale, or (3) seek judicial intervention to enjoin the sale. See Exhibit 6 p. 67-69. The Bank knew
25 that without taking action to stop the sale, the Association’s foreclosure would extinguish all
26 junior interests in the Property. By allowing the sale to go forward, the Bank must have intended
27 this consequence. NRS 47.250(2). On the other hand, SFR merely attended a publicly noticed,
28 publicly held foreclosure sale, and placed the winning bid at the auction. The Bank is seeking yet

1 another bailout for its poor business decisions. Title should be quieted in SFR's name and the
2 Bank enjoined from taking any further action to enforce its extinguished lien against the Property
3 or further clouding SFR's title.

4 **D. The Bank's Constitutional Challenges to NRS 116 Fail.**

5 **a. NRS 116 does not involve a state actor, and thus Due Process is not implicated.**

6 The NRS 116 foreclosure provisions do not involve a state actor. This decision was reached
7 in a 5-0 decision by the Nevada Supreme Court. Saticoy Bay LLC Series 350 Durango 104 v.
8 Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 133 Nev. Adv. Op. 5, ____
9 P.3d ____ (Nev. Jan. 26, 2017). Further, *Saticoy Bay* acknowledged that the 9th Circuit in a previous
10 holding found that the NRS 116 foreclosure provision did involve a state actor¹⁷, but rejected such
11 analysis. Saticoy Bay, 133 Nev. Adv. Op. 5 *5 fn.3. Without a state actor, there cannot be a
12 violation of due process. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n.,
13 531 U.S. 288 (2001). As such, the Bank's argument regarding NRS 116's violation of their due
14 process soundly fails.

15 To the extent the Bank complains about the content of the notices, the Nevada Supreme
16 Court has already reviewed the notices and determined that the content is adequate to provide a
17 lender with the means to protect its collateral. SFR, 130 Nev. ____, 334 P.3d at 418 ("The notices
18 went to the homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to
19 state the total amount of the lien."). Nothing prevented the Bank from taking some action to protect
20 its collateral. As the Nevada Supreme Court noted in SFR, "[t]he inequity [the Bank] decries is
21 thus of its own making. . . ." ¹⁸

22 **b. NRS 116 does not violate the Takings Clause of the United States or Nevada**
23 **Constitution.**

24 The Nevada Supreme Court found that NRS 116's foreclosure provision are not in violation
25 of the Takings Clause. Saticoy Bay, 133 Nev. Adv. Op. 5 *11. Specifically, the Nevada Supreme
26

27 ¹⁷ Bourne Valley Court Trust v. Wells Fargo Bank, 832 F.3d 1154 (9th Cir. 2016).

28 ¹⁸ SFR, 334 P.3d at 414.

1 Court found that the Bank's property was not subject to an actual physical invasion nor did the
2 Foreclosure Statutes represent a regulatory taking. Id. at 9. As such, this argument is now meritless.

3
4 **IV. CONCLUSION**

Based on the above, the Court should deny the Bank's Motion for Summary Judgment.

5 DATED this 13th day of February 2017.

6 **KIM GILBERT EBRON**

7
8 /s/ *Jaqueline A. Gilbert, Esq.*

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

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28 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of February, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR Investments Pool 1, LLC's Motion for Summary Judgment**, to the following parties.

Alverson Taylor Mortensen & Sanders		
Name	Email	Select
Kurt R. Bonds	kfile@alversonmortensen.com	<input checked="" type="checkbox"/>
Kurt R. Bonds	kbonds@alversonmortensen.com	<input checked="" type="checkbox"/>
Kim Gilbert Ebron		
Name	Email	Select
Diana Cline Ebron	diana@kgelegal.com	<input checked="" type="checkbox"/>
E-Service for Kim Gilbert Ebron	eservice@hkmlaw.com	<input checked="" type="checkbox"/>
Jacqueline A. Gilbert	jackie@kgelegal.com	<input checked="" type="checkbox"/>
Michael L. Sturm	mike@kgelegal.com	<input checked="" type="checkbox"/>
Tomas Valerio	staff@kgelegal.com	<input checked="" type="checkbox"/>
Snell & Wilmer LLP.		
Name	Email	Select
Docket	Docket_LAS@swlaw.com	<input checked="" type="checkbox"/>
Gaylene Kim	gkim@swlaw.com	<input checked="" type="checkbox"/>
Lyndsey Luxford	lluxford@swlaw.com	<input checked="" type="checkbox"/>
Richard C. Gordon	rgordon@swlaw.com	<input checked="" type="checkbox"/>
Tiffany & Bosco		
Name	Email	Select
Gregory L. Wilde	gfileno@tblaw.com	<input checked="" type="checkbox"/>
Wright, Finlay & Zak, LLP		
Name	Email	Select
Edgar C. Smith	esmith@wrightflegal.net	<input checked="" type="checkbox"/>

/s/ Zachary Clayton
An employee of Kim Gilbert Ebron

EXHIBIT 1:

Deposition of R. Scott Dugan

June 1, 2015

(Rabbit Track property)

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

Scott Dugan
June 1, 2015



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

BANK OF AMERICA, N.A., successor by merger to BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a national association; ROSE OF SHARON FAITH MINISTRIES, a Nevada non-profit corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.
A-14-698511-C

DEPOSITION OF SCOTT DUGAN
(Rabbit Track)

Taken at the Offices of Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada

On Monday, June 1, 2015
At 11:07 a.m.

Reported by: Jane V. Efaw, CCR #601, RPR

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WITNESS

SCOTT DUGAN

Examination by Ms. Hanks

Examination by Mr. Brenner

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E X H I B I T S

NUMBER

DESCRIPTION

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Exhibit 1 Bank of America, N.A.'s Expert Disclosure

13

Exhibit 2 Work file

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Exhibit 3 Cover page with two pages of excerpts from the book of The Appraisal of Real Estate, Twelfth Edition

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Appearances:

For the Plaintiff:

KAREN L. HANKS, ESQ.
Howard Kim & Associates
1055 Whitney Ranch Drive
Suite 110
Las Vegas, Nevada 89014
(702) 485-3300

For Defendant Bank of America, N.A.:

DARREN T. BRENNER, ESQ.
Akerman LLP
1160 Town Center
Suite 330
Las Vegas, Nevada 89144
(702) 634-5000

- and -

ELIZABETH HAMRICK, ESQ.
Bradley Arant Boult Cummings
200 Clinton Avenue West
Suite 900
Huntsville, Alabama 35801-4900
(256) 517-5100

* * * * *

Page 3

Thereupon --

SCOTT DUGAN

was called as a witness by the Plaintiff. and having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HANKS:

Q. Please state your name for the record.

A. Richard Scott Dugan.

Q. Mr. Dugan, have you had your deposition taken before?

A. Yes.

Q. Have you had it taken enough times that you feel comfortable if I don't talk about the typical admonitions?

A. Yes.

Q. I like to remind every deponent that the oath you just took is the same oath you would take in a court of law. So if it's found out you didn't tell the truth here today, it would carry the same penalty of perjury that you'd have in court. Do you understand that?

A. Yes.

Q. What is your occupation?

A. I'm a licensed certified general real estate

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<p>1 appraisal?</p> <p>2 A. To estimate the reasonableness of the fair</p> <p>3 market value or the disposition value of the property</p> <p>4 as of a specific time.</p> <p>5 Q. And is that so Freddie, Fannie or FHA knows</p> <p>6 how much they can list the property for?</p> <p>7 A. And ultimately sell it for.</p> <p>8 Q. In the last two years, have you done any of</p> <p>9 those types of appraisals?</p> <p>10 A. Yes.</p> <p>11 Q. Can you approximate how many?</p> <p>12 A. I have no idea.</p> <p>13 Q. And why in those contexts would you do</p> <p>14 disposition value as opposed to market value?</p> <p>15 A. The disposition value is at a point when the</p> <p>16 bank or the particular lender has taken it back and</p> <p>17 they want to know how quick it can be sold and for</p> <p>18 what price.</p> <p>19 Q. I understand that. I guess I'm confused as</p> <p>20 to why you wouldn't just give a market value</p> <p>21 appraisal to them, and they could list it at the</p> <p>22 market value?</p> <p>23 MR. BRENNER: Form. Go ahead.</p> <p>24 THE WITNESS: Ultimately sometimes banks</p> <p>25 want to know what the disposition value is versus</p>	<p>1 request.</p> <p>2 BY MS. HANKS:</p> <p>3 Q. And again -- and I'm sorry if you answered</p> <p>4 it -- is the reason why they used disposition value</p> <p>5 is mainly because the client has asked you to use</p> <p>6 disposition value?</p> <p>7 MR. BRENNER: Form and calls for</p> <p>8 speculation.</p> <p>9 THE WITNESS: The majority of the time when</p> <p>10 we do appraisals, we do fair market value.</p> <p>11 Occasionally we do disposition value but not a lot.</p> <p>12 BY MS. HANKS:</p> <p>13 Q. And on the occasions where you do</p> <p>14 disposition value, what's the explanation as to why</p> <p>15 you would do that instead of market value?</p> <p>16 A. They want it --</p> <p>17 MR. BRENNER: Form.</p> <p>18 THE WITNESS: The seller is under compulsion</p> <p>19 to sell.</p> <p>20 BY MS. HANKS:</p> <p>21 Q. No, I understand the definition of</p> <p>22 disposition. I'm talking about in the context of</p> <p>23 when it happened, what was the owner -- Fannie,</p> <p>24 Freddie, or whoever was the owner -- telling you why</p> <p>25 they were asking for disposition value as opposed to</p>
Page 10	Page 12
<p>1 market value under normal circumstances.</p> <p>2 BY MS. HANKS:</p> <p>3 Q. And what is the difference between</p> <p>4 disposition value and market value?</p> <p>5 A. The difference is the property is subject to</p> <p>6 prevailing rates, consummation of a sale within a</p> <p>7 future exposure time dictated by the client, and the</p> <p>8 seller is under compulsion to sell.</p> <p>9 Q. You looked at a piece of paper to read that</p> <p>10 definition. What is that piece of paper?</p> <p>11 A. That's in Mr. Brunson's report.</p> <p>12 Q. And what page of Mr. Brunson's report is</p> <p>13 that?</p> <p>14 A. Page 7.</p> <p>15 Q. So you agree with the definition that is</p> <p>16 contained in Mr. Brunson's report for disposition</p> <p>17 value?</p> <p>18 A. Yes.</p> <p>19 Q. And just so I understand. When you have</p> <p>20 done the cases on behalf of either Freddie, Fannie or</p> <p>21 FHA and you had the REO context where they are owning</p> <p>22 it, it's after they foreclosed on the property?</p> <p>23 MR. BRENNER: Form.</p> <p>24 THE WITNESS: No, not necessarily after. It</p> <p>25 can be prior to depending on the client's specific</p>	<p>1 market? Did those conversations take place?</p> <p>2 MR. BRENNER: Form. Calls for speculation.</p> <p>3 THE WITNESS: I don't recall.</p> <p>4 BY MS. HANKS:</p> <p>5 Q. When you're doing appraisals, do you always</p> <p>6 take the direction of the client as to what value you</p> <p>7 will use?</p> <p>8 A. If it's not misleading.</p> <p>9 Q. And how would you determine if it's</p> <p>10 misleading?</p> <p>11 A. It depends on the circumstances of the</p> <p>12 assignment and the type of property and so forth.</p> <p>13 Q. And why do you need to be concerned if it's</p> <p>14 misleading?</p> <p>15 A. Because I ultimately answer to my peers.</p> <p>16 Q. And who are your peers?</p> <p>17 A. Other appraisal professionals.</p> <p>18 Q. And are appraisers governed by USPAP?</p> <p>19 A. Yes.</p> <p>20 Q. And those are a set of standards that govern</p> <p>21 your industry, so to speak; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And those standards, if I understand you</p> <p>24 correctly, require that any appraisal you do is not</p> <p>25 misleading; is that correct?</p>

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1 A. We're supposed to be protectors of the
2 public.
3 Q. And so just in general if a client had asked
4 you to use one type of value in order to do your
5 appraisal, do you under USPAP have a duty to
6 determine whether that value would lead to misleading
7 results?
8 A. You'd have to state in the report what the
9 client asked and possibly do a hypothetical or
10 extraordinary assumption.
11 (Thereupon Plaintiff's Exhibit 1
12 was marked for identification.)
13 BY MS. HANKS:
14 Q. Let's look at your testimony history. I
15 think it's the last page of your report of Exhibit 1.
16 For any of the cases listed here, 1 through 33, did
17 any of them involve an appraisal as to disposition
18 value?
19 A. I can't tell you. I don't have that in
20 front of me.
21 Q. You don't have the list of testimony, or you
22 just need other records to reference?
23 A. That was supplied to you. I didn't bring an
24 extra copy of that.
25 Q. It's actually in Exhibit 1. So if you want

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1 to look at it.
2 A. I couldn't tell you without looking at the
3 files. But most of them are probably a fair market
4 value as of a specific date and time.
5 Q. Have you ever had an occasion where a client
6 has asked you to do an appraisal and imposed a
7 certain value -- let's go with market value -- and
8 you came back and said, "No, I can't do that because
9 it would be misleading"?
10 MR. BRENNER: Form. Incomplete
11 hypothetical.
12 THE WITNESS: Not that I recall.
13 BY MS. HANKS:
14 Q. Did I understand your testimony that you're
15 not necessarily required to tell the client that you
16 can't do it? You just merely have to make those
17 disclosures in your report?
18 A. No. If I think it would be misleading, I
19 would decline the assignment. That is my prerogative
20 as the owner of the business.
21 Q. Have you ever been disqualified as an expert
22 by any court?
23 A. No.
24 Q. Have you ever had your testimony limited by
25 any court?

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1 A. No.
2 MR. BRENNER: I didn't get a chance to
3 object, but it calls for speculation.
4 BY MS. HANKS:
5 Q. Now let's talk about your retention in this
6 matter. Bank of America hired you to be an expert in
7 this case. And it's SFR Investments Pool 1, LLC
8 versus Bank of America; is that correct?
9 A. Yes.
10 Q. And when you were first contacted to be
11 hired as an expert, what did Bank of America tell you
12 they needed you for?
13 A. To complete a retrospective market value
14 opinion on certain properties as of a specific date
15 and time.
16 Q. And did you inquire as to why they wanted
17 market value?
18 A. They wanted to know the fair market value as
19 of that date.
20 Q. As of what date?
21 A. As of the date of the assignment.
22 Q. You mean the date they were actually
23 retaining you?
24 A. No. The date of each individual report.
25 Q. Okay. And just to be clear. So the date of

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1 the report is the retrospective date for purposes of
2 your appraisal?
3 A. Yes.
4 Q. And what is the date of your report in this
5 matter?
6 A. The date that the valuation was -- the
7 retrospective date was November 1st, 2013.
8 Q. I'm confused, then, because I thought you
9 said the effective date is the date you were retained
10 by Bank of America. Were you retained by Bank of
11 America on November 1st, 2013?
12 A. No. That is the date of the retroactive
13 valuation.
14 Q. What is the significance of that date?
15 A. That is the date that the client wanted to
16 know what the fair market value of that property was.
17 Q. Did you ask the client why November 1st,
18 2013?
19 A. From my instructions from Accurity, it was
20 that they wanted it just prior to the foreclosure
21 date.
22 Q. When you were retained by Bank of America,
23 did you have a discussion with them about eventual
24 foreclosure? Did you have a discussion about the
25 fact that this property was foreclosed upon on

<p style="text-align: right;">Page 17</p> <p>1 November 1st, 2013?</p> <p>2 A. No, I did not.</p> <p>3 Q. When you were drafting your report, did you</p> <p>4 have any understanding as to who foreclosed on the</p> <p>5 property on November 1st, 2013?</p> <p>6 A. My valuation would have been prior to that.</p> <p>7 And I would not have that knowledge.</p> <p>8 Q. Okay. I'm sorry. You mean you would have</p> <p>9 written your report before knowing that?</p> <p>10 A. My date of value is November 1st. At that</p> <p>11 point in time, the property was still in the owner of</p> <p>12 record's name, Rose of Sharon Faith Ministries.</p> <p>13 Q. But I understand you're drafting a report on</p> <p>14 March 3rd, 2015. Correct?</p> <p>15 A. Correct.</p> <p>16 Q. So at the time you were being retained by</p> <p>17 Bank of America to the time you actually drafted your</p> <p>18 report, did you ever have an understanding of who</p> <p>19 foreclosed on this property in or around November</p> <p>20 1st, 2013?</p> <p>21 A. Yes. I have a copy of the foreclosure deed</p> <p>22 in the report.</p> <p>23 Q. And who foreclosed on the property?</p> <p>24 A. I think it was SFR Investments. I'm sorry.</p> <p>25 It was the HOA. Excuse me.</p>	<p style="text-align: right;">Page 19</p> <p>1 America regarding this file?</p> <p>2 A. Accurity.</p> <p>3 Q. And what is your relation to Accurity?</p> <p>4 A. I'm an independent contract appraiser that</p> <p>5 was hired by them to handle these issues in the state</p> <p>6 of Nevada.</p> <p>7 Q. So am I correct in understanding that Bank</p> <p>8 of America would have contacted Accurity, and then</p> <p>9 Accurity would have contacted you and assigned you</p> <p>10 the assignment?</p> <p>11 A. Yes.</p> <p>12 Q. So if there was any communications between</p> <p>13 Bank of America and Accurity, I would have to ask</p> <p>14 Accurity specifically?</p> <p>15 A. Yes.</p> <p>16 Q. They don't send those communications to you?</p> <p>17 A. I don't recall. I mean, you can look in</p> <p>18 here, document page 84. It shows that they sent</p> <p>19 numerous ones that were due with the dates and the</p> <p>20 addresses and the date of the HOA's lien sale. But</p> <p>21 otherwise, no.</p> <p>22 Q. Okay. Let's talk about that so I understand</p> <p>23 what that document is. You say it's document Bates</p> <p>24 Stamp D-U-N-G-A-N 000084, and then it goes through</p> <p>25 85. Is this a document that Accurity provided to</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. And was there any discussion with Bank of</p> <p>2 America how the HOA foreclosure might affect the use</p> <p>3 of market value in your appraisal?</p> <p>4 A. None to me.</p> <p>5 (Thereupon Plaintiff's Exhibit 2</p> <p>6 was marked for identification.)</p> <p>7 BY MS. HANKS:</p> <p>8 Q. If you could take a look at Exhibit 2. This</p> <p>9 is what I was told was your work file. Can you look</p> <p>10 through that and confirm. Is this your work file</p> <p>11 related to the report you drafted in this matter?</p> <p>12 A. It appears to be.</p> <p>13 Q. I did not see any handwritten notes or even</p> <p>14 electronic notes. Do you take any type of notes when</p> <p>15 you are conducting an appraisal?</p> <p>16 A. What type of notes?</p> <p>17 Q. Any notes, whether it be electronic or</p> <p>18 handwritten. Any form of notes you might take. Do</p> <p>19 you do that in terms of your work with this file?</p> <p>20 A. No.</p> <p>21 Q. And in terms of communications with Bank of</p> <p>22 America, were they all via telephone?</p> <p>23 A. I didn't have any direct communications with</p> <p>24 Bank of America.</p> <p>25 Q. Who would have communications with Bank of</p>	<p style="text-align: right;">Page 20</p> <p>1 you?</p> <p>2 A. Yes.</p> <p>3 Q. If you needed to contacted Bank of America</p> <p>4 after the assignment, who would you contact? Do you</p> <p>5 have to go through Accurity or do you go directly to</p> <p>6 Bank of America?</p> <p>7 A. Any issues I had I went through Accurity.</p> <p>8 Q. Do you have any of those e-mail</p> <p>9 correspondence?</p> <p>10 A. The majority of the time it's all phone</p> <p>11 calls.</p> <p>12 Q. Do you recall if you had any questions or</p> <p>13 follow-up that you needed for this file in order to</p> <p>14 complete your report?</p> <p>15 A. No. I think by this time we had everything</p> <p>16 pretty much ironed out.</p> <p>17 Q. When you say "by this time," what do you</p> <p>18 mean?</p> <p>19 A. We had already completed 30 or 40 of these</p> <p>20 assignments in previous months.</p> <p>21 Q. In your work file, if you turn to page Dugan</p> <p>22 000086. It starts with, "As a reminder the FHFA</p> <p>23 released a statement." How did you get this</p> <p>24 document?</p> <p>25 A. I think it was an article or something.</p>

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1 as of the date prior to or the date that the transfer
2 took place.
3 Q. No. I meant HOA lien cases, not what your
4 appraisal is. I mean in the context of this type of
5 litigation we have here, how many appraisals have you
6 done with Bank of America where there's similar
7 litigation?
8 A. I couldn't tell you. I've done quite a few,
9 but I don't know how many and which for each bank.
10 Q. And do you have an understanding, having
11 done quite a few, that the general dispute in the
12 case -- and we can limit it to just this case, the
13 Rabbit Track property -- is that Bank of America is
14 claiming it still has an interest in the property
15 that SFR purchased at the HOA foreclosure sale?
16 A. I believe so.
17 Q. And would that be something that would fall
18 into the definition of a fractional ownership
19 property?
20 A. Possibly.
21 Q. Now, when you have a fractional ownership
22 property, would you use a market value as a
23 definition for an appraisal in that context?
24 MR. BRENNER: Incomplete hypothetical.
25 THE WITNESS: I'm not sure where you're

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1 going with that. I don't understand the question.
2 BY MS. HANKS:
3 Q. If you have a piece of property that has the
4 fractional ownership where, like you said, you have
5 multiple people either owning it or claiming
6 ownership and you were doing an appraisal, would you
7 apply a market value --
8 MR. BRENNER: Same objection.
9 BY MS. HANKS:
10 Q. -- to that appraisal?
11 A. Yes. You do a market value and then
12 potentially possibly some type of discount.
13 Q. And what will be the reason for the
14 discount?
15 A. Lack of control.
16 Q. So the lack of the fee simple? The lack of
17 each party to use, sell, and lease it any way they
18 see fit?
19 A. Yes.
20 Q. And why does that affect market value of a
21 particular property?
22 A. For the reasons I just stated. Lack of
23 complete control.
24 Q. Is that an element that's required for
25 market value? That the party have complete control

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1 to use, sell, lease, or do whatever it wants with the
2 property?
3 A. That's of the fee simple title, not market
4 value.
5 Q. No, I understand. I thought -- my
6 understanding was in order for market value to be
7 applicable, you'd have to have fee simple as an
8 element of the property. Correct?
9 A. Yes.
10 Q. So if you don't have fee simple as an
11 element of the property, the market value is an
12 inappropriate value to use?
13 A. No, because you have to have a starting
14 point.
15 Q. Right. I was going to correct that. It's
16 inappropriate to use it without discounting for the
17 fact that the fee simple element is absent?
18 MR. BRENNER: Incomplete hypothetical.
19 THE WITNESS: Possibly.
20 BY MS. HANKS:
21 Q. What do you mean by "possibly"?
22 A. Well, the hypothetical is so broad that I
23 can't really give you an answer based on the
24 question.
25 Q. Well, I'm just trying to understand. You

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1 said that it had to be discounted. And you said it
2 has to be discounted because of the fee simple not
3 being present for all the parties. Correct?
4 MR. BRENNER: Misstates prior testimony.
5 BY MS. HANKS:
6 Q. Is that correct?
7 A. No.
8 Q. Okay. Then correct me. Where am I
9 misunderstanding?
10 A. I gave you an example of four parties owning
11 25 percent each.
12 Q. Okay.
13 A. And they argue about the property.
14 Therefore, there's a disagreement on who is to use it
15 at what time and so forth. And, therefore, you still
16 estimate the market value, and then potentially one
17 of the parties may sell their percentage interest for
18 less in order to get out of it.
19 Q. Okay. And why would a party sell it for
20 less in order to get out of it?
21 A. Because it's not a fee simple ownership
22 because it has multiple owners.
23 Q. So if I understand that, let's take that
24 hypothetical. If you had four people who own a
25 quarter interest in a property. And we'll go A, B,

<p style="text-align: right;">Page 33</p> <p>1 C, D. We'll call them A, B, C, D. And Party A gets 2 a market value appraisal. Would Party A be entitled 3 to the remaining 75 percent of that market value? 4 MR. BRENNER: Incomplete hypothetical. 5 Vague. 6 THE WITNESS: I don't understand that 7 question. 8 BY MS. HANKS: 9 Q. What I'm trying to understand is your 10 hypothetical, to understand what you meant by what 11 you just said. That if Party A wanted to sell off or 12 wanted to buy the interest of the other three parties 13 and get the whole hundred percent of the property, it 14 would not be as simple as taking the market value of 15 the property because the other three still control 16 it. So that person would have to discount, in other 17 words, take a little bit less to get rid of them and 18 off the property. Is that what I understood you to 19 say? 20 A. No. It depends on the parties involved in 21 this case, whether the other three parties would 22 discount it. I have no idea. 23 Q. But you have to take into consideration when 24 you're doing the appraisal, is what I'm trying to 25 understand, because the fee simple doesn't exist for</p>	<p style="text-align: right;">Page 35</p> <p>1 THE WITNESS: My assignment was done prior 2 to the HOA lien transfer. 3 BY MS. HANKS: 4 Q. When you say your assignment was done prior 5 to, you didn't actually do the report prior to the 6 foreclosure sale. Correct? 7 A. No. 8 Q. But your retrospective value was to take in 9 consideration before the HOA sale was finalized. Is 10 that how I'm understanding that? 11 A. Correct. 12 Q. But why was that the case? In other words, 13 why did you decide that as opposed to taking into 14 consideration that SFR claims an ownership to the 15 property? 16 MR. BRENNER: Form. 17 THE WITNESS: The client wanted a benchmark, 18 an approximate fair market value of the 19 reasonableness of the value of this property as of 20 that point in time. 21 BY MS. HANKS: 22 Q. And did the client tell you what they 23 intended to use that appraisal for? 24 A. For litigation. 25 Q. In what context?</p>
<p style="text-align: right;">Page 34</p> <p>1 Party A. So it isn't as simple as, "Here's the 2 market value. Here's what you're entitled to." Is 3 that how I understood it? 4 A. First of all, you said Party A was going to 5 buy the other three parties out. So if you have a 6 market value of a hundred grand and each party is 7 \$25,000, Party A would probably have to pay the other 8 three parties \$25,000 each. 9 Q. And what if they wanted to sell their 10 interest? Would they have to sell it at that rate? 11 When you're doing an appraisal, would you account for 12 a discount because not every party has a fee simple? 13 MR. BRENNER: Form. Vague. 14 THE WITNESS: Well, first of all, all four 15 parties have fee simple because they're all owners of 16 the property. 17 BY MS. HANKS: 18 Q. Together they have fee simple? 19 A. Correct. 20 Q. But individually they don't? 21 A. Correct. 22 Q. In terms of your assignment for this case, 23 why did you not factor in that Bank of America and 24 SFR are disputing who has title to the property? 25 MR. BRENNER: Form.</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. BRENNER: Calls for speculation. 2 THE WITNESS: That was not provided to me. 3 BY MS. HANKS: 4 Q. Well, don't you need to know that as an 5 appraiser, what was discussed earlier in the USPAP, 6 to make sure your report won't be misleading? 7 MR. BRENNER: Argumentative. Misstates 8 prior testimony. 9 THE WITNESS: If I'm doing a retrospective 10 market value as of a specific date, that's not 11 misleading. 12 BY MS. HANKS: 13 Q. Right. But if it's going to be used in the 14 context of a litigation, don't you under the USPAP 15 guidelines need to know whether your report will be 16 misleading? 17 In other words, don't you need to know what 18 the reason for using it in the litigation is going to 19 be in order to make that determination? 20 MR. BRENNER: Form. 21 THE WITNESS: No, because I'm doing a fair 22 market value. And we do it all the time 23 retrospective. I do it for Data Debt. Where 24 somebody dies 20 years ago, we'll go back and do a 25 valuation for IRS purposes. It's fair market. It's</p>

<p style="text-align: right;">Page 37</p> <p>1 the simplest assignment you can have. 2 BY MS. HANKS: 3 Q. No, I understand that. But I'm backing up 4 to make sure you understood how Bank of America 5 intended to use your report. And you said 6 litigation. And so I was asking a more specific 7 question. In what context do you understand that 8 Bank of America intends to use your report in the 9 litigation? 10 MR. BRENNER: Are you asking that again, or 11 are you telling him what you're asking for? 12 MS. HANKS: I'm trying to get back to the 13 question because I got the general response of 14 "litigation." 15 BY MS. HANKS: 16 Q. So what do you understand is the actual 17 litigation? What are they really using it for? 18 MR. BRENNER: Asked and answered. Calls for 19 speculation. 20 THE WITNESS: Disparity between what these 21 properties were ultimately sold or the lien was 22 purchased for versus what the actual market value of 23 the property was. 24 BY MS. HANKS: 25 Q. Okay. So if it's your understanding that</p>	<p style="text-align: right;">Page 39</p> <p>1 regardless how the sale is, it's not a market value 2 transaction. Correct? 3 A. Yes. 4 Q. And so if Bank of America is going to use 5 your report to explain the disparity or dispute the 6 disparity between the price paid by SFR and the 7 market value, why would you use a definition that 8 does not apply to the type of sale that happened in 9 this case? 10 MR. BRENNER: Vague as to which party "you" 11 is or "they" and calls for speculation. Go ahead. 12 BY MS. HANKS: 13 Q. Did you understand the question? 14 A. At the time I did it, it was not sold. The 15 original owners were in control. 16 Q. Right. But that's an actuality that didn't 17 happen. Right? 18 A. As of the date I did it, the owner was still 19 in control prior to the sale of the -- or prior to 20 the HOA lien foreclosure. 21 Q. I understand that. But if the report is 22 being used to show the disparity between the actual 23 HOA foreclosure sale and the price paid, then why 24 would you use market value as your appraisal 25 definition?</p>
<p style="text-align: right;">Page 38</p> <p>1 Bank of America intends to use your appraisal to show 2 the disparity between the price paid by SFR at the 3 HOA foreclosure sale and what the house was worth in 4 terms of market value, why wouldn't you take into 5 consideration that fee simple did not exist at the 6 time of the HOA foreclosure sale? 7 A. Because my assignment is prior to the HOA 8 sale. 9 Q. But how do you compare -- let's back up. 10 Would you agree that an HOA foreclosure sale is not a 11 market value transaction? 12 MR. BRENNER: Calls for speculation. 13 Incomplete hypothetical. 14 THE WITNESS: Your terminology calling it an 15 HOA sale is inappropriate. It's an assessment or a 16 lien. It is not a market value transaction. 17 BY MS. HANKS: 18 Q. Right. So an HOA forecloses on a lien and 19 holds a public foreclosure auction for the sale of 20 property in order to pay its lien on a piece of 21 property, that is not a market value transaction. 22 Correct? 23 A. Correct. And I'm not sure it was at a 24 public sale. 25 Q. I think the foreclosure deed says it. But</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. BRENNER: Vague. Go ahead. 2 THE WITNESS: The client wanted a benchmark 3 to know what the property reasonableness was. Market 4 value was as of that date to potentially, I guess, 5 show the disparity between the two. 6 BY MS. HANKS: 7 Q. Can we show the disparity between the two 8 using your market value appraisal? 9 MR. BRENNER: Form. I think it's trying to 10 call for a legal conclusion. Lacks foundation. 11 THE WITNESS: You'd have to ask the judge 12 that question, I guess. 13 BY MS. HANKS: 14 Q. How about under your USPAP guidelines? 15 A. USPAP guidelines? In doing a fair market 16 value, I'm in compliance with USPAP. 17 Q. And how would you explain to the jury how 18 your report is not misleading? How would you make 19 sure you met that standard under USPAP? 20 MR. BRENNER: Form. Vague. 21 BY MS. HANKS: 22 Q. In other words, if you came to court, which 23 I imagine you intend to testify at trial, how will 24 you explain the jury to use your report in order to 25 determine the disparity between the price paid by SFR</p>

<p>Page 41</p> <p>1 and your opinion of what the market value of the 2 property was? How will you tell them to do that? 3 MR. BRENNER: It's outside the scope of the 4 retention. 5 BY MS. HANKS: 6 Q. Okay. I'm sorry. Are you not planning on 7 testifying at trial? 8 A. Yes, to the fair market value of that 9 property as of that date. 10 Q. When you come to testify at trial, are you 11 making any -- are you planning on testifying that 12 therefore the price paid by SFR was wrong? 13 A. I haven't been engaged for that portion yet. 14 Q. And when you say "yet," do you know if 15 there's any intention to engage you for that? 16 A. I couldn't tell you that at this point in 17 time. 18 Q. So if I understand you correctly, your 19 intentions or your engagement is to simply come to 20 trial and testify that the market value of the 21 property before the HOA foreclosure sale was X; is 22 that correct? 23 A. Yes. 24 Q. And essentially what is the jury supposed to 25 then do with that report?</p>	<p>Page 43</p> <p>1 your market value appraisal to tell the jury that the 2 price paid by SFR was unreasonable? 3 MR. BRENNER: Incomplete hypothetical. 4 Form. 5 THE WITNESS: I guess I haven't been 6 retained for that. So I would have to analyze it and 7 do the necessary work to prepare for that. 8 BY MS. HANKS: 9 Q. Which I understand that. But as you sit 10 here today, would you be able to use the report you 11 already drafted, or would you have to do additional 12 work? 13 A. Probably both. 14 Q. So would you be able to use the report that 15 you've already drafted? 16 A. To establish a fair market value as one 17 point of reference, yes. 18 Q. Would you be able to use it to establish 19 that the price paid by SFR was unreasonable? 20 A. The relationship between the two indicates 21 that they're potentially unreasonable. 22 Q. And can you compare fair market value 23 appraisal to what a party paid at an HOA foreclosure 24 sale? 25 MR. BRENNER: Form. Vague.</p>
<p>Page 42</p> <p>1 MR. BRENNER: Calls for speculation. 2 THE WITNESS: I have no idea. That's up to 3 the jury and the judge. 4 BY MS. HANKS: 5 Q. Let's assume you were retained to come to 6 trial and testify that the price paid by SFR was 7 unreasonable, would you still use your market value 8 report to make that opinion? 9 MR. BRENNER: Form. 10 THE WITNESS: I haven't completed that type 11 of assignment on this property. 12 BY MS. HANKS: 13 Q. So is it a no? 14 A. What's the question again? 15 Q. Let's assume -- you said you weren't 16 retained to come to court to testify as to that. 17 You're only coming to court to testify, as it stands 18 now, that this is the market value of the property 19 before the HOA foreclosure sale. Correct? 20 A. Yes. 21 Q. And I said let's assume for this 22 hypothetical that two seconds from now Mr. Brenner is 23 going to say, "Yes. I want you to come to trial. I 24 want you to broaden your retention and come to trial 25 and talk about that." Would you then be able to use</p>	<p>Page 44</p> <p>1 THE WITNESS: First of all, it's not an HOA 2 foreclosure sale. It's an HOA lien. 3 BY MS. HANKS: 4 Q. Lien sale? 5 A. It doesn't -- you know, I haven't been hired 6 for that yet. So I'll defer at some point if they 7 decide they want me to do that. 8 Q. And I'm clear that you haven't been hired 9 for that. And I appreciate that. But I'm trying to 10 make sure I understand that if at some point you do 11 get hired for that, can you rely on the report that 12 you already drafted, or would you have to do some 13 further work or a different assessment? That's what 14 I'm trying to understand. 15 MR. BRENNER: Same objection. 16 THE WITNESS: I think it's asked and 17 answered. I said I would rely on this, and I'd also 18 have to do some additional work. 19 BY MS. HANKS: 20 Q. And what additional work would you need to 21 do? 22 A. I don't know at this point in time. 23 Q. What would you do if, hypothetically 24 speaking, the bank had come to you and said, "Our 25 problem is we have a disparity in price, and we want</p>

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<p>1 districts, how good they are, and how they relate to 2 a particular buyer profile. 3 Q. Did you research what was happening with 4 respect to sales by HOAs in 2013? 5 A. We never used an HOA sale because we deemed 6 them not to be arms-length transactions in the 7 marketplace. 8 Q. And what's an arms-length transaction? 9 A. Buyer and seller are highly motivated and 10 willing. Basically the definition of fair market 11 value. 12 Q. And just so I understand what you just said. 13 That definition does not apply to a sale by an HOA? 14 MR. BRENNER: Incomplete hypothetical. 15 Form. 16 THE WITNESS: An HOA is not a sale. It's a 17 lien. It's an assessment. 18 BY MS. HANKS: 19 Q. Pickup the HOA forecloses on the lien. You 20 understand that, right? 21 A. Correct. 22 Q. They conduct a sale on their lien, and they 23 sell the property in order to recoup the lien that 24 they're owed. Correct? 25 A. Right. But they're not market driven.</p>	<p>1 A. They could foreclose and keep the property. 2 Q. Well, that's what I mean. I'm asking the 3 foreclosure is not because they're not motivated to 4 do it. It's because they're being compelled to do it 5 in order to get their lien paid. Correct? 6 MR. BRENNER: Foundation. Misstates the 7 law. 8 THE WITNESS: First of all, there's 9 instances in the city where HOAs still own the 10 properties and are renting them out. So they don't 11 have to sell it. 12 BY MS. HANKS: 13 Q. If they do sell it, I'm trying to understand 14 in terms of the definition of "value." They don't 15 fall under the definition of an equally motivated 16 seller because they're being compelled to make the 17 sell, not because they're a motivated seller. 18 MR. BRENNER: Form. 19 BY MS. HANKS: 20 Q. I'm just trying to understand why they don't 21 fit under the definition of a motivated seller under 22 any definition of value, I think is what you said? 23 A. The HOA, they typically sell the liens to 24 stop the bleeding from the HOAs so that they can 25 generate revenue and keep the community maintained at</p>
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<p>1 Q. And what do you mean by "they're not market 2 driven"? 3 A. They're not acting in the best interest to 4 obtain market value. 5 Q. For who? 6 A. For the parties involved. 7 Q. Who are the parties involved from an HOA 8 perspective if they're selling on their lien? 9 A. Well, the HOA per Nevada Revised Statute can 10 only bid in what they're owed, interest and et 11 cetera. So if a property is worth \$300,000 and the 12 HOA lien is \$5,000, it doesn't meet the definition of 13 fair market value. 14 Q. Whatever is paid at the sale you mean? 15 A. Correct. 16 Q. And that's because the HOA is not a 17 motivated seller under that definition? 18 A. It's not a motivated seller under any 19 definition of value. 20 Q. It's being sold because they're being told 21 to sell it. Correct? 22 A. No. Technically the HOA doesn't have to 23 sell it. 24 Q. Well, how would they get their lien 25 otherwise?</p>	<p>1 a certain standard. 2 Q. Just so I'm clear, though. Whatever is 3 compelling the HOA to move forward with a sale in 4 order to recoup their lien, whether they credit bid 5 or sell it to a third party, that does not meet the 6 definition of equally motivated seller for any 7 definition of value. Did I understand that 8 correctly? 9 A. Agreed. 10 Q. And just so I'm clear. When you're talking 11 about all of these various forces -- the economic, 12 the physical, the governmental, and the social 13 forces -- for purposes of your report, you were only 14 looking at the market in terms of fair market value, 15 not what was happening specifically with HOA 16 foreclosure sales; is that correct? 17 A. Yes. 18 Q. Now let's turn to the last paragraph on that 19 page. The second sentence starts with, "The 20 Assumptions and Limiting Conditions along with the 21 Clarification of Scope of Work provide specifics as 22 to the development of the appraisal along with 23 exceptions that may have been necessary to complete a 24 credible report." What are the assumptions that were 25 made in preparing this report?</p>

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<p>1 Or, actually, let me back up. What is an 2 assumption? 3 A. An assumption is something that's presumed 4 to be correct. 5 Q. And then what is a limiting condition? 6 A. Those are the conditions that we make when 7 we do a report, that we include in the body of the 8 report that we're not experts in. 9 Q. And then the end of that sentence says 10 "necessary to complete a credible report." Am I 11 correct in understanding that USPAP requires that the 12 report be credible? Is that a part of the 13 guidelines? 14 A. I think your ethics requires the report to 15 be not misleading. 16 Q. Now jumping back, then. Where are the 17 assumptions that you made when making your opinions 18 with respect to this property? 19 A. Page 8 of the original report. 20 Q. And you're going by your actual page number 21 or the Bates number at the end, just so we're on the 22 same page? 23 A. My page number 8. 24 Q. At the top? So page 8 of your report, 25 Exhibit 1, but is Bates-stamped as Dugan 000009. So</p>	<p>1 A. I made the assumption because we're not 2 title experts, and we're assuming the title is good. 3 Q. Did you review a title report with respect 4 to this property prior to drafting your appraisal? 5 A. No. 6 Q. Why not? 7 A. Because that's not part of my -- I'm not an 8 expert in the title industry. It's not part of my 9 job. 10 Q. Right. 11 A. That's why we make an assumption. These are 12 assumptions that we don't do typically. 13 Q. And that's what I want a clarification on. 14 Do you actually do any research before you make the 15 assumption? In other words, do you do research and 16 say, "Okay, I can make this assumption," or do you 17 automatically make the assumption? 18 A. Automatically make these assumptions. 19 Q. So if, in fact, title is not good and 20 marketable, what would that do in terms of your 21 report. If that assumption were false, how would 22 that affect your report? 23 A. It's not part of my assumptions. I'm not a 24 legal expert. So we make that assumption to keep us 25 out of that. In other words, I'm not a title expert.</p>
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<p>1 here it starts "Statement of Assumptions and Limiting 2 Conditions." 3 And the first one it appears to state, after 4 you get past the first sentence, "The appraiser 5 assumes that the title is good and marketable." Do 6 you see that? It's the very first point but the 7 second sentence. 8 A. Yes. 9 Q. Okay. Now, the title that SFR purchased, is 10 that good and marketable? 11 MR. BRENNER: It calls for a legal 12 conclusion. 13 THE WITNESS: It's not within my scope of 14 work. 15 BY MS. HANKS: 16 Q. Is it your understanding that that is one of 17 the issues that's being litigated in this particular 18 litigation? 19 A. It's not part of my scope of work. 20 Q. So you don't know? 21 A. No. 22 Q. Did you inquire? 23 A. No. 24 Q. So how were you able -- why did you make 25 this assumption?</p>	<p>1 Q. I understand that. But you understand when 2 you're making assumptions in your report the effect 3 they have. Right? 4 A. Right. 5 Q. In other words, they have to be true in 6 order for your report to be credible? 7 A. As of the date of my assignment, the 8 assumption was true. 9 Q. Prior to SFR purchasing the property? 10 A. Correct. 11 Q. But let's assume it's not true. And I'm 12 sorry for the pun because we were talking about 13 assumptions. But for the sake of argument, let's 14 take the proposition that that first assumption, that 15 there's free and marketable title, is not true. How 16 would that affect your report? 17 MR. BRENNER: Incomplete hypothetical. 18 THE WITNESS: It wouldn't affect my report 19 because I'm not a title expert. 20 BY MS. HANKS: 21 Q. So is it your testimony that this assumption 22 could be false and your report for value would still 23 be accurate? 24 MR. BRENNER: Incomplete hypothetical. 25 THE WITNESS: My report makes the assumption</p>

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<p>1 A. Yes.</p> <p>2 Q. And I have the entire textbook if you'd</p> <p>3 rather look at that. Is this a textbook that you use</p> <p>4 in the course of your work as an appraiser?</p> <p>5 A. At times.</p> <p>6 Q. And if you would turn to -- it's page 68 of</p> <p>7 the textbook, but it's the second page in the packet.</p> <p>8 And actually I highlighted this section we're going</p> <p>9 to talk about. It reads, "The Universal Standards of</p> <p>10 Professional Appraisal Practice, USPAP, requires the</p> <p>11 appraiser to identify the real property being</p> <p>12 appraised in every assignment." Did you do that in</p> <p>13 this case?</p> <p>14 A. Yes.</p> <p>15 Q. And what rights were you understanding that</p> <p>16 you were appraising?</p> <p>17 A. Fee simple ownership.</p> <p>18 Q. So as if Rose of Sharon Faith Ministries</p> <p>19 still owned the property?</p> <p>20 A. Yes.</p> <p>21 Q. What does this appraisal have to do with the</p> <p>22 actual problem in the litigation, if anything?</p> <p>23 A. I guess you'd have to --</p> <p>24 MR. BRENNER: Hold on. Incomplete</p> <p>25 hypothetical. Form. Lacks foundation. Calls for a</p>	<p>1 Q. And who did you identify were the intended</p> <p>2 users of your report?</p> <p>3 A. Bank of America; Bradley Arant Boult</p> <p>4 Cummings, LLP; or legal professionals associated with</p> <p>5 this case.</p> <p>6 Q. Then the next one of the steps says,</p> <p>7 "Intended use of the appraisal." What did you</p> <p>8 determine or what was your understanding was the</p> <p>9 intended use by Bank of America of your appraisal?</p> <p>10 MR. BRENNER: Calls for speculation.</p> <p>11 THE WITNESS: It's listed on page 1 under</p> <p>12 the assignment type in the body of the report.</p> <p>13 BY MS. HANKS:</p> <p>14 Q. What does it say?</p> <p>15 A. "Provide a retrospective market value</p> <p>16 opinion for litigation involving the HOA foreclosures</p> <p>17 of the subject property."</p> <p>18 Q. Okay. I understand that's a general</p> <p>19 statement why you were hired. But under the</p> <p>20 valuation process, did you identify what the intended</p> <p>21 use of the appraisal was?</p> <p>22 MR. BRENNER: Objection. The question</p> <p>23 misstated prior testimony. The witness never said it</p> <p>24 was general. Lacks foundation. And it's</p> <p>25 argumentative.</p>
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<p>1 legal conclusion. Calls for speculation.</p> <p>2 THE WITNESS: Okay. I couldn't answer that</p> <p>3 question because I'm not exactly sure.</p> <p>4 BY MS. HANKS:</p> <p>5 Q. Did you inquire at all of Bank of America or</p> <p>6 Accurity as to what the problem was in the underlying</p> <p>7 litigation?</p> <p>8 MR. BRENNER: Lacks foundation.</p> <p>9 THE WITNESS: Again, I think I've answered</p> <p>10 it. But to provide a retrospective market value as a</p> <p>11 benchmark of what the fair market value of a given</p> <p>12 property would be as of a specified date and time.</p> <p>13 BY MS. HANKS:</p> <p>14 Q. Okay. So turn to the second page. It's</p> <p>15 page 51 of the textbook and the second page of that</p> <p>16 packet in Exhibit 3. And it gives you Figure 4.1.</p> <p>17 It looks like it's a chart explaining how -- each of</p> <p>18 the steps that you do in terms of a valuation</p> <p>19 process. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And the first box I want to talk about, you</p> <p>22 have to define the problem. And the first one says,</p> <p>23 "Identification of the client/intended users." Did</p> <p>24 you do that in this case?</p> <p>25 A. Yes.</p>	<p>1 THE WITNESS: You know, this is a scope of a</p> <p>2 guideline.</p> <p>3 BY MS. HANKS:</p> <p>4 Q. Right.</p> <p>5 A. And they're in the report. You don't have</p> <p>6 to have -- you have to have what you stated in the</p> <p>7 report here, and it's here. So ask me the next one.</p> <p>8 Q. I'm still trying to understand what your</p> <p>9 understanding is of how your report is going to be</p> <p>10 used or intended to be used by Bank of America as</p> <p>11 required by the USPAP standards identifying it.</p> <p>12 MR. BRENNER: You're misstating the USPAP</p> <p>13 standard. You've already asked this question several</p> <p>14 times. It's vague and it's argumentative.</p> <p>15 THE WITNESS: And this isn't USPAP.</p> <p>16 BY MS. HANKS:</p> <p>17 Q. Okay.</p> <p>18 A. This is not USPAP.</p> <p>19 Q. But you're required to do what you see in</p> <p>20 this diagram. In other words, the definition of the</p> <p>21 problem, you're required to do all of these items</p> <p>22 that are listed in this box. Identify the client,</p> <p>23 the intended use, the purpose of the appraisal, the</p> <p>24 date of opinion, the identification of</p> <p>25 characteristics of the property, extraordinary</p>

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<p>1 assumptions, and then hypothetical conditions.</p> <p>2 A. They're all there.</p> <p>3 Q. In your report?</p> <p>4 A. Yes.</p> <p>5 Q. I'm sorry. What page was it where you</p> <p>6 indicated that you identified the intended use of the</p> <p>7 appraisal?</p> <p>8 A. The first form page.</p> <p>9 Q. So I have it as Dugan 5; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then where is it that you state intended</p> <p>12 use of the report?</p> <p>13 MR. BRENNER: Asked and answered.</p> <p>14 BY MS. HANKS:</p> <p>15 Q. In the assignment box here, is that where</p> <p>16 you were reading from previously?</p> <p>17 A. Yes.</p> <p>18 Q. So you have, "Intended use. Provide a</p> <p>19 retrospective market value opinion for litigation</p> <p>20 involving the HOA foreclosure of the subject</p> <p>21 property."</p> <p>22 Do you need to know any more other than Bank</p> <p>23 of America intends to use it somehow, some way, in</p> <p>24 the litigation?</p> <p>25 A. No, I don't believe so.</p>	<p>1 Q. You only assessed the property rights of</p> <p>2 Rose of Sharon Faith Ministries assuming they still</p> <p>3 owned the property free and clear. Correct? Free</p> <p>4 and clear of a mortgage.</p> <p>5 A. Well, I wouldn't have any way to know</p> <p>6 whether the mortgage was free and clear. I'm</p> <p>7 estimating the market value subject to good title and</p> <p>8 such. I don't know if they have any liens.</p> <p>9 Q. Would you agree that your report is only</p> <p>10 credible to the extent it gets compared to another</p> <p>11 market value appraisal?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. Is your report in terms of -- because I know</p> <p>14 you really don't understand how Bank of America might</p> <p>15 use your report other than you said in the HOA</p> <p>16 litigation. Right?</p> <p>17 A. Correct.</p> <p>18 Q. So if the report is -- if your market value</p> <p>19 appraisal is compared to something other than a</p> <p>20 market value appraisal, does that jeopardize the</p> <p>21 credibility of your report in terms of its use?</p> <p>22 A. You have to ask it again.</p> <p>23 MS. HANKS: Actually, can you repeat the</p> <p>24 question?</p> <p>25 ///</p>
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<p>1 Q. Nothing under the USPAP or your ethical</p> <p>2 guidelines require you to know anything specific on</p> <p>3 how the report is going to be used?</p> <p>4 A. No.</p> <p>5 MR. BRENNER: Misstates prior testimony.</p> <p>6 Lacks foundation.</p> <p>7 BY MS. HANKS:</p> <p>8 Q. And then after the definition of the problem</p> <p>9 where it said "Intended use of appraisal," the</p> <p>10 purpose of the appraisal says "including definition</p> <p>11 of value."</p> <p>12 And again just so I'm clear. Bank of</p> <p>13 America imposed the definition of value that you will</p> <p>14 be using in your appraisal in this context, correct,</p> <p>15 because they asked for a market value, a</p> <p>16 retrospective market value?</p> <p>17 A. Yes.</p> <p>18 Q. And then the next one is "Date of opinion of</p> <p>19 value," which you provided. And the next one says,</p> <p>20 "Identification of characteristics of the property,</p> <p>21 including location and property to be valued."</p> <p>22 Just so I understand, again, you did not</p> <p>23 analyze the property rights of SFR or Bank of</p> <p>24 America, correct, in your appraisal?</p> <p>25 A. Yes.</p>	<p>1 (Whereupon the pending question</p> <p>2 was read by the reporter.)</p> <p>3 THE WITNESS: I'm not even sure that makes</p> <p>4 sense.</p> <p>5 BY MS. HANKS:</p> <p>6 Q. Okay. I can clarify it. I understand the</p> <p>7 underlying report. Your report is credible in its</p> <p>8 universe in terms of what you did. You did a market</p> <p>9 value based on the assumptions and limiting</p> <p>10 conditions. I understand that's your testimony.</p> <p>11 And what I'm asking is would the credibility</p> <p>12 of the report in terms of its use, if someone else</p> <p>13 used it to compare it to a non-market-value</p> <p>14 appraisal, does that jeopardize the credibility of</p> <p>15 your report?</p> <p>16 A. I don't understand that. It doesn't even</p> <p>17 make any sense.</p> <p>18 Q. Are you having trouble with the question?</p> <p>19 A. You're trying to say that my market value</p> <p>20 approach would not be a market value approach to</p> <p>21 someone else?</p> <p>22 Q. No. That it can't be compared to someone</p> <p>23 who's done something other than a market value</p> <p>24 appraisal. In other words, can you use your report?</p> <p>25 Does the credibility of your report hinge on how it's</p>

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1 Q. It's not a market value transaction. Right?
2 **MR. BRENNER:** Same objections.
3 **THE WITNESS:** Yeah. I'm going to say that I
4 haven't been hired to do the HOA analysis on the
5 other side yet.
6 **BY MS. HANKS:**
7 Q. So are you taking back your statement that
8 the price paid by any person at an HOA sale is
9 unreasonable if it's below market value?
10 A. Are you asking me if it meets the definition
11 of market value or disposition value?
12 Q. No. You said that it makes no sense and
13 that has to be unreasonable -- or it definitely was
14 unreasonable I think was your term -- because they're
15 paying so below market value.
16 And that's what led me to say, "But it's not
17 a market value transaction. So why would you be led
18 to that conclusion?" And then you said, "Well, I
19 haven't done that analysis." So I'm just asking, are
20 you retracting that testimony now?
21 **MR. BRENNER:** And I'm going to continue to
22 object that it calls for a legal conclusion. It's
23 outside the scope of this witness's testimony and
24 what he's been retained for and what he's told you
25 he's been retained for. And it's an incomplete

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1 hypothetical and it lacks foundation.
2 **THE WITNESS:** It's outside of my scope of
3 work. If I'm at some point retained for that, then I
4 can give you a more educated answer.
5 **BY MS. HANKS:**
6 Q. Just so we're on the same page. You're not
7 qualified to testify today that the price paid by SFR
8 was unreasonable?
9 **MR. BRENNER:** Objection to the form and
10 foundation of the question. You haven't laid
11 foundation for his qualifications.
12 **THE WITNESS:** Yes.
13 **BY MS. HANKS:**
14 Q. You'd agree with what I just said?
15 **MR. BRENNER:** Same objection.
16 **THE WITNESS:** That I'm not testifying on --
17 **BY MS. HANKS:**
18 Q. Right. As you sit here today, you're not
19 qualified to testify that the price paid by SFR was
20 unreasonable? Because I think you had indicated you
21 haven't done that analysis or been retained to do
22 that analysis.
23 **MR. BRENNER:** Objection. Calls for
24 speculation. Calls for a legal conclusion.
25 **THE WITNESS:** I think I'm qualified to state

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1 that these are not arms-length transactions, and
2 they're not market driven. And, therefore, they're
3 unreasonable.
4 **BY MS. HANKS:**
5 Q. Is there ever a context where an HOA
6 foreclosure sale could be arms-length?
7 A. Sure.
8 Q. How?
9 A. If at the auction it's bid up to market
10 value and then sold with the highest price and it's
11 close to market value.
12 Q. How could the HOA control the bids at the
13 sale to make sure it got up to market value?
14 **MR. BRENNER:** Calls for speculation and
15 argumentative.
16 **THE WITNESS:** Well, they can't control it.
17 But I believe we've seen that these units today in
18 current time are selling for significantly more than
19 what they sold for prior to the State Supreme Court
20 decision.
21 **BY MS. HANKS:**
22 Q. Do you know if that, in fact, happened
23 because of the Supreme Court decision?
24 **MR. BRENNER:** Calls for speculation.
25 **THE WITNESS:** I can't answer that. I don't

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1 know.
2 **BY MS. HANKS:**
3 Q. So you haven't done any analysis of the ebb
4 and flow of prices paid at HOA foreclosure sales in
5 relation to certain events, such as the Supreme Court
6 decision?
7 A. Not yet.
8 Q. So getting back to where we were going. How
9 can an HOA foreclosure sale ever be an arms-length
10 transaction?
11 **MR. BRENNER:** Lacks foundation. Calls for
12 speculation.
13 **THE WITNESS:** It could be a minimum bid and
14 bid up to close to market value.
15 **BY MS. HANKS:**
16 Q. But that's based on the bidding. That's
17 dictated by the bidding that happens at that
18 particular sale. Right?
19 A. Correct.
20 Q. So is an arms-length transaction -- I guess
21 I'm confused on the definition of an arms-length
22 transaction. Arms-length transaction is the price
23 that was actually paid for something?
24 A. No. An arms-length transaction is a willing
25 buyer, a willing seller. Paid in cash. Everybody

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<p>1 and said, "But the HOA foreclosure sale where SFR 2 purchased this property was not a market value 3 transaction." Correct? 4 A. Yes. 5 Q. So then how could SFR ever have paid market 6 value for the property? 7 A. They bought it before the HOA lien from the 8 seller. 9 Q. But the seller would have to list it for 10 sale. Correct? 11 A. But they would have to know about it 12 somehow. 13 Q. Do you know if Rose of Sharon Faith 14 Ministries ever listed the house for sale? 15 A. I don't believe so. 16 Q. So the only way SFR could have paid market 17 value is if Rose of Sharon Faith Ministries listed it 18 for sale? 19 MR. BRENNER: Calls for speculation. 20 Incomplete hypothetical. Lacks foundation. 21 THE WITNESS: The question makes absolutely 22 no sense. The question has no concept of reality. 23 BY MS. HANKS: 24 Q. And that's where I'm trying to get 25 clarification because I'm confused by your response.</p>	<p>1 BY MS. HANKS: 2 Q. Let's follow the train of thought here. 3 Again, you said the price paid by SFR was 4 unrealistic. And you said why. And then you 5 answered, "Because it was below market value." And I 6 said, "Isn't the HOA foreclosure a non-market-value 7 transaction?" You said, "Yes." 8 It brings me right back to it, then. Then 9 how could a price be paid at a market value rate if 10 it wasn't a market value transaction? 11 MR. BRENNER: I'm going to object that it's 12 argumentative, lacks foundation, and calls for 13 speculation. And these are arguments, not factual 14 questions. If you can answer her question, please 15 answer it. 16 THE WITNESS: I don't have a clue what 17 you're asking. 18 BY MS. HANKS: 19 Q. Do you know if the bank attended this 20 foreclosure sale? 21 A. No. 22 Q. Do you know if the bank can attend an HOA 23 foreclosure sale? 24 A. It's beyond the scope of my job. 25 Q. So that's an "I don't know"?</p>
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<p>1 A. But that's not my job to tell you how to 2 clarify the question. The question doesn't make any 3 sense. 4 Q. And I'll clarify it. That's what I'm trying 5 to do. I'm trying to clarify it. I'm trying to 6 understand your answer because your answer doesn't 7 make sense. That's what I'm trying to get at. How 8 could a party claim market value for a piece of 9 property in a non-market-value transaction? 10 MR. BRENNER: Calls for speculation. It's 11 an incomplete hypothetical. And it lacks foundation. 12 Mr. Dugan is an appraiser. He's not a real estate 13 agent. He hasn't reviewed other evidence in this 14 case. The question's been asked and answered. 15 MS. HANKS: And I'll just say for the 16 record, Counsel, he made an opinion that the price 17 paid by SFR is unrealistic. So to the extent he's 18 going to come to trial, I'm entitled to know what's 19 the basis for that statement. If you want to retract 20 that -- 21 MR. BRENNER: You're not asking for what the 22 basis for the statement is. 23 MS. HANKS: I am. 24 MR. BRENNER: You're asking how can somebody 25 come in and do that.</p>	<p>1 A. I don't know. 2 Q. Then it would be fair to state that you 3 didn't know if the bank can bid at the foreclosure 4 sale in order to control the price? 5 A. Beyond my scope. 6 Q. So that's an "I don't know"? 7 A. Beyond my scope. 8 Q. Do you know? 9 A. I said it's beyond my scope of work. 10 Q. I understand that. But as you sit here as 11 an appraiser with how many years of experience, do 12 you know if a bank can do that? 13 MR. BRENNER: Calls for speculation. Calls 14 for a legal conclusion. 15 THE WITNESS: I don't go to the auction. So 16 I'm sure banks, people, could bid against the HOA. 17 They can go in there and cure the HOA lien and bring 18 it current anytime prior to the sale or at the time 19 of the sale. 20 BY MS. HANKS: 21 Q. And so you do have an understanding that the 22 bank could go to the HOA foreclosure sale and in some 23 regard control the bidding? 24 MR. BRENNER: Calls for speculation. 25 THE WITNESS: Beyond my scope.</p>

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1 BY MS. HANKS:
2 Q. So that's an "I don't know"?
3 A. I don't know.
4 Q. Did you in the course and scope of your work
5 look at other foreclosure sale prices in November
6 2013?
7 A. First of all, they're not arms-length
8 transactions. So they're not sales. They're not
9 market value. They're not disposition value or
10 liquidation value.
11 Q. You said a lot in that answer. So I'll back
12 up. What do you mean by they're not sales?
13 A. They're not sales.
14 Q. What are they?
15 A. They're liens.
16 Q. Okay. But that's the actual auction. In
17 terms of an appraisal, what do you believe the actual
18 auction is when they're auctioning off the property?
19 MR. BRENNER: Form. Vague.
20 BY MS. HANKS:
21 Q. You wouldn't call that a sale?
22 A. No. They're liens. They're liens by
23 homeowners. And per NRS, they're only allowed to bid
24 in what they're owed.
25 Q. And what statute of NRS states that?

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1 A. 116.
2 Q. But which section?
3 A. I don't know. I've read it but --
4 Q. When you say they're only allowed to bid
5 what they're owed, who's they?
6 A. The HOA.
7 Q. How about other people who come to the
8 auction?
9 A. They could bid anything they want.
10 Q. And I'm actually calling the actual auction
11 "the sale of the property." So should we just call
12 it an auction instead of a sale?
13 A. I'd prefer to call it "a lien." It's a sale
14 of some type of partial interest ownership.
15 MR. BRENNER: May I make a suggestion? What
16 if we call it "an HOA foreclosure on a lien." Is
17 that the right terminology?
18 MS. HANKS: If you want to call it an HOA
19 foreclosure on a lien, I can do that.
20 MR. BRENNER: Ask the witness.
21 THE WITNESS: That's fine.
22 MS. HANKS: Can you go back to the original
23 question where we had trouble with the "sale" word?
24 (Whereupon the pending question
25 was read by the reporter.)

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1 BY MS. HANKS:
2 Q. So in the course and scope of your work for
3 this particular file, did you review prices being
4 paid at HOA foreclosures on a lien in or around
5 November 1st, 2013?
6 A. No.
7 Q. So would it be fair to state that you do
8 note that the price paid by SFR of \$22,000 on
9 November 1st, 2013 is consistent with what other
10 parties were paying for HOA foreclosures on a lien?
11 A. I'm a real estate appraiser. HOA liens are
12 not market definition sales. Therefore, if you want
13 to know what the HOA liens are, anybody could look
14 those up. But that's not part of an appraisal
15 assignment because anybody that would use HOA liens
16 and confer that those are sales and should be used
17 doesn't understand the definition of disposition
18 value or market value.
19 Q. So backing up to my question. Because you
20 didn't research what parties were paying in or around
21 November 1st, 2013 at HOA foreclosures, would you
22 agree, then, that you cannot state whether the price
23 paid by SFR in this case was below, above, or at
24 those prices?
25 A. It's pretty irrelevant to me because I'm a

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1 real estate appraiser. They're not market driven
2 transactions. So why would I look at them.
3 Q. And I understand why you wouldn't look at
4 them for a market value appraisal. I get that.
5 A. I wouldn't look at them for disposition
6 value.
7 Q. And we'll get to that because that was the
8 second half of your answer. I just want to make
9 sure. I want you to stick with the question.
10 The question was, having not reviewed what
11 parties were paying in or around this time in HOA
12 foreclosures, you are not in a position to state that
13 the price paid by SFR was inconsistent with that time
14 period. Correct?
15 MR. BRENNER: Objection. Foundation.
16 THE WITNESS: There would be no reason for
17 an appraiser to look at HOA lien transactions because
18 they are not sales.
19 MS. HANKS: Counsel, he's not answering the
20 question.
21 MR. BRENNER: I think he's answering the
22 question to the best of his ability. He's saying as
23 an appraiser he's looking at market value. And
24 that's the way he's answering the question.
25 Are you able to give her a yes-or-no answer

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1 or "I don't know"?
2 **BY MS. HANKS:**
3 Q. It's a yes-or-no question. Let me back up.
4 I'll ask it for the fourth time.
5 I don't care why you would or wouldn't look
6 at stuff. The questioning started with the fact that
7 I asked you, did you as part of your assignment
8 research HOA foreclosures on a lien? And you had
9 indicated, no, you didn't. That wasn't part of the
10 assignment. So you didn't. I understand that.
11 So my next follow-up question to that was,
12 would it be fair to state that because you didn't
13 research that material, you could not state whether
14 the price paid by SFR in this case was inconsistent
15 with what other people were paying at the time at HOA
16 foreclosures? Yes or no? I mean is that correct?
17 **A. Correct.**
18 Q. Now, the second half of that question, you
19 gave an answer to the extent it's not disposition
20 value. It's not market value. What did you mean by
21 that when I was talking about prices paid at an HOA
22 foreclosure lien?
23 **A. That they can't be construed as meeting any**
24 **type of market value definition.**
25 Q. Okay. And how about disposition value?

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1 **A. Can't make it.**
2 Q. Why?
3 **A. Both the buyer and seller acting prudently**
4 **and knowledgeably.**
5 Q. You believe that's not happening when an HOA
6 is selling a lien?
7 **A. No.**
8 Q. What value would you use then?
9 **A. There is no value for an HOA lien. There is**
10 **no market value. They are just prices being paid for**
11 **whatever, to cure the lien.**
12 Q. So how can you have an opinion that it's not
13 realistic, then, if there's no value that goes to it?
14 Can they be realistic, the prices being paid?
15 **A. No, because they're pennies on the dollar,**
16 **and it makes absolutely no sense. In other words,**
17 **because anybody acting prudently wouldn't give a**
18 **property away for less than what the land value is.**
19 Q. Except for an HOA who's trying to satisfy a
20 lien. Right?
21 **A. Correct. But it can be disposition value.**
22 Q. And your testimony is that there's no value
23 in the world of appraisal that applies to that type
24 of transaction?
25 **A. Correct.**

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1 Q. And when parties such as SFR are purchasing
2 a property at the time -- we'll go with November 1st,
3 2013 -- what was SFR buying?
4 **MR. BRENNER:** Calls for a legal conclusion.
5 **THE WITNESS:** Plus it's beyond the scope of
6 my work.
7 **BY MS. HANKS:**
8 Q. I'm asking not in terms of title or anything
9 like that. I'm talking about the bundle of rights we
10 talked about earlier and fee simple. What is
11 somebody buying when they're buying something at an
12 HOA foreclosure?
13 **MR. BRENNER:** Calls for a legal conclusion.
14 **THE WITNESS:** My scope was to estimate the
15 value as of March 3rd, 2015, which I have completed.
16 **BY MS. HANKS:**
17 Q. Are you intending to come to trial and
18 testify that the price paid by SFR was not realistic?
19 **MR. BRENNER:** Form. Counsel, can I just
20 help clarify? You mean realistic in comparison to
21 market value? If you tack that on, I think you'll
22 get your question answered a lot quicker, and we'll
23 avoid the back-and-forth.
24 **BY MS. HANKS:**
25 Q. Let's do that. Are you intending to come to

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1 trial and testify that the price paid by SFR was
2 unrealistic?
3 **A. Yes.**
4 Q. And how can you compare a market value
5 transaction to a non-market-value transaction and
6 make that value?
7 **A. If I appraise something at X and pay Y,**
8 **which is pennies on the dollar, it indicates there's**
9 **something wrong with something.**
10 Q. But you're comparing a market value to a
11 non-market-value transaction, which we established
12 earlier. It's apples to oranges.
13 **A. I'll testify to the market value of this**
14 **property. And I'll this leave up to the attorneys to**
15 **argue the rest.**
16 Q. So you're not going to come to trial and say
17 that the price paid by SFR was unrealistic because it
18 was below market value?
19 **A. Not at this time.**
20 Q. And if you change that at any point, would
21 you supplement your report?
22 **MR. BRENNER:** That would go for the
23 attorneys. I'll represent for the record we'll
24 follow the Rules of Civil Procedure.
25 ///

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<p>1 foundation.</p> <p>2 THE WITNESS: And I can't answer that</p> <p>3 question. I don't know what the ramifications are</p> <p>4 between the two. It's up to the attorneys to argue</p> <p>5 that out in court.</p> <p>6 BY MS. HANKS:</p> <p>7 Q. And just so I'm clear. When you're saying</p> <p>8 disposition of value and liquidation value are</p> <p>9 inappropriate definitions to use for a price paid at</p> <p>10 a HOA foreclosure lien, that's because you're basing</p> <p>11 it off of the market value? And you believe that if</p> <p>12 less market value was paid, then concessions were</p> <p>13 made?</p> <p>14 A. I know you understand English. Number 9,</p> <p>15 "The price represents the normal consideration for</p> <p>16 the property sold." Normal consideration.</p> <p>17 Q. Right. But did you compare other HOA</p> <p>18 foreclosure liens?</p> <p>19 MR. BRENNER: Asked and answered.</p> <p>20 THE WITNESS: I've already answered that</p> <p>21 question many times.</p> <p>22 BY MS. HANKS:</p> <p>23 Q. And that's what I want to make sure I</p> <p>24 understand. When they say "prices normally paid" and</p> <p>25 understanding that definition, that term is talking</p>	<p>1 November 1st, 2013, fair market value.</p> <p>2 BY MS. HANKS:</p> <p>3 Q. Right. I understand that. But your counsel</p> <p>4 asked you, "Are you intending to testify that the</p> <p>5 amount paid by SFR" -- and he asked you three</p> <p>6 things -- "is not market value?" And you said,</p> <p>7 "Yes." And he said, "Is not disposition value?" And</p> <p>8 you said, "Yes." And he said, "Is not liquidation</p> <p>9 value?" And you said, "Yes."</p> <p>10 A. Correct.</p> <p>11 Q. But you cannot come into court and testify</p> <p>12 at all that what SFR paid meets any definition of</p> <p>13 value in the appraisal world because it doesn't fit.</p> <p>14 There's no definition of value that fits the context</p> <p>15 how SFR acquired this property. Correct?</p> <p>16 MR. BRENNER: Form.</p> <p>17 THE WITNESS: I guess in Mr. Brunson's</p> <p>18 report, he said you could customize a definition. So</p> <p>19 I'm not sure how to do that because definitions are</p> <p>20 the rules. And they're not changed. And you can't</p> <p>21 make up a definition for some type of value. But in</p> <p>22 his report, he says you can.</p> <p>23 BY MS. HANKS:</p> <p>24 Q. And I just want to be clear. Counsel asked</p> <p>25 you, "Can an HOA start off an auction at the market</p>
Page 130	Page 132
<p>1 about normally paid in a fair market context?</p> <p>2 A. No, in disposition value.</p> <p>3 Q. Okay.</p> <p>4 A. In other words, disposition value says the</p> <p>5 price represents the normal consideration. There's</p> <p>6 nothing normal about these HOA liens, nothing normal</p> <p>7 about these. The HOA liens can't even buy you the</p> <p>8 dirt that the property -- the house sits on for what</p> <p>9 they've paid for these properties.</p> <p>10 Q. And I think that brings me back to kind of</p> <p>11 what we were talking about before, then. It's your</p> <p>12 belief that there's no definition of value that would</p> <p>13 fit that criteria, what was happening in these HOA</p> <p>14 foreclosures on their liens?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so because of that, how does</p> <p>17 anyone know -- and when I say "anyone," I mean any</p> <p>18 appraiser -- whether the price paid by SFR is</p> <p>19 unreasonable? If you have no definition of value,</p> <p>20 how can you possibly make that an unreasonable price?</p> <p>21 MR. BRENNER: Calls for speculation and</p> <p>22 incomplete hypothetical.</p> <p>23 THE WITNESS: That wasn't my job, to tell</p> <p>24 you whether the price is reasonable, what SFR paid.</p> <p>25 My job was to estimate the market value as of</p>	<p>1 value price?" You had answered "Yes" to him, and you</p> <p>2 answered "No" to me. So which is it?</p> <p>3 MR. BRENNER: Misstates his testimony.</p> <p>4 BY MS. HANKS:</p> <p>5 Q. Can an HOA start off an auction on its lien</p> <p>6 at the market value of a house?</p> <p>7 A. I think I said yes.</p> <p>8 Q. Yeah.</p> <p>9 A. I mean, if they felt that they had a</p> <p>10 responsibility to the first.</p> <p>11 Q. And I thought I asked you that question, and</p> <p>12 you said, "No, I don't know if they can do that."</p> <p>13 A. Why don't we just say I don't know.</p> <p>14 Q. Then your last follow-up question with</p> <p>15 counsel was it didn't matter to you for purposes of</p> <p>16 your supplementations who owned the property, whether</p> <p>17 it was Rose of Sharon Faith Ministries or SFR because</p> <p>18 you were assuming that title was free and marketable.</p> <p>19 Correct?</p> <p>20 A. Title was good and marketable.</p> <p>21 Q. That's a dispute in this case, whether SFR</p> <p>22 has good and marketable title?</p> <p>23 A. Beyond the scope of my assignment.</p> <p>24 Q. Do you know if SFR could sell the property</p> <p>25 right now?</p>

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jane V. Efaw, CCR No. 601, do hereby certify:

That I reported the taking of the deposition of
the witness, SCOTT DUGAN, at the time and place
aforesaid;

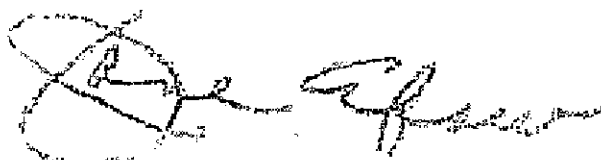
That prior to being examined, the witness was by
me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes
into typewriting and that the typewritten transcript
of said deposition is a complete, true and accurate
transcription of said shorthand notes taken down at
said time, and that a request has been made to review
the transcript.

I further certify that I am not a relative or
employee of counsel of any party involved in said
action, nor a relative or employee of the parties
involved in said action, nor a person financially
interested in the action.

Dated at Las Vegas, Nevada, this ____ day of

_____, 2015.



Jane V. Efaw, CCR #601

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jane V. Efaw, CCR No. 601, do hereby certify:

That I reported the taking of the deposition of
the witness, SCOTT DUGAN, at the time and place
aforesaid;

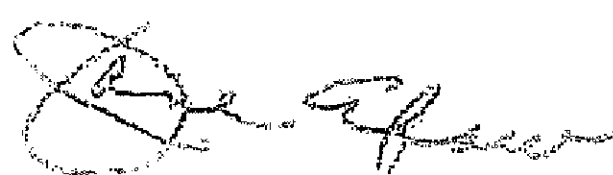
That prior to being examined, the witness was by
me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes
into typewriting and that the typewritten transcript
of said deposition is a complete, true and accurate
transcription of said shorthand notes taken down at
said time, and that a request has been made to review
the transcript.

I further certify that I am not a relative or
employee of counsel of any party involved in said
action, nor a relative or employee of the parties
involved in said action, nor a person financially
interested in the action.

Dated at Las Vegas, Nevada, this _____ day of

_____, 2015.



Jane V. Efaw, CCR #601

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, Lori-Ann Landers, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify:
8

9 That I reported the taking of the deposition
10 of the witness, RICHARD SCOTT DUGAN, at the time and
11 place aforesaid;
12

13 That prior to being examined, the witness
14 was by me duly sworn to testify to the truth, the whole
15 truth, and nothing but the truth;
16

17 That I thereafter transcribed my shorthand
18 notes into typewriting and that the typewritten
19 transcript of said deposition is a complete, true and
20 accurate transcription of my said shorthand notes taken
21 down at said time to the best of my ability.
22

23 I further certify that I am not a relative
24 or employee of an attorney or counsel of any of the
25 parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action; and that transcript review NRCP
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 2nd
day of June 2015.

LORI-ANN LANDERS, CCR 792, RPR

Lori-Ann Landers

EXHIBIT 2:

Deposition of R. Scott Dugan

June 1, 2015

(Manorwood property)

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

Scott Dugan
June 1, 2015



Mini-Transcripts® with Word Index

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1 Conditions along with the Clarification of Scope of
2 Work provide specifics as to the development of the
3 appraisal along with exceptions that may have been
4 necessary to complete a credible report." What is an
5 assumption?
6 A. An assumption is something that we assume to
7 be correct.
8 Q. And then what is a limiting condition?
9 A. A limiting condition is we limit our
10 liability and assume that the information that we've
11 obtained regarding comparables and so forth is fairly
12 accurate.
13 Q. And it talks about the effective date. Am I
14 correct in understanding the effective date is
15 January 18th, 2013. Correct?
16 A. Yes.
17 Q. And that's the same date as the HOA auction;
18 is that right?
19 A. I believe so.
20 Q. Now, where in your report do I find the
21 assumptions that you made?
22 A. The assumptions are on my page number 8 at
23 the top.
24 Q. So let's go there. I want to direct your
25 attention to the first assumption. I'll skip past

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1 the first sentence and go to the second sentence that
2 reads, "The appraiser assumes that the title is good
3 and marketable and, therefore, will not render any
4 opinions about the title." Did I read that
5 correctly?
6 A. I believe so.
7 Q. And did you review any title reports with
8 respect to this property as part of your drafting of
9 the report in this case?
10 A. No.
11 Q. And what is the effect of that assumption if
12 it's not true?
13 MS. HAMRICK: Objection. Calls for a legal
14 conclusion and speculation.
15 THE WITNESS: We don't make an assumption
16 that that's not true. That is a standard portion of
17 our scope of work. That we assume that the title is
18 good and marketable in every assignment we do.
19 BY MS. HANKS:
20 Q. And would it be fair to state that your
21 conclusions as to market value are only as good as
22 the truth of the assumptions made?
23 MS. HAMRICK: Objection. Calls for
24 speculation and legal conclusion.
25 THE WITNESS: Yes.

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1 BY MS. HANKS:
2 Q. And if you go further down that page where
3 it starts -- it looks bold to me. Do you see that
4 section?
5 A. Yes.
6 Q. "The scope of work is the type and extent of
7 research and analyses performed in an appraisal
8 assignment that is required to produce credible
9 assignment results, given the nature of the appraisal
10 problem, the specific requirements of the intended
11 users and the intended use of the appraisal report."
12 So let's talk about the nature of the
13 appraisal problem. What is your understanding of the
14 appraisal problem in the context of this case?
15 A. Well, the appraisal problem was very simple
16 for me. They wanted fair market value as of a
17 retrospective date of valuation not taking into
18 consideration the transfer of the HOA lien.
19 Q. So that's what I want to be clear on. When
20 you did your report, you specifically did not take
21 into consideration the HOA auction that occurred?
22 A. Yes.
23 Q. And how about the intended use? Well, let's
24 go back. The specific requirements of the intended
25 user, we already talked about that. Bank of America

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1 was asking for a market value appraisal
2 retrospectively; is that correct?
3 A. Yes.
4 Q. And then what was your understanding or what
5 is your understanding of the intended use of this
6 report by Bank of America?
7 MS. HAMRICK: Objection. Calls for
8 speculation.
9 THE WITNESS: That it will be used at some
10 point in time for litigation involving the HOA
11 foreclosure sale of this property.
12 BY MS. HANKS:
13 Q. Is it your understanding that Bank of
14 America intends to use your report to show that the
15 price paid by SFR at the HOA auction was
16 unreasonable?
17 MS. HAMRICK: Objection. Calls for
18 speculation. Calls for a legal conclusion.
19 THE WITNESS: I don't know that answer.
20 BY MS. HANKS:
21 Q. Have you ever heard of the term
22 "commercially unreasonable"?
23 A. I've heard of it.
24 Q. Are you familiar with it enough to testify
25 about it?

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1 A. No.
2 MS. HAMRICK: Objection. Vague. Lacks
3 foundation.
4 THE WITNESS: No.
5 MR. SHAFER: Do you need to take a break?
6 MS. HANKS: I'm sorry.
7 (Off the record.)
8 BY MS. HANKS:
9 Q. And if you read further in that paragraph,
10 do you see where it says, "The opinion of value that
11 is the conclusion of this report," the third or
12 fourth sentence?
13 A. Yes.
14 Q. It reads, "The opinion of value that is the
15 conclusion of this report is credible only within the
16 context of the scope of work, effective date, the
17 date of report, the intended users, the intended use,
18 the stated assumptions and limiting conditions, any
19 hypothetical conditions and/or extraordinary
20 assumptions, and the type of value, as defined
21 herein."
22 Am I correct -- and I'm going to paraphrase
23 because I want to make sure I understand what it
24 means. Does this statement mean that this report is
25 only credible to the extent that you accept as true

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1 all the assumptions and limiting conditions within
2 the report?
3 MS. HAMRICK: Objection. Lacks foundation.
4 THE WITNESS: Yes.
5 BY MS. HANKS:
6 Q. And it's only as credible with respect to
7 the intended use, which would be market value as of
8 the retrospective date. Correct?
9 A. Yes.
10 MS. HAMRICK: Objection. Lacks foundation.
11 Calls for a legal conclusion.
12 BY MS. HANKS:
13 Q. And so jumping off of that. If any of the
14 assumptions or limiting conditions that were applied
15 in this report were found to be nonapplicable, that
16 would in some way affect the credibility of the
17 report?
18 MS. HAMRICK: Objection. Calls for
19 speculation. Calls for a legal conclusion.
20 Incomplete hypothetical.
21 THE WITNESS: I estimated a fair market
22 value opinion based on the assumptions and limiting
23 conditions in this report, which are assumed to be
24 true and accurate.
25 ///

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1 BY MS. HANKS:
2 Q. Right. And so I'm just trying to understand
3 the statement. I was just stating it a different
4 way. So that means that if any of the assumptions or
5 limiting conditions were found to be inapplicable,
6 then that affects the credibility of the report?
7 MS. HAMRICK: Same objections.
8 THE WITNESS: You know, I've never been
9 asked that question. I guess I'd have to sit here
10 and read them all, as I don't read them all the time.
11 BY MS. HANKS:
12 Q. That leads me to my next question, then. Is
13 it a quantitative versus qualitative assessments? In
14 other words, is one assumption less important than
15 another assumption where you could have one
16 assumption not be true and not really affect the
17 credibility of the report?
18 A. Possibly.
19 Q. Okay. But the purpose of this statement,
20 and for your protection as an appraiser, the report
21 in terms of its credibility is only as good as all
22 the assumptions you put in here and all the limiting
23 conditions in here being accurate?
24 MS. HAMRICK: Objection. Assumes facts not
25 in evidence. Calls for a legal conclusion and

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1 incomplete hypothetical. Calls for speculation.
2 THE WITNESS: Yes.
3 BY MS. HANKS:
4 Q. And we talked about the assumptions. Where
5 are the limiting conditions set forth?
6 A. They're mixed in with the assumptions.
7 Q. Okay.
8 A. In other words, that I'm not a home
9 inspector. You must have the appraiser's written
10 consent and approval. Must be obtained before the
11 appraisal can be conveyed to another or anyone in the
12 public. They're all kind of listed there on that
13 page.
14 Q. Okay. Let's turn to page 4 of your report.
15 It's Bates-stamped Dugan 6.
16 MS. HANKS: Can we take a quick break? My
17 day care called, which is never a good thing. So
18 let's just take a quick break.
19 MS. HAMRICK: Absolutely.
20 (Off the record.)
21 BY MS. HANKS:
22 Q. So if you turn to page 4 of your report,
23 we've already established you marked the definition
24 of value used for purposes of the report was market
25 value. Correct?

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1 statement to mean that this market value appraisal,
2 this report, is not applicable or would not be
3 applicable to the HOA auction that happened in this
4 case?
5 **MS. HAMRICK:** Objection. Lacks foundation.
6 Calls for a legal conclusion.
7 **THE WITNESS:** Yes.
8 **BY MS. HANKS:**
9 Q. And then the next paragraph, the first
10 sentence reads, "The single point of value is based
11 on the definition of value (stated within the
12 report), which has criteria that may or may not be
13 consistent in the marketplace."
14 Would you agree that the definition of value
15 used in your report, which is fair market value, is
16 not consistent with the marketplace of the HOA
17 auction?
18 **MS. HAMRICK:** Objection. Calls for
19 speculation. Incomplete hypothetical. Vague and
20 ambiguous.
21 **THE WITNESS:** Yes.
22 **BY MS. HANKS:**
23 Q. And then you further talk about the single
24 point of value. The next paragraph, the last
25 sentence, it states, "The definition of market value

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1 and its criteria is not universal in its application
2 nor consistent from one intended use to another."
3 If I were to take that sentence and make it
4 more specific to this particular case, would I be
5 correct in stating that that statement means you
6 cannot take this market value report and uniformly
7 apply it to what happened in the HOA auction in this
8 case?
9 **MS. HAMRICK:** Objection. Calls for a legal
10 conclusion. Incomplete hypothetical. Calls for
11 speculation.
12 **THE WITNESS:** The HOA lien is not a market
13 value transaction. So how are you changing it?
14 **BY MS. HANKS:**
15 Q. No. I'm just asking if I understand that
16 definition. I think we're saying the same thing. So
17 I'll clarify it.
18 That sentence means if I make it specific to
19 this case, you're telling whoever is reading this
20 report that the market value used in this report may
21 not be consistent with other types of transactions.
22 And I'm asking would that be true in this case? Is
23 the market value report in this case inconsistent
24 with the HOA auction?
25 **MS. HAMRICK:** Same objections.

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1 **THE WITNESS:** The HOA liens are not any type
2 of market value.
3 **BY MS. HANKS:**
4 Q. Okay. And so this sentence would tell me as
5 a reader that I shouldn't or I can't use -- as an
6 intended user of this report, I can't use the report
7 in connection with an HOA lien because the two are
8 different?
9 **MS. HAMRICK:** Objection. Lacks foundation.
10 Incomplete hypothetical. Calls for speculation.
11 **THE WITNESS:** You can show the disparity
12 between the two.
13 **BY MS. HANKS:**
14 Q. But what would be the purpose of that if I'm
15 comparing -- because I think you said it before.
16 That's like comparing an apple to an orange.
17 Correct? A market value appraisal to an HOA lien
18 foreclosure is an apple to an orange, correct, in
19 terms of comparison?
20 A. Okay.
21 Q. Do you agree with that?
22 A. Yes.
23 Q. And so this statement means that the
24 definition of market value and its criteria is not
25 universal in its application nor consistent from one

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1 intended use to another. So are you telling the
2 reader by putting that caveat in the report that the
3 market value opinion in this report may not be
4 applicable to all circumstances?
5 A. No, because I did a fair market value and
6 that's what my report is based on. You really have
7 to read the whole sentence -- I mean the
8 multi-sentences because the single point of value is
9 a benchmark, and it doesn't mean that somebody may
10 pay less or more because that could happen.
11 Q. Okay. And we can go read the next
12 paragraph. That might help us explain that sentence
13 too.
14 It says, "This report was prepared to the
15 intended user's requirements and only for their
16 stated purpose."
17 And I think we clarified that, or we've
18 gotten that covered. That the intended user's
19 requirements and only for their stated purposes is
20 Bank of America wanted a market value from the
21 retrospective date of January 18, 2013. Correct?
22 A. Yes.
23 Q. And then you go on to say in the sentence of
24 the report, "The analysis and conclusions are unique
25 to that purpose and should not be relied upon for

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<p>1 be like insurable value. It's not a liquidation 2 value or disposition value. It's a fair market 3 value. 4 So, in other words, if the client were to 5 think that this was some type of different value, 6 they'd have to be specific and ask for that. 7 In other words, this isn't a cost approach 8 to value where they could -- a lot of times what 9 they'll do with appraisals is they'll try to use the 10 cost approach for the insurable value. They'll take 11 out the land and then say it's going to cost X to 12 build the house over, less the slab and less the 13 on-sites, which typically don't burn, and that's what 14 we should insure the property for. 15 BY MS. HANKS: 16 Q. So would it be fair to say you can't use 17 this report as evidence of any other value other than 18 market value? You can't take this report and say it 19 also means that's the disposition value and also the 20 liquidation value? 21 A. Yes. 22 Q. And how does disposition value and 23 liquidation value differ from market value? I know 24 there's different elements. I'm asking if you were 25 to look at this, if you would have done the analysis</p>	<p>1 liquidation value, is that correct, in your opinion? 2 A. Yes. 3 Q. Would you agree, however, that an HOA 4 foreclosure auction meets the definition of 5 liquidation or disposition value more than market 6 value? 7 MS. HAMRICK: Objection. Incomplete 8 hypothetical. Calls for speculation. Calls for a 9 legal conclusion. 10 THE WITNESS: I'd go to Number 9 again. 11 "The price represents the normal consideration for 12 the property sold unaffected by special or creative 13 financing or sales concessions granted by anyone 14 associated with the sale." 15 BY MS. HANKS: 16 Q. And help me understand that because I had 17 problems with that in the prior deposition. How can 18 disposition and liquidation value be different than 19 market value? 20 If I'm understanding correctly, that the one 21 element is starting from the premise of market value. 22 And that's how I understand what you're saying about 23 that element. That you're starting at what the 24 property would normally sell at, and that's market 25 value. How can that be possible if disposition and</p>
Page 50	Page 52
<p>1 of disposition value for this particular property, 2 what would you have done differently than you did for 3 your market value assessment? 4 MS. HAMRICK: Objection. Calls for 5 speculation. 6 THE WITNESS: Well, the main difference 7 between liquidation and disposition is in disposition 8 the sale is within a future exposure time specified 9 by the client. Liquidation value is consummation of 10 a sale within a short period of time. 11 BY MS. HANKS: 12 Q. And generally speaking, do liquidation 13 values and disposition values differ from market 14 values because of those difference factors? 15 A. Multiple factors, yes, they do. 16 Q. Does disposition value and liquidation value 17 tend to be lower or higher than market value because 18 of those added elements or different elements? 19 A. Typically, they would be lower. 20 Q. And I understand from a previous 21 deposition that it's your opinion that an HOA 22 foreclosure lien auction does not meet the definition 23 of disposition value. Correct? 24 A. Yes, I believe so. 25 Q. And it also does not meet the definition of</p>	<p>1 liquidation are different than market value? 2 MS. HAMRICK: Objection. Incomplete 3 hypothetical. Calls for speculation. 4 THE WITNESS: I'm not sure I got it, sorry. 5 BY MS. HANKS: 6 Q. And I apologize. And I'm trying to 7 understand it too. And correct me if I'm wrong. Am 8 I understanding what you're saying as to that 9 element? That the property sells for what it 10 normally sells for means or your understanding of 11 what that sentence means is what it sells for in a 12 market value transaction. Is that what that element 13 means. 14 A. The only thing different between disposition 15 and liquidation is the time of the sell and the 16 compulsion of the seller. 17 Q. And liquidation is a quicker compulsion than 18 disposition? 19 A. Liquidation is a shorter time period. 20 Q. Okay. 21 A. And disposition is driven by the client that 22 holds the note or holds something against the 23 property. 24 Q. So that element that talks about what the 25 property would normally sell for, absent these</p>

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1 concessions, what does your understanding of that
2 mean? In other words, what basis would it normally
3 sell for? Would it normally sell for in a
4 disposition context? Would it normally sell for in a
5 liquidation context? Or would it normally sell for
6 in a market value context? That's what I'm trying to
7 understand.

8 **A. There are only certain elements that are**
9 **different, which is the shorter period of time versus**
10 **consummation of a sale within a future exposure time.**
11 **But there still is exposure, and HOA's aren't**
12 **exposed.**

13 **Q. So it's even more of a distressed sale than**
14 **even liquidation. Would you agree with that?**

15 **A. Well, I'm not going to say it doesn't fit**
16 **these definitions based on Number 9 just by itself.**

17 **Q. I understand that. You've got "market" up**
18 **here on top in terms of --**

19 **A. Market value is everything is normal.**

20 **Q. And then disposition value you have some**
21 **normal elements to it. One of them being how long**
22 **it's exposed to the market. Right?**

23 **A. Correct.**

24 **Q. The timing. And you go even further down to**
25 **liquidation. That's even less timing. So the**

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1 compulsion to sell is even more of a forced sale.
2 Correct?

3 **A. Yes.**

4 **Q. So of all the value spectrums, would you put**
5 **an HOA foreclosure below liquidation because of the**
6 **timing that it's on the market?**

7 **MS. HAMRICK: Objection. Calls for**
8 **speculation. Outside the scope.**

9 **THE WITNESS: The HOA liens don't represent**
10 **any type of liquidation, disposition, or market**
11 **value.**

12 **BY MS. HANKS:**

13 **Q. No, I understand that. I understand that's**
14 **your opinion. But I mean if you had to put it on the**
15 **spectrum, you had to put it somewhere on that**
16 **spectrum. If you're looking at a spectrum starting**
17 **with market value and the next one is disposition**
18 **value and the next one is liquidation value, would**
19 **the next one in line be HOA foreclosure auction after**
20 **liquidation because the time is one day at a public**
21 **auction?**

22 **MS. HAMRICK: Objection. Incomplete**
23 **hypothetical. Calls for speculation. Outside the**
24 **scope.**

25 **THE WITNESS: I just don't think you can**

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1 compare an HOA lien transaction to any type of
2 definition of value because the liens are selling for
3 pennies on the dollar. So they don't make any sense.
4 They're transferring. And I understand that. But
5 when they transfer for nominal pennies on the dollar,
6 they're not any type of value.

7 **BY MS. HANKS:**

8 **Q. So would that get us back to the caveat that**
9 **you put in the Clarification of Scope of Work? That**
10 **you really can't take this report and compare it to**
11 **what happened in the HOA context because the HOA is a**
12 **beast of its own? Would that be a fair statement?**

13 **MS. HAMRICK: Objection. Lacks foundation.**
14 **Misstates testimony. Calls for speculation.**

15 **THE WITNESS: Yes.**

16 **BY MS. HANKS:**

17 **Q. If we turn to page 32 of your report, the**
18 **Valuation Methodology, the sentence states, "The data**
19 **presented in the report is considered to be the most**
20 **relevant to the valuation of the subject property**
21 **(and its market segment) based on its current**
22 **occupancy and market environment."**

23 **Now, I want to be clear about that. When**
24 **you wrote that sentence in this report, you do not**
25 **mean HOA lien foreclosure. Correct?**

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1 **MS. HAMRICK: I'm sorry. Which sentence was**
2 **that?**

3 **MS. HANKS: Yeah. After Valuation**
4 **Methodology, "The data presented in the report is**
5 **considered." It's page 32. It's the second**
6 **paragraph.**

7 **MS. HAMRICK: Is it in the "Limitations of**
8 **the Assignment" paragraph?**

9 **MS. HANKS: Are you on page 32?**

10 **MS. HAMRICK: Valuation. 32 of the report.**
11 **I'm sorry. I was looking at Dugan 32.**

12 **THE WITNESS: It's the same.**

13 **BY MS. HANKS:**

14 **Q. Okay. Yes, Dugan 34 is actually what**
15 **page 32 is Bates-stamped as. So after "Valuation**
16 **Methodology," you state, "The data presented in the**
17 **report is considered to be the most relevant to the**
18 **valuation of the subject property (and its market**
19 **segment) based on its current occupancy and market**
20 **environment.**

21 **Now, I want to be sure I understand that**
22 **sentence. When you wrote that sentence in this**
23 **report, you were not talking about market environment**
24 **to mean HOA auction. You mean if the Schaefer's still**
25 **owned the property and were listing it on the free**

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1 A. I believe so.
2 Q. So this isn't a phenomenon in and of itself.
3 There are other similar liens that do sell like this.
4 Correct?
5 MS. HAMRICK: Objection. Vague and
6 ambiguous as to "phenomenon."
7 THE WITNESS: I'm sorry?
8 BY MS. HANKS:
9 Q. I was saying that the HOA foreclosure
10 auction is not something that's unique in and of
11 itself. You've seen other situations where a lien
12 has been foreclosed upon and a lower price has been
13 paid compared to market value?
14 A. Not in a tax lien because I don't believe a
15 tax lien has ever wiped out a first deed of trust.
16 Q. Do you know of any other lien that wipes out
17 a first deed of trust other than an HOA foreclosure
18 lien?
19 MS. HAMRICK: Objection. Calls for a legal
20 conclusion.
21 THE WITNESS: And I think it's outside my
22 scope.
23 BY MS. HANKS:
24 Q. So you would not be comfortable answering
25 that question?

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1 A. No.
2 MS. HANKS: Okay. I don't think I have
3 anything else at this time. If you have some
4 questions.
5 MR. SHAFER: Just a few.
6
7 EXAMINATION
8 BY MR. SHAFER:
9 Q. I hope they're not silly questions. And
10 we'll pick up kind of in the order.
11 You mentioned tax sales. You were saying
12 that in your experience you've never seen a tax sale
13 wipe out a first deed of trust, or it's your opinion
14 that a tax sale does not wipe out a first deed of
15 trust.
16 MS. HAMRICK: Objection. Calls for
17 speculation. Outside the scope.
18 THE WITNESS: I believe it's outside my
19 scope. But I haven't seen, that I'm aware of, where
20 a tax lien wipes out a first deed of trust.
21 BY MR. SHAFER:
22 Q. And I just wanted to clarify. So it's not
23 your opinion -- you're not making an opinion as to
24 whether or not it does? You're just saying in your
25 experience you've never seen it happen?

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1 A. No.
2 Q. When you talked about the HOA foreclosure
3 sales not being market driven, is it your
4 understanding that HOA lien sales are sold for the
5 amount of the HOA lien?
6 A. Yes.
7 Q. Are they ever sold for a different amount
8 than that?
9 A. I believe that they've sold for more than
10 the lien. And I think we've actually seen that
11 latter, in the last six months, where these
12 properties have sold and the remaining portion of the
13 proceeds above and beyond the HOA lien is deposited
14 with the court system so the banks and whoever can
15 work it out at a later time.
16 Q. Have you rendered any opinions as to the
17 appropriate procedures for HOA foreclosure auctions
18 or sales?
19 A. Not at this time.
20 Q. Have you been asked to render such an
21 opinion?
22 A. No.
23 Q. Would you have any basis for rendering such
24 an opinion?
25 MS. HAMRICK: Objection. Calls for

Page 68

1 speculation. Outside of the scope.
2 BY MR. SHAFER:
3 Q. Have you ever attended any HOA foreclosure
4 auctions or sales?
5 A. No, but I've been involved in several.
6 Q. And in what ways have you been involved?
7 A. I'm actually the president of the Homeowners
8 Association in Spanish Trail for the last eight years
9 of one of the sub-associations.
10 Q. Were you involved in the mechanics of
11 noticing the sales?
12 A. No.
13 MS. HAMRICK: Objection. Outside the scope.
14 THE WITNESS: I didn't do that myself, no.
15 BY MR. SHAFER:
16 Q. Were you involved in any of the accounting
17 that was involved in generating the liens?
18 MS. HAMRICK: Objection. Outside the scope.
19 Irrelevant.
20 THE WITNESS: No.
21 BY MR. SHAFER:
22 Q. You don't intend to offer any opinion as to
23 what the proper value should have been at an HOA
24 foreclosure sale or auction in this case?
25 MS. HAMRICK: Objection. Calls for

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1 speculation. Beyond the scope.
2 **THE WITNESS:** I'm only testifying to the
3 market value at that time.
4 **BY MR. SHAFER:**
5 Q. I think we've gone over that a few times
6 from about as many different angles that I can think
7 of.
8 A. Yes.
9 Q. Have you ever been asked to render an
10 opinion as to what the proper value of a property
11 would be at a tax sale?
12 A. I'm sorry, Jay.
13 Q. Have you ever been asked to appraise a
14 property at a tax sale or render an opinion as to
15 what a property would be worth at a tax sale?
16 A. Not that I recall.
17 Q. How about at a foreclosure auction or a
18 trustee sale for first deed of trust? Have you ever
19 been asked to render an opinion as to the value of a
20 property in that circumstance?
21 A. Hundreds of times.
22 Q. How does that value generally compare to a
23 market value?
24 **MS. HAMRICK:** Objection. Outside the scope.
25 **THE WITNESS:** Close.

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1 **BY MR. SHAFER:**
2 Q. Does that amount vary over time? Is it a
3 set percentage discount on market value?
4 **MS. HAMRICK:** Objection. Calls for
5 speculation. Outside the scope.
6 **THE WITNESS:** Actually, they're very similar
7 to the reports we have completed here because
8 typically we don't have access to the property. So
9 we do an exterior with extraordinary assumptions.
10 And I've done hundreds for the banks over
11 the years in order to go for deficiencies. And what
12 they'll use my reports for, number one, is for the
13 deficiency and, number two, for the bid amount for
14 the trust deed's sale.
15 **BY MR. SHAFER:**
16 Q. Is the amount that you would evaluate a
17 property to be in a trust deed sale or foreclosure
18 auction ever more than the market value?
19 **MS. HAMRICK:** Objection. Calls for
20 speculation. Incomplete hypothetical.
21 **THE WITNESS:** Does it sell for more than
22 what we state?
23 **BY MR. SHAFER:**
24 Q. No. My question is, are your appraisals for
25 a trustee's sale or a foreclosure auction ever more

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1 than the markets value of the property?
2 **MS. HAMRICK:** Same objections.
3 **THE WITNESS:** More than what it ultimately
4 sells for? Or do you mean do I appraise it for
5 higher than what I believe the market value is?
6 **BY MR. SHAFER:**
7 Q. I guess that would be another way of getting
8 around it. Is the value at the foreclosure sale more
9 than the market's value?
10 **MS. HAMRICK:** Objection. Calls for
11 speculation. Incomplete hypothetical.
12 **THE WITNESS:** Not typically.
13 **MR. SHAFER:** I think that's all the
14 questions I have.
15
16 **EXAMINATION**
17 **BY MS. HAMRICK:**
18 Q. I have one question actually, Mr. Dugan, a
19 clarification, please. This is your report. It's
20 Bates-stamped Dugan 6. It's page 4 of your report in
21 Exhibit 1.
22 A. Yes.
23 Q. And just to clarify. In the top box
24 "Current Owner of Record," as was indicated earlier,
25 it says "SFR Investments Pool 1, LLC." Were the

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1 Schaefer's the current owner of record as of the time
2 of your retrospective market valuation?
3 A. Yes.
4 **MS. HAMRICK:** Thank you. No further
5 questions.
6
7 **FURTHER EXAMINATION**
8 **BY MS. HANKS:**
9 Q. With respect to that question, are you doing
10 it based on a time of day? Because it's my
11 understanding the foreclosure auction occurred on
12 January 18th, 2013.
13 A. I'm sorry?
14 Q. Are you doing it based on the time of day?
15 Because it's my understanding, according to the
16 foreclosure deed, that the auction took place on
17 January 18th, 2013.
18 A. I'm not sure what you're asking me.
19 Q. Why would the Schaefer's still be the owner
20 if the property was auctioned off and SFR paid a
21 check for it?
22 A. I think like in the previous case, I
23 wouldn't have known that. So I probably put "SFR"
24 there instead of the Schaefer's.
25 Q. No, I understand that. But your counsel

Page 77		Page 79	
1	FURTHER EXAMINATION	1	CERTIFICATE OF DEPONENT
2	BY MR. SHAFER:	2	PAGE LINE CHANGE REASON
3	Q. Besides the potential value on a particular	3	
4	date, you didn't offer any opinions on any other	4	
5	aspects of this case related to the HOA procedures or	5	
6	the legal aspects of this case?	6	
7	A. No.	7	
8	MS. HAMRICK: Objection. It's vague and	8	
9	ambiguous as to "legal aspects of the case."	9	
10	THE WITNESS: No.	10	
11	BY MR. SHAFER:	11	
12	Q. Does your appraisal factor in any potential	12	
13	legal costs or factors having to deal with this	13	
14	particular lawsuit in valuating the value of the	14	
15	property?	15	* * * * *
16	MS. HAMRICK: Objection. Vague and	16	
17	ambiguous.	17	I, SCOTT DUGAN, deponent herein, do hereby
18	THE WITNESS: No.	18	certify and declare the within and foregoing
19	MR. SHAFER: That's it.	19	transcription to be my deposition in said action;
20	MS. HANKS: Okay. We're off the record.	20	that I have read, corrected and do hereby affix my
21	THE REPORTER: Ms. Hamrick, would you like a	21	signature to said deposition.
22	copy of the transcript?	22	
23	MS. HAMRICK: Yes, please.	23	SCOTT DUGAN, Deponent
24	THE REPORTER: Mr. Shafer, would you like a	24	
25	copy of the transcript?	25	

Page 78		Page 80	
1	MR. SHAFER: No. I'll take your card,	1	REPORTER'S CERTIFICATE
2	though, in case we do later.	2	STATE OF NEVADA)
3	(Thereupon the taking of the	3	COUNTY OF CLARK) SS:
4	deposition was concluded at	4	I, Jane V. Eflaw, CCR No. 601, do hereby certify:
5	5:06 p.m.)	5	That I reported the taking of the deposition of
6	* * * * *	6	the witness, SCOTT DUGAN, at the time and place
7		7	aforesaid;
8		8	That prior to being examined, the witness was by
9		9	me duly sworn to testify to the truth, the whole
10		10	truth, and nothing but the truth;
11		11	That I thereafter transcribed my shorthand notes
12		12	into typewriting and that the typewritten transcript
13		13	of said deposition is a complete, true and accurate
14		14	transcription of said shorthand notes taken down at
15		15	said time, and that a request has been made to review
16		16	the transcript.
17		17	I further certify that I am not a relative or
18		18	employee of counsel of any party involved in said
19		19	action, nor a relative or employee of the parties
20		20	involved in said action, nor a person financially
21		21	interested in the action.
22		22	Dated at Las Vegas, Nevada, this _____ day of
23		23	_____, 2015.
24		24	
25		25	Jane V. Eflaw, CCR #601

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jane V. Efaw, CCR No. 601, do hereby certify:

That I reported the taking of the deposition of
the witness, SCOTT DUGAN, at the time and place
aforesaid;

That prior to being examined, the witness was by
me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes
into typewriting and that the typewritten transcript
of said deposition is a complete, true and accurate
transcription of said shorthand notes taken down at
said time, and that a request has been made to review
the transcript.

I further certify that I am not a relative or
employee of counsel of any party involved in said
action, nor a relative or employee of the parties
involved in said action, nor a person financially
interested in the action.

Dated at Las Vegas, Nevada, this _____ day of

_____, 2015


Jane V. Efaw, CCR #601

EXHIBIT 3:

Deposition of R. Scott Dugan

June 16, 2015

(Brighton Summit property)

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

CASE NO.
A-14-698568-C

BANK OF AMERICA, N.A., successor
by merger to BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a
national association; JUSTIN M.
MISSIMER, an individual;
BOBBIEJO L. MISSIMER, an
Individual; DOES I through X; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

DEPOSITION OF RICHARD SCOTT DUGAN

Taken at the Law Offices of Akerman, LLP
1160 Town Center Drive
Suite 330
Las Vegas, Nevada 89144

Monday, June 16, 2015
10:09 a.m.

Reported by: Angela Campagna, CCR #495

1 anything that puts undue pressure on the sale of a
2 property.

3 BY MS. HANKS:

4 Q. Would a foreclosure of a lien by an HOA
5 be considered a forced sale?

6 MS. MORGAN: Objection. Lacks foundation.
7 Incomplete hypothetical. Calls for legal
8 conclusion.

9 THE WITNESS: That's probably not part of my
10 scope of work but an HOA is a lien and they are
11 basically trying to recover outstanding homeowner's
12 dues that are unpaid in order to run the
13 association.

14 BY MS. HANKS:

15 Q. So when they foreclosure on a lien,
16 that's considered a forced sale?

17 MS. MORGAN: Same objection.

18 THE WITNESS: Yes.

19 BY MS. HANKS:

20 Q. Now, just so I'm clear we've talked in
21 the past before that the person that actually
22 assigns you the file so to speak is Accurity
23 Qualified Analytics; correct?

24 A. Yes.

25 Q. In other words the bank would have

1 A. Yes.

2 Q. Well, when constraints are put on the
3 marketing in terms of time does that affect the
4 value?

5 A. Yes.

6 Q. Does it affect it negative or
7 positively?

8 A. It depends on the market at the given
9 time of the sale.

10 Q. Typically speaking would it be fair to
11 state that when you put constraints on the marketing
12 in terms of days, the less days will typically give
13 you a less value for the property?

14 MS. MORGAN: Objection. Incomplete
15 hypothetical.

16 THE WITNESS: It would give you a less value
17 but if the time marketing days is unreasonable, then
18 it would create a sales concession.

19 BY MS. HANKS:

20 Q. What is a sales concession?

21 A. That's where the -- it's a concession
22 where we know the market value based on the fact
23 that four homes sold at \$100,000 and now we have a
24 seller that's under liquidation or disposition that
25 has to put the property on the market and sell it in

1 a shorter time period; so, therefore they are going
2 to take less for that property.

3 Q. Okay. So when someone takes less for
4 property, you consider that a sales concession?

5 MS. MORGAN: Objection. Misstates prior
6 testimony.

7 THE WITNESS: That's a liquidation or
8 disposition value.

9 BY MS. HANKS:

10 Q. No. I understand that but I'm trying
11 to understand what's your definition of a sales
12 concession. I thought you had said when someone
13 takes less for a property because they're selling it
14 for a shorter period of time or they're forced sale?

15 A. Well, I think sales concession is when
16 a seller -- I think you're misconstruing the term.
17 Sales concession is when a seller offers concessions
18 in order to attract a potential buyer that may not
19 be able to afford the property; so, therefore I'll
20 pay points on behalf of the buyer.

21 Q. Okay. And that's what I was trying to
22 understand what was your definition of a sale
23 concession. So a concession is when a seller offers
24 the points?

25 A. Correct.

1 Q. Any other type of concession?

2 A. Any other type of concession?

3 MS. MORGAN: Objection. Vague.

4 THE WITNESS: Well, there is other concessions
5 in regard to if a property is sold unreasonably in
6 the too short a period of time, then it may not
7 equal any type of definition of market value.

8 BY MS. HANKS:

9 Q. And how do you define unreasonably?

10 A. How do I define unreasonably?

11 Q. Uh-huh.

12 A. Well, let's say for example if we on
13 the Brighton property we exposed it for one day,
14 then there would be no way for that property to
15 attract a competitive potential buyer pool that
16 would purchase the property. And therefore it would
17 not have proper exposure and it wouldn't meet the
18 definition of a value.

19 Q. Meet the definition of market value or
20 any value?

21 A. Any value.

22 Q. How long were properties on the market
23 in Las Vegas in 2007?

24 MS. MORGAN: Objection. Vague and ambiguous.

25 THE WITNESS: It would really depend on what

1 meant by the term.

2 A. If you're talking about an HOA lien
3 they're not exposed to the market. They're not
4 listed in the MLS and therefore they don't meet the
5 definition of the open market.

6 Q. In other words they don't meet the
7 definition of a market value; correct?

8 A. Any type of value.

9 Q. But certainly not market value?

10 A. Definitely.

11 Q. And that's the appraisal that you did,
12 correct, market value?

13 A. That's the only appraisal I did.

14 Q. Okay. Now, with respect to the sales
15 concession getting back to that, I think you talked
16 about when a seller offers points as an example of a
17 sales concession, any other examples of sales
18 concessions that a seller could offer in a
19 particular sale?

20 MS. MORGAN: Objection. Vague and ambiguous.
21 Outside the scope of work.

22 THE WITNESS: Well, they can give cars away as
23 a concession. They can give anything they want as a
24 concession.

25 / / / /

1 Q. Okay. And so in other words when
2 you're comparing whether something sold for
3 disposition value, why does it matter what the
4 market value is? It's a completely different beast;
5 right?

6 A. Well, it still matters what market
7 value is because you have to look at the market
8 value in order to get the disposition value. In
9 other words if I have ten sales and my particular
10 disposition value wants it sold in 30 days and all
11 my sales happened in fifteen days, I could be
12 actually selling it for more because I'm exposing it
13 on the market longer.

14 Q. Or the inverse being less?

15 A. Absolutely.

16 Q. And it could be -- I think you said
17 typically you might see 80 to 90 percent but it
18 could even be less than that; correct?

19 A. Then you get to a position then is it a
20 value?

21 Q. And isn't value just an economic
22 concept, it's not a fact; correct?

23 A. In order to have -- sure.

24 Q. And so essentially what we have in this
25 situation -- let's take the HOA foreclosing on its

1 lien. We have a very limited exposure to the
2 market, right, listed for auction one day; correct?

3 MS. MORGAN: Objection. Assumes facts not in
4 evidence. Calls for speculation.

5 THE WITNESS: It's at the auction for one day
6 but prior to that it's got a notice of default for
7 90 days, I believe.

8 BY MS. HANKS:

9 Q. Right. But it's not listed for sale
10 during that 90-day period; correct?

11 A. Correct.

12 Q. So when a property is -- unlike a
13 market value property that you're selling on the
14 open market and can say, hey, I want to leave it up
15 for sale for 30, 60, 90 days, an HOA is foreclosing
16 on the lien, is only offering it up for auction on
17 one day in a matter of minutes; correct?

18 MS. MORGAN: Objection. Vague and ambiguous
19 and is an incomplete hypothetical.

20 THE WITNESS: Sure.

21 BY MS. HANKS:

22 Q. And we discussed earlier that that's a
23 timing constraint. We called it constraints on the
24 marketing that will affect the value.

25 A. It affects the value and creates a

1 concession.

2 Q. And therefore if we have a property
3 that sold under those time constraints for less than
4 market value, it falls or it could fall within a
5 disposition value analysis or liquidation value
6 analysis; correct?

7 MS. MORGAN: Objection. Incomplete
8 hypothetical. Calls for speculation.

9 THE WITNESS: Are you talking about HOA lien?

10 BY MS. HANKS:

11 Q. Yeah.

12 A. No.

13 Q. Why not?

14 A. Because the HOA can only collect a
15 certain amount that is owed to them. So the figure
16 that they are collecting that between that and
17 market value is the sales concession, they are
18 giving up that difference because they don't care
19 about it.

20 Q. And that to your understanding meets no
21 definition of value within the appraisal world?

22 A. Absolutely.

23 Q. And then would it be fair to state then
24 that because of that type of transaction meets no
25 definition of value in the appraisal world, you

1 cannot compare that type of transaction to a market
2 value transaction?

3 A. Correct.

4 Q. Now backing up to your retention, am I
5 correct in understanding -- I think you had
6 testified earlier but I want to make sure I
7 understand -- that the appraisal for market value,
8 retrospective market value that was imposed upon you
9 by Bank of America; correct?

10 MS. MORGAN: What is the question? I'm sorry.

11 BY MS. HANKS:

12 Q. In other words you were contacted and
13 asked to do a retrospective market value appraisal
14 by Bank of America; correct?

15 A. By Accurity.

16 Q. Through Bank of America; correct? Bank
17 of America talked to Accurity and said I want a
18 retrospective market analysis; is that correct?

19 A. I believe so.

20 Q. And what I'm getting is, is that was
21 the assignment that you were given?

22 A. Yes.

23 Q. And in other words you did not look at
24 this particular case the lawsuits surrounding this
25 case and this property and say I think retrospective

1 market analysis is a property analysis?

2 A. The client had stated what they wanted.

3 Q. Okay. Thank you. And just so I
4 understand, when you did the market value
5 retrospective market value analysis, you were doing
6 it as of the effective date of September 12, 2012;
7 correct?

8 A. I believe so. Yes.

9 Q. And it was in the context of the
10 property not being sold in HOA foreclosure of a
11 lien?

12 A. It was prior to.

13 Q. Right. So in other words it assumed
14 that the borrower still owned the property and was
15 listing it on the open market, your report?

16 A. Yes.

17 Q. And the first page of your report --
18 it's actually page number three of your report and
19 it's Bates stamped Dugan 000003 where you indicate
20 that at the bottom paragraph, "The value opinion
21 reported is as of the stated effective date and is
22 contingent upon the certification and limiting
23 conditions attached. The assumptions and limiting
24 conditions along with the clarification of scope of
25 work provides specifics as of development of the

1 appraisal along with exceptions that may have been
2 necessary to complete a credible report."

3 A. Yes.

4 Q. And my question, I want to talk now
5 about what assumptions and limiting conditions that
6 apply to this particular appraisal. And I believe
7 they are found on page eight of your report;
8 correct?

9 A. Yes.

10 Q. So that's the page that's titled
11 assumptions and limiting conditions and scope of
12 work and one of the assumptions and limiting
13 conditions that you made was that the title to this
14 particular property was good and marketable; is that
15 correct?

16 A. Yes.

17 Q. And what does it mean for title to be
18 good and marketable?

19 MS. MORGAN: Objection. Calls for legal
20 conclusion. Vague and ambiguous.

21 THE WITNESS: That the title is not clouded.
22 BY MS. HANKS:

23 Q. Does it mean that someone can sell the
24 property?

25 A. Yes.

1 Q. Does it mean someone can insure the
2 property via title insurance?

3 A. Yes.

4 Q. Does it mean someone can dispose of the
5 property whether that be a sale or any other type of
6 method, they can just do whatever they want with the
7 property, that's what that means; correct?

8 MS. MORGAN: Objection. Incomplete
9 hypothetical.

10 THE WITNESS: As long as it's legal.

11 BY MS. HANKS:

12 Q. Yeah. We don't mean burn it down and
13 claim insurance proceeds; correct?

14 A. Yeah.

15 Q. Okay. Now with respect to SFR's
16 purchasing of this property, is it your
17 understanding that they received good and marketable
18 title?

19 MS. MORGAN: Objection. Calls for a legal
20 conclusion. Outside of the scope of work.

21 THE WITNESS: Outside of my scope of work. I
22 didn't do any work regarding SFR.

23 BY MS. HANKS:

24 Q. Okay. Do you have an understanding
25 that that is the crux of this litigation that the

1 So I want to break that down to
2 those three clauses. What is your understanding of
3 the nature of the appraisal problem for this
4 particular file?

5 A. To estimate the market value
6 retrospective as a specific date per the client's
7 request.

8 Q. And do you know if that really is going
9 to have any relation to what is being fought about
10 in the underlying litigation?

11 MS. MORGAN: Objection. Vague and ambiguous.
12 It's beyond the scope of Mr. Dugan's assignment and
13 in a roundabout way calls for legal conclusion.

14 THE WITNESS: I have no idea.

15 BY MS. HANKS:

16 Q. So you have no idea how Bank of America
17 intends to use your report in the actual litigation?

18 A. No.

19 MS. MORGAN: Objection. Misstates prior
20 testimony.

21 THE WITNESS: I believe they are doing it as a
22 benchmark to estimate what the value of the property
23 would have been if they had put it on the open
24 market and sold it.

25 / / / /

1 Q. So SFR's purchase of the property was
2 not a market value purchase; correct?

3 A. Yes.

4 Q. And further in that paragraph under
5 your assumptions, limited conditions and scope of
6 work, it reads, "The opinion of value that is the
7 conclusion of this report is credible only within
8 the context of the scope of work, effective date,
9 the date of report, the intended users, the intended
10 use, the stated assumptions, and limiting
11 conditions, any hypothetical conditions, and/or
12 extraordinary assumptions, and the type of value as
13 defined herein."

14 And to summarize that sentence
15 that essentially is saying that the report is only
16 as credible as the acceptance of the fact that it
17 was a retrospective market value appraisal; correct?

18 A. Yes.

19 Q. And actually if you go to page nine of
20 your report, you actually define market value there
21 and it has five elements; is that correct?

22 A. Yes.

23 Q. And just so I'm clear I think you've
24 already testified to this, but I just want to make
25 sure that the market value definition that's in your

1 report here, the transaction that SFR was involved
2 in whereby it purchased the property at the HOA
3 auction does not meet this definition of market
4 value; correct?

5 A. Yes.

6 Q. Now, if you go to page number four of
7 your report under the first box on that page where
8 you have subject, it;s the little section that is
9 marked subject, you have current owner of record is
10 Justin and Bobbie Jo Missimer. Missimer? It's
11 M-i-s-s-i-m-e-r. Is that a typo? It may be.

12 A. I have no idea. What's wrong with it?

13 Q. Well, I don't think they own the
14 property. SFR owns it; so, I was just wondering,
15 are you going from a different ownership of record?

16 A. I think they're the people that owned
17 it prior to the sale.

18 Q. Okay. So not what the current owners
19 are but what the owners would have been in terms of
20 the retrospective analysis?

21 A. Well, yeah. I couldn't use who owns it
22 today.

23 Q. Well --

24 A. I'm not doing it as of today. I did it
25 as of September 12th, 2012.

1 A. Right. Yeah. You could get an 80/20
2 but you had to have the 20 down payment. It had to
3 be your money. Couldn't be a gift from parents. I
4 mean, it was very, very difficult to just get a
5 loan.

6 Q. Right. And, so I'm just talking in
7 generalities. Is that another example of a
8 constraint that could affect a value for a property
9 when you limit the pool of buyers?

10 A. Yes.

11 Q. And do you know whether the pool of
12 buyers is limited in the context of an HOA
13 foreclosure of a lien? In other words buyers who
14 potential bidders at that auction, is that pool
15 limited in anyway?

16 MS. MORGAN: Objection. Vague and ambiguous.
17 Calls for speculation.

18 THE WITNESS: I would say yes.

19 BY MS. HANKS:

20 Q. And one of the ways it's limited is a
21 party typically has -- well, I think always has to
22 be a cash buyer when attending an auction; correct?

23 A. I believe so.

24 Q. Okay.

25 A. Or at least they have to have a certain

1 BY MS. HANKS:

2 Q. Do you know what the term "bundle of
3 rights" means?

4 MS. MORGAN: Objection. Calls for legal
5 conclusion.

6 THE WITNESS: Bundle of the rights is all of
7 the components to fee simple estate.

8 BY MS. HANKS:

9 Q. Okay. And maybe we've already talked
10 about it and just stating it a different way.
11 Whether someone is getting a fee simple estate, does
12 that affect value?

13 MS. MORGAN: Objection. Incomplete
14 hypothetical. Calls for speculation.

15 THE WITNESS: Yes.

16 BY MS. HANKS:

17 Q. And would it be fair to state that when
18 you -- when a buyer is not getting fee simple, the
19 value would decrease?

20 MS. MORGAN: Same objections.

21 THE WITNESS: Yes.

22 BY MS. HANKS:

23 Q. Can you just go to page 29 of your
24 report? It's still talking about the clarification
25 of scope of work. And you have evaluation

1 really talked about it at length today but I want to
2 make sure I understand that last paragraph on the
3 last page of your report. Would it be fair to state
4 that your report and your opinion as to the value
5 really can only be understood in terms of September
6 12, 2012 taking into consideration that it would be
7 a market value transaction; correct?

8 MS. MORGAN: Objection. Vague and ambiguous.

9 THE WITNESS: Yes.

10 MS. HANKS: All right. I don't think I have
11 anything further on this file.

12 MS. MORGAN: Okay.

13 MS. HANKS: We're adding as Exhibit 1 his
14 report.

15 (Exhibit 1 marked.)

16 (Whereupon the deposition was
17 concluded at 12:10 p.m.)

18

19

20

21

22

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24

25

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, RICHARD SCOTT DUGAN, on Monday, June 16, 2015, commencing at the hour of 10:09 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 23rd day of June 2015.

ANGELA CAMPAGNA, CCR #495

Angela Campagna

EXHIBIT 4:

Deposition of R. Scott Dugan

July 2, 2015

(Dappled Light property)

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

Richard Scott Dugan
July 2, 2015



Min-U-Script® with Word Index

Richard Scott Dugan - July 2, 2015
SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.

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21	CERTIFIED GENERAL REAL ESTATE APPRAISER	21	
22	(Dappled Light)	22	
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24	At 11:37 a.m.	24	
25	At 1160 North Town Center Drive, Suite 330 Las Vegas, Nevada	25	
REPORTED BY: JEAN DAHLBERG, RFR, CCR NO. 759, CSR 11715			
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1	APPEARANCES:	1	LAS VEGAS, NEVADA; THURSDAY, JULY 2, 2015
2	For the Plaintiff:	2	11:37 A.M.
3	HOWARD KIM & ASSOCIATES	3	-oOo-
4	BY: KAREN L. HANKS, ESQ.	4	Whereupon --
5	1055 Whitney Ranch Drive, Suite 110	5	(In an off-the-record discussion held prior to
6	Henderson, Nevada 89014	6	the commencement of the proceedings, counsel agreed to
7	(702) 485-3300	7	waive the court reporter's requirements under
8	(702) 485-3301 (Facsimile)	8	Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)
9	karen@hkimlaw.com	9	(Prior to the commencement of the deposition
10		10	proceedings, Exhibits 1 through 5 were marked for
11	For the Defendants:	11	identification.)
12	AKERMAN SENTERFITT, LLP	12	
13	BY: MELANIE D. MORGAN, ESQ.	13	RICHARD SCOTT DUGAN,
14	1160 North Town Center Drive, Suite 330	14	having been first duly sworn to testify to the truth,
15	Las Vegas, Nevada 89144	15	the whole truth, and nothing but the truth, was examined
16	(702) 634-5008	16	and testified as follows:
17	(702) 380-8572 (Facsimile)	17	EXAMINATION
18	melanie.morgan@akerman.com	18	BY MS. HANKS:
19		19	Q. Please state your name for the record.
20		20	A. Richard Scott Dugan.
21		21	Q. Mr. Dugan, this is the second deposition we're
22		22	taking of you today. We're going to talk about
23		23	7912 Dappled Light Avenue; is that correct?
24		24	A. Yes.
25		25	Q. And since you've had your deposition taken on

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1 multiple occasions, do you feel comfortable that I don't
2 also go through the admonitions in this deposition?
3 A. Yes.
4 Q. Again, though, I always like to remind anybody
5 sitting in that seat that the oath you just took is the
6 same oath you would take in a court of law. Do you
7 understand that?
8 A. Yes.
9 Q. Now, I want to go through your background. I'll
10 summarize it, and you tell me if I'm wrong.
11 You're a certified appraiser in Nevada; correct?
12 A. Certified general.
13 Q. Certified general appraiser.
14 A. Yes.
15 Q. And you've held that position, so to speak,
16 since 1969; is that correct?
17 A. Well, back in 1969, you didn't have to be
18 licensed.
19 Q. But you were doing appraisal work as of 1969?
20 A. Yes.
21 Q. And I think at some point in 1990, 1991, the
22 Federal Government changed the rules and then required
23 appraisers to be licensed; correct?
24 A. State licensed.
25 Q. And you received your state license in Nevada in

Page 6

1 or around 1989 or 1990; correct?
2 A. '90, '91.
3 Q. And as part of that licensure, you're required
4 to take continuing education classes, which you've done
5 since you've received that licensure; is that correct?
6 A. Yes.
7 Q. And your license has never been revoked; that's
8 right?
9 A. Yes.
10 Q. And your license has never been suspended;
11 correct?
12 A. Yes.
13 Q. Now, in this particular file, who retained you?
14 A. Accurity.
15 Q. And is it your understanding that Accurity was
16 contacting you on behalf of Bank of America?
17 A. Yes.
18 Q. And what was the scope of your assignment?
19 A. Oh, excuse me. I'm sorry. No, I was -- I was
20 contacted by Akerman on this one.
21 Q. Okay. So this is the one case where you were
22 not contacted by Accurity, but instead contacted
23 directly from Akerman on behalf of Bank of America?
24 A. Yes.
25 Q. And what was the scope of your retention? In

Page 7

1 other words, what did Akerman ask you to do for this
2 particular property?
3 A. Complete a retrospective market value as of the
4 specific date in the report as of 9/5/2012.
5 Q. And again, when you say they asked you to do
6 that analysis, does that mean that they imposed the
7 condition of market value retrospective analysis on you?
8 A. I think that they had reviewed previous reports
9 and found them to be acceptable, and therefore they
10 requested me to continue in the same manner.
11 Q. Okay. But just to be clear, then, you did not
12 review the litigation in this particular case dealing
13 with this property, looked at the litigation as a whole,
14 and then decide retrospective market value appraisal
15 would be the appropriate appraisal; is that correct?
16 A. Well, they stated they wanted a retrospective
17 and they wanted market value.
18 Q. Right. And when you say "they," that means
19 Akerman on behalf of Bank of America; is that correct?
20 A. Yes.
21 Q. And you have the definition of market value in
22 your report at Page 8; is that correct?
23 A. Yes.
24 Q. Now, does this definition apply to an HOA
25 foreclosure auction?

Page 8

1 A. No. There is no definition of market value that
2 would be acceptable for an HOA lien.
3 Q. Okay. And in addition to doing a market value
4 appraisal, you also as part of that assumed -- on Page 7
5 you list your assumption -- that good and marketable
6 title be transferred; correct?
7 A. Yes.
8 Q. Now, are you aware as to whether good and
9 marketable title is transferred in the context of an HOA
10 foreclosure of its lien?
11 MS. MORGAN: Objection; calls for a legal
12 conclusion, incomplete hypothetical.
13 BY MS. HANKS:
14 Q. Go ahead and answer.
15 A. No. It's not under good and marketable title.
16 Q. Okay. So your understanding is that in an HOA
17 foreclosure of a lien, good and marketable title is not
18 transferred to the buyer?
19 MS. MORGAN: Objection; misstates prior
20 testimony, calls for a legal conclusion.
21 THE WITNESS: Correct.
22 BY MS. HANKS:
23 Q. And I asked you this in the prior deposition,
24 you agree with the following statement: That the price
25 at a foreclosure sale is not deemed the equivalent of

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1 the property's fair-market value; correct?
2 A. Yes.
3 Q. Now, we marked as Exhibit 1 your report. I know
4 you have your own copy; but we marked as Exhibit 1 a
5 copy of your report. And then I'm going to go through
6 the other exhibits that we marked; but before we get
7 there, we'll go through your report like we did the last
8 depo.
9 So if you look at Page 2 of your report --
10 A. Yes.
11 Q. -- this looks like a cover letter. And my
12 question to you is: I've deposed you on prior matters;
13 correct? I've deposed you in the Manorwood property,
14 the Rabbit Track property, the Morning Sorrow property,
15 the Brighton Summit property, and just a few minutes ago
16 the --
17 A. Hollow.
18 Q. -- Hollow Tree property; is that correct?
19 A. Yes.
20 Q. And in all of those reports it appears you had a
21 similar cover letter; is that correct?
22 A. Yes.
23 Q. And with the exception of the top portion where
24 you have the date, the party you were sending it to, the
25 property you're addressing, the opinion of value, and

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1 the effective date, would the body of that letter be the
2 same in all of those matters as you see it here?
3 A. Yes.
4 Q. And is the same true for Page 7 of your report,
5 with the exception of the property address at the top
6 being different, the body of this page is the same for
7 all of those expert reports; correct?
8 A. Yes.
9 Q. And then is that the same -- true for Page 8?
10 With the exception of the property address being
11 different, is this page the same as we see here as in
12 all of the other reports for all the other properties
13 that we've already discussed?
14 A. Everything would be the same except the
15 information at the top and the bottom with the
16 signature and the value.
17 Q. And when you say "the information at the top,"
18 you're talking about the property address, client, and
19 address?
20 A. Yes.
21 Q. Okay. And at the bottom where it says
22 "appraiser," "client contact" and "supervisory
23 appraiser" box; correct?
24 A. Yes.
25 Q. And then how about Page 9? I think we talked

Page 11

1 about this page is substantially the same or is exactly
2 the same from "extraordinary assumption" down to the
3 "retrospective value" paragraph, ending at that
4 parenthetical, "Chicago Appraisal Institute, 2010";
5 correct?
6 A. Yes.
7 Q. The differences would start when you start with
8 the sentence "The final value"?
9 A. Correct.
10 Q. And that the same is true for --
11 A. Page 26.
12 Q. -- Page 26. So Page 26, other than the top
13 portion that identifies the client and the property
14 address, is this page the same page that you have
15 included in your prior reports for the other prior
16 properties?
17 A. Yes.
18 Q. And is the same true for Page 27?
19 A. Yes.
20 Q. And 28, is the same true?
21 A. Yes.
22 Q. So because of that, and we've asked in those
23 depositions extensive questions regarding those
24 particular pages, I've marked as Exhibit 2 a copy -- a
25 copy of the transcript in Case No. A-14-698511,

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1 SFR Investments Pool 1, LLC versus Bank of America,
2 et al., and this was on the Rabbit Track property.
3 Did you waive your ability to read and sign this
4 transcript?
5 A. Counsel stated that I did not need to --
6 Q. Okay. And then I --
7 A. -- so I would say yes.
8 Q. And I also marked -- or had the court reporter
9 mark as Exhibit 3 a copy of the transcript in
10 Case No. A-14-694435, SFR Investments Pool 1, LLC versus
11 Bank of America, et al., and this was the Manorwood
12 property.
13 Did you waive your right to read and sign this
14 transcript?
15 A. Yes.
16 Q. And the court reporter marked as Exhibit 4 the
17 transcript in Case No. A-14-696561, SFR Investments
18 Pool 1, LLC versus Bank of America, et al., and this is
19 the Morning Sorrow property.
20 Did you waive your right to read and sign this
21 transcript?
22 A. Yes.
23 Q. And the last transcript we're attaching as an
24 exhibit is Exhibit 5. It's Case No. A-14-698568,
25 SFR Investments Pool 1, LLC versus Bank of America,

Page 13

1 et al., and this is related to the Brighton Summit
2 property.
3 Did you waive your right to read and sign this
4 transcript?
5 A. Yes.
6 MS. MORGAN: I'm just going to object to the
7 attachment of these prior deposition transcripts from
8 his testimony for the purposes of use for any testimony
9 that's not specific to this property. I didn't -- I
10 understand that this is an attempt as a timesaving
11 measure, but I wasn't aware that Counsel intended to do
12 this, and it may very well be just to save time. But to
13 the extent that that testimony in the prior transcripts
14 do not pertain to this property and pertain to another
15 property or a hypothetical not presented in this case,
16 I'll object.
17 BY MS. HANKS:
18 Q. Now, if you go to Page 4 in your report in the
19 matter, the Dappled Light matter, it looks like you
20 compared six properties; is that correct?
21 A. Yes.
22 Q. And Comparable 1 had -- it was exposed to the
23 market, i.e., it was listed on the MLS, for 33 days;
24 correct?
25 A. Yes.

Page 14

1 Q. And Property Number 2, Comparable No. 2 was
2 listed on the MLS for 87 days; is that correct?
3 A. Yes.
4 Q. And Comparable No. 3 was listed on the MLS for
5 44 days; is that correct?
6 A. Yes.
7 Q. And Comparable No. 4 was listed on the MLS for
8 78 days; is that correct?
9 A. Yes.
10 Q. And Comparable No. 5 was listed on the MLS for
11 213 days; is that correct?
12 A. Yes.
13 Q. And then Comparable No. 6 was listed on the MLS
14 for 35 days; correct?
15 A. Yes.
16 Q. Okay. Now, we discussed it a little bit in the
17 prior deposition, so I just want to get it on the record
18 in this deposition. An HOA foreclosure of a lien is not
19 a type of transaction that's listed on the MLS; is that
20 correct?
21 A. Yes.
22 Q. And because it's not listed on the MLS, the pool
23 of buyers that could be potential purchasers of property
24 that an HOA is foreclosing upon is limited; correct?
25 A. Yes.

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1 Q. Now, what is your understanding of how
2 SFR Investments Pool 1, LLC obtained this property?
3 A. From what I understand, they bought it after
4 somebody purchased it for the \$6,000.
5 Q. Okay. And so I think it's in -- it's Page 24 of
6 your report. You have the Trustee's Deed Upon Sale in
7 here. It's dated February 14th, 2013. Do you see that?
8 A. Yes.
9 Q. Okay. Now, your retrospective value date,
10 though, is September 5th, 2012. Do you know why there's
11 a discrepancy? Actually, I'm sorry, there is no
12 discrepancy. That's the date the document was recorded?
13 A. Recorded, correct.
14 Q. The sale was September 5th, 2012; correct?
15 A. Yes.
16 Q. The public auction?
17 A. Correct.
18 Q. Okay. And based on this Trustee's Deed and
19 Sale, does it appear to you that no one bid on the
20 property so it reverted to the HOA that was foreclosing?
21 A. Yes.
22 Q. And it's your understanding that the HOA then
23 sold it to SFR?
24 A. Correct.
25 Q. Now, can a party like an HOA, who has no

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1 mortgages on a property -- in other words, they own it
2 outright -- can they sell it for whatever price they
3 want?
4 A. Sure. But under the definition of "market
5 value," it has to be under responsible ownership.
6 Q. So is there some requirement that a party sell
7 their house for market value?
8 A. No. But buyers and sellers have to act
9 prudently and knowledably (sic) and under no undue
10 stimulus, and they have to do what is reasonably
11 expected by reasonable buyers themselves. But still
12 could give it away, yes.
13 Q. Did you review Mr. Brunson's rebuttal expert
14 report in this matter?
15 A. No.
16 Q. So would it be fair to state that because you
17 have not reviewed Mr. Brunson's report as you sit here
18 today, you do not have any comments about that report?
19 A. Not at this time.
20 Q. Have you been asked by Bank of America to review
21 Mr. Brunson's report and make any comments?
22 A. Not yet.
23 Q. Have all of your opinions that you intend to
24 express in this case, are they contained within the
25 report that we've marked in Exhibit 1 and anything that

Richard Scott Dugan - July 2, 2015
SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.

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1 you've testified to here today?
2 A. Yes.
3 MS. HANKS: I don't have anything further.
4 MS. MORGAN: Okay.
5 (The deposition concluded at 11:53 a.m.)
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Page 19

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA }
3 COUNTY OF CLARK } SS:
4 I, Jean M. Dahlberg, a duly commissioned and licensed
5 Court Reporter, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition
7 of the deponent, Richard Scott Dugan, commencing on
8 Thursday, July 2, 2015, at 11:37 a.m.
9 That prior to being examined, the deponent was, by
10 me, duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript of said
13 deposition is a complete, true and accurate
14 transcription of said shorthand notes.
15 I further certify that I am not a relative or
16 employee of an attorney or counsel of any of the
17 parties, nor a relative or employee of an attorney or
18 counsel involved in said action, nor a person
19 financially interested in the action.
20 IN WITNESS WHEREOF, I have hereunto set my hand in my
21 office in the County of Clark, State of Nevada, this 8th
22 day of July, 2015.
23
24 JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715
25

Page 18

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
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19 * * * * *
20 I, RICHARD SCOTT DUGAN, deponent herein, do hereby
21 certify and declare that the within and foregoing
22 transcription to be my deposition in said action; that I
23 have read, corrected and do hereby affix my signature to
24 said deposition, under penalty of perjury.
25
26 RICHARD SCOTT DUGAN, Deponent Date

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jean M. Dahlberg, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the deponent, Richard Scott Dugan, commencing on Thursday, July 2, 2015, at 11:37 a.m.

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 8th day of July, 2015.

Juan M. Hallberg

JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

EXHIBIT 5

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>David I. Brownstein (195393) Law Office of David I. Brownstein PO Box 16474 Irvine, CA 92623 (949) 486-4404 p (949) 861-6045 f david@brownsteinfirm.com</p> <p><input type="checkbox"/> <i>Movant appearing without an attorney</i> <input checked="" type="checkbox"/> <i>Attorney for Movant</i></p>		<p>FOR COURT USE ONLY</p>	
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>			
<p>In re: RICHARD PARKS, and LUCY PARKS,</p> <p>Debtor(s).</p>		<p>CASE NO.: 8:10-bk-21738-TA CHAPTER: 11</p>	
		<p>NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (REAL PROPERTY)</p>	
		<p>DATE: 2/14/2017 TIME: 10:00 am COURTROOM: 5B</p>	
<p>Movant: SFR Investments Pool 1, LLC</p>			

1. Hearing Location:

- ☐ 255 East Temple Street, Los Angeles, CA 90012
 ☒ 411 West Fourth Street, Santa Ana, CA 92701
☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367
 ☐ 1415 State Street, Santa Barbara, CA 93101
☐ 3420 Twelfth Street, Riverside, CA 92501

2. Notice is given to the Debtor and trustee (*if any*)(Responding Parties), their attorneys (*if any*), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.

3. To file a response to the motion, you may obtain an approved court form at www.cacb.uscourts.gov/forms for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.

4. When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above.
5. If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion.
6. ☒ This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing.
7. ☐ This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b). If you wish to oppose this motion, you must file and serve a response no later than (date) _____ and (time) _____; and, you may appear at the hearing.
- a. ☐ An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).
- b. ☐ An application for order setting hearing on shortened notice was filed and was granted by the court and such motion and order have been or are being served upon the Debtor and upon the trustee (if any).
- c. ☐ An application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

Date: 1/17/2017

Law Office of David I. Brownstein
Printed name of law firm (if applicable)

David I. Brownstein, attorney for Movant
Printed name of individual Movant or attorney for Movant

/s/ David I. Brownstein
Signature of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO REAL PROPERTY

1. Movant is the:

- ☐ Holder: Movant has physical possession of a promissory note that either (1) names Movant as the payee under the promissory note or (2) is indorsed to Movant, or indorsed in blank, or payable to bearer.
- ☐ Beneficiary: Movant is either (1) named as beneficiary in the security instrument on the subject property (e.g., mortgage or deed of trust) or (2) is the assignee of the beneficiary.
- ☐ Servicing agent authorized to act on behalf of the Holder or Beneficiary.
- ☒ Other (*specify*):
Movant is the purchaser of the property and current owner.

2. The Property at Issue (Property):

a. Address:

Street address: 2270 Nashville Ave.

Unit/suite number:

City, state, zip code: Henderson, NV 89052

- b. Legal description, or document recording number (including county of recording), as set forth in Movant's deed of trust (attached as Exhibit 1):

3. Bankruptcy Case History:

- a. A ☒ voluntary ☐ involuntary bankruptcy petition under chapter ☐ 7 ☒ 11 ☐ 12 ☐ 13 was filed on (date) 8/23/2010.
- b. ☐ An order to convert this case to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (date) _____.
- c. ☒ A plan, if any, was confirmed on (date) 7/5/2012.

4. Grounds for Relief from Stay:

- a. ☒ Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay as follows:
- (1) ☐ Movant's interest in the Property is not adequately protected.
- (A) ☐ Movant's interest in the Property is not protected by an adequate equity cushion.
- (B) ☐ The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
- (C) ☐ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor.
- (2) ☐ The bankruptcy case was filed in bad faith.
- (A) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (B) ☐ The Property was transferred to the Debtor either just before the bankruptcy filing or after the filing.
- (C) ☐ A non-individual entity was created just prior to the bankruptcy petition date for the sole purpose of filing this bankruptcy case.
- (D) ☐ Other bankruptcy cases have been filed in which an interest in the Property was asserted.
- (E) ☐ The Debtor filed only a few case commencement documents with the bankruptcy petition. Schedules and the statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed.
- (F) ☐ Other (*see attached continuation page*).

- (3) ☐ (Chapter 12 or 13 cases only)
- (A) ☐ All payments on account of the Property are being made through the plan.
☐ Preconfirmation ☐ Postconfirmation plan payments have not been made to the chapter 12 trustee or chapter 13 trustee.
- (B) ☐ Postpetition mortgage payments due on the note secured by a deed of trust on the Property have not been made to Movant.
- (4) ☐ The Debtor filed a Statement of Intentions that indicates the Debtor intends to surrender the Property.
- (5) ☐ The Movant regained possession of the Property on (date) _____,
which is ☐ prepetition ☐ postpetition.
- (6) ☒ For other cause for relief from stay, see attached continuation page.
- b. ☒ Pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property; and, pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.
- c. ☐ Pursuant to 11 U.S.C. § 362(d)(3), the Debtor has failed, within the later of 90 days after the order for relief or 30 days after the court determined that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. § 101(51B) to file a reasonable plan of reorganization or to commence monthly payments.
- d. ☐ Pursuant to 11 U.S.C. § 362(d)(4), the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved:
- (1) ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval; or
- (2) ☐ Multiple bankruptcy cases affecting the Property.
5. ☒ **Grounds for Annulment of the Stay.** Movant took postpetition actions against the Property or the Debtor.
- a. ☒ These actions were taken before Movant knew the bankruptcy case had been filed, and Movant would have been entitled to relief from the stay to proceed with these actions.
- b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit ____.
- c. ☒ Other (specify):
See attached memorandum of points and authorities in support of motion
6. **Evidence in Support of Motion: (Declaration(s) MUST be signed under penalty of perjury and attached to this motion)**
- a. The REAL PROPERTY DECLARATION on page 6 of this motion.
- b. ☒ Supplemental declaration(s).
- c. ☐ The statements made by Debtor under penalty of perjury concerning Movant's claims and the Property as set forth in Debtor's case commencement documents. Authenticated copies of the relevant portions of the case commencement documents are attached as Exhibit ____.
- d. ☐ Other:
7. ☒ **An optional Memorandum of Points and Authorities is attached to this motion.**

Movant requests the following relief:

1. Relief from the stay is granted under: ☒ 11 U.S.C. § 362(d)(1) ☐ 11 U.S.C. § 362(d)(2) ☐ 11 U.S.C. § 362(d)(3).
2. ☒ Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
3. ☐ Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.
4. ☐ Confirmation that there is no stay in effect. *Predecessors in interest to
Movant or Movant
5. ☒ The stay is annulled retroactive to the bankruptcy petition date. Any postpetition actions taken by ~~Movant~~ ^{*Movant} to enforce its remedies regarding the Property shall not constitute a violation of the stay.
6. ☐ The co-debtor stay of 11 U.S.C. §1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.
7. ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
8. ☐ A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing on this Motion:
☐ without further notice, or ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
9. ☐ Relief from the stay is granted under 11 U.S.C. § 362(d)(4): If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.
10. ☐ The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion:
☐ without further notice, or ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
11. ☐ The order is binding and effective in any future bankruptcy case, no matter who the debtor may be:
☐ without further notice, or ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
12. ☒ Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).
13. ☐ If relief from stay is not granted, adequate protection shall be ordered.
14. ☒ See attached continuation page for other relief requested.

Date: 1/17/2017

Law Office of David I. Brownstein
Printed name of law firm (if applicable)
David I. Brownstein, attorney for Movant
Printed name of individual Movant or attorney for Movant

/s/ David I. Brownstein
Signature of individual Movant or attorney for Movant

Item #14 Continuation for other relief requested:

Movant SFR also seeks the annulment of the automatic stay retroactive to the Petition Date, for any and all actions in support of the foreclosure taken with respect to the Property by the Copper Ridge Community Association and/or its agent Nevada Association Services, Inc. that might be construed as necessary for effecting the grant of the Foreclosure Deed of March 1, 2013 for the Property, to SFR.

REAL PROPERTY DECLARATION

I, (*print name of Declarant*) Christopher J. Hardin, declare:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the real property that is the subject of this Motion (Property) because (*specify*):
 - a. ☐ I am the Movant.
 - b. ☐ I am employed by Movant as (*state title and capacity*): Manager of SFR Investments Pool 1, LLC
 - c. ☐ Other (*specify*):
2. a. ☒ I am one of the custodians of the books, records and files of Movant that pertain to loans and extensions of credit given to Debtor concerning the Property. I have personally worked on the books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant. These books, records and files were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the actions, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.
 - b. ☐ Other (*see attached*):
3. The Movant is:
 - a. ☐ Holder: Movant has physical possession of a promissory note that (1) names Movant as the payee under the promissory note or (2) is indorsed to Movant, or indorsed in blank, or payable to bearer. A true and correct copy of the note, with affixed allonges/indorsements, is attached as Exhibit _____.
 - b. ☐ Beneficiary: Movant is either (1) named as beneficiary in the security instrument on the subject property (e.g., mortgage or deed of trust) or (2) is the assignee of the beneficiary. True and correct copies of the recorded security instrument and assignments are attached as Exhibit _____.
 - c. ☐ Servicing agent authorized to act on behalf of the:
 - ☐ Holder.
 - ☐ Beneficiary.
 - d. ☒ Other (*specify*): Movant was purchaser of the subject property at a public foreclosure auction sale conducted by Nevada Association Services, Inc. on behalf of the Cooper Ridge Community Association, a lienholder.
4. a. The address of the Property is:

Street address: 2270 Nashville Ave.
Unit/suite no.:
City, state, zip code: Henderson, NVm 89052

 - b. The legal description of the Property or document recording number (including county of recording) set forth in the Movant's deed of trust is:

GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5 Clark County.
Movant's Foreclosure Deed of Trust Document Recording No. 201303060001614, Clark County, Nevada.
Parcel No. 178-19-712-012

5. Type of property (*check all applicable boxes*):

- a. ☐ Debtor's principal residence
b. ☒ Other residence
c. ☐ Multi-unit residential
d. ☐ Commercial
e. ☐ Industrial
f. ☐ Vacant land
g. ☐ Other (*specify*):

6. Nature of the Debtor's interest in the Property:

- a. ☒ Sole owner
b. ☐ Co-owner(s) (*specify*):
c. ☐ Lienholder (*specify*):
d. ☐ Other (*specify*):
e. ☒ The Debtor ☒ did ☐ did not list the Property in the Debtor's schedules.
f. ☒ The Debtor acquired the interest in the Property by ☒ grant deed ☐ quitclaim deed ☐ trust deed.
The deed was recorded on (*date*) _____.

7. Movant holds a ☐ deed of trust ☐ judgment lien ☐ other (*specify*) Foreclosure Deed that encumbers the Property.

- a. ☒ A true and correct copy of the document as recorded is attached as Exhibit 1.
b. ☐ A true and correct copy of the promissory note or other document that evidences the Movant's claim is attached as Exhibit _____.
c. ☐ A true and correct copy of the assignment(s) transferring the beneficial interest under the note and deed of trust to Movant is attached as Exhibit _____.

8. Amount of Movant's claim with respect to the Property:

	PREPETITION	POSTPETITION	TOTAL
a. Principal:	\$ N/A	\$	\$
b. Accrued interest:	\$	\$	\$
c. Late charges	\$	\$	\$
d. Costs (attorney's fees, foreclosure fees, other costs):	\$	\$	\$
e. Advances (property taxes, insurance):	\$	\$	\$
f. Less suspense account or partial balance paid:	\$[]	\$[]	\$[]
g. TOTAL CLAIM as of (<i>date</i>):	\$	\$	\$

- h. ☐ Loan is all due and payable because it matured on (*date*) _____

9. Status of Movant's foreclosure actions relating to the Property (*fill the date or check the box confirming no such action has occurred*): Actions taken by grantor to Movant

- a. Notice of default recorded on (*date*) 5/24/2012 or ☐ none recorded.
b. Notice of sale recorded on (*date*) _____ or ☐ none recorded.
c. Foreclosure sale originally scheduled for (*date*) _____ or ☐ none scheduled.
d. Foreclosure sale currently scheduled for (*date*) _____ or ☐ none scheduled.
e. Foreclosure sale already held on (*date*) 3/1/2013 or ☐ none held.
f. Trustee's deed upon sale already recorded on (*date*) 3/6/2013 or ☐ none recorded.

10. Attached (*optional*) as Exhibit _____ is a true and correct copy of a POSTPETITION statement of account that accurately reflects the dates and amounts of all charges assessed to and payments made by the Debtor since the bankruptcy petition date.

11. ☐ (*chapter 7 and 11 cases only*) Status of Movant's loan: Not Applicable to Movant

a. Amount of current monthly payment as of the date of this declaration: \$_____ for the month of _____ 20__.

b. Number of payments that have come due and were not made: _____. Total amount: \$_____

c. Future payments due by time of anticipated hearing date (*if applicable*):

An additional payment of \$_____ will come due on (*date*) _____, and on the _____ day of each month thereafter. If the payment is not received within _____ days of said due date, a late charge of \$_____ will be charged to the loan.

d. The fair market value of the Property is \$_____, established by:

(1) ☐ An appraiser's declaration with appraisal is attached as Exhibit _____.

(2) ☐ A real estate broker or other expert's declaration regarding value is attached as Exhibit _____.

(3) ☐ A true and correct copy of relevant portion(s) of the Debtor's schedules is attached as Exhibit _____.

(4) ☐ Other (*specify*):

e. **Calculation of equity/equity cushion in Property:**

Based upon ☐ a preliminary title report ☐ the Debtor's admissions in the schedules filed in this case, the Property is subject to the following deed(s) of trust or lien(s) in the amounts specified securing the debt against the Property:

	Name of Holder	Amount as Scheduled by Debtor (<i>if any</i>)	Amount known to Declarant and Source
1st deed of trust:		\$	\$
2nd deed of trust:		\$	\$
3rd deed of trust:		\$	\$
Judgment liens:		\$	\$
Taxes:		\$	\$
Other:		\$	\$
TOTAL DEBT: \$			

f. Evidence establishing the existence of these deed(s) of trust and lien(s) is attached as Exhibit _____ and consists of:

(1) ☐ Preliminary title report.

(2) ☐ Relevant portions of the Debtor's schedules.

(3) ☐ Other (*specify*):

g. ☐ **11 U.S.C. § 362(d)(1) - Equity Cushion:**

I calculate that the value of the "equity cushion" in the Property exceeding Movant's debt and any lien(s) senior to Movant's debt is \$_____ and is _____% of the fair market value of the Property.

h. ☐ **11 U.S.C. § 362(d)(2)(A) - Equity:**

By subtracting the total amount of all liens on the Property from the value of the Property as set forth in Paragraph 11(e) above, I calculate that the Debtor's equity in the Property is \$_____.

- i. ☐ Estimated costs of sale: \$_____ (estimate based upon _____% of estimated gross sales price)
- j. ☐ The fair market value of the Property is declining because:

12. ☐ (*Chapter 12 and 13 cases only*) Status of Movant's loan and other bankruptcy case information:

- a. A 341(a) meeting of creditors is currently scheduled for (*or concluded on*) the following date: _____.
A plan confirmation hearing currently scheduled for (*or concluded on*) the following date: _____.
A plan was confirmed on the following date (*if applicable*): _____.

- b. Postpetition preconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

Number of Payments	Number of Late Charges	Amount of Each Payment or Late Charge	Total
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

(See attachment for additional breakdown of information attached as Exhibit _____.)

- c. Postpetition postconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

Number of Payments	Number of Late Charges	Amount of each Payment or Late Charge	Total
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

- d. Postpetition advances or other charges due but unpaid: \$
(*For details of type and amount, see Exhibit _____*)
- e. Attorneys' fees and costs: \$
(*For details of type and amount, see Exhibit _____*)
- f. Less suspense account or partial paid balance: \$[]
- TOTAL POSTPETITION DELINQUENCY: \$

- g. Future payments due by time of anticipated hearing date (*if applicable*): _____.
An additional payment of \$_____ will come due on _____, and on the _____ day of each month thereafter. If the payment is not received by the _____ day of the month, a late charge of \$_____ will be charged to the loan.

- h. Amount and date of the last 3 postpetition payments received from the Debtor in good funds, regardless of how applied (if applicable):

\$_____ received on (*date*) _____
\$_____ received on (*date*) _____
\$_____ received on (*date*) _____

- i. ☐ The entire claim is provided for in the chapter 12 or 13 plan and postpetition plan payments are delinquent. A plan payment history is attached as Exhibit _____. See attached declaration(s) of chapter 12 trustee or 13 trustee regarding receipt of payments under the plan (*attach LBR form F 4001-1.DEC.AGENT.TRUSTEE*).

13. ☐ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor.
14. ☐ The court determined on (date) _____ that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. § 101(51B). More than 90 days have passed since the filing of the bankruptcy petition; more than 30 days have passed since the court determined that the Property qualifies as single asset real estate; the Debtor has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or the Debtor has not commenced monthly payments to Movant as required by 11 U.S.C. § 362(d)(3).
15. ☐ The Debtor's intent is to surrender the Property. A true and correct copy of the Debtor's statement of intentions is attached as Exhibit _____.
16. ☐ Movant regained possession of the Property on (date) _____, which is ☐ prepetition ☐ postpetition.
17. ☐ The bankruptcy case was filed in bad faith:
- a. ☐ Movant is the only creditor or one of few creditors listed in the Debtor's case commencement documents.
 - b. ☐ Other bankruptcy cases have been filed in which an interest in the Property was asserted.
 - c. ☐ The Debtor filed only a few case commencement documents. Schedules and a statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed.
 - d. ☐ Other (specify): _____
18. ☐ The filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved:
- a. ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. See attached continuation page for facts establishing the scheme.
 - b. ☐ Multiple bankruptcy cases affecting the Property include:
 - 1. Case name: _____
Chapter: _____ Case number: _____
Date filed: _____ Date discharged: _____ Date dismissed: _____
Relief from stay regarding the Property ☐ was ☐ was not granted.
 - 2. Case name: _____
Chapter: _____ Case number: _____
Date filed: _____ Date discharged: _____ Date dismissed: _____
Relief from stay regarding the Property ☐ was ☐ was not granted.
 - 3. Case name: _____
Chapter: _____ Case number: _____
Date filed: _____ Date discharged: _____ Date dismissed: _____
Relief from stay regarding the Property ☐ was ☐ was not granted.
- ☐ See attached continuation page for information about other bankruptcy cases affecting the Property.
- ☐ See attached continuation page for facts establishing that the multiple bankruptcy cases were part of a scheme to delay, hinder, or defraud creditors.

19. ☒ Enforcement actions taken after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).
- a. ☒ These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit ____.
- c. ☒ For other facts justifying annulment, see attached continuation page.

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

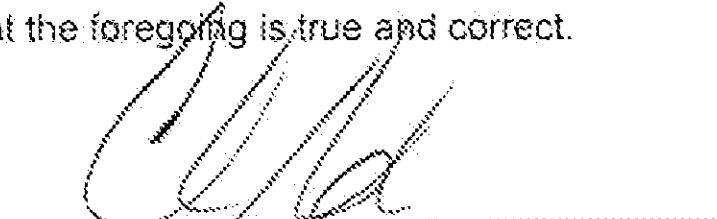
_____	Christopher J. Hardin	Signature on next page
<i>Date</i>	<i>Printed name</i>	<i>Signature</i>

19. ☒ Enforcement actions taken after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).
- a. ☒ These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit _____.
- c. ☒ For other facts justifying annulment, see attached continuation page.

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


Date

Christopher J. Hardin
Printed name


Signature

1 **DAVID I. BROWNSTEIN (SBN 195393)**
2 **LAW OFFICE OF DAVID I. BROWNSTEIN**
3 PO Box 16474
4 Irvine, CA 92623
5 Tel: (949) 486-4404
6 Fax: (949) 861-6045
7 david@brownsteinfirm.com

8 Counsel for Movant,
9 SFR Investments Pool 1, LLC

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 (SANTA ANA DIVISION)

13 In re:

14 RICHARD PARKS, and
15 LUCY PARKS,

16 Reorganized Debtors.

) Case No.: 8:10-bk-21738-TA

) Chapter 11

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION FOR RELIEF TO**
) **RETROACTIVELY ANNUL THE**
) **AUTOMATIC STAY; SUPPLEMENTAL**
) **DECLARATION OF CHRISTOPHER J.**
) **HARDIN IN SUPPORT THEREOF**

17 **Hearing:**

18 Date: 2/14/2017

19 Time: 10:00 am

20 Place: Courtroom 5B

Ronald Reagan Federal Building

411 W. Fourth Street

Santa Ana, CA 92701

21
22
23
24 **TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES**
25 **BANKRUPTCY COURT JUDGE; THE DEBTORS AND THEIR COUNSEL OF**
26 **RECORD, THE OFFICE OF THE UNITED STATES TRUSTEE; US BANK NA;**
27 **WELLS FARGO BANK, NA; AND ALL OTHER INTERESTED PARTIES:**
28

1 SFR INVESTMENTS POOL 1, LLC (“SFR”), the innocent third party purchaser of real
2 property located at 2270 Nashville Ave, Henderson, Nevada 89052; Parcel No. 178-19-712-012
3 (the “Property”), hereby submits this Memorandum of Points and Authorities and the
4 Supplemental Declaration of Christopher J. Hardin, in support of its Motion for Relief From
5 The Automatic Stay and to Retroactively Annul the Automatic Stay with respect to actions
6 taken against the above noted Property (the “Motion”), during the Chapter 11 Bankruptcy case
7 of Richard and Lucy Parks (the “Debtors”).

8 Specifically, on March 2, 2013, the homeowners’ association where the Property was
9 located held a public auction of the Property based on unpaid monthly assessments and SFR
10 was the highest bidder at the action, with no notice of the Debtors’ bankruptcy case.

11 The Motion is based upon the foregoing Notice of Motion and Motion, the following
12 memorandum of points and authorities, the papers and pleadings on file herein, and the
13 declaration of Christopher J. Hardin (“Hardin Decl.”), submitted concurrently herewith.

14 15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 More than *three years* after the Property was sold to SFR at the foreclosure auction held
18 by Nevada Association Services, Inc. (“NAS”) on behalf of the Copper Ridge Community
19 Association (“Association”), US Bank, NA as Trustee (the “Bank”) has asserted that the sale
20 should be declared void as the Association’s foreclosure sale was held without this Court’s
21 leave in violation of the automatic stay¹.

22 While the Bank² could have employed numerous options to protect its interest in the
23 Property, it failed to do so. Instead, it gambled with its deed of trust and let the Property be
24 sold at the Association’s public auction, insisting—despite the clear language in the statute—
25 that the Association’s foreclosure did not extinguish its first deed of trust. After the Nevada
26

27 ¹ On July 1, 2010, Wells Fargo executed an Assignment and assigned transferred the beneficial
28 interest in the Deed of Trust to U.S. Bank, NA as Trustee for Wells Fargo Asset Securities Corporation,
Mortgage Pass-Through Certificates Series 2006-AR4. Wells Fargo Home Mortgage, a division of Wells
Fargo Bank, NA services the loan for US Bank NA, pursuant to the Dock. #236 filed in this Case.

² All references to the Bank also includes its predecessor(s) in interest.

1 Supreme Court flatly rejected this argument in SFR Investments Pool 1 v. U.S. Bank, 130 Nev.
2 Adv. Op. 75, 334 P.3d 408 (2014), reh'g denied (Oct. 16, 2014) (a copy this Opinion is
3 attached hereto), the Bank is now scrambling to find absolution from its calamitous mistake.

4 Pursuant to Ninth Circuit law, a creditor—such as the Bank—has no standing to assert
5 an automatic stay violation. That right belongs only to the trustee and the debtor—the parties
6 the automatic stay intended to protect.³ Here, there is no trustee, and the Debtors have not
7 asserted an automatic stay violation regarding the Association's actions.

8 Even if the Bank had standing to assert a stay violation—which it does not—cause
9 exists to grant SFR's Motion for retroactive relief. As set forth in more detail below, SFR had
10 no knowledge of this bankruptcy case or of any alleged stay violation prior to purchasing the
11 Property *over three years ago*. Since acquiring the Property at the public foreclosure auction,
12 SFR has expended significant funds to rehabilitate and maintain the Property. As an innocent
13 purchaser of the Property, SFR would be irreparably harmed if this Motion is not granted.
14 Given the length of time that has passed since the Association's sale, it would be
15 extraordinarily difficult, if not impossible, to restore the parties to the status quo ante.

16 Neither NAS nor the Association were listed as creditors in the Debtors' petition and
17 given this, were not included in the Debtors' mailing matrix. Moreover, the Debtors
18 surrendered the Property after confirmation, and it was not included in their confirmed Plan.
19 The Bank, however had notice of the Debtors' bankruptcy and actually filed its own motion for
20 relief from the automatic stay, which this Court granted. Afterward, the Bank did not foreclose
21 on the Property. In addition, the Bank had notice of the Association's actions but failed to
22 protect its interest, and therefore would not be prejudiced if this Court grants SFR's Motion for
23 retroactive annulment—particularly when the Bank waited *over three years* to even assert a
24

25 ³ On November 12, 2015, The Honorable Gary Spraker of the Bankruptcy Court, District of Nevada,
26 entered an Order Granting SFR's Motion to Reopen the Case to Retroactively Annul the Automatic Stay
27 [Dkt. No. 40] in Case No. 12-17610-MKN. In that order, the Court stated, "Thus, while the Ninth
28 Circuit has held that an action taken in violation of the automatic stay may be void, it is only void as to
those protected parties and a secured creditor is not a protected party." In re Hunyady, No. BK-12-
17610-MKN, 2015 WL 9916719, at *2 (Bankr. D. Nev. Nov. 12, 2015) (a copy of that Order is attached
hereto).

1 stay violation took place.

2 Finally, the Debtors would be irreparably harmed if SFR's Motion for retroactive relief
3 is not granted, as they would still be facing an imminent foreclosure by the Association or the
4 Bank, thus destroying the credit they have been rebuilding for the last, almost four years, since
5 their bankruptcy case closed.

6 For these reasons, SFR respectfully requests this Court grant its Motion for retroactive
7 annulment of the automatic stay in this case.

8 9 **II. STATEMENT OF FACTS**

10 1. On August 23, 2010, Richard and Lucy Parks ("Debtors") filed their voluntary
11 petition for Chapter 11 bankruptcy protection in the United States Bankruptcy Court, Central
12 District of California ("Petition") [Dkt. No. 1].

13 2. Neither NAS nor the Association were listed as creditors in the Debtors'
14 Petition. As such, neither A&K nor the Association were included in the mailing matrix for the
15 case.

16 3. On April 17, 2012, the Debtors filed Amended Plan [Dkt. No. 199] and this
17 Court entered an Order Confirming Plan on July 5, 2012 [Dkt. No. 238].

18 4. According to the confirmed Plan, Wells Fargo Bank had a secured claim of
19 \$312,600.82 via a first deed of trust against the Property. The Property had a value of
20 \$175,000.00. The Plan proposed a zero payment for the secured claim and the Plan proposed
21 to treat the Bank's lien as follows:

22 The creditor may exercise all its rights and remedies to conduct a
23 non-judicial foreclosure sale and to seek appointment of a
24 receiver. Recourse shall be limited to the collateral. To the extent
25 the creditor has an allowed deficiency claim, it will be a Class 16
claim.

26 5. On July 2, 2012, the Bank filed its Motion for Relief from the Automatic Stay,
27 asserting that the Debtors had no equity in the Property and that the Property was not necessary
28 for an effective reorganization [Dkt. No. 236].

1 6. On, August 7, 2012, this Court granted the Bank's Motion for Relief from the
2 Automatic Stay [Dkt. No. 256]. However, the Bank did nothing to foreclose on its deed of
3 trust.

4 7. On May 24, 2012, while the bankruptcy case was open, the Association, through
5 its agent NAS, recorded a Notice of Delinquent Assessment Lien.

6 8. NAS also recorded a Notice of Default and Election to Sell and Notice of
7 Foreclosure Sale, without first seeking leave of this Bankruptcy Court.

8 9. On March 1, 2013, SFR, having no knowledge of the bankruptcy case,
9 purchased the Property by being the highest bidder at the Association's public foreclosure
10 auction. See a copy of the Foreclosure Deed, attached to the Declaration of Christopher J.
11 Hardin of SFR (the "Hardin Decl.") as Exhibit 1, and Hardin Decl. at ¶ 6 and 8. The
12 Foreclosure Deed granting title to the Property in favor of SFR was recorded in the Official
13 Records of the Clark County Recorder on March 3, 2013 as Instrument No. 201303060001614.
14 Id.

15 10. On March 22, 2013, SFR filed a Complaint against U.S. Bank and the Debtors
16 in Nevada State District Court for Quiet Title and Injunctive Relief (the "Complaint").

17 11. On June 11, 2013, the Nevada District Court granted U.S. Bank's Motion to
18 Dismiss the Complaint.

19 12. U.S. Bank foreclosed on the Property and a Trustee's Deed upon Sale was
20 recorded as Instrument No. 201307310000944.

21 13. On December 10, 2014, the Nevada Supreme Court reversed and remanded the
22 June 11, 2013 Order that had dismissed SFR's Complaint.

23 14. Despite the Nevada Supreme Court's reversal, U.S. Bank maintains control and
24 possession of the Property.

25 15. On August 10, 2016, U.S. Bank filed a Motion for Summary Judgment
26 asserting, among other things, that the Association's foreclosure sale was void for violating the
27 bankruptcy stay.
28

1 **III. LEGAL STANDARD**

2 A decision to annul the automatic stay under 11 U.S.C. § 362(d) is a core proceeding
3 under 28 U.S.C. § 157(b)(2)(G) and as such, is in the exclusive jurisdiction of the Bankruptcy
4 Court. Section 362(d) provides:

5 On request of a party in interest and after notice and a hearing, the court shall
6 grant relief from the stay provided under subsection (a) of this section, such as
by terminating, annulling, modifying, or conditioning such stay—

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

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

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

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

12 11 U.S.C. § 362(d).

13 Bankruptcy Courts have wide latitude in crafting relief from the stay, including the
14 power to grant retroactive relief. In re Nat'l Envtl. Waste Corp., 191 B.R. 832, 836 (Bankr.
15 C.D. Cal. 1996) subsequently aff'd 129 F.3d 1052 (9th Cir. 1997) (internal citations omitted).
16 Retroactive relief is not given solely in “extreme” or “extraordinary” circumstances. See In re
17 Fjeldsted, 293 B.R. 12, 23 (B.A.P. 9th Cir. 2003). Rather the analysis for retroactive
18 annulment entails “weighing the equities” on a “case by case” basis. Id.

19 Under 11 U.S.C. § 362(g)(2), the party opposing the stay relief bears the ultimate
20 burden of proving that the request for retroactive relief from the stay should be denied. 11
21 U.S.C. § 362(g)(2); see also In re Nat'l Envtl. Waste Corp., 191 B.R. at 836; subsequently aff'd
22 129 F.3d 1052 (9th Cir. 1997) (“Pursuant to Section 362(b)(2), the [party opposing the relief]
23 has the burden of proof to demonstrate that ‘cause’ does not exist to annul the stay under
24 Section 362(d)(1).”).

25 ///

26 ///

27 ///

IV. LEGAL ARGUMENT

A. Factors to Consider in Determining Whether or Not to Grant Retroactive Relief

Retroactive relief is not given solely in “extreme” or “extraordinary” circumstances. See In re Fjeldsted, 293 B.R. at 23. Rather the analysis for retroactive annulment entails “weighing the equities” on a “case by case” basis. Id.

Acknowledging that a mechanistic application of factors is inappropriate in making this determination, the Court in In re Fjeldsted, suggested considering the following factors when deciding whether or not to annul the stay:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. **A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;**
4. The Debtor's overall good faith (totality of circumstances test): *cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R. 87, 93 (9th Cir. BAP 1988)(chapter 13 good faith);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. **The relative ease of restoring parties to the *status quo ante*;**
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. **Whether annulment of the stay will cause irreparable injury to the debtor;**
12. Whether stay relief will promote judicial economy or other efficiencies.

Id. at 24-25 (emphasis added).

The Fjeldsted Court went on to state, “[m]indful that such lists are capable of being misconstrued as inviting arithmetic reasoning, we emphasize that these items are merely a framework for analysis and not a scorecard. **In any given case, one factor may so outweigh the others as to be dispositive.**” Id. at 25 (emphasis added).

B. Cause Exists to Retroactively Annul the Automatic Stay

Applying the Fjeldsted factors, cause exists to retroactively annul the automatic stay in this case to May 24, 2012, the date the first notice of default was recorded. This is warranted in order to validate the sale of the Property by the Association to SFR.⁴ First, the Property had no value to the estate and was not necessary for a reorganization of the Debtors. Throughout the pleadings filed in their Bankruptcy Case, the Debtors consistently stated it was their intention to surrender the Property. The Debtors did not include the Property as an asset to be retained in their Chapter 11 Plan [Dckt No. 199]. As the Debtors had no equity in the Property, the granting of the retroactive relief herein, would not be prejudicial to any unsecured creditors of the Debtors' bankruptcy estate.

Second, there is no prejudice to the Bank as it was on notice of the actions of the Association, it was sent the Notice of Default and Election to Sell, and it was sent the Notice of Sale as required by NRS 116.31162 through NRS 116.31168,⁵ and failed to timely raise an objection either during the bankruptcy or at any time prior to it being raised at this juncture—over three years after the foreclosure sale occurred. While the Bank, undoubtedly, may claim that it would suffer prejudice if the stay relief is granted retroactively, let's be clear—the Bank had many opportunities to protect its interest in the Property and simply failed to do so. First,

⁴ In similar cases—where parties have moved for retroactive annulment of the automatic stay to validate NRS 116 sales—bankruptcy courts in the District of Nevada have granted such relief. See In re Wayne Alan Haddad and Debra Ann Haddad, Case No. 11-13184-MKN (“Haddad Case”) [Dkt. No. 36] and In re Robert J. Heaton and Bridgette Heaton, Case No. 12-16153-LED (“Heaton Case”) [Dkt. No. 121] (Copies of the written opinions of both Orders in these cases are attached hereto in Exhibit 2). In both cases, the Court considered the following factors in determining to grant the requested relief: (1) the property owner's lack of knowledge of the bankruptcy case; (2) the property owner's status as a bona fide purchaser for value; (3) the bank's knowledge of the bankruptcy case and the association foreclosure proceedings; (4) the lack of diligence of the bank in raising an automatic stay violation; (5) the prejudice the property owner would face if retroactive relief was not granted; and (6) the prejudice the debtor(s) would face if the annulment was not granted, specifically, damage to the debtor(s) credit score that would occur as a result of another foreclosure. Additional factors considered by the Court include: (1) the prejudice the property's owner's tenant would face if retroactive relief was not granted; (2) the lack of opposition by the trustee to the request for retroactive annulment; and (3) the difficulty, if not impossibility, of restoring the parties to the status quo ante given the time that has elapsed from the sale of the Property. While retroactive annulment is to be determined on a case by case basis, many of the factors considered in the Haddad Case and Heaton Case are similarly applicable here.

⁵ This was identified and explained by the Nevada Supreme Court in SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014), reh'g denied (Oct. 16, 2014) (A copy of this Opinion is attached hereto), and this Court is requested to take judicial notice of the fact thereof pursuant to FRE 201.

1 after receiving the NOS from the Association, the Bank could have brought the pending sale to
2 the attention of the Trustee—a party with standing to assert an automatic stay violation. It did
3 not. Second, the Bank could have initiated an adversary action to determine the validity and
4 extent of its lien and the Association’s lien. It did not. Third, the Bank could have paid the
5 Association the small super priority lien amount to protect its interest in the Property. It did
6 not. Fourth, the Bank could have showed up at the auction and bid on the Property to protect
7 its interest. It did not. To date, the Bank has done nothing to try to foreclose on the Property.
8 Thus, even if the Association had moved to lift stay, it still would have beaten the Bank in
9 conducting its foreclosure sale. Thus, any prejudice to the Bank by granting retroactive relief
10 would not be unjust.

11 Third, if the stay relief is not made retroactive, SFR—the only innocent party in this
12 case—would be significantly harmed. SFR is a bona fide purchaser, paying value for the
13 Property, without knowledge of any competing claims and without knowledge of the
14 bankruptcy case or any alleged stay violations. Since it purchased the Property on March 1,
15 2013—*over three years ago*—SFR has spent considerable time and money paying the HOA
16 assessments and incurring substantial legal fees trying to quiet title on the Property. After
17 years of fighting with the various banks, the Nevada Supreme Court ruled in SFR’s favor
18 stating that an association’s non-judicial foreclosure of its super priority lien extinguishes a
19 bank’s first deed of trust. See SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75,
20 334 P.3d 408 (2014), reh’g denied (Oct. 16, 2014) (A copy of this Opinion is attached hereto).
21 For SFR to lose the Property it has fought so hard to retain because, now, *over three years* after
22 the sale took place, because the Bank asserts the sale was void due to an automatic stay
23 violation that the Bank could have and should have asserted years ago, would be wildly
24 inequitable.

25
26 Fourth, the Debtors would be prejudiced if the stay relief was not made retroactive. The
27 Debtors received their discharge almost three years ago. The purpose of bankruptcy is to
28 provide a debtor with a fresh start. After the bankruptcy and foreclosure, over the last several

1 years, the Debtors have likely begun to rebuild their credit. If the request for retroactive
2 annulment of the stay is not granted and the Association's foreclosure sale is determined to be
3 void, the Bank or the Association would initiate new foreclosure proceedings which would
4 adversely impact the Debtors' newly rebuilt credit.

5 **V. CONCLUSION**

6 Based upon all of the foregoing, as well as SFR's Notice of Motion and Motion for
7 Relief From Stay, SFR urges this Court to grant SFR's Motion for retroactive relief.

8 Dated: January 17, 2017

LAW OFFICE OF DAVID I. BROWNSTEIN

9
10 By /s/ David I. Brownstein
11 DAVID I. BROWNSTEIN
12 Counsel for Counsel for Movant,
13 SFR Investments Pool 1, LLC
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DECLARATION OF CHRISTOPHER J. HARDIN

I, Christopher J. Hardin, hereby declare as follows:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am the manager of SFR Investments Pool 1, LLC ("SFR"). I am over the age of eighteen (years) old and I am competent to testify.

3. I am a resident of Clark County, Nevada.

4. This declaration supports SFR's Motion for Relief from Stay and Retroactive Annulment of the Automatic Stay in the above Bankruptcy Case ("Motion").

5. As manager of SFR, I frequently attend and purchase properties at association foreclosure auctions.

6. On March 1, 2013, I attended a public foreclosure auction conducted by Nevada Association Services, Inc. ("NAS") on behalf of the Copper Ridge Community Association ("Association"). At that auction, I was the highest bidder and purchased real property located at 2270 Nashville Ave, Henderson, Nevada 89052; Parcel No. 178-19-712-012 (the "Property"). After purchasing the Property, I received a Foreclosure Deed that was recorded on March 3, 2013 in the Official Records of the Clark County Recorder as Instrument No. 201303060001614. A true and correct copy of the Foreclosure Deed is attached hereto as **Exhibit 1**

7. It is my belief that the Association foreclosure sale extinguished the first deed of trust on the Property.

8. When SFR purchased the Property at the Association foreclosure auction, SFR had no knowledge of this bankruptcy case.

9. As SFR had no reason to doubt that the Association foreclosure sale was valid, SFR expended substantial resources paying assessments to the Association and prosecuting a quiet title action.

///

///

1 10. I do not believe SFR should be punished for the Association and/or NAS's
2 conduct, particularly when SFR had no knowledge of this bankruptcy case and spent a
3 significant amount of money on the Property since its acquisition over three years ago.

4 11. For these reasons, I respectfully request this Court grant this Motion for relief
5 from the automatic stay and for retroactive relief of the actions to foreclose on the Property.

6 I declare under penalty of perjury of the laws of the United States of America, that the
7 foregoing is true and correct.

8 Dated this 15th day of January, 2017, at Las Vegas, Nevada

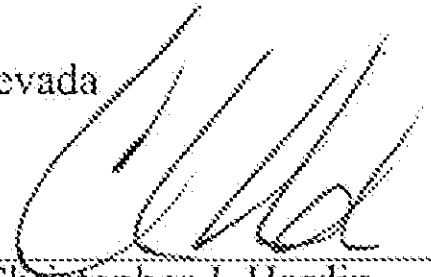
9
10 
Christopher J. Hardin

EXHIBIT “1”

EXHIBIT “1”

Inst #: 201303060001614
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$71.40 Ex: #
03/06/2013 11:33:13 AM
Receipt #: 1522795
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

FORECLOSURE DEED

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

NAS # N71222

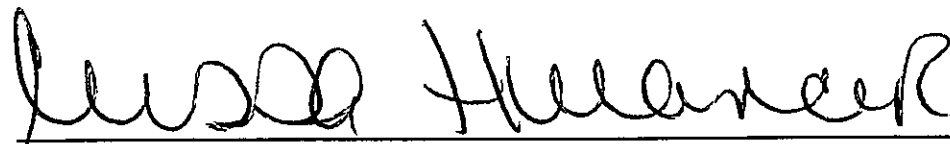
The undersigned declares:

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: S F R 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

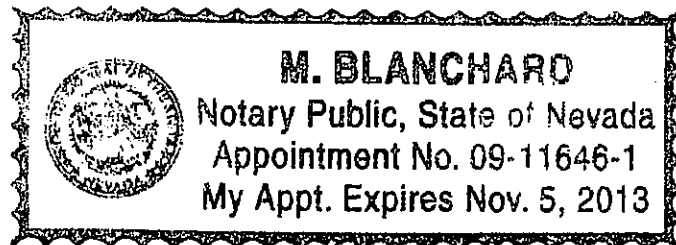
STATE OF NEVADA)
COUNTY OF CLARK)

On March 1, 2013, before me, M. Blanchard, personally appeared Elissa 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

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 178-19-712-012

b. _____

c. _____

d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.

c. ☐ Condo/Twnhse d. ☐ 2-4 Plex

e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l

g. ☐ Agricultural h. ☐ Mobile Home

☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 14,000.00

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

c. Transfer Tax Value: \$ 14,000.00

d. Real Property Transfer Tax Due \$ 71.40

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] Capacity: Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Rd.

City: Las Vegas

State: NV Zip: 89146

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: S F R Investments Pool 1, LLC

Address: 5030 Paradise Rd., B-214

City: Las Vegas

State: NV Zip: 89119

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

North American Title Company _____
8485 W. Sunset Road #111 _____
Las Vegas, NV 89113 _____

Escrow # 37570 / N 71222
State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT “2”

Copies of Unpublished Opinions Identified in Motion

- a. SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), reh’g denied (Oct. 16, 2014)
- b. In re Hunyady, BK-12-17610-MKN, 2015 WL 9916719, at *2 (Bankr. D. Nev. Nov. 12, 2015)
- c. In re Wayne Alan and Debra Ann Haddad, Case No. 11-13184-MKN (Bankr. D. Nev)
- d. In re Robert J. and Bridgette Heaton, Case No. 12-16153-LED (Bankr. D. Nev)

EXHIBIT “2”

Case "a"

Case "a"

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
Appellant,

vs.

THE BANK OF NEW YORK MELLON, A
DELAWARE CORPORATION F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS CWALT,
INC. ALTERNATIVE TRUST 2005-84
MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2005-84,
Respondent.

No. 63929

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

vs.

THE BANK OF NEW YORK MELLON, A
DELAWARE CORPORATION F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS CWALT,
INC. ALTERNATIVE TRUST 2005-84
MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2005-84,
Respondent.

No. 64374

FILED

NOV 25 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

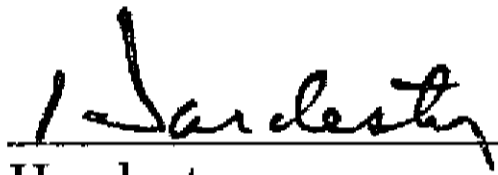

ORDER VACATING, REVERSING, AND REMANDING

These are consolidated appeals from a district court order denying a preliminary injunction and an order granting a motion to dismiss in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The district court denied SFR Investments' motion for a preliminary injunction, finding that SFR Investments was not likely to succeed on the merits because NRS 116.3116(2)'s superpriority provision "only creates a priority payment from foreclosure proceeds." The district

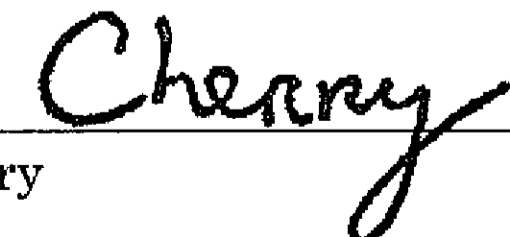
court granted Bank of New York Mellon's motion to dismiss for the same reason. This court's recent disposition in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014), decides that a common-interest community association's NRS 116.3116(2) superpriority lien has true priority over a first security interest, and the association may nonjudicially foreclose on that lien. The district court's decisions thus were based on an erroneous interpretation of the controlling law and did not reach the other issues colorably asserted. Accordingly, we

VACATE the order denying preliminary injunctive relief, REVERSE the order granting the motion to dismiss, AND REMAND this matter to the district court for further proceedings consistent with this order.


_____, J.
Hardesty

_____, J.
Douglas

CHERRY, J., concurring:

For the reasons stated in the *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014), dissent, I disagree that respondent lost its lien priority by virtue of the homeowners association's nonjudicial foreclosure sale. I recognize, however, that *SFR Investments* is now the controlling law and, thusly, concur in the disposition of these appeals.


_____, J.
Cherry

cc: Hon. Michael Villani, District Judge
Howard Kim & Associates
Akerman LLP/Las Vegas
Goodman, Shapiro & Lombardi, LLC
Hall Jaffe & Clayton, LLP
HindmanSanchez
Marcus, Errico, Emmer & Brooks, P.C.
Eighth District Court Clerk

Case "b"

Case "b"

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HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Entered on Docket
November 12, 2015


Honorable Gary Spraker
United States Bankruptcy Judge



Howard C. Kim, Esq.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
Katherine C.S. Carstensen, Esq.
Nevada Bar No. 10656
E-mail: katherine@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

JAMES J. HUNYADY
MARLEEN HUNYADY

Debtors.

Case No. BK-12-17610-MKN
Chapter 7

**ORDER GRANTING SFR
INVESTMENTS POOL 1, LLC'S
MOTION TO REOPEN CASE TO
RETROACTIVELY ANNUL THE
AUTOMATIC STAY**

Date of Hearing: October 14, 2015
Time of Hearing: 2:30 p.m.
Place: Foley Federal Building
300 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

Judge: Hon. Gary A. Spraker

On the above-referenced date and time, this Court issued an oral ruling on SFR Investments Pool 1, LLC's ("SFR") Motion to Reopen the Case to Retroactively Annul the Automatic Stay ("Motion") [Dkt. No. 26]. PennyMac Holdings, LLC ("PennyMac") filed an opposition to the Motion on September 30, 2015 [Dkt. No. 32], to which SFR filed its reply on October 7, 2015 [Dkt. No. 33]. Howard C. Kim Esq. and Katherine C.S. Carstensen, Esq. appeared on behalf of SFR. Matthew L. Knepper, Esq. appeared on behalf of PennyMac. After notice was given to creditors and interested parties, no other party appeared at the hearing or filed an opposition or response to the Motion.

The Court, having considered the papers and pleadings on file herein and the arguments of counsel, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT¹

1. On June 27, 2015, James J. Hunyady and Marleen Hunyady ("Debtors") filed their voluntary petition for Chapter 7 bankruptcy protection in the United States Bankruptcy Court, District of Nevada [Dkt. No. 1]

2. On September 26, 2012, the Court entered an Order Discharging the Debtors [Dkt. No. 21]

3. On October 25, 2012, Green Valley South ("Association") authorized the publication of the non-judicial foreclosure sale of real property located at 2818 Painted Rose Lane, Henderson, Nevada 89074; Parcel No. 177-13-413-005 (the "Property").

4. On November 30, 2012, Nevada Association Services, Inc. ("NAS"), on behalf of the Association, recorded the Notice of Sale in the Official Records of the Clark County Recorder as Instrument No. 201211300002367 ("NOS").

5. On December 3, 2012, a final decree was entered and the Court closed the Debtors' bankruptcy case [Dkt. No. 25].

6. The NOS was recorded three days before the bankruptcy case was closed. Thus, the case was in its closing days when the stay violation took place.

¹ Any finding of fact that should be a conclusion of law is deemed a conclusion of law.

7. On March 1, 2013, the Property was sold to SFR at a public auction. The Foreclosure Deed was recorded on March 6, 2013 in the Official Records of the Clark County Recorder as Instrument No. 201303060000410.

8. The act taken in violation of the automatic stay was the recordation of the NOS on November 30, 2012.

9. The Association foreclosure sale of the Property, in and of itself, did not violate the automatic stay, as the sale took place months after the bankruptcy case was closed.

CONCLUSIONS OF LAW²

A. The Ninth Circuit B.A.P., in In re Williams, 323 B.R. 691, 700 (9th Cir. B.A.P. 2005), aff'd, 204 Fed. App'x 582 (9th Cir. 2006), reviewed its prior decision in the Fjeldsted case³ and the Ninth Circuit's decision in the National Environmental Waste Corporation case⁴ and surmised that the Court should consider not only the original factors identified in the National Environmental Waste case—which are (1) whether the creditor was aware of the bankruptcy petition, and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice that would result to the creditor⁵—but also a number of other factors, including the extent of any prejudice, including to a bona fide purchaser, the debtor's overall good faith, the debtor's compliance with the Code, how quickly the creditor moved for annulment, and how quickly the debtor moved to set aside the sale.⁶

B. The Ninth Circuit B.A.P. in Williams further wrote that:

But because a mechanistic application of “factors” is inappropriate in making the determination of whether to annul the stay, in Fjeldsted, we observed that: Mindful that such lists [of factors] are capable of being misconstrued as inviting arithmetic reasoning, we emphasize that these items are merely a framework for analysis and not a scorecard. **In any given case, one factor may so outweigh the others so as to be dispositive.**

² Any conclusion of law that should be a finding of fact is deemed a finding of fact.

³ In re Fjeldsted, 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003).

⁴ In re Nat'l Env'tl. Waste Corp., 129 F.3d 1052, 1054 (9th Cir. 1997).

⁵ See In re Williams, 323 B.R. at 700.

⁶ Id.

1 In re Williams, 323 B.R. at 700.

2 C. The Ninth Circuit has held that actions taken in violation of the automatic stay are
3 void. In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992).

4 D. However, the Ninth Circuit has also concluded, in In re Pecan Groves of Arizona,
5 951 F.2d 242, 246 (9th Cir. 1991), that:

6 Likewise, Tilley's standing as a lienholder, and thus as a property owner with
7 interests adverse to the estate, requires us to hold that he does not have standing in
a bankruptcy proceeding to challenge actions as violative of the stay.

8 Id. at 246.

9 E. In reconciling these cases,⁷ it seems clear that the protections of the automatic
10 stay, as strong and fundamental as they are, devolve to the protection of the debtor and the
11 bankruptcy estate, and specifically, its representative, being either the trustee or the debtor-in-
12 possession in a Chapter 11 case.

13 F. Thus, while the Ninth Circuit has held that an action taken in violation of the
14 automatic stay may be void, it is void only as to those protected parties and a secured creditor is
15 not a protected party.

16 G. This point was recently reaffirmed in In re Demas Wai Yan, No. ADV NC-08-
17 03166, 2015 WL 845570, at *2 (B.A.P. 9th Cir. Feb. 26, 2015), in which the Court, citing Pecan
18 Groves, held:

19 The Ninth Circuit has held that creditors do not have standing to enforce the
20 protections of the automatic stay and the power to do so in a Chapter 7 belongs to
the trustee.

21 Id.

22 H. Thus, the protections of the automatic stay were afforded to only the Debtors and
23 the trustee in this case, neither of which asserted a stay violation.

24 I. There is no party—either the Debtors or the trustee—seeking to enforce the
25 automatic stay because, in large part, PennyMac had acquired relief from the stay to do exactly
26 what the Association did, foreclose on the Property.

27 ⁷ See In re Schwartz, 954 F.2d 569 (9th Cir. 1992); see also In re Pecan Groves of Arizona, 951
28 F.2d 242 (9th Cir. 1991); see also In re Globe Investments and Loan Company, 867 F.2d 556
(9th Cir. 1989).

J. Moreover, the Debtors and the trustee recognized that the Property was of no benefit to the estate and therefore let the Property go.

K. Here, PennyMac is not arguing over bankruptcy rights and protections, but rather, is seeking to use the automatic stay as an offensive shield in the state court action. The Bankruptcy Code is not intended to be used for such a purpose. Creditors do not get to offensively use the protections of the automatic stay and the voidness of actions taken without relief from the automatic stay. See In re Pecan Groves of Arizona, 951 F.2d 242 (9th Cir. 1991); see also In re Globe Investments and Loan Company, 867 F.2d 556 (9th Cir. 1989); see also In re Demas Wai Yan, No. ADV NC-08-03166, 2015 WL 845570 (B.A.P. 9th Cir. Feb. 26, 2015).

L. Given this, PennyMac, as a creditor, does not have standing to object to the retroactive annulment of the automatic stay in this case.

M. Even if PennyMac did have such standing, which it does not, the facts in this case tip sharply in favor of granting SFR's request for retroactive relief. Those facts include, but are not necessarily limited to: (1) the bankruptcy case closed only days after the NOS was recorded; (2) the Association foreclosure sale happened months after the bankruptcy case closed; (3) PennyMac had obtained relief from the automatic stay, indicating that a secured creditor was not adequately protected so that the stay could be lifted to allow a foreclosure sale to take place; and (4) neither the Debtors nor the trustee are complaining or seeking to prevent the annulment of the automatic stay. As such, the formulaic and slavish enforcement of the stay in this case, where no real benefit would be served with regards to the intended beneficiaries of that stay—that being the Debtors and the estate—tip sharply in favor of granting retroactive annulment in this case.

N. The other factors to be considered in determining whether to grant retroactive annulment do not tip the analysis significantly one way or the other.

O. In consideration of the Fjeldsted factors,⁸ exercising its discretion, this Court finds retroactive annulment of the automatic stay is appropriate in this case.

///

⁸ In re Fjeldsted, 293 B.R. at 25 (B.A.P. 9th Cir. 2003).

P. Additionally, this Court notes that SFR's lack of direct involvement in the bankruptcy case also favors granting retroactive annulment. SFR is a bona fide purchaser for value here, where it had no knowledge of the bankruptcy case or the application of the automatic stay.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that SFR Investments Pool 1, LLC's Motion to Reopen the Case to Retroactively Annul the Automatic Stay [Dkt. No. 26] is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the automatic stay with respect to real property located at 2818 Painted Rose Lane, Henderson, Nevada 89074; Parcel No. 177-13-413-005 is ANNULLED as of November 1, 2012.

IT IS SO ORDERED.

Prepared and submitted by:

HOWARD KIM & ASSOCIATES

/s/Katherine C.S. Carstensen

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

KATHERINE C.S. CARSTENSEN, ESQ.

Nevada Bar No. 10656

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Attorneys for SFR Investments Pool 1, LLC

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HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

LOCAL RULE 9021 CERTIFICATION

In accordance with Local Rule 9021, the counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

_____ The court waived the requirements of approval under LR 9021.

_____ No party appeared at the hearing or filed an objection to the motion.

 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

	<u>Approved</u>	<u>Disapproved</u>	<u>Failed to Respond</u>
Matthew L. Knepper, Esq.	X		

_____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order

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

DATED this 6th day of November, 2015.

HOWARD KIM & ASSOCIATES

/s/Katherine C.S. Carstensen
KATHERINE C.S. CARSTENSEN, ESQ.
Nevada Bar No. 10656
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorney for SFR Investments Pool 1, LLC

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Case "c"

Case "c"


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
May 19, 2015

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:	)	Case No.: 11-13184-MKN
	)	Chapter 7
WAYNE ALAN HADDAD and DEBRA)	
ANN HADDAD,)	
	)	Date: March 4, 2015
Debtors.	)	Time: 2:30 p.m.

**ORDER ON EX PARTE MOTION TO REOPEN BANKRUPTCY CASE FOR THE
PURPOSE OF RETROACTIVELY ANNULLING THE AUTOMATIC STAY¹**

On March 4, 2015, the court held a hearing on the Ex Parte Motion to Reopen Bankruptcy Case for the Purpose of Retroactively Annuling the Automatic Stay ("Annulment Motion") (ECF No. 28) brought on behalf of NV Eagles, LLC ("NV Eagles"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On March 8, 2011, Wayne Alan Haddad and Debra Ann Haddad ("Debtors") filed a voluntary Chapter 7 petition, which included their required schedules of assets and liabilities. (ECF No. 1). On their real property Schedule "A," Debtors listed a residence located at 7527 Alamo Summit Drive, Las Vegas, NV 89129 ("Alamo Summit Property"), which was identified as an investment property. Debtors indicated that the Alamo Summit Property had a value of \$259,983.00 that was subject to secured claims in the total amount of \$396,291.50. On their Schedule "D," Debtors listed BAC Home Loans Servicing ("BAC") as a creditor having a claim

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 in the amount of \$247,947.00 secured by a mortgage on the Alamo Summit Property, as well as
2 Wells Fargo Small Business (“Wells Fargo”) as a creditor having a claim in the amount of
3 \$148,344.50 secured by an interest in the same property. On their Schedule “F,” Debtors listed
4 Canyon Ranch Estate HOA Community Management Group (“HOA”) as a creditor having an
5 unsecured claim in the amount of \$600.00. On their Statement of Intention, Debtors stated their
6 intent to surrender the Alamo Summit Property to BAC and Wells Fargo. The case was assigned
7 for administration to Chapter 7 trustee David A. Rosenberg (“Trustee”).

8 On March 8, 2011, a notice scheduling a meeting of creditors for April 8, 2011, was
9 issued by the court clerk. (ECF No. 7). The notice was served on all creditors, including BAC
10 (ECF No. 9).

11 On June 8, 2011, an order was entered granting the Debtors a Chapter 7 discharge. (ECF
12 No.17).

13 On June 19, 2012, HOA recorded a Notice of Delinquent Assessment Lien, dated April
14 30, 2012, with the Clark Country’s Recorder’s Office. See Annulment Motion at ¶ 11.

15 On June 25, 2012, Trustee filed an Ex Parte Application for Order Authorizing the
16 Employment of Real Estate Agent for Estate to list and sell the Alamo Summit Property on
17 behalf of the estate. (ECF No. 22). On June 27, 2012, an order was entered granting the
18 Trustee’s motion. (ECF No. 23).

19 On October 29, 2012, the HOA recorded a Notice of Default and Election to Sell with the
20 Clark Country’s Recorder’s Office. See Annulment Motion at 3:10-13. BAC was served a copy
21 of the Notice of Default and Election to Sell by certified mail. Id.

22 On January 30, 2013, the Chapter 7 Trustee’s Report of No Distribution (“No Asset
23 Report”) was filed, stating there is no property available for distribution from the estate over and
24 above the available exemptions. (ECF No. 24). On the same date, a final decree closing the case
25 was entered. (ECF No. 25). Additionally, on the same date, BAC’s parent, Bank of America,
26 N.A., filed a request for special notice in the case. (ECF No. 26).

27 On April 25, 2013, a Notice of Trustee’s Sale was recorded with the Clark County
28 Recorder’s Office on behalf of HOA. See Annulment Motion at ¶ 14. BAC was served a copy

of the Notice of Trustee's Sale by certified mail. Id.

On May 22, 2013, the foreclosure sale was conducted and the Property was acquired by Underwood Partners, LLC ("Underwood"). See Annulment Motion at ¶ 15. On June 3, 2013, a Foreclosure Deed was recorded with the Clark County Recorder's Office. Id. at ¶ 16.

On July 3, 2013, an assignment of First Deed of Trust on the Property from BAC to Green Tree Servicing, LLC ("Green Tree") was recorded. See Annulment Motion at ¶ 17.

On October 18, 2013, a transfer of interest from Underwood to NV Eagles was recorded with the Clark County Recorder's Office. See Annulment Motion at ¶ 18.

On October 22, 2013, an action was commenced entitled Alessi & Koenig, LLC v. Wayne A. Haddad, et al, in the Eighth Judicial District Court in Clark County, Nevada ("State Court"), denominated Case No. A-13-690547-C. See Annulment Motion at ¶ 19. Other named defendants included Wells Fargo Bank, National Association, and Green Tree. The action seeks a judicial determination of the disposition of excess proceeds from the foreclosure sale.

On January 8, 2014, Green Tree filed a third party complaint against NV Eagles in State Court to quiet title to the Alamo Summit Property and alleging that the foreclosure sale had no effect on Green Tree's First Deed of Trust. See Annulment Motion at ¶ 20.

On May 21, 2014, NV Eagles filed a counterclaim against Green Tree for declaratory relief also seeking to quiet title to the Alamo Summit Property. On October 29, 2014, NV Eagles also filed a motion for summary judgment ("MSJ") asserting that the HOA's super priority over BAC's First Deed of Trust validates the foreclosure sale. See Annulment Motion at ¶ 21.

On November 13, 2014, Green Tree filed an opposition to the MSJ alleging that the foreclosure sale was void *ab initio* because it was conducted in violation of the automatic stay that existed in the Debtors' bankruptcy case. See Annulment Motion at ¶ 22.

On December 29, 2014, the instant Annulment Motion was filed. NV Eagles seeks to reopen the Debtors' bankruptcy case to obtain an order to annul the automatic stay retroactive to April 30, 2012, i.e., a date after the Debtors received their discharge but before the HOA recorded its Notice of Delinquent Assessment Lien.

On December 31, 2014, Debtors filed an Opposition to the Motion (“Debtors’ Opposition”). (ECF No. 30). On January 7, 2015, Green Tree filed opposition (“Green Tree Opposition”). (ECF No. 31). No opposition was filed by the Trustee.

On January 30, 2015, NV Eagles filed a notice of hearing scheduling the Annulment Motion to be heard on March 4, 2015. NV Eagles did not file a written reply.

DISCUSSION

Section 350(b) provides that “[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” Relief under Section 350(b) may be sought through a motion brought by the debtor or by a party in interest. See FED.R.BANKR.P. 5010.

Upon the filing of a bankruptcy petition, the automatic stay arises under Section 362 that prohibits actions against both the debtor and property of the bankruptcy estate. Prohibited activities include “any act to obtain possession of property of the estate . . . or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Prohibited acts also include “any act to create, perfect, or enforce any lien against property of the estate.” 11 U.S.C. § 362(a)(4). Actions taken in violation of the automatic stay are *void ab initio* and have no effect. See United States v. Schwartz (In re Schwartz), 954 F.2d 569, 572-73 (9th Cir. 1992). Under Section 541(a)(1), property of a bankruptcy estate includes any property in which the debtor has a legal or equitable interest as of the petition date. Under Section 554(c), property of a bankruptcy estate that is not administered by the bankruptcy trustee is deemed abandoned at the time the bankruptcy case is closed.

Under Section 362(c)(1), the stay of an act against property of the bankruptcy estate continues until the property is no longer property of the estate, unless relief from stay is granted by the court. Under Section 362(c)(2)(C), the automatic stay terminates as to an individual Chapter 7 debtor at the time the discharge is granted. See In re Henry, 266 B.R. 457, 474 (Bankr. C.D. Cal. 2001).

Under Section 362(d), relief from the automatic stay may be granted by terminating, annulling, modifying or conditioning the stay. Under Section 362(d)(1), relief from the stay may

1 be obtained on a showing of cause. Because relief may be granted in the form of annulling the
2 automatic stay, retroactive relief from stay is permitted. See Fjeldsted v. Lien (In re Fjeldsted),
3 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003), citing In re Schwartz, 954 F.2d at 572-73.

4 In this case, the Alamo Summit Property was property of the Debtors' bankruptcy
5 estate at the time the Chapter 7 petition was filed. From June 2012 through January 2013, the
6 Trustee was interested in selling the property, but decided not to do so and filed the No Asset
7 Report on January 30, 2013. A decree closing the Chapter 7 case was entered on the same date.
8 Prior to that time, the estate's interest in the Alamo Summit Property had never been abandoned.
9 Closure of the case, however, resulted in the administrative abandonment of the Alamo Summit
10 Property on that date.²

11 Prior to case closure then, the Alamo Summit Property remained property of the
12 bankruptcy estate. Under Section 362(c)(1), the automatic stay protected the estate's interest in
13 the Alamo Summit Property. When the discharge was entered on June 8, 2011, the automatic
14 stay terminated as to the Debtors, but remained with respect to property of the Debtors'
15 bankruptcy estate.

16 There is no dispute that when the HOA recorded its Notice of Delinquent Assessment
17 Lien, dated April 30, 2012, with the Clark County's Recorder's Office on June 19, 2012, it had
18 not obtained relief from the automatic stay. Issuing the Notice of Delinquent Assessment Lien
19 as well recording it clearly were acts to create, perfect or enforce the HOA lien under Section
20 362(a)(4) as a step to obtain possession of and exercise control over estate property under
21 Section 362(a)(3). These actions violated the automatic stay, and therefore, were void.

22 In this instance, NV Eagles seeks an order reopening the bankruptcy case for the purpose
23 of obtaining an order annulling the automatic stay. Annulling the stay "... has the effect of
24 retroactively validating acts that otherwise violated the stay." See Lonestar Sec. & Video, Inc. v.
25 Gurrola (In re Gurrola), 328 B.R. 158, 172 (B.A.P. 9th Cir. 2005). Whether "cause" exists to

26
27 ² Although the foreclosure sale did not occur until after the case was closed, HOA
28 initiated foreclosure process by sending a Notice of Delinquent Assessment Lien and a Notice of
Default and Election to Sell well-before the Trustee administratively abandoned the estate's
assets by closing the case.

annul the stay is determined under a “balancing of the equities” test. Id. Relevant factors considered in making this determination include the extent of prejudice to the parties involved, including harm to a bona fide purchase and relative ease of restoring parties to the status quo; the costs of annulment to the debtor and creditors; how quickly the parties moved for annulment; and whether stay relief will promote judicial economy or other efficiencies. See In re Fjeldsted, 293 B.R. at 25. These factors simply provide an analytical framework and any one factor may be dispositive in comparison to the others. Id. at 25. Thus, determining whether annulment is proper is made on a case by case basis. See Nat’l Env’tl. Waste Corp. v. City of Riverside (In re Nat’l Env’tl. Waste Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

Debtors’ Opposition asserts that reopening of their bankruptcy case might trigger the reporting agencies to reset the timetable to rebuilding their credit. Debtors’ Opposition at ¶ 18. Moreover, Debtors argue that the case should not be reopened to adjudicate a legal argument that was already raised in State Court. See Debtors’ Opposition at ¶ 23. Green Tree asserts that the request to annul the stay is not supported by cause under Section 362(d)(1). See Green Tree Opposition at 3:8-12.

In this particular instance, NV Eagles, through its predecessor-in-interest Underwood, purchased the Alamo Summit Property at the foreclosure sale initiated by the HOA while the automatic stay was still in place, but the sale was conducted after the Debtors’ case was closed. Despite the violation of the stay, various factors militate in favor of annulling the stay, including the prejudice to NV Eagles, a subsequent third-party purchaser of the Alamo Summit Property. Neither NV Eagles nor Underwood was put on notice of the bankruptcy at the time of the foreclosure sale because the Debtors already had been discharged and Debtors’ case already had been closed. It appears that both Underwood and NV Eagles are bona fide purchasers. In contrast, Green Tree’s predecessor-in-interest, BAC, was a scheduled creditor in the Debtors’ bankruptcy case and had notice of the proceeding.

If the automatic stay is not annulled, NV Eagles will lose any monies expended for the purchase, repair, maintenance and upkeep of the Alamo Summit Property, and possibly incur additional costs. NV Eagles was sufficiently diligent in filing its Annulment Motion before the

1 bankruptcy court once Green Tree raised the automatic stay violation in response to the MSJ
2 before the State Court.

3 Moreover, adjudication of the applicability of the automatic stay and relief therefrom in
4 the bankruptcy court promotes judicial economy and efficiency. Debtors' concern that
5 reopening the case will impair restoration of their credit history appears to be outweighed by the
6 impact that would occur if title to the Alamo Summit Property was restored to their names. If
7 that occurs, Debtors do not appear to be in any position to prevent another foreclosure from
8 occurring either by the HOA or by BAC and Green Tree. A post-discharge foreclosure or other
9 disposition of the Alamo Summit Property likely will have greater negative impact on the
10 Debtors' credit history than a reopening of their bankruptcy case.

11 In short, no opposition to the requested relief has been presented by the Trustee. The
12 concerns offered by the Debtors are outweighed by notions of judicial economy. The opposition
13 by Green Tree is without merit. Based on the record in this proceeding, together with materials
14 presented and arguments of counsel, the court concludes that cause exists to grant NV Eagles'
15 request to reopen the bankruptcy case and to annul the automatic stay.

16 **IT IS THEREFORE ORDERED** that the Ex Parte Motion to Reopen Bankruptcy Case
17 for the Purpose of Retroactively Annulling the Automatic Stay, Docket No. 28, be, and the same
18 hereby is, **GRANTED**.

19 **IT IS FURTHER ORDERED** that the automatic stay with respect to the property
20 located at 7527 Alamo Summit Drive, Las Vegas, NV 89129 is **ANNULLED** as of April 30,
21 2012.

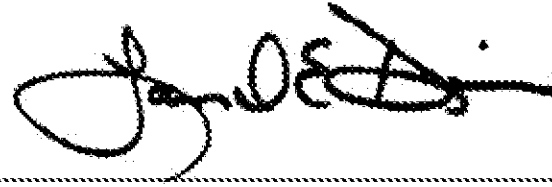
22
23 Notice and Copies sent through:

24 CM/ECF ELECTRONIC NOTICING AND/OR
25 BNC MAILING MATRIX

26 and sent via FIRST CLASS MAIL THROUGH BNC to:
27 WAYNE A. HADDAD
28 DEBRA A. HADDAD
10427 HICKORY BARK ROAD
LAS VEGAS, NV 89135

Case "d"

Case "d"



Honorable Laurel E. Davis
United States Bankruptcy Judge



Entered on Docket
September 23, 2015

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Howard C. Kim, Esq.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
Karen L. Hanks, Esq.
Nevada Bar No. 9578
E-mail: karen@hkimlaw.com
Katherine C.S. Carstensen, Esq.
Nevada Bar No. 10656
E-mail: katherine@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

ROBERT J. HEATON
BRIDGETTE HEATON

Debtors.

Case No. BK-12-16153-led
Chapter 7

**ORDER GRANTING RETROACTIVE
ANNULMENT OF THE AUTOMATIC
STAY**

Date of Hearing: September 1, 2015
Time of Hearing: 2:00 p.m.
Place: Foley Federal Building
300 S. Las Vegas Blvd.
Las Vegas, NV 89101

Judge: Hon. Laurel E. Davis

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

On the above-referenced date and time, this Court issued an oral ruling on: (1) the Capistrano at Seven Hills Homeowners Association's ("Association") Ex Parte Motion to Reopen Case for the Purpose of Retroactively Annulling the Automatic Stay ("Association's Motion") [Dkt. No. 34]; (2) the Amended Order to Show Cause Why the Court Should Not Order Sanctions Against the Association for its Violation of the Automatic Stay ("Amended OSC") [Dkt. No. 51]; and (3) SFR Investments Pool 1, LLC's ("SFR") Motion for Retroactive Annulment of the Automatic Stay ("SFR's Motion") [Dkt. No. 76]. Steven Loizzi, Jr., Esq. appeared on behalf of the Association. Howard C. Kim, Esq. and Katherine C.S. Carstensen, Esq. appeared on behalf of SFR. Troy Fox, Esq. appeared on behalf of Robert J. Heaton and Bridgette Heaton ("Debtors"), as well as Chad Heaton, Marisa Heaton, and Persides Tatom. Michael R. Brooks, Esq. appeared on behalf of The Bank of New York Mellon fka Bank of New York, as Trustee ("BNY Mellon"). After notice was given to creditors and interested parties, no other party appeared at the hearing or filed an opposition or response to the Association's Motion, SFR's Motion, or the Amended OSC.

The Court, having considered the papers and pleadings on file herein and the arguments of counsel at the hearings held on February 10, 2015, April 13, 2015, and May 27, 2015, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT¹

1. On May 23, 2012, Debtors filed a Chapter 7 bankruptcy petition, schedules, and a statement of financial affairs [Dkt. No. 1].

2. In their bankruptcy petition, Debtors stated that they intended to surrender real property located at 1300 Rolling Sunset Street, Henderson, Nevada 89052; Parcel No. 191-02-519-010 (the "Property") [Dkt. No. 1].

3. On June 26, 2012, the Association learned about the Debtor's bankruptcy case [Dkt. No. 78].²

¹ Any finding of fact that should be a conclusion of law is deemed a conclusion of law.

² It is unclear from the record, whether the Association found out about the Debtor's bankruptcy case on June 26, 2012, as stated in Dkt. No. 78, or on June 29, 2012, as stated in Dkt. No. 34. For the purposes of this order, this slight discrepancy is insignificant.

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

1 4. On August 22, 2012, an Order Discharging the Debtors was entered by the Court
2 [Dkt. No. 17].

3 5. On August 27, 2012, the legal assistant at Alessi & Koenig, LLC (“A&K”), the
4 agent for the Association, who was responsible for the account in this case, reported that the
5 bankruptcy had discharged and collections could resume [Dkt. No. 47].

6 6. On September 10, 2012, BNY Mellon filed a Motion for Relief from the
7 Automatic Stay regarding the Property (“Motion for Relief”) [Dkt. No. 19].

8 7. On October 19, 2012, the Court entered an Order Granting BNY Mellon’s Motion
9 for Relief [Dkt. No. 23].

10 8. On October 25, 2012, the Association mailed a renewed Notice of Trustee Sale
11 (“NOS”) regarding the Property [Dkt. No. 78].

12 9. On October 31, 2012, the Association recorded the NOS against the Property in
13 the Official Records of the Clark County Recorder as Instrument No. 201210310000660 [Dkt.
14 No. 76].

15 10. On January 16, 2013, the Association held the foreclosure sale of the Property
16 (“Association foreclosure sale”) [Dkt. No. 34].

17 11. On January 24, 2013, a Trustee’s Deed Upon Sale (“Association Foreclosure
18 Deed”) was recorded against the Property by SFR, who purchased the Property at the
19 Association foreclosure sale. The Association Foreclosure Deed was recorded against the
20 Property in the Official Records of the Clark County Recorder as Instrument No.
21 201301240002565 [Dkt. No. 76].

22 12. On February 15, 2013, SFR filed a wrongful detainer action against the Debtors
23 [Dkt. No. 60].

24 13. On March 16, 2013, Chris Hardin (“Hardin”), the manager of SFR, e-mailed
25 Robert Heaton (“Heaton”) and offered to lease the Property to the Debtors for \$1,300.00 a month
26 [Dkt. No. 55].

27 14. On March 19, 2013, Heaton responded to Hardin by e-mail stating, “The total
28 move in to get into Veritas is \$1709.00. If you can do that amount I will leave the refrigerator

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1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 there. Which is pretty new. They need a cashiers check made to them. I can start moving in end
2 of next week when the unit is ready. I appreciate it.” [Dkt. No. 55].

3 15. On March 20, 2013, Hardin responded to Heaton’s March 19, 2015 e-mail stating,
4 “Agreed. I’ll do it, provided all the appliances remain.” [Dkt. No. 55]. Heaton responded that a
5 cashier’s check must be issued in the name of Veritas in the amount of \$1,663.61 and stated, “I
6 will probably need the weekend to get fully moved out.” [Dkt. No. 55].

7 16. On March 25, 2013, Hardin e-mailed Heaton stating, “I will call Veritas at 10am
8 to arrange for their payment.” [Dkt. No. 55].

9 17. On July 8, 2013, the Final Decree was entered and the Debtors’ bankruptcy case
10 was closed [Dkt No. 32].

11 18. On February 13, 2014, BNY Mellon filed a third-party complaint against SFR in
12 District Court Case No. A-13-690543-C, alleging that its security interest was not extinguished
13 by the Association foreclosure sale (“State Court Litigation”) [Dtk. No. 76].

14 19. On July 3, 2014, SFR filed an answer to BNY Mellon’s third-party complaint
15 [Dkt. No. 76].

16 20. On August 26, 2014, the state court clerk entered a default against the Debtors
17 [Dkt. No. 76].

18 21. According to the Association, BNY Mellon did not assert an automatic stay
19 violation in the State Court Litigation until October 29, 2014 [Dkt. No. 78].

20 22. On November 24, 2014, the Association filed its Motion to Reopen the
21 Bankruptcy Case for the Purpose of Retroactively Annulling the Automatic Stay [Dkt. No. 34].

22 23. On December 29, 2014, Bridgette Heaton passed away [Dkt. No. 117].

23 24. On February 10, 2015, the Court heard the Association’s Motion to Reopen the
24 Bankruptcy Case.

25 25. On February 24, 2015, the Court—because the Association admitted in its Motion
26 to Reopen the Bankruptcy Case and at the February 10, 2015 hearing that it violated the
27 automatic stay—issued an Order to Show Cause Why the Court Should Not Order Sanctions
28

1 Against the Association for its Violation of the Automatic Stay (“OSC”) [Dkt. No. 48]. The
2 OSC was subsequently amended on February 25, 2015 [Dkt. No. 51].

3 26. On April 15, 2015, an Order was entered reopening the Debtor’s bankruptcy case
4 [Dkt. No. 66].

5 27. The Association admits that its non-judicial foreclosure sale, wherein SFR
6 purchased the Property, was held in violation of the automatic stay.

7 **CONCLUSIONS OF LAW**³

8 A. Actions taken in violation of the automatic stay are void. *In re Gruntz*, 202 F.3d
9 1074, 1082 (9th Cir. 2000).

10 B. Section 362 of the Bankruptcy Code gives the Bankruptcy Court wide latitude in
11 crafting relief from the automatic stay, including the power to grant retroactive relief. *In re*
12 *National Environmental Waste Corporation*, 129 F.3d 1052, 1054 (9th Cir. 1997) (“*National*
13 *Environment*”).

14 C. In deciding whether to annul the stay, the Court must engage in a balancing of the
15 equities test on a case-by-case basis. *In re Fjeldsted*, 293 B.R. 12, 24 (9th Cir. B.A.P. 2003)
16 (“*Fjeldsted*”).

17 D. In *Fjeldsted*, the B.A.P. identified twelve (12) non-exclusive factors a court may
18 consider in determining whether to grant retroactive annulment of the automatic stay. *Id.* at 24.
19 Those twelve (12) factors are as follows:

- 20 (1) The number of filings;
21 (2) Whether, in a repeat filing case, the circumstances indicate an intention to delay and
22 hinder creditors;
23 (3) A weighing of the extent of prejudice to creditors or third parties if the stay relief is not
24 made retroactive, including whether harm exists to a bona fide purchaser;
25 (4) The debtor’s overall good faith, which is a totality of the circumstances test;
26 (5) Whether the creditors knew of the stay, but nonetheless took action, thus compounding
27 the problem;
28 (6) Whether the debtor complied and is otherwise complying with the Bankruptcy Code
and Rules;
(7) The relative ease of restoring parties to the status quo ante;
(8) The costs of annulment to debtors and creditors;

³ Any conclusion of law that should be a finding of fact is deemed a finding of fact.

- (9) How quickly creditors moved for annulment or how quickly debtors moved to satisfy the sale or violative conduct;
- (10) Whether after learning of the bankruptcy, creditors proceeded to take steps in continuing violation of the stay or whether they moved expeditiously to gain relief;
- (11) Whether annulment of the stay will cause irreparable injury to the debtor;
- (12) Whether stay relief will promote judicial economy or other efficiencies.

Id.

E. After balancing the equities, and in consideration of the undisputed facts of this case, the Court finds and concludes that retroactive annulment is appropriate for the following reasons.

- a. First, all of the events at issue here occurred after the Debtors received their discharge on August 12, 2012. In fact, the Debtors admit in Dkt. No. 74, that, “[t]here is no dispute that the stay, as to the debtors terminated August 22, 2012.”
- b. On the petition date, the Debtors filed their statement of intention to surrender the Property [Dkt. No. 1], hence prior to filing their bankruptcy case, the Debtors had already decided that the Property would not become property of their bankruptcy estate.
- c. BNY Mellon argues the automatic stay was violated by the Association and SFR. The Association and SFR argue that BNY Mellon lacks standing to assert a violation of the automatic stay. It is not necessary for the Court to reach the standing issue because the Court concludes that the arguments made by BNY Mellon lack merit when viewed under the balancing of the equities analysis arising from the *Fjeldsted* and *National Environment* cases.
 - i. Specifically, BNY Mellon knew that the Debtors had filed the bankruptcy case, as evidenced by its Motion for Relief filed September 10, 2012 [Dkt. No. 19] and the Court’s order granting the Motion for Relief filed on October 19, 2012 [Dkt. No. 23].
 - ii. In addition, BNY Mellon did not argue that it did not receive proper and adequate notice of the Association’s foreclosure sale.

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

- 1 iii. Therefore, BNY Mellon’s knowledge of the bankruptcy case and its notice
2 of the Association foreclosure sale provided BNY Mellon with all of the
3 facts and information it needed to raise a stay violation approximately three
4 years ago.
- 5 iv. BNY Mellon’s lack of diligence in timely raising the argument that the
6 Association foreclosure sale was void for violation of the automatic stay
7 coupled with the Debtors’ surrender of the Property in their schedules leads
8 the Court to conclude that the equities of this case weigh against accepting
9 BNY Mellon’s arguments.
- 10 d. The alleged violation of the automatic stay involved the Property, which the
11 Debtors made clear they intended to surrender. While the Debtors contend the
12 trustee in this case stated that they would likely be able to remain in the Property
13 for another year after the surrender, the Debtors have not provided the Court with
14 any legal citation which would grant the Debtors an actual right to do so, nor is the
15 Court aware of any such legal authority.
- 16 e. The record also reflects that SFR, the purchaser of the Property at the Association
17 foreclosure sale, delayed taking possession of the Property and provided
18 compensation to the Debtors as a means of relocation assistance to the Debtors.
19 Thus, the Debtors received compensation and additional time necessary to relocate
20 and move into replacement housing. This was granted by SFR after SFR purchased
21 the Property at the Association foreclosure sale.
- 22 f. SFR will suffer prejudice if the stay is not annulled. SFR asserts that it was an
23 innocent bona fide purchaser. This fact has not been disputed. According to
24 Hardin, SFR’s manager, SFR paid \$20,500.00 to purchase the Property at the
25 Association foreclosure sale [Dkt. No. 77]. SFR has also spent at least \$40,121.32
26 rehabilitating the Property, maintaining the Property, paying Association
27 assessments, paying off other preexisting liens, and paying substantial litigation
28 costs to defend its title to the Property [Dkt. No. 77]. In addition, SFR offered to

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

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(702) 485-3300 FAX (702) 485-3301

1 rent the Property to the Debtors at a below-market rate. When the Debtors refused
2 this offer, SFR reached an agreement with the Debtors and paid to help get the
3 Debtors into their new apartment at a cost to SFR of \$1,663.61 [Dtk. No. 77].

4 g. The Property has been rented by SFR to a tenant whose lease will not expire until
5 August of 2016 [Dkt. No. 77]. Thus, in addition to SFR, SFR's tenant may be
6 prejudiced if the stay is not annulled.

7 h. Additionally, the Debtors may suffer prejudice if the stay is not annulled. The
8 Debtors surrendered the Property and have not expressed a desire to recover the
9 Property. Moreover, the Debtors received compensation from SFR to relocate to
10 another property. Thus, if the Court does not retroactively annul the automatic stay
11 to validate the sale of the Property to SFR, another foreclosure sale would likely
12 take place, which would negatively impact the Debtors' credit.

13 i. Additionally, it is difficult, if not impossible, to restore the parties to the status quo
14 in this case. No party has provided the Court with any possible solution that would
15 result in repayment to SFR the substantial sums it has already spent on the Property.
16 In addition, the Debtors have not offered to return the relocation money they
17 received from SFR and the Court does not have the authority to order them to do
18 so. Finally, no party has provided the Court with any possible solution that would
19 resolve the fact that the Property is currently occupied by a tenant whose lease will
20 not expire until August 2016.

21 **ORDER**

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Association's
23 Motion to Retroactively Annul the Automatic Stay [Dkt. No. 34] is GRANTED.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SFR's Motion for
25 Retroactive Annulment of the Automatic Stay [Dkt. No. 76] is GRANTED.

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the automatic stay
27 with respect to real property located at 1300 Rolling Sunset Street, Henderson, Nevada 89052;
28 Parcel No. 191-02-519-010 is ANNULLED as of October 20, 2012.

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Amended OSC
2 [Dkt. No. 51] has been satisfied.

3 IT IS SO ORDERED.

4

5 Prepared and submitted by:

6 **HOWARD KIM & ASSOCIATES**

7

/s/Howard C. Kim

8

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

9

KAREN L. HANKS, ESQ.

Nevada Bar No. 9576

10

KATHERINE C.S. CARSTENSEN, ESQ.

Nevada Bar No. 10656

11

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

12

Attorneys for SFR Investments Pool 1, LLC

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HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

LOCAL RULE 9021 CERTIFICATION

In accordance with Local Rule 9021, the counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

_____ The court waived the requirements of approval under LR 9021.

_____ No party appeared at the hearing or filed an objection to the motion.

 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

	<u>Approved</u>	<u>Disapproved</u>	<u>Failed to Respond</u>
Steven Loizzi, Jr., Esq.	X		
Troy Fox, Esq.	X		
Michael R. Brooks, Esq.	X		

_____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order

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

DATED this 22nd day of September, 2015.

HOWARD KIM & ASSOCIATES

/s/Katherine C.S. Carstensen
KATHERINE C.S. CARSTENSEN, ESQ.
Nevada Bar No. 10656
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorney for SFR Investments Pool 1, LLC

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301