

**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 08:16 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

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**APPELLANT'S APPENDIX VOLUME 5**

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Attorneys for Appellant  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
11766 Wilshire Blvd. #1170, Los Angeles, CA 90025

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (REAL PROPERTY)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 1/24/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:  
see attached list

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) 1/24/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

see attached list

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 1/24/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

GSO Overnite for delivery 1/25/2017

Hon. Theodor Albert, US Bankruptcy Court,

U.S. Bankruptcy Court, 411 W. Fourth Street, #5-097, Santa Ana, CA 92701

☐ Service information continued on attached page

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

1/24/2017

Date

David I. Brownstein

Printed Name

/s/ David I. Brownstein

Signature

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# EXHIBIT 6

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
	)	DEPT NO: XXXI
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.	)	
<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 APPEARANCES:

2 For Plaintiffs SFR Investments Pool 1, LLC:

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8 For Third-Party Defendants Copper Ridge Community  
Association:

9

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13

14 For Third-Party Defendant Nevada Association  
Services, Inc:

15

16 THE LAW OFFICES OF RICHARD VILKIN, P.C.  
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For Defendant U.S. Bank:

20

21 SNELL & WILMER, LLP  
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22 Suite 1100  
Las Vegas, Nevada 89169  
23 TEL: (702) 784-5200  
FAX: (702) 784-5252  
24 E-mail: JDelidanakis@swlaw.com

25 Also Present: Brian O'Laughlin



1 Q Did you ever ask for that proof from the  
2 borrower?

3 A Not that I can see.

4 Q Did U.S. Bank ever communicate with the  
5 association about this property?

6 A No.

7 Q Did U.S. Bank ever communicate with NAS  
8 about this property before the date of the  
9 association foreclosure sale?

10 A No.

11 Q Did U.S. Bank ever communicate with the  
12 borrower about association dues, besides the planned  
13 unit development rider that's included in the deed  
14 of trust?

15 That wouldn't have been U.S. Bank; that  
16 would have been Wells Fargo.

17 So back to the original question.

18 A Not --

19 Q Did U.S. Bank ever communicate with them?

20 A Not that I saw.

21 Q Did Wells Fargo ever communicate with  
22 U.S. Bank about the association lien or association  
23 foreclosure?

24 A No.

25 Q Are there any other entities besides

1 U.S. Bank that claim an interest in the first deed  
2 of trust?

3 **A No.**

4 Q Are there any other entities besides  
5 U.S. Bank that claim an interest in the promissory  
6 note?

7 **A No.**

8 Q Does Fannie Mae have an interest in this  
9 loan?

10 **A No.**

11 Q Does Freddie Mac have an interest in this  
12 loan?

13 **A No.**

14 Q Is this loan FHA insured?

15 **A It is not.**

16 Q Is there any references to SFR Investments  
17 Pool 1, LLC, in your file before the date of  
18 litigation?

19 **A Before the date of the foreclosure sale or**  
20 **litigation?**

21 Q Before litigation.

22 MR. DELIKANAKIS: Scope.

23 **A Not that I can remember.**

24 BY MS. EBRON:

25 Q Did U.S. Bank make any payments to the

1 association on behalf of this property?

2 **A No.**

3 Q Did U.S. Bank attend or participate in the  
4 association foreclosure sale?

5 **A No.**

6 Q Did U.S. Bank participate in any civil or  
7 administrative action challenging the association  
8 lien or association foreclosure sale before the date  
9 of the association foreclosure sale?

10 **A No.**

11 Q Were there any internal communications  
12 that mentioned the association's lien, what  
13 association assessments, or association foreclosure  
14 sale as it relates to the property before the date  
15 of the association foreclosure sale?

16 **A The one letter indicating the borrower was**  
17 **past due on their dues.**

18 Q Has U.S. Bank ever communicated with the  
19 FHFA regarding this loan?

20 **A No.**

21 Q What is U.S. Bank's factual basis for its  
22 allegation that the deed of trust was not  
23 extinguished by the association foreclosure sale?

24 **A That the first deed of trust was recorded**  
25 **in first position at the time of origination and**

1     **remains there to date.**

2           Q     Anything else?

3           **A     No.**

4           MS. EBRON: Counsel, do you want to ask  
5 questions?

6           MR. VILKIN: Are you done?

7           MS. EBRON: I believe I am.

8           MR. VILKIN: Okay. So I have --

9           MS. EBRON: I might have follow-ups.

10          MR. VILKIN: Can we go off the record for  
11 a second?

12          (Recess taken.)

13          MR. DELIKANAKIS: This is  
14 John Delikanakis. We've had a conversation amongst  
15 counsel to continue this deposition, and what's been  
16 proposed and agreed upon by counsel is that we will  
17 look at two dates when the PMK deponent is supposed  
18 to be in Las Vegas, March 25th of 2016 and  
19 April 8th of 2016.

20          I will check with the client and our  
21 scheduling and see if he's, in fact, available to  
22 take another -- what? -- two-and-a-half, two hours  
23 of deposition?

24          Is that correct, Counsel?

25          MR. VILKIN: Yes.

30(b)(6) Robert Ferguson - 2/10/2016  
SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.

1 STATE OF NEVADA )  
COUNTY OF CLARK )

2

3

CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a duly commissioned and  
5 licensed court reporter, Clark County, State of  
6 Nevada, do hereby certify:


7

That I reported the taking of the deposition of  
8 Robert Ferguson, commencing on Wednesday, February  
9 10, 2016, at the hour of 3:21 p.m.; that the witness  
10 was, by me, duly sworn to testify to the truth and  
11 that I thereafter transcribed my said shorthand  
12 notes into typewriting, and that the typewritten  
13 transcript of said deposition is a complete, true,  
14 and accurate transcription of said shorthand notes;  
15 that I am not a relative or employee of any of the  
16 parties involved in said action, nor a relative or  
17 employee of an attorney involved in nor a person  
18 financially interested in said action; further, that  
19 the reading and signing of the transcript was  
20 requested.

21

IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of  
23 Nevada, this 19th day of February, 2016.

24

  
CCR 887 - LST

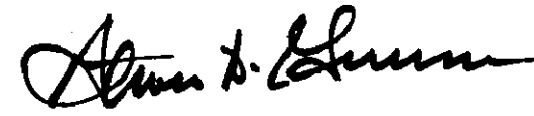
25

ANDREA N. MARTIN, CRR, CCR NO. 887

# **TAB 24**

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

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02/14/2017 03:20:13 AM



CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Dept.: XXXI

JOINDER OF NEVADA ASSOCIATION  
SERVICES, INC. TO OPPOSITIONS OF  
SFR INVESTMENT POOL 1, LLC AND  
COPPER RIDGE HOA TO MOTION FOR  
SUMMARY JUDGMENT BY U.S. BANK  
(PART 2 OF OPPOSITION)

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

Plaintiff,

vs.

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

1 Defendants.

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

8 Counterclaimant,  
9 vs.

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

12 Counter Defendant.

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

18 Third-Party Plaintiff,  
19 vs.

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

24 Third-Party Defendants.

25 ///

26 ///

27 ///



1 JOINDER OF NEVADA ASSOCIATION SERVICES, INC. TO OPPOSITIONS OF SFR  
2 INVESTMENT POOL 1, LLC AND COPPER RIDGE HOAD TO MOTION FOR SUMMARY  
3 JUDGMENT BY U.S. BANK (PART 2 OF OPPOSITION)

4 Third-party defendant Nevada Association Services, Inc., ("NAS") hereby provides Part  
5 2 of its Opposition to the Motion for Summary Judgment filed by Third-Party plaintiff U.S. Bank  
6 by joining in the Oppositions of SFR Investments Pool 1, LLC and Copper Ridge Community  
7 Association (both filed February 13, 2017) to the Motion for Summary Judgment filed by U.S.  
8 Bank. NAS previously filed Part 1 of its Opposition on February 3, 2017.

9  
10 Date: February 14, 2017

LAW OFFICES OF RICHARD VILKIN, P.C.

11  
12  
13 By: 

14 Richard Vilkin, Esq.  
15 Nevada Bar No. 8301  
16 1286 Crimson Sage Ave.  
17 Henderson, NV. 89012  
18 *Attorneys for third-party defendant Nevada*  
19 *Association Services, Inc.*  
20  
21  
22  
23  
24  
25  
26  
27  
28

Certificate of E-Service

I hereby certify that on February 14, 2017, I caused to be served electronically a copy of the foregoing JOINDER OF NEVADA ASSOCIATION SERVICES, INC. TO OPPOSITIONS OF SFR INVESTMENT POOL 1, LLC AND COPPER RIDGE HOA TO MOTION FOR SUMMARY JUDGMENT BY U.S. BANK (PART 2 OF OPPOSITION) when filing said document on the court's Wiznet electronic filing system and requesting therein that it be E-Served to all persons who are listed for E-Service on that system for this case as follows:

**Alverson Taylor Mortensen & Sanders**

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

**Kim Gilbert Ebron**

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

**Law Offices of Richard Vilkin, P.C.**

Name	Email		Select
------	-------	--	--------

Richard Vilkin	<a href="mailto:richard@vilkinlaw.com">richard@vilkinlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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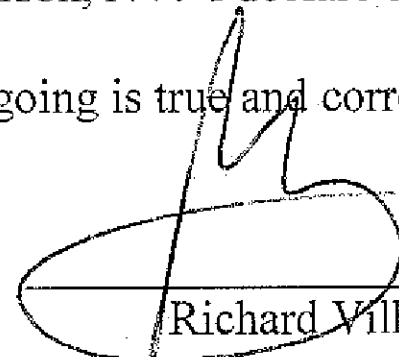
### NAS

Name	Email		Select
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Susan E. Moses	<a href="mailto:susanm@nas-inc.com">susanm@nas-inc.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

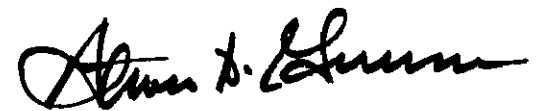
### Snell & Wilmer L.L.P.

Name	Email		Select
Candy Charlet - Legal Secretary	<a href="mailto:ccharlet@swlaw.com">ccharlet@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Daniel Ivie	<a href="mailto:dive@swlaw.com">dive@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Docket	<a href="mailto:Docket_LAS@swlaw.com">Docket_LAS@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Gaylene Kim	<a href="mailto:gkim@swlaw.com">gkim@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Lyndsey Luxford	<a href="mailto:lluxford@swlaw.com">lluxford@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Maricris Williams	<a href="mailto:mawilliams@swlaw.com">mawilliams@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Richard C. Gordon	<a href="mailto:rgordon@swlaw.com">rgordon@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Robin Perkins	<a href="mailto:rperkins@swlaw.com">rperkins@swlaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Executed this 14th day of February, 2017 at Henderson, NV. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

  
Richard Vilkin

# **TAB 25**



CLERK OF THE COURT

**RIS**  
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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  
REPLY IN SUPPORT OF ITS 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 Reply in Support of its Motion for Summary Judgment. This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court entertains.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. ARGUMENT**

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

The Bank has made the same argument in its Motion for Summary Judgment as it makes in its Opposition to SFR’s Motion for Summary Judgment. See Bank’s MSJ at 6-7; See also Bank’s Opp. at 4-5. Therefore, SFR incorporates the response to this argument from its Opposition to the Bank’s Motion for Summary Judgment. See SFR’s Opp. at 5. SFR notes, however, that the hearing in the Bankruptcy Court to retroactively annul the stay has been continued until March 28, 2017. To the extent this Court deems this to be a dispositive issue, SFR would request that this Court defers its ruling until the Bankruptcy Court decides the issue.

**B. SFR Can Rely On The Foreclosure Deed.**

SFR can rely on the foreclosure deed and the conclusive nature of the document. Shadow Wood affirmed that deed recitals are conclusive to the matters recited pursuant to NRS 116.31166(1). Shadow Wood Homeowners Ass’n., Inc., v. New York Comm. Bancorp, Inc., 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105, 1110 (2016) (The [appellant’s] trustee’s deed contains recitals that NRS 116.31166 deems “conclusive,” to wit: “Default” occurred; and, “All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.”). However, Shadow Wood has provided a means to challenge these recitals, but it is the Bank’s burden to provide some admissible evidence allowing this Court to overcome the presumptions to even allow this Court to make a ruling in equity. Id. at 1112. In this case, the Bank has not.

1 **C. The Bank Has Not Rebutted the Presumption**  
2 **That the Foreclosure Notices Were Not Received.**<sup>1</sup>

3 The Bank has not been able to rebut that the notices were both sent to and received by  
4 Wells Fargo Bank, N.A., U.S. Bank or its foreclosure trustee, National Default Servicing Corp.  
5 NRS 47.250(13) states that a disputable presumption exists “that a letter duly directed and mailed  
6 was received in the regular course of the mail.” “A presumption,..., imposes on the party against  
7 whom it is directed the burden of proving that the nonexistence of the presumed fact is more  
8 probable than its existence.” NRS 47.180(1). If direct evidence is proffered against the presumed  
9 fact, the NRS provides the following guidance:

10 **NRS 47.200 Determination on evidence of presumed fact: Where basic facts established.**

11 When reasonable minds would necessarily agree that the evidence renders the existence of the basic  
12 facts more probable than not, but direct evidence is introduced contrary to the existence of the  
13 presumed fact, the question of the existence of the presumed fact is determined as follows:

14 1. If reasonable minds would necessarily agree that the direct evidence renders the  
15 nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find  
16 against the existence of the presumed fact.

17 2. **If reasonable minds would necessarily agree that the direct evidence does not render  
18 the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
19 to find in favor of the presumed fact.**

20 3. If reasonable minds would not necessarily agree as to whether the direct evidence renders  
21 the nonexistence of the presumed fact more probable than not, the judge shall submit the matter to  
22 the jury with an instruction to find in favor of the existence of the presumed fact unless they find  
23 from the direct evidence that its nonexistence is more probable than its existence, in which event  
24 they should find against its existence.

25 NRS 47.200. Thus, even if this Court finds that a party has provided some evidence to rebut a  
26 presumption, as a matter of law, this Court can still instruct a jury to find in favor of the presumed  
27 fact. In other words, as a matter of law, this Court can rely on this fact as true in regards to a Motion  
28 for Summary Judgment if reasonable minds would agree that in light of all the evidence, the  
presumed fact is more likely probable than not.

SFR is entitled to the presumption that the NOD and the NOS were mailed as addressed.  
In the Bank’s purported First Deed of Trust, Wells Fargo Bank listed its address as “P.O. Box  
10304, Des Moines, IA 503060304”. See SFR’s MSJ Exhibit D at USB000002. The NOD was

<sup>1</sup> As a preliminary matter, the Deposition of U.S. Bank, N.A. in this case is attached as Exhibit 3 to SFR’s  
Opp. and attached herein as **Exhibit 1**. The Deposition attached to SFR’s Motion for summary Judgement  
as Exhibit 3 was attached in error. SFR does not dispute that the Bank claims to have not received the NOD  
or NOS. See Bank’s Opp. at 6:21-22.



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

1 sent to this address by Nevada Association Services (NAS), agent to the Association. In fact, NAS  
2 mailed a copy of this document both certified mail and first class to the above address. See SFR's  
3 MSJ Exhibit 1-J. On June 7, 2012, an Assignment of Mortgage was recorded in which the  
4 document stated that Wells Fargo Bank, N.A. conveyed to U.S. Bank, N.A. as trustee, the subject  
5 Deed of Trust. This document listed U.S. Bank, N.A., as trustee's address as "60 LIVINGSTON  
6 AVE, ST. PAUL, MN 55107" SFR's MSJ Exhibit 1-H.

7 After this assignment, NAS mailed its NOS to multiple parties including U.S. Bank N.A.  
8 as trustee and National Default Servicing Corp. as shown below:

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This is a USPS Certified Mail Receipt (PS Form 3811, January 2005). It features a barcode at the top left with the number 7196 9008 7111 9084 3547. The service type is 'CERTIFIED MAIL'. The recipient's address is 'U.S. BANK N.A. TRUSTEE, 60 LIVINGSTON AVE., ST. PAUL, MN 55107'. The receipt is dated 'FEB 11 2013' and was received at the 'Parks' location in the 'Copper Ridge Community'. The sender is 'NEVADA ASSN SERVICES'. The receipt includes a signature and a date stamp.

SFR's MSJ Exhibit 1-K.

This is a USPS Certified Mail Receipt (PS Form 3811, January 2005). It features a barcode at the top left with the number 7196 9008 7111 9084 3552. The service type is 'CERTIFIED MAIL'. The recipient's address is 'NATIONAL DEFAULT SERVICING CORP., NOSC FILE # 10-40886-WF-NV, 7720 N. 16TH ST., #300, PHOENIX, AZ 85020'. The receipt is dated 'FEB 11 2013' and was received at the 'Parks' location in the 'Copper Ridge Community'. The sender is 'NEVADA ASSN SERVICES'. The receipt includes a signature and a date stamp.

Id. As shown in these receipts, both U.S. Bank, N.A. and National Default Servicing Corp.  
signed for the receipt of the NOS on February 11, 2013, and February 8, 2013, respectively.



1 The multiple receipts of mailings are evidence that the NOD and NOS were, more probably  
2 than not, sent to its duly directed destinations. As such, the burden switches to the Bank to establish  
3 that the mailings did not occur or were not received.

4 In its attempt to defeat this presumption, the Bank has stated that it has not received a NOS  
5 prior to the foreclosure. Other than this self-serving statement, the Bank has not come forward  
6 with any other evidence rebutting the mailings provided in SFR's MSJ. Despite the Bank's denial  
7 of receipt of the notices, reasonable minds would still find that the mailings were, more probably  
8 than not, sent to its intended location and received. Therefore, this Court can consider as a matter  
9 of law that the mailings were sent and received.

10 However, to the extent, that any doubt remains regarding the mailings, in U.S. Bank, N.A.'s  
11 deposition, 30(b)(6) designee Robert Ferguson stated that it did not find a NOD or NOS in the loan  
12 file. When Mr. Ferguson was asked what he reviewed for his deposition he answered as follows:

13 A: I reviewed every document that was in our imaging system from the date  
14 of the loan origination to March 1st -- actually, March 5th of 2013. I reviewed the  
15 origination -- that included the origination documents, electronic versions of  
16 those. I reviewed the loan servicing platform, the foreclosure process notes, loss  
mitigation process notes, and loan pay history. I also reviewed the delinquency  
history on the mortgage as well.

17 Q: Anything else?

18 A: That's all I can remember.

19 Deposition of US Bank's 30(b)(6) designee, Robert Ferguson p. 46:19-47:5 attached as **Exhibit 1**.

20 The problem is that while Mr. Ferguson's reviewed the loan servicing platform, including the  
21 imaging system, this loan servicing platform was controlled and maintained by Wells Fargo Bank,  
22 N.A.<sup>2</sup>

23 ...

24 ...

25 ...

26 ...

27 ...  
28 <sup>2</sup> Id. at 91:21-23.

1 Q: And you are -- what's your relationship to Wells Fargo, in terms of this  
2 property or this loan?

3 A: I work for Wells Fargo. I'm not sure of your question. Typically, do you  
4 mean in relationship to U.S. Bank.

5 Q: To U.S. Bank. Sorry.

6 A: Wells Fargo Bank is the servicer on behalf of U.S. Bank, as trustee for the  
7 pool of loans that contain the Parks' loan.

8 Q: So the loan servicing platform is maintained and controlled by Wells  
9 Fargo?

10 A: That's correct.

11 Id. at 91:10-23.

12 However, Mr. Ferguson, as an employee of Wells Fargo Bank, N.A. was unable to  
13 testify to how U.S. Bank handles its incoming mail:

14 Q: Well, if a party sent the notice to 60 Livingston Avenue, would it have  
15 ended up in your servicing platform and imaging system -- or should it have, I  
16 guess is the proper way to say it?

17 A: **I'm unsure what U.S. Bank's processes were for dealing with mail.**

18 Id. at 93:1-6 (emphasis added). In other words, in the deposition of U.S. Bank, U.S. Bank could  
19 not testify regarding its own processes for dealing with mail.

20 Thus, it can be seen that Mr. Ferguson cannot possibly testify that the NOS was not mailed  
21 to U.S. Bank, N.A. He simply did not have the knowledge to testify to such at his deposition. As  
22 a result, the Bank denies that it received the NOS but has failed to provide any evidence that it  
23 even looked for the NOS in U.S. Bank's records. This cannot defeat SFR's presumption that the  
24 NOS was mailed to U.S. Bank.

25 It is likely that the Bank will argue that the NOS was not mailed to its Servicer, Wells  
26 Fargo Bank N.A.'s, correct address which listed a change of address on the Assignment of the  
27 Mortgage. See SFR's MSJ Exhibit 1-H. However, this is not grounds to overturns the sale. First,  
28 NAS did send a NOS to Wells Fargo Bank, N.A. to its previously recorded address located in the  
originating Deed of Trust. But more importantly, Wells Fargo Bank, N.A. was no longer the

beneficiary of record and not required to receive notice pursuant to NRS 116.3116. NRS 116.31163, 116.311635, 116.31168 and 107.090(3)-(4) require that only junior interest holders receive notices pursuant to statute unless a party otherwise requests it.<sup>3</sup> However, if a servicer such as a Wells Fargo Bank, N.A. sought to receive such notices, NRS has expressly prescribed a way to do such a thing. Under NRS 116.31163(1) and 116.311635(b)(1), a person may formally request notice even if it does not have a lien interest in the property, such as a loan servicer who want to stay on top of developments as to its collateral. Under NRS 116.31163(2) and 116.311635(b)(2) those persons who are holders of a recorded security interest but not necessarily the beneficiary of record can notify the association of their interest and receive notice. Wells Fargo Bank, N.A. was neither a junior interest holder of record nor party who requested notice pursuant to NRS 116.31163(1) or notified the Association as a non-recorded holder under 116.31163(2). As such, Wells Fargo Bank, N.A. was not entitled to receive the NOS.

**D. The Foreclosure Sale Was Commercially Reasonable.**

The Bank makes the same substantive argument in its Motion for Summary Judgment as its Opposition for Summary Judgment. Thus, SFR incorporates its argument that the price was commercially reasonable from SFR's Opp. to MSJ at p.6-11. However, the Bank further argues that the notices did not provide an adequate warning that the Bank's Deed of Trust could be

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<sup>3</sup> In *SFR*, all seven Nevada justices construed NRS 116.3116 *et seq.* as **requiring notice to junior lienholders like the Bank**. 334 P.3d at 411, 418, 422 (emphasis added). Such a construction was, in part, based on NRS 116.31168(1), which stated:

The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.<sup>3</sup>

334 P.3d at 411. The majority again referenced NRS 107.090(3)(b) and (4), noting these sections require the "notice of default and notice of sale [be sent to] 'each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.'" *Id.* Based on this interpretation, the *dissent* noted, "[a]s the majority points out, by incorporating certain notice provisions from Chapter 107, Chapter 116 appears to mandate that the association mail the notice of default and notice of sale to the first security holders who have recorded their interest when the association is foreclosing on its lien." *SFR*, 334 P.3d at 422 (Gibbons, C.J., dissenting). All seven justices determined that incorporation of NRS 107.090 required notice to junior lienholders, like the Bank.

1 extinguished in the Association's foreclosure. Bank's Opp. to MSJ at p.12:15-22. This is clearly  
2 false and is an argument that the Bank has had expressly rejected by the Nevada Supreme Court.

3 SFR has made it clear that an association's notice containing the entire lien amount is  
4 sufficient to give notice to the Bank of an association's superpriority lien. SFR held the following  
5 regarding contents of notices:

6 U.S. Bank further complains about the content of the notice it received. It argues  
7 that due process requires specific notice indicating the amount of the superpriority  
8 piece of the lien and explaining how the beneficiary of the first deed of trust can  
9 prevent the superpriority foreclosure sale. But it appears from the record that  
10 specific lien amounts were stated in the notices, ranging from \$1,149.24 when the  
11 notice of delinquency was recorded to \$4,542.06 when the notice of sale was sent.  
12 **The notices went to the homeowner and other junior lienholders, not just U.S.**  
13 **Bank, so it was appropriate to state the total amount of the lien.**

14 *SFR*, 130 Nev. \_\_\_, 334 P.3d at 418(emphasis added).

15 Here the NOD and NOS, warned of the impending foreclosure proceedings, including the  
16 possibility of a sale. The Notice of Default read, "WARNING! IF YOU FAIL TO PAY THE  
17 AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE  
18 AMOUNT IS IN DISPUTE!" (SFR MSJ at Exhibit 1-I) and,

19 WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU  
20 PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE  
21 DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN  
22 DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY  
23 QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT  
24 (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE  
25 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA  
26 REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

27 SFR MSJ at Exhibit 1-K. These warnings are the exact warnings required by NRS 116.31162.

28 Additionally, the NOD and the NOS were recorded within the allowable timeframes established  
by NRS 116.33162<sup>4</sup> and mailed to all junior interest holder as required by NRS 116.3116(8). The

<sup>4</sup> NRS 116.31162(1)(b) reads:

Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

- (1) Describe the deficiency in payment.
- (2) State the name and address of the person authorized by the association to enforce the lien by

1 Bank cannot claim that these notices do not provide adequate notice that its property interest was  
2 at stake.

3 **E. The Risk of Litigation Does Not Defeat SFR's Status as a BFP.**

4 A BFP is a purchaser of real property: (i) for value; and (ii) without notice of a competing  
5 or superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246,  
6 247 (1979).

7 Notice by a potential purchaser that an association is conducting a sale pursuant to NRS  
8 116, and that the potential exists for challenges to the sale "post hoc[.]" does not preclude that  
9 purchaser from BFP status. Shadow Wood, 366 P.3d at 1116. Thus, knowledge of a Deed of  
10 Trust would have only let SFR know that the Bank may have a "post hoc" challenge.

11 SFR's acknowledgment that litigation was a burden that came with the purchase of NRS  
12 116 foreclosure properties does not defeat SFR's BFP status. Berge states that a BFP is one who  
13 purchases real property "without notice of a competing or superior interest." After the foreclosure,  
14 the Bank's interest in the property was extinguished meaning that SFR was not aware that the  
15 Bank had a surviving superior or competing interest. However, SFR understood that the Banks  
16 were likely to contests the sales in court. This Court can appreciate that the ability to bring a  
17 lawsuit and the merits of a lawsuit are two separate things. Nothing in this case shows that SFR  
18 was aware of any surviving superior or competing interest of the Bank.

19 If this Court were to weigh equities, it "must consider the entirety of the circumstances  
20 that bear upon the equities." Shadow Wood, 366 P.3d at 1114. These would include not only any  
21 irregularities in the sale process by the Association or Association's agents, but the actions or  
22 (in)actions by the Bank and SFR's BFP status. Id. As the Shadow Wood court noted,  
23 "[c]onsideration of harm to potentially innocent third parties is especially pertinent here where  
24 [the Bank] did not use the legal remedies available to it to prevent the property from being sold  
25 \_\_\_\_\_  
26 sale.

(3) Contain, in 14-point bold type, the following warning:

27 WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU  
28 COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

1 to a third party. . . .” Id. at 1115, n.7. The Bank has no evidence to suggest that the NOS was not  
2 mailed to U.S. Bank or National Default Servicing Corporation. SFR’s MSJ at Ex. 1-K. The  
3 Bank’s mere allegation that Wells Fargo, N.A., as a servicer, did not receive the NOS until four  
4 days after the Association’s sale does not prove that U.S. Bank did not receive the NOS. And  
5 further, SFR would have had no way of knowing such information, if, in fact, it was true.  
6 However, the Bank’s poor document handling cannot be weighed in a way that could displace  
7 SFR’s interest in the property as a BFP.

8 In further weighing of the equities, between the dates the NOD was recorded and the date  
9 of the foreclosure sale the Bank never recorded a lis pendens or other document alleging any  
10 problems with the foreclosure process or the foreclosure sale. SFR’s MSJ Exhibit 2, ¶ 18.  
11 Additionally, SFR has no relationship with the Association or the Association’s Agent, except as  
12 a purchaser of Property. SFR’s MSJ Exhibit 2, ¶¶ 16, 17. the Bank did not (1) pay or attempt to  
13 pay the lien, (2) contact the Association or the Association’s agent prior to the sale, (2) attend the  
14 sale, or (3) seek judicial intervention to enjoin the sale. See SFR’s Opp. to MSJ at Exhibit 6 p.  
15 67-69. The Bank knew that without taking action to stop the sale, the Association’s foreclosure  
16 would extinguish all junior interests in the Property. By allowing the sale to go forward, the Bank  
17 must have intended this consequence. NRS 47.250(2). On the other hand, SFR merely attended  
18 a publicly noticed, publicly held foreclosure sale, and placed the winning bid at the auction. The  
19 Bank is seeking yet another bailout for its poor business decisions. The Bank has not provided  
20 any reason for this Court to even weigh equities. Title should be quieted in SFR’s name and the  
21 Bank enjoined from taking any further action to enforce its extinguished lien against the Property  
22 or further clouding SFR’s title.

23 **F. The Bank is Not Entitled to an Equitable**  
24 **Remedy as the Bank’s Remedy is For Money Damages.**

25 To the extent an Association wrongly forecloses, a Bank’s remedy is against the parties  
26 who harmed it, in lieu of displacing an innocent third-party purchaser.  
27  
28

1 A Bank's right to recover money damages from a wrongful association foreclosure is  
2 consistent with this Court's precedent in Swartz v. Adams after it found that a homeowner was  
3 denied the constitutionally required notice of the foreclosure of its home. Swartz stated that:

4 Since the execution sales were conducted so as to deny the owners of the property  
5 due process of law, the ideal remedy would be to return that property to the former  
6 owner pending constitutionally sufficient proceedings. Unfortunately, this may no  
7 longer be done without injury to innocent third parties who are bona fide purchasers  
of the property. However, Violet has also sought compensatory relief in her  
complaint. We therefore reverse and remand the case to the court below for  
appropriate proceedings consistent with this opinion.

8 93 Nev. 240, 245–46, 563 P.2d 74, 77 (1977).

9 This is also consistent with the Restatement's commentary regarding those non-judicial  
10 foreclosure jurisdictions where price alone is not enough to set aside a sale: the wronged junior  
11 lienholder must seek a remedy from someone other than the purchaser. *See* Restatement (Third)  
12 Property: Mortgages, §8.3, Comment *b*.

13 Other courts have consistently found that a BFP is protected even in cases where the  
14 conduct is as extreme as the wrongful rejection of tender. Moeller v. Lien, 25 Cal. App. 4th 822,  
15 831–32, 30 Cal.Rptr.2d 777, 783 (1994) (“[t]he conclusive presumption precludes an attack by the  
16 trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a  
17 proper tender of reinstatement by the trustor”). *See also* Melendrez v. D & I Investments, Inc., 26  
18 Cal.Rptr.3d 413, 431-432 (2005) (“courts have sustained a number of foreclosure sale challenges  
19 where the actions have been brought before the transfer of the transfer of the trustee's deed to the  
20 buyer[.]” but not after delivery of the trustee's deed) (internal citations omitted)).

21 Given that the Bank simply has a collateral interest in the property, a remedy for monetary  
22 damages is a perfect substitute. Munger v. Moore, 11 Cal. App. 3d 1, 7, 89 Cal. Rptr. 323 (Ct.  
23 App. 1970)(“a trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained  
24 where there has been an illegal, fraudulent or willfully oppressive sale of property under a power  
25 of sale contained in a mortgage or deed of trust”) (citing Davenport v. Vaughn, 193 N.C. 646 [137  
26 S.E. 714, 716]); Sandler v. Green, 287 Mass. 404 [192 N.E. 39, 40]; Edwards v. Smith (Mo.) 322  
27 S.W.2d 770, 776; Dugan v. Manchester Federal Sav. & Loan Assn., 92 N.H. 44 [23 A.2d 873,  
28 876]; Harper v. Interstate Brewery Co., 168 Ore. 26 [120 P.2d 757, 764]; Black v. Burd (Tex. Civ.

1 App.) 255 S.W.2d 553, 556; Holman v. Ryon (D.C. App.) 56 F.2d 307, 310-311; Royall v.  
2 Yudelevit, 268 F.2d 577, 580 [106 App. D.C. 1].

3         Allowing the Bank to seek monetary damages against an association inherently keeps the  
4 liability on the parties who created the problems with the foreclosure. In contrast, by forcing a BFP  
5 to lose its ownership interest in the property due to actions not known by the BFP, only punishes  
6 the BFP. Moreover, by protecting a BFP in this regard, and holding the trustee accountable, this  
7 also affords an adequate remedy to the complaining party.

8         Here, as in Swartz, the Bank is not prevented from seeking monetary damages from the  
9 Association and its trustee, the proper remedy is for compensatory damages and not the  
10 overturning of a foreclosure sale. Any other result would cause prejudice to an innocent third party  
11 purchaser. Ultimately, if this Court wants to protect the foreclosure process through the NRS 116  
12 statutory schemes and create accountability on the proper parties, while protecting BFPs, it can  
13 easily do so by requiring the Bank, a lien holder, to seek compensatory damages from the  
14 foreclosing association.

15         **G. SFR is Entitled to Summary Judgment on the**  
16         **Bank's Claim for Intentional Interference with a Contract.**

17         Under Nevada law, to prove a claim for intentional interference with a contract, a party  
18 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)  
19 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption  
20 of the contract; and (5) resulting damage. J.J. Indus., LLC v. Bennett, 119 Nev. 269, 274, 71 P.3d  
21 1264, 1267 (2003). The Bennett Court elaborated on the intent element, and held that "because the  
22 action involves an intentional tort, the inquiry usually concerns the defendant's ultimate purpose  
23 or the objective that he or she is seeking to advance. Thus, mere knowledge of the contract is  
24 insufficient to establish that the defendant intended or designed to disrupt the plaintiff's contractual  
25 relationship; instead, the plaintiff must demonstrate that the defendant intended to induce the other  
26 party to breach the contract with the plaintiff. Accordingly, the plaintiff must inquire into the  
27 defendant's motive." Id. at 275, 1268.

28         Thus, the Bank's analysis falls flat for two reasons. First, the Bank has failed to present



1 evidence that SFR was even was aware of the contract between the Bank and its borrower. While  
2 the Bank is correct in asserting that the recording of the Deed of Trust made SFR “constructively  
3 aware” of the recorded copy of the deed of trust, to prove intentional interference with a contract,  
4 the Bank must prove that SFR was actually aware. That Bank has not provided any evidence to  
5 that regard and instead relies on SFR’s constructive notice of the deed of trust. See Bank’s Opp.  
6 at 15:22-28.

7 The Bank has not provided a shred of evidence that SFR’s actions were done with the  
8 motive to breach the Bank’s contract. Therefore, the Bank cannot establish that SFR’s actions were  
9 “intentional acts intended or designed to disrupt the contractual relationship.” Bennett, 119 Nev.  
10 at 274, 71 P.3d at 1267. SFR purchased this property at an NRS 116 foreclosure property with the  
11 obvious intention to prevail at the auction and obtain title to the property; not out of spite to the  
12 Bank or to cause harm to the Bank. Simply put, SFR had no hand in what transpired between the  
13 homeowner/borrower and the Association, and between the homeowner/borrower and the Bank,  
14 prior to the Association sale; the homeowner/borrower’s failure to pay his/her assessments was  
15 the homeowner/borrower’s own doing. Because the Bank cannot show that SFR’s intention was  
16 to break the Contract between the Bank and the borrower, the Bank’s claim for intentional  
17 interference with contract fails as a matter of law, and summary judgment in favor of SFR is  
18 warranted.

## 19 II. CONCLUSION

20 Based on the above, the Court should Grant the SFR’s Motion for Summary Judgment. To  
21 the extent it believes that the bankruptcy issues may be dispositive, which it should not due to the  
22 Bank’s lack of standing to raise the issue, then SFR requests this Court defer ruling on summary  
23 judgment until after the March 28, 2017 hearing in bankruptcy court on SFR’s motion to  
24 retroactively annul the stay.

25 DATED this 17th day of February 2017.

26 **KIM GILBERT EBRON**

27 /s/ Jaqueline A. Gilbert, Esq.  
28 JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th 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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, to the following parties.

<u>Select All</u> <u>Select None</u>		
<b>Alverson Taylor Mortensen &amp; Sanders</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Adam Knecht	<a href="mailto:aknecht@alversonstaylor.com">aknecht@alversonstaylor.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Kurt R. Bonds	<a href="mailto:kfile@alversonstaylor.com">kfile@alversonstaylor.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Kurt R. Bonds	<a href="mailto:kbonds@alversonstaylor.com">kbonds@alversonstaylor.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Trevor P. Waite	<a href="mailto:twaites@alversonstaylor.com">twaites@alversonstaylor.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Kim Gilbert Ebron</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Diana Cline Ebron	<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
E-Service for Kim Gilbert Ebron	<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Michael L. Sturm	<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Tomas Valerio	<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Law Offices of Richard Vilkin, P.C.</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Richard Vilkin	<a href="mailto:richard@vilkinlaw.com">richard@vilkinlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>NAS</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Brandon E. Wood	<a href="mailto:brandon@nas-inc.com">brandon@nas-inc.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Susan E. Moses	<a href="mailto:susanm@nas-inc.com">susanm@nas-inc.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Snell &amp; Wilmer L.L.P.</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Candy Charlet - Legal Secretary	<a href="mailto:ccharlet@swlaw.com">ccharlet@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Daniel Irie	<a href="mailto:dirie@swlaw.com">dirie@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Docket	<a href="mailto:Docket_LAS@swlaw.com">Docket_LAS@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Gaylene Kim	<a href="mailto:gkim@swlaw.com">gkim@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
John Delikanakis	<a href="mailto:jdelikanakis@swlaw.com">jdelikanakis@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Lindsey Luford	<a href="mailto:lluford@swlaw.com">lluford@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Marionis Williams	<a href="mailto:mawilliams@swlaw.com">mawilliams@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Richard C. Gordon	<a href="mailto:rgordon@swlaw.com">rgordon@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Robin Perkins	<a href="mailto:rperkins@swlaw.com">rperkins@swlaw.com</a>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

/s/ Zachary Clayton  
An employee of Kim Gilbert Ebron

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of February 2017, pursuant to NRCP 5(b), I served via **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, to the following parties, via USPS priority mail:

MICHAEL F. BOHN, ESQ.  
Law Offices of  
Michael F. Bohn, Esq., Ltd.  
376 East Warm Springs Road  
Suite 140  
Las Vegas, NV 89119

*/s/ Tomas Valerio*  
\_\_\_\_\_  
An employee of Kim Gilbert Ebron

# EXHIBIT 1

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.	)	
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	)	
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	)	
	)	
	)	

)  
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

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25 Also Present: Brian O'Laughlin

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**30(b)(6) Robert Ferguson - 2/10/2016**  
**SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.**

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**30(b)(6) Robert Ferguson - 2/10/2016**  
**SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.**

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

2 3:21 p.m.

3 -oOo-

4 (In an off-the-record discussion held  
5 prior to the commencement of the  
6 proceedings, counsel agreed to waive the  
7 court reporter's requirements under Rule  
8 30(b)(4) of the Nevada Rules of Civil  
9 Procedure.)

10 ROBERT FERGUSON,  
11 having been first duly sworn by the court reporter  
12 to testify to the truth, the whole truth, and  
13 nothing but the truth, was examined and testified  
14 under oath as follows:

15 EXAMINATION

16 BY MS. EBRON:

17 Q Good afternoon. I'm Diana Cline Ebron. I  
18 represent SFR Investments Pool 1, LLC, in this  
19 matter, as well as the last one.

20 Can you please state your name for the  
21 record.

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

23 Q And you're employed by Wells Fargo Bank,  
24 N.A.?

25 A I am.

1 MS. EBRON: I'm going to let counsel go  
2 ahead and represent themselves so we know who all is  
3 here.

4 MR. WAITE: Trevor Waite on behalf of  
5 Third-Party Defendants Copper Ridge Community  
6 Association.

7 MR. VILKIN: Richard Vilkin on behalf of  
8 Third-Party Defendant, Nevada Association Services,  
9 Inc.

10 SPEAKER1: Brian O'Laughlin, in-house with  
11 Wells, Fargo.

12 MR. DELIKANAKIS: John Delikanakis with  
13 Snell & Wilmer on behalf of U.S. Bank.

14 BY MS. EBRON:

15 Q Before we started today, we discussed with  
16 counsel that we would incorporate background  
17 information, your employment history, that type of  
18 thing, from a deposition taken on March 24th,  
19 2015, Case No. A-13-686489-C.

20 Are you okay with that?

21 **A Yes.**

22 Q Is there anything you wanted to update?

23 **A In the deposition transcript you just**  
24 **referenced, I used to be a notary with the state of**  
25 **Oregon, and I did not renew that, so I'm no longer a**

1     **notary.**

2           Q     Thank you.

3                     (Deposition Exhibit 1 was marked for  
4                     identification.)

5     BY MS. EBRON:

6           Q     Can you please take a look at what's been  
7     marked as Exhibit 1.

8           **A     Okay.**

9           Q     Do you recognize this document?

10          **A     I do.**

11          Q     What is it?

12          **A     This is a notice of deposition for today's**  
13     **deposition.**

14          Q     This is for the deposition of U.S. Bank,  
15     N.A., a National Banking Association, as Trustee for  
16     the Certificate Holders of Wells Fargo, Asset  
17     Securities Corporation, Mortgage Pass-Through  
18     Certificate, Series 2006-AR4.

19                     Whenever I refer to "U.S. Bank," I'm going  
20     to be referring to it as "the trustee."   Okay?

21          **A     Okay.**

22          Q     If I refer to "the trust," I'll be  
23     referring to the trust known as Wells Fargo Asset  
24     Securities Corporation, Mortgage Pass-Through  
25     Certificate, Series 2006-AR4.   Okay?

1           **A     Okay.**

2           Q     In addition, there's some other  
3     definitions. On Page 3, there's a definition of  
4     "property." It's the real property located at  
5     2270 Nashville Avenue, Henderson, Nevada 89052,  
6     Parcel No. 178-19-712-012.

7                     For the purposes of this deposition,  
8     whenever I talk about "the property," I'm referring  
9     to the one on Nashville Avenue. Okay?

10          **A     Okay.**

11          Q     In addition, there's a definition of  
12     "association," referring to Copper Ridge Community  
13     Association. So unless otherwise specified, when I  
14     talk about "the association," I'm referring to the  
15     Copper Ridge Community Association. Okay?

16          **A     Okay.**

17          Q     There's also a reference to "the  
18     association foreclosure sale." When I talk about  
19     that, I'm talking about the auction held on  
20     March 1st, 2013, by Nevada Association Services,  
21     Inc., on behalf of the association. Okay?

22          **A     Okay.**

23          Q     From time to time during the deposition, I  
24     may refer to Nevada Association Services as NAS.  
25     All right?

1           **A     Okay.**

2           Q     There are topics that start on Page 3 and  
3 go to Page 23. Have you had a chance to review  
4 those before today?

5           **A     I've reviewed the 23 topics.**

6           Q     And are you the person that U.S. Bank has  
7 designated to testify on its behalf for these  
8 topics?

9           **A     Yes.**

10          Q     What is the relationship between U.S. Bank  
11 and Wells Fargo such that you would be designated as  
12 the witness?

13          **A     Wells Fargo Bank, N.A., is the servicer**  
14 **for the loans on behalf of the trustee, which is**  
15 **U.S. Bank.**

16                   **(Deposition Exhibit 2 was marked for**  
17 **identification.)**

18 BY MS. EBRON:

19          Q     Can you please look at what's been marked  
20 as Exhibit 2.

21          **A     (Complies.) Okay.**

22          Q     Do you recognize this document?

23          **A     I do.**

24          Q     What is it?

25          **A     This is a note the borrower executed on**

1     **December 30th, 2005.**

2           Q     When you talk about "the borrower," are  
3     you referring to Lucia Parks?

4           **A     I am.**

5           Q     Do you know what information was redacted  
6     from the top left-hand corner of the first page of  
7     the note?

8           **A     A mortgage loan number.**

9           Q     Do you know what this stamp at the bottom  
10    right-hand corner that says "Exhibit 1" is referring  
11    to?

12                   MR. DELIKANAKIS:   (Indicating.)

13           **A     I do not.**

14    BY MS. EBRON:

15           Q     Did you have a chance to look at the  
16    original wet-ink signature note?

17           **A     I did not.**

18           Q     Do you know where that note is located?

19           **A     This note is in our vaults in Minneapolis,**  
20    **Minnesota.**

21           Q     How do you know that?

22           **A     I looked in our servicing platform and**  
23    **determined that the custodian of the collateral**  
24    **documents was Wells Fargo Bank and that the address**  
25    **of the particular vault that this loan -- these loan**



1 documents are housed is in is in Minneapolis.

2 Q Do you know who input that information  
3 into the place that you looked?

4 A The data would have been input into our  
5 system of record by someone who worked while  
6 onboarding this loan into our loan servicing  
7 platform.

8 Q When was this loan onboarded into your  
9 servicing platform?

10 A At the time of origination in December of  
11 2005.

12 (Deposition Exhibit 3 was marked for  
13 identification.)

14 BY MS. EBRON:

15 Q Can you look at what has been marked as  
16 Exhibit 3, please.

17 A (Complies.) Okay.

18 Q Do you recognize this document?

19 A I do.

20 Q What is it?

21 A This is a deed of trust regarding the  
22 property in question in this matter, with the  
23 borrower of Lucia Parks.

24 Q And is this the deed of trust that was  
25 executed to secure the note that we marked as

1 Exhibit 2?

2 **A It is.**

3 Q Who originated this loan?

4 **A Wells Fargo Bank.**

5 Q When did U.S. Bank obtain an interest in  
6 this loan?

7 **A This loan was sold to -- shortly after**  
8 **origination, I would say within four or five months**  
9 **of origination, back in 2006.**

10 Q Are there documents that evidence the  
11 transfer from Wells Fargo to U.S. Bank?

12 MR. DELIKANAKIS: Objection: Form of the  
13 question.

14 **A This loan was included in a pool of loans**  
15 **that was securitized, and U.S. Bank was named the**  
16 **trustee of the pool of loans.**

17 MS. EBRON: Off the record.

18 (Pause in proceedings.)

19 MS. EBRON: Back on the record.

20 BY MS. EBRON:

21 Q Do you know how much the trust paid to  
22 purchase the loan?

23 **A The practice would be for the transaction**  
24 **to include nearly dollar for dollar for the**  
25 **principal balance of the loan at the time the loan**

1     **was transferred to the trust.**

2           Q     How do you know that?

3           **A     Just the general banking practice of**  
4     **transactions such as these.**

5           Q     In Exhibit 3, can you look at the page  
6     that's Bates Stamped USB000021.

7           **A     (Complies.)   Okay.**

8           Q     Do you recognize this?

9           **A     I do.**

10          Q     What is it?

11          **A     It's a planned unit development rider.**

12          Q     Why did Wells Fargo include it in the deed  
13     of trust?

14          **A     It informs the borrowers of their**  
15     **responsibility to keep in compliance and current**  
16     **with their requirements under the PUD.**

17          Q     Is it fair to say that Wells Fargo was  
18     aware of the homeowners association when it  
19     originated this loan?

20               MR. DELIKANAKIS:   Objection:   Form of the  
21     question; also calls for a legal conclusion.

22          **A     Wells Fargo was aware that the loan was --**  
23     **that the property was located within a PUD.**

24               (Deposition Exhibit 4 was marked for  
25     identification.)

1 BY MS. EBRON:

2 Q Can you look at what's been marked as  
3 Exhibit 4, please.

4 **A (Complies.)**

5 Q I'm going to represent to you that this is  
6 just a portion of the Declaration of Covenants,  
7 Conditions, and Restrictions for Copper Ridge  
8 Community, with the title page and the Table of  
9 Contents, because the entire document is voluminous.

10 Have you seen this document before?

11 **A I have not.**

12 Q Do you know if this is something that is  
13 contained in U.S. Bank's business records?

14 **A I did not see this within their records.**  
15 **(Deposition Exhibit 5 was marked for**  
16 **identification.)**

17 BY MS. EBRON:

18 Q Look at what has been marked as Exhibit 5,  
19 please.

20 **A (Complies.) Okay.**

21 Q Do you recognize this document?

22 **A I do.**

23 Q What is it?

24 **A It is a grant, bargain, sale deed between**  
25 **Albert and Mary Brandelli and the borrower of the**

1     **loan we originated, Lucia Parks.**

2           Q     Is this something that's part of  
3     U.S. Bank's business records?

4           **A     I'm not sure if the copy that I've seen**  
5     **has -- is the recorded copy of this document or not.**

6           Q     Is there a copy that is not recorded in  
7     U.S. Bank's business records?

8           **A     I believe there is.**

9                   **(Deposition Exhibit 6 was marked for**  
10                   **identification.)**

11    BY MS. EBRON:

12           Q     Can you look at what has been marked as  
13     Exhibit 6.

14           **A     (Complies.)**

15           Q     Do you recognize this document?

16           **A     I don't respect -- I don't specifically**  
17     **recognize this document. I don't remember seeing**  
18     **it.**

19                   **(Deposition Exhibit 7 was marked for**  
20                   **identification.)**

21    BY MS. EBRON:

22           Q     Can you look at what's been marked as  
23     Exhibit 7, please.

24           **A     Okay.**

25           Q     Do you recognize this document?

1           **A**     **I do not.**

2                   **(Deposition Exhibit 8 was marked for**  
3                   **identification.)**

4   BY MS. EBRON:

5           Q     Take a look at what has been marked as  
6   Exhibit 8, please.

7           **A**     **(Complies.) Okay.**

8           Q     Do you recognize this document?

9           **A**     **I do not.**

10                   **(Deposition Exhibit 9 was marked for**  
11                   **identification.)**

12   BY MS. EBRON:

13           Q     Look at what has been marked as Exhibit 9.

14           **A**     **(Complies.) Okay.**

15           Q     Do you recognize this document?

16           **A**     **I do not.**

17                   **(Deposition Exhibit 10 was marked for**  
18                   **identification.)**

19   BY MS. EBRON:

20           Q     Can you please look at what has been  
21   marked as Exhibit 10.

22           **A**     **(Complies.)**

23           Q     Do you recognize this document?

24           **A**     **I do.**

25           Q     What is it?

1           **A**     It is a notice of default and election to  
2     sell regarding the first deed of trust, what was  
3     Exhibit 3.

4           Q     Who is National Default Servicing  
5     Corporation?

6           **A**     They are the trustee for the deed of  
7     trust.

8           Q     If you look on the page that is Bates  
9     Stamped USB000039 --

10          **A**     Okay.

11          Q     -- the second paragraph from the bottom  
12     discusses the failure to pay.

13                     Do you see that?

14                     MR. DELIKANAKIS: Can you point which  
15     section you're looking at? What sentence does it  
16     begin with?

17                     MS. EBRON: Starts with, "That a breach  
18     of, and default in, the obligations for which such  
19     Deed of Trust security has occurred in that payment  
20     has not been made of: Failure to pay the  
21     installments of principal interest and impounds  
22     which became due on November 1st, 2009."

23          **A**     I see that.

24     BY MS. EBRON:

25          Q     Do you know if Lucia Parks made any

1 payments on the loan after November 1st, 2009?

2 **A Not without looking at the payment**  
3 **history, but I believe she did.**

4 (Deposition Exhibit 11 was marked for  
5 identification.)

6 BY MS. EBRON:

7 Q Can you look at what has been marked as  
8 Exhibit 11.

9 **A (Complies.)**

10 Q Do you recognize this document?

11 **A I don't remember reviewing this in**  
12 **preparation for today.**

13 (Deposition Exhibit 12 was marked for  
14 identification.)

15 BY MS. EBRON:

16 Q Can you look at what has been marked as  
17 Exhibit 12.

18 **A (Complies.)**

19 Q Do you recognize this document?

20 **A Yes.**

21 Q What is it?

22 **A It's an assignment of deed of trust.**

23 Q Who is it from and who is it to?

24 **A It is assigning to -- from Wells Fargo to**  
25 **the U.S. Bank National Association, as Trustee for**



1     **Wells Fargo Asset Securities Corporation, Mortgage**  
2     **Pass-Through Certificate, Series 2006-AR4.**

3           Q     When was this executed?

4           **A     July 1st of 2010.**

5                   MR. DELIKANAKIS:   Just to note for the  
6     record, there's actually two executions on this  
7     document.

8     BY MS. EBRON:

9           Q     Here?

10          **A     It appears to be a --**

11                   MR. DELIKANAKIS:   -- a notary.

12                   THE WITNESS:   -- signature and a notary.

13                   MR. DELIKANAKIS:   A notary.

14                   MS. EBRON:   Oh, okay.

15                   MR. DELIKANAKIS:   A notary signed that,  
16     executed by the president.

17                   MS. EBRON:   What am I missing?

18                   MR. DELIKANAKIS:   It's okay.

19     BY MS. EBRON:

20          Q     Do you know who Olivia A. Todd is?

21          **A     I do not.**

22          Q     Above the signature line, it says,  
23     "Wells Fargo Bank, N.A., Successor by Merger to  
24     Wells Fargo Home Mortgage, Inc., by its attorney in  
25     fact National Default Servicing Corporation."

1 Do you see that?

2 **A I do.**

3 Q Is National Default Servicing Corporation  
4 Wells Fargo Bank, N.A.'s attorney in fact?

5 MR. DELIKANAKIS: Objection: Form of the  
6 question; calls for a legal conclusion.

7 **A For this specific assignment, so National**  
8 **Default Servicing Corporation had the ability to**  
9 **sign this particular document as Wells Fargo Bank,**  
10 **N.A.'s attorney in fact.**

11 (Deposition Exhibit 13 was marked for  
12 identification.)

13 BY MS. EBRON:

14 Q Can you please look at what has been  
15 marked as Exhibit 13.

16 **A (Complies.) Okay.**

17 Q Do you recognize this document?

18 **A I do.**

19 Q What is it?

20 **A It is a notice of trustee's sale.**

21 Q Does this notice of trustee's sale relate  
22 to the deed of trust marked as Exhibit 3?

23 **A It does.**

24 Q Was it National Default Servicing  
25 Corporation that caused this to be recorded?

1           **A     Yes.**

2           Q     Was that on behalf of U.S. Bank?

3           **A     Correct.**

4                   **I should say on behalf of U.S. Bank as**  
5   **Trustee for the pool.**

6           Q     Right. Thank you.

7                   Can you look at the page Bates Stamped  
8   USB000044, the paragraph that starts, "Said sale  
9   will be made, in 'as is' condition, without covenant  
10   or warranty, expressed or implied, regarding title,  
11   possession or encumbrances to satisfy the  
12   indebtedness" of the -- sorry -- "indebtedness  
13   secured by said Deed of Trust."

14                  Do you see that?

15           **A     I see -- I do.**

16           Q     Do you know why that was included in this  
17   notice of sale?

18                  MR. DELIKANAKIS: Objection: Form of the  
19   question calls for a legal conclusion.

20           **A     I can only see the words that you just**  
21   **read out into the record exists on this document as**  
22   **you read them.**

23   BY MS. EBRON:

24           Q     Have you seen other notices of trustee's  
25   sales that relate to deeds of trust?

1 MR. DELIKANAKIS: Objection: Scope.

2 **A I have.**

3 BY MS. EBRON:

4 Q Do you know if that language is generally  
5 included --

6 MR. DELIKANAKIS: Same --

7 BY MS. EBRON:

8 Q -- in notices of trustee's sale?

9 MR. DELIKANAKIS: Same objection: Scope.

10 **A I believe it is a typical language used.**

11 **(Deposition Exhibit 14 was marked for**  
12 **identification.)**

13 BY MS. EBRON:

14 Q Can you look at what's been marked as  
15 Exhibit 14, please.

16 **A (Complies.)**

17 Q Do you recognize this document?

18 **A I do.**

19 Q What is it?

20 **A It's the substitution of trustee.**

21 Q Is this something that is contained in  
22 U.S. Bank's business records?

23 **A Yes.**

24 Q Do you know if there was a different  
25 substitution of trustee executed before the date on

1 this one?

2 MR. DELIKANAKIS: Objection: Form of the  
3 question.

4 Do you understand the question?

5 THE WITNESS: I think I do.

6 **A I can't recall seeing a different**  
7 **substitution of trustee prior to this one, in my**  
8 **review.**

9 BY MS. EBRON:

10 Q Going back to Exhibit 13 --

11 **A Okay.**

12 Q -- the paragraph that begins, "Notice is  
13 hereby given."

14 **A On which exhibit?**

15 Q Sorry. On 13.

16 **A Okay.**

17 Q It states that it will sell on  
18 August 3rd, 2010, at 10 a.m.

19 Do you see that?

20 **A I do.**

21 Q Did the sale go forward on that date?

22 **A It did not.**

23 Q Do you know why not?

24 **A I believe the borrower filed for**  
25 **Chapter 11 bankruptcy, causing a stay.**

1 Q Is there a document that you reviewed that  
2 makes you believe that?

3 A The -- yes. There's bankruptcy documents  
4 in our imaging system related to Parks' bankruptcy  
5 filing.

6 Q Do you know when the bankruptcy stay was  
7 lifted or was no longer in effect?

8 A Not off the top of my head. I can't  
9 recall the date.

10 (Deposition Exhibit 15 was marked for  
11 identification.)

12 BY MS. EBRON:

13 Q Look at what has been marked as  
14 Exhibit 15, please.

15 A (Complies.) Okay.

16 Q Do you recognize this document?

17 A I specifically don't recall this exact  
18 document, but I did see notices of trustee's sale in  
19 our file.

20 Q In that second paragraph, where it says it  
21 will sell on July 19th, 2011, at 10 a.m., do you  
22 see that?

23 A I do.

24 Q Did the sale go forward on that date?

25 A I don't believe so.

1 Q Do you know why not?

2 MR. DELIKANAKIS: I'll caution the witness  
3 not to speculate.

4 A Yeah, not without looking at the business  
5 records to determine.

6 BY MS. EBRON:

7 Q What business records would you look at to  
8 determine why the sale did not go forward on  
9 July 19th, 2011?

10 MR. DELIKANAKIS: Objection: Form of the  
11 question.

12 A I would look at the foreclosure process  
13 notes and the bankruptcy process notes and the loss  
14 mitigation process notes.

15 BY MS. EBRON:

16 Q Do you know if the bankruptcy stay was  
17 either lifted or no longer in effect when this  
18 notice of trustee's sale was recorded?

19 A Not without looking at the order granting  
20 the relief from stay to be able to tell what the  
21 time period was.

22 Q On the next page Bates Stamped USB000049,  
23 do you see that same language about, 'as is'  
24 condition without covenant or warranty, expressed or  
25 implied," as we did in the last notice of sale?

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

2                     (Deposition Exhibit 16 was marked for  
3                     identification.)

4     BY MS. EBRON:

5           Q     Can you look at what has been marked as  
6     Exhibit 16, please.

7           **A**     (Complies.)

8           Q     Do you recognize this document?

9           **A**     I don't believe I have seen this before.  
10                   (Deposition Exhibit 17 was marked for  
11                   identification.)

12    BY MS. EBRON:

13           Q     Would you please look at what has been  
14    marked as Exhibit 17.

15                   MR. VILKIN: I'm sorry. Which one are you  
16    on: 17?

17                   MS. EBRON: Seventeen. It's Bates Stamped  
18    USB --

19                   MR. VILKIN: Yeah.

20                   MS. EBRON: -- 000053.

21                   MR. VILKIN: Thank you.

22           **A**     Okay.

23    BY MS. EBRON:

24           Q     Do you recognize this document?

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



1 Q When was this executed?

2 A June 7th of 2012.

3 Q Who is this from and who is it to?

4 A Wells Fargo Bank to the U.S. Bank National  
5 Association as Trustee for the pool of loans.

6 Q Do you know why the deed of trust was  
7 assigned from Wells Fargo Bank to U.S. Bank two  
8 times, like the one here in Exhibit 17 and then also  
9 in Exhibit 12?

10 MR. DELIKANAKIS: Objection: Form of the  
11 question.

12 A No, I do not.

13 (Deposition Exhibit 18 was marked for  
14 identification.)

15 BY MS. EBRON:

16 Q Look at what has been marked as  
17 Exhibit 18.

18 A (Complies.) Okay.

19 Q Do you recognize this document?

20 A I apologize. I've reviewed so many  
21 documents, I can't remember if I specifically have  
22 seen this before today or not.

23 Q In your review of the file, you looked for  
24 foreclosure notices; correct?

25 A I did.

1 Q Do you recall seeing any foreclosure  
2 notices from homeowners associations?

3 MR. DELIKANAKIS: Objection to the form of  
4 the question.

5 Are you -- do you understand the scope of  
6 foreclosure notices?

7 MS. EBRON: Okay.

8 BY MS. EBRON:

9 Q Foreclosure notices, including a notice of  
10 default or notice of sale from a homeowners  
11 association --

12 MR. DELIKANAKIS: Thank you, Counsel.

13 BY MS. EBRON:

14 Q -- in relation to this property. And I'm  
15 looking for ones that would have been included in  
16 U.S. Bank's business records, not ones provided by  
17 counsel or through litigation.

18 A I did see -- I believe it was a notice of  
19 sale and then a -- another notice regarding -- but I  
20 don't know if it was a recorded document that was  
21 sent to Wells Fargo.

22 I do want to say that the notice of sale  
23 was received -- or in our imaging system  
24 March 5th, so -- what? -- four days after the HOA  
25 foreclosure sale.

1 Q March 5th of 2013?

2 A Correct.

3 Q What about the other notice you mentioned?

4 Do you know when that was uploaded to your imaging  
5 system?

6 A I can't recall the date that the other one  
7 was uploaded.

8 Q Did you review servicing notes in  
9 preparation for your deposition?

10 A I did.

11 Q And in the servicing notes, was there a  
12 corresponding note to the imaged notice of sale  
13 received -- or imaged on March 5th, 2013?

14 A Right. And just so the record's clear,  
15 the document that we received on March 5th, 2013,  
16 it is either a notice of sale or a notice of default  
17 and election to sell.

18 As I sit here today, I can't tell -- I  
19 can't remember which one was which.

20 Q Okay.

21 A So to answer your question, yes, there is  
22 a corresponding business record on the 5th of  
23 March, 2013, from the trustee that indicates the  
24 document was sent to Wells Fargo for upload into our  
25 system.

1 Q When you say "from the trustee," who is  
2 the trustee?

3 A National Default.

4 Q Okay. So the entity that was conducting  
5 the foreclosure sale of the deed of trust?

6 A Correct.

7 (Deposition Exhibit 19 was marked for  
8 identification.)

9 BY MS. EBRON:

10 Q Can you look at what has been marked as  
11 Exhibit 19.

12 MR. VILKIN: 19?

13 MS. EBRON: Yes.

14 A (Complies.) Okay.

15 BY MS. EBRON:

16 Q Do you recognize this document?

17 A I do not.

18 (Deposition Exhibit 20 was marked for  
19 identification.)

20 BY MS. EBRON:

21 Q Can you look at what has been marked as  
22 Exhibit 20, please.

23 A (Complies.) Okay.

24 Q Do you recognize this document?

25 A I do not, and I'm -- I'm just going to say

1 right now it looks like the recorded date of this  
2 document was 3/6/2013, which is after the date of  
3 the HOA foreclosure sale.

4 So the review of my system of record and  
5 the reviewing of the imaged documents contained in  
6 our system, our image system, I conducted that  
7 review from originations to the HOA foreclosure  
8 sale. So a lot -- any of the documents that are  
9 dated after that I probably have not looked at.

10 MR. DELIKANAKIS: It's outside the scope  
11 of the deposition anyway. I mean, if you want to --  
12 you're just trying to authenticate documents. I'm  
13 not sure what the purpose of the exercise is for  
14 these events after the sale.

15 MS. EBRON: I am just seeing what he  
16 recalls seeing in the file.

17 MR. DELIKANAKIS: The objection will be  
18 that it's outside the scope of the deposition.

19 (Deposition Exhibit 21 was marked for  
20 identification.)

21 BY MS. EBRON:

22 Q Can you look at what has been marked as  
23 Exhibit 21.

24 A (Complies.) Okay.

25 Q Do you recognize this document?

1           **A     I do not.**

2           Q     Is this another notice of trustee's sale  
3     that relates to the deed of trust marked as  
4     Exhibit 3?

5           **A     It is referencing the deed of trust that**  
6     **is marked as Exhibit 3, yes.**

7           Q     Do you know if a foreclosure sale took  
8     place on April 1st, 2013?

9                     MR. DELIKANAKIS:  Objection:  Scope.

10          **A     Not as I sit here today.  I'd have to look**  
11     **at our servicing records in and around that time.**

12                     **(Deposition Exhibit 22 was marked for**  
13     **identification.)**

14     BY MS. EBRON:

15          Q     Can you look at what has been marked as  
16     Exhibit 22.

17                     MR. DELIKANAKIS:  Same objection:  Outside  
18     the scope.

19          **A     (Complies.)  Okay.**

20     BY MS. EBRON:

21          Q     Do you recognize this document?

22          **A     I do not.**

23                     **(Deposition Exhibit 23 was marked for**  
24     **identification.)**

25     BY MS. EBRON:

1 Q Can you look at what has been marked as  
2 Exhibit 23.

3 A (Complies.)

4 MS. EBRON: Just note there's -- on the  
5 last page of that, Bates Stamp USB00076, should not  
6 be included.

7 A Okay.

8 MR. VILKIN: I'm sorry. I'm a  
9 little confused.

10 Twenty-three is what: Trustee deed?

11 MS. EBRON: It is the trustee's deed upon  
12 sale --

13 MR. VILKIN: Okay. Thank you.

14 MS. EBRON: -- and it relates to the deed  
15 of trust.

16 BY MS. EBRON:

17 Q Have you seen this document before?

18 A I have not.

19 (Deposition Exhibit 24 was marked for  
20 identification.)

21 BY MS. EBRON:

22 Q Can you look at what has been marked as  
23 Exhibit 24.

24 A (Complies.) Okay.

25 Q Do you recognize this document?

1           **A     I do not.**

2                   MR. DELIKANAKIS:  Objection:  Outside the  
3  scope.

4                   (Deposition Exhibit 25 was marked for  
5  identification.)

6  BY MS. EBRON:

7           Q     Can you look at what has been marked as  
8  Exhibit 25.

9           **A     (Complies.)**

10          Q     This is a document that was produced  
11  separately by U.S. Bank, outside of recorded  
12  documents.

13                  Have you seen this before?

14          **A     I don't believe I've seen this before.**

15          Q     Do you know where this was -- like, what  
16  portion of U.S. Bank's business records this came  
17  from or if it came from U.S. Bank's business  
18  records?

19          **A     It did not come from the business records**  
20 **from U.S. Bank from the origination of the -- from**  
21 **the date of the origination of the original deed of**  
22 **trust to the date of the HOA foreclosure sale,**  
23 **because I looked at every one of those documents,**  
24 **and this was not one of those.**

25                  **So if it did come from U.S. Bank's**



1 records, it would have been a document that we  
2 received after the date of the foreclosure, if that  
3 makes sense.

4 (Deposition Exhibit 26 was marked for  
5 identification.)

6 BY MS. EBRON:

7 Q Look at what has been marked as  
8 Exhibit 26.

9 A (Complies.) Okay.

10 Q Do you recognize this document?

11 A I do.

12 Q What is it?

13 A It's a letter to Wells Fargo from  
14 Green Valley Ranch Community Association.

15 Q And was this something that was received  
16 by U.S. Bank?

17 A Yes. It was -- just to clarify the  
18 record, it was received by Wells Fargo Bank as  
19 Servicer on behalf of U.S. Bank.

20 Q Do you know when it was received by  
21 Wells Fargo?

22 A I think it was received in July of 2012.

23 But, actually, I'm going to walk that  
24 back. I'm -- without looking at our imaging system,  
25 I can't tell you an exact date, but I do know that

1     **we received this.**

2           Q     Towards the bottom of the letter on the  
3     first page Bates Stamped USB000111, there is a  
4     reference to an enclosure.

5           Do you see that?

6           **A     Okay.**

7           Q     And it says "Notice of Default and  
8     Election to Sell (copy.)"

9           **A     Okay.**

10          Q     Do you know if the document marked as  
11     Exhibit 25 was received with this letter that's  
12     marked as Exhibit 26?

13          **A     I believe it was.**

14          Q     Were there any corresponding notes in the  
15     servicing records about when this was received?

16          **A     And you say "this."   Exhibit 26 --**

17          Q     Exhibit 26.   Thank you.

18          **A     -- and 25 or just 26?**

19          Q     Either or both.

20          **A     I can't remember the exact date that we**  
21     **received this.   The borrower's loan was in our**  
22     **foreclosure process, so we would have anticipated**  
23     **paying any type of delinquencies from the HOA out of**  
24     **the proceeds of our foreclosure sale at this point.**

25          Q     I understand if you don't remember the

1 exact date, but do you remember if there was a  
2 servicing note about receipt of the letter?

3 **A I don't recall a servicing note specific**  
4 **to this letter.**

5 **(Deposition Exhibit 27 was marked for**  
6 **identification.)**

7 BY MS. EBRON:

8 Q Can you look at what has been marked as  
9 Exhibit 27. It's Bates Stamped USB000112. And,  
10 again, this was disclosed right after the letter  
11 that was in Exhibit 26 and separate from the  
12 recorded documents.

13 **A When you say "disclosed," I guess I don't**  
14 **understand that.**

15 Q Sorry. Disclosed by your counsel in that  
16 order.

17 **A Okay.**

18 Q And since I don't have the originals, I  
19 can't tell how they were put together or where they  
20 came from.

21 Do you know where this came from?

22 **A Exhibit 27?**

23 Q Yes.

24 **A Right, and I think I briefly spoke about**  
25 **this earlier in the deposition. This showed -- and**

1    when I'm saying "this," I'm going to say Exhibit 27  
2    shows up in our imaging system as of March 5th,  
3    2013.

4                   There is a corresponding note in our  
5    foreclosure processing platform identifying the  
6    receipt of this notice of foreclosure sale.

7           Q     Who would have input that note?

8           A     The note was input via our LPS system,  
9    which is the interface that the trustees use to  
10   communicate with Wells Fargo, and the trustees would  
11   be the trustees responsible for conducting the  
12   nonjudicial foreclosure sales.

13          Q     In this case, that would have been  
14   National Default Servicing Corporation?

15          A     At that time, that is correct, yes.

16          Q     So is it your understanding that this  
17   notice of foreclosure sale was received by National  
18   Default Servicing Corporation and a note was made  
19   about it in LPS?

20          A     On March 5th, 2013, a note was entered  
21   into our mortgage service platform via LPS by the  
22   trustee.

23          Q     So the note was from March 5th, 2013.

24                   Was the image saved on that same date?

25          A     Yes.

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

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

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

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

13 BY MS. EBRON:

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

16 A (Complies.) Okay.

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

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

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

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

3 A Yes.

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

6 A There's not.

7 Q Do you know when this was generated?

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

10 MS. EBRON: Yes.

11 MR. DELIKANAKIS: Okay.

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

17 BY MS. EBRON:

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

20 A It is.

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

23 A I do not.

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

25 A That would be "short sale."

1 Q What about "MKWLE"?

2 A Do not know.

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

5 A Do not.

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

8 A (Complies.) Okay.

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

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

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

17 A There's not.

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

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

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

24 A No.

25 Q Does Wells Fargo allege that the

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

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

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

8 **A And your question again?**

9 **(Record read by reporter.)**

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

12 MS. EBON: Why?

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

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

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

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

25 If you are asking for a conclusion, which



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

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

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

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

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

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

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

19 BY MS. EBRON:

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

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

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

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

6           A     It was not.

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

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

13          Q     Anything else?

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

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

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

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

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

4 Q Anything else?

5 A That's all I can remember.

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

8 A Just the attorneys.

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

11 A I did not.

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

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

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

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

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

4           **A     No. Just --**

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

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

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

17          **A     No.**

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

20          **A     No, I did not.**

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

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

25          **A     I do not know.**

1 BY MS. EBRON:

2 Q How do you know that you are the one who  
3 has been designated by U.S. Bank if you have not  
4 spoken with anyone from U.S. Bank?

5 A Wells Fargo is the servicer of this  
6 mortgage. Our duties of servicer include responding  
7 to and appearing at depositions that involve loans  
8 that are within this trust.

9 Q How do you know that?

10 A We're the responsible party, as outlined  
11 in the agreement between U.S. Bank and Wells Fargo.

12 Q What agreement?

13 A The pooling and servicing agreement.

14 Q Did you review the pooling and servicing  
15 agreement in preparation for the deposition?

16 A I did.

17 MS. EBRON: Counsel, is that something  
18 that's been produced?

19 MR. DELIKANAKIS: No.

20 MS. EBRON: Are you going to produce it?

21 MR. DELIKANAKIS: No.

22 MS. EBRON: Why?

23 MR. DELIKANAKIS: It's irrelevant. If you  
24 submit a request, I can give you more detailed  
25 reasons --

1 MS. EBRON: I have.

2 MR. DELIKANAKIS: -- why it's irrelevant.

3 MS. EBRON: I have.

4 MR. DELIKANAKIS: It's not going to be  
5 produced. If you want to ask some foundational  
6 questions, I think you'll realize it's irrelevant.

7 BY MS. EBRON:

8 Q In the pooling and servicing agreement,  
9 does it contain any references to how Wells Fargo  
10 should handle association liens?

11 **A Yes.**

12 Q What does it say?

13 **A There is a section in the servicing**  
14 **agreement that says Wells Fargo should keep records**  
15 **when properties are in REO process for amounts we**  
16 **pay to associations for dues.**

17 Q Anything else?

18 **A No.**

19 Q Is there any information in that agreement  
20 that discusses what type of information -- strike  
21 that.

22 Is there anything in that agreement that  
23 contains other references to associations?

24 **A Other references to associations?**

25 Q Yeah, homeowners associations.

1           **A**     I only studied the servicing agreement as  
2     it pertained to association dues. So there may be  
3     other things in the servicing agreement that have to  
4     do with insurance requirements, for an example.

5           **Q**     Why didn't you look at anything else  
6     related to associations besides dues?

7           **A**     I did. I reviewed the document for every  
8     instance for the word "association," every instance  
9     of the combination of "association" and "dues,"  
10    "homeowners," and similar terms, and the only  
11    instance that it brings up specifically "homeowners  
12    dues" is in the section governing how Wells Fargo  
13    has to handle REO properties.

14          **Q**     Well, what about the other sections that  
15    you mentioned that were not just relating to dues?  
16    What were those?

17          **A**     There were requirements for the types of  
18    insurance that would have to be proven to be on the  
19    property in HOAs, loss insurance.

20          **Q**     Anything else?

21          **A**     Not that I can remember.

22          **Q**     Does the pooling and servicing agreement  
23    contain any reporting requirements for Wells Fargo  
24    to report information to U.S. Bank?

25          **A**     Yes.

1 Q What type of reporting is done from  
2 Wells Fargo to U.S. Bank?

3 A The reporting is around the performance of  
4 the pool of loans in terms of delinquencies and  
5 foreclosures and the like.

6 Q Do you know if the pooling and servicing  
7 agreement is something that was provided to the SEC?

8 A I did not check the SEC to see if the  
9 agreement is listed there.

10 Q Is that something that's common for these  
11 types of pools?

12 A Yes.

13 Q So it's not a confidential document?

14 MR. DELIKANAKIS: Objection: Form of the  
15 question; calls for a legal conclusion.

16 A It could be, but, generally, the SEC will  
17 have a copy of the agreement.

18 BY MS. EBRON:

19 Q Those are generally posted on the website?

20 A On the SEC's website, correct.

21 Q Can you look at the page in Exhibit 28  
22 that is Bates Stamped USB000115.

23 A (Complies.) Okay.

24 Q Do you recognize this document?

25 A This is a screen capture from our loss



1 mitigation process notes printed on November 26,  
2 2013.

3 Q Is there any reference to associations on  
4 this page?

5 A There is not.

6 Q Right under the part that says "Process  
7 Notes" it says "01/29/13, 17:25:04."

8 Do you know what that "Q8B" stands for?

9 A That is the team member that entered that  
10 notation.

11 Q Okay. So the same person would have  
12 entered that note on January 29th, 2013, as on  
13 December 21st, 2012?

14 A That's correct.

15 Q And then those other -- each of the other  
16 ones on that page refer to someone else?

17 A Yes.

18 Q Is there a way to find out the actual  
19 identity of the person from that code?

20 A The codes are sometimes recycled, because  
21 there's only three digits, and there's several  
22 thousand servicing team members. So I can't be  
23 100 percent sure if today's Q8B, Bravo, would be the  
24 same as the Q8B that's entered the note on January  
25 of 2013, but, yes, I can look up the code.

1 Q Okay. And do you know what it means  
2 "A3P"?

3 A "Authorized third party."

4 Q What is that?

5 A The borrower has sent in written  
6 authorization that the person they designate can  
7 speak to Wells Fargo regarding the mortgage loan.

8 Q So it requires -- if somebody were to call  
9 in to get information about the loan, it would have  
10 to either be the borrower or someone who the  
11 borrower has authorized in writing?

12 A Yes.

13 Q What does "liquidation loss mitigation"  
14 mean?

15 A This is a loan that's being reviewed for  
16 short sale, and it's in loss mitigation, so the  
17 liquidation would be a review for something that, at  
18 the end of it, the borrower will no longer own the  
19 property, so a deed in lieu or a short sale or a  
20 short payoff.

21 Q In the note that's 1/15/13, that same one,  
22 a couple lines down, the "A3P" is "authorized third  
23 party," so that would refer to Brian Goodman; right?

24 A Correct.

25 Q Calls for a status update, and then does

1 ADVS means that the person "M6M" advised Mr. Goodman  
2 that file -- I don't know what that says -- that  
3 file reviewed and also advise -- something about a  
4 BPO.

5 Is that "broker's price opinion"?

6 **A Yes.**

7 Q And then, "Advised authorized third party  
8 to call back for follow-up"?

9 **A That's correct.**

10 MS. EBRON: Okay.

11 MR. VILKIN: Very good.

12 MR. DELIKANAKIS: Off the record.

13 (Discussion held off the record.)

14 BY MS. EBRON:

15 Q Do you know what -- in the next note it  
16 says, "Working PROC Project."

17 Do you know what that is?

18 **A I do not.**

19 Q Do you know what -- in the note for  
20 1/7/13, what "PAS-DB" means?

21 **A It means that the vendor has completed the**  
22 **BPO for us as of 1/5/13, and the value was -- is**  
23 **listed there.**

24 Q So a BPO completed on January 5th of  
25 2013 valued the property at \$187,050?

1           **A     Yes.**

2           Q     Do you know if there are any other  
3 valuations that were done on the property?

4           MR. DELIKANAKIS:  Objection:  Scope.

5           MS. EBRON:  Well, and if you want, I can  
6 ask the other question first.

7           MR. DELIKANAKIS:  Yeah.

8   BY MS. EBRON:

9           Q     Does U.S. Bank allege that the price paid  
10 at the association foreclosure was not commercially  
11 reasonable?

12          MR. DELIKANAKIS:  Objection:  Form of the  
13 question; calls for a legal conclusion.

14   BY MS. EBRON:

15          Q     I'm looking at Topic No. 19.  Do you want  
16 to go back to the --

17                Do you know if U.S. Bank is alleging the  
18 price paid by SFR Investments Pool 1, LLC, was  
19 inadequate?

20           **A     I believe that those arguments are made in**  
21 **the complaint or in the pleadings.**

22          Q     Are you aware of any other BPOs besides  
23 the one referenced here on the page Bates Stamped  
24 USB000115?

25          MR. DELIKANAKIS:  Objection:  Scope.

1 MS. EBRON: It's in Topic 19.

2 MR. DELIKANAKIS: Scope as to the form of  
3 the question; in other words, what time frame are  
4 you speaking of?

5 **A There was not another valuation done after**  
6 **January 7th, 2013, and before the foreclosure sale**  
7 **on March 1st, 2013.**

8 BY MS. EBRON:

9 Q Were there any done before this BPO that  
10 was completed on January 5th, 2013?

11 **A There would have been the originations**  
12 **valuation, and as I sit here today, I do not know if**  
13 **there was an additional valuation done before**  
14 **January 7th, 2013.**

15 Q Do you know what the valuation was at  
16 origination?

17 **A I would have to look at the -- it's part**  
18 **of the mortgage file, but I don't know sitting here**  
19 **today. I'll just -- just to -- I will say that it**  
20 **would have been more than \$331,500.**

21 Q Thank you.

22 Back in Exhibit 28, looking at the page  
23 Bates Stamped USB000116, do you recognize this?

24 **A Again, this is a screen print from our**  
25 **loss mitigation process section of our servicing**

1 platform on November 26, 2013.

2 Q Is there any reference to associations on  
3 this page?

4 A There's not.

5 Q In the first note -- well, the note dated  
6 2/6/13, it says "working select short task in  
7 equator."

8 Do you know what that means?

9 A "Equator" is the means by which  
10 Wells Fargo communicates with outside real estate  
11 agents involved in short sales.

12 Q What's a "select short sale task"?

13 A I do not know.

14 Q And the next note says "working HAFA  
15 filter report."

16 Do you know what that means?

17 A It's the government short sale program,  
18 HAFA.

19 Q Do you know what "HAFA" -- "filter  
20 complete bankruptcy denied HAFA" means?

21 A This loan was not approved for a HAFA.

22 Q Does it mean that it was not approved  
23 because there had been a bankruptcy?

24 A I don't know.

25 Q In the next note, on that same day,

1 February 5th, 2013, is this another PBO that was  
2 different than the one we looked at on the previous  
3 page?

4 **A Yes.**

5 Q Do you know why it jumped from 187.050 to  
6 200,000 in a month?

7 **A I do not know.**

8 Q In your review of the records, did you see  
9 the actual BPO or just reference in the notes?

10 **A I saw the BPO, but I didn't look through**  
11 **the BPO, aside from looking at what value was**  
12 **assigned.**

13 **(Deposition Exhibit 29 was marked for**  
14 **identification.)**

15 BY MS. EBRON:

16 Q Can you look at what has been marked as  
17 Exhibit 29, please.

18 **A (Complies.) Okay.**

19 Q Do you recognize this document?

20 **A I do.**

21 Q What is it?

22 **A It is a trustee's sale guarantee.**

23 Q Is this something that you've seen in  
24 U.S. Bank's business records?

25 **A For this particular loan, I do not recall**

1     **seeing TSG...**

2           Q     I'll represent to you that this is a  
3     document that I received pursuant to a subpoena to  
4     National Default Servicing Corporation, so it wasn't  
5     produced by your counsel.

6                     I'm wondering -- we were talking about LPS  
7     before and the interface that you have with the  
8     trustees, including National Default Servicing.

9                     Is a trustee's sale guarantee something  
10    that the trustee would normally upload to the  
11    system?

12           **A     I have seen them in our imaging system**  
13    **before.**

14           Q     Does U.S. Bank dispute that it had actual  
15    notice of the association foreclosure before the  
16    date of the association foreclosure sale?

17                     MR. DELIKANAKIS: I'm going to make the  
18    same objection. It's asking for a legal conclusion.

19                     If you're asking factually if he's aware  
20    of any notice being received, that's why he's here  
21    is testify, as to the facts that you outlined in  
22    there.

23                     MS. EBRON: That's what I asked.

24                     MR. DELIKANAKIS: That isn't what you  
25    asked.



1 BY MS. EBRON:

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

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

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

16 A No.

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

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

21 Do you understand the question?

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

25 BY MS. EBRON:

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

5           **A     No.**

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

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

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

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

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

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

1     **as of March 1st, 2013.**

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

5           **A     Back in 2010.**

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

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

12           Do you understand what she's asking?

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

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

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

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

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

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

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

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

17 A Not that I recall.

18 Q Was there documentation required for the  
19 borrower's application for the HAFA we looked at  
20 before in Exhibit No. -- what was that? -- 28?  
21 There was a reference to a HAFA denial. Maybe I'm  
22 saying that wrong. Yes, on the page Bates Stamped  
23 USB000116, Exhibit No. 28.

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

25 Q Did the documentation required for that

1 application of HAFA include anything about  
2 homeowners associations?

3 **A That would be included on the request for**  
4 **mortgage assistance, which would be part of a HAFA**  
5 **review.**

6 Q In your preparation for the deposition,  
7 did you look for a trustee's sale guarantee?

8 **A I did.**

9 Q And you didn't find one?

10 **A I did not.**

11 Q When Wells Fargo originated this loan, did  
12 it request or find out the amount of the association  
13 dues before funding the loan?

14 **A That information would have been provided**  
15 **on the mortgage application by the borrower.**

16 Q Is that a "yes"?

17 **A Yes.**

18 Q So at that time, Wells Fargo would have  
19 been aware of the amount of the association dues?

20 **A That would have been disclosed to**  
21 **Wells Fargo as part of the borrower's application**  
22 **for a mortgage.**

23 Q Is that a "yes"?

24 **A I believe so.**

25 Q Did Wells Fargo create an escrow for taxes

1 and insurance for this property?

2 **A I don't recall if the taxes and insurance**  
3 **were impounded or not.**

4 Q Were the homeowners association dues?

5 **A No.**

6 Q Do you know why not?

7 **A Not standard practice to impound those.**

8 Q Back in the loss mitigation efforts, was  
9 there ever a requirement to get information directly  
10 from the homeowners association about delinquencies,  
11 like a certificate or anything like that?

12 **A At times, there's requirements that the**  
13 **borrower provide proof of payment, canceled checks**  
14 **and the like, to show that they've paid association**  
15 **dues.**

16 Q What do you mean "at times"?

17 **A If they are past due and need to be**  
18 **brought current.**

19 Q So if the dues are past due and need to be  
20 brought current, then the borrower would be required  
21 to provide proof that they paid?

22 **A In some cases, yes.**

23 Q What about in this case?

24 **A We did not ever receive that proof from**  
25 **the borrower.**

1 Q Did you ever ask for that proof from the  
2 borrower?

3 A Not that I can see.

4 Q Did U.S. Bank ever communicate with the  
5 association about this property?

6 A No.

7 Q Did U.S. Bank ever communicate with NAS  
8 about this property before the date of the  
9 association foreclosure sale?

10 A No.

11 Q Did U.S. Bank ever communicate with the  
12 borrower about association dues, besides the planned  
13 unit development rider that's included in the deed  
14 of trust?

15 That wouldn't have been U.S. Bank; that  
16 would have been Wells Fargo.

17 So back to the original question.

18 A Not --

19 Q Did U.S. Bank ever communicate with them?

20 A Not that I saw.

21 Q Did Wells Fargo ever communicate with  
22 U.S. Bank about the association lien or association  
23 foreclosure?

24 A No.

25 Q Are there any other entities besides

1 U.S. Bank that claim an interest in the first deed  
2 of trust?

3 **A No.**

4 Q Are there any other entities besides  
5 U.S. Bank that claim an interest in the promissory  
6 note?

7 **A No.**

8 Q Does Fannie Mae have an interest in this  
9 loan?

10 **A No.**

11 Q Does Freddie Mac have an interest in this  
12 loan?

13 **A No.**

14 Q Is this loan FHA insured?

15 **A It is not.**

16 Q Is there any references to SFR Investments  
17 Pool 1, LLC, in your file before the date of  
18 litigation?

19 **A Before the date of the foreclosure sale or**  
20 **litigation?**

21 Q Before litigation.

22 MR. DELIKANAKIS: Scope.

23 **A Not that I can remember.**

24 BY MS. EBRON:

25 Q Did U.S. Bank make any payments to the



1 association on behalf of this property?

2 **A No.**

3 Q Did U.S. Bank attend or participate in the  
4 association foreclosure sale?

5 **A No.**

6 Q Did U.S. Bank participate in any civil or  
7 administrative action challenging the association  
8 lien or association foreclosure sale before the date  
9 of the association foreclosure sale?

10 **A No.**

11 Q Were there any internal communications  
12 that mentioned the association's lien, what  
13 association assessments, or association foreclosure  
14 sale as it relates to the property before the date  
15 of the association foreclosure sale?

16 **A The one letter indicating the borrower was**  
17 **past due on their dues.**

18 Q Has U.S. Bank ever communicated with the  
19 FHFA regarding this loan?

20 **A No.**

21 Q What is U.S. Bank's factual basis for its  
22 allegation that the deed of trust was not  
23 extinguished by the association foreclosure sale?

24 **A That the first deed of trust was recorded**  
25 **in first position at the time of origination and**

1     **remains there to date.**

2             Q     Anything else?

3             **A     No.**

4             MS. EBRON: Counsel, do you want to ask  
5 questions?

6             MR. VILKIN: Are you done?

7             MS. EBRON: I believe I am.

8             MR. VILKIN: Okay. So I have --

9             MS. EBRON: I might have follow-ups.

10            MR. VILKIN: Can we go off the record for  
11 a second?

12            (Recess taken.)

13            MR. DELIKANAKIS: This is  
14 John Delikanakis. We've had a conversation amongst  
15 counsel to continue this deposition, and what's been  
16 proposed and agreed upon by counsel is that we will  
17 look at two dates when the PMK deponent is supposed  
18 to be in Las Vegas, March 25th of 2016 and  
19 April 8th of 2016.

20            I will check with the client and our  
21 scheduling and see if he's, in fact, available to  
22 take another -- what? -- two-and-a-half, two hours  
23 of deposition?

24            Is that correct, Counsel?

25            MR. VILKIN: Yes.

1 MR. DELIKANAKIS: About two hours of  
2 deposition so we can finish this PMK deposition.  
3 I'll report back to counsel his availability and see  
4 if that works.

5 MR. VILKIN: And if it doesn't work, we  
6 discussed the possibility of finishing the depo by  
7 telephone.

8 MR. DELIKANAKIS: Agreed.

9 MS. EBRON: Agreed.

10 MR. WAITE: That's fine.

11 THE WITNESS: Thank you.

12 THE REPORTER: And for your copies,  
13 Counsel, do you prefer electronic or hard copy?

14 MR. DELIKANAKIS: Electronic.

15 THE REPORTER: Just electronic?

16 MR. DELIKANAKIS: Right now, electronic.

17 THE REPORTER: And yours?

18 MR. VILKIN: Well, I hadn't ordered one  
19 yet, but I will, yes.

20 THE REPORTER: Electronic?

21 MR. VILKIN: Yes. Thank you.

22 THE REPORTER: And yours?

23 MR. WAITE: I don't think we're ordering  
24 one.

25 THE REPORTER: Okay.

1 MR. VILKIN: Actually, you know what?

2 I'll take a hard copy as well.

3 (Discussion held off the record.)

4 MR. DELIKANAKIS: Send me a hard copy as  
5 well, E-Tran, disc.

6 THE REPORTER: Read and sign through your  
7 office?

8 MR. DELIKANAKIS: Yes.

9 THE REPORTER: Thank you.

10 (Proceedings concluded at 5:13 p.m.)

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CERTIFICATE OF DEPONENT

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\* \* \* \* \*

I, Robert Ferguson, Deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition, under penalty of perjury.

\_\_\_\_\_  
Robert Ferguson, Deponent

30(b)(6) Robert Ferguson - 2/10/2016  
SFR Investments Pool 1, LLC vs. U.S. Bank, N.A., et al.

1 STATE OF NEVADA )  
COUNTY OF CLARK )

2

3

CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a duly commissioned and  
5 licensed court reporter, Clark County, State of  
6 Nevada, do hereby certify:


7

That I reported the taking of the deposition of  
8 Robert Ferguson, commencing on Wednesday, February  
9 10, 2016, at the hour of 3:21 p.m.; that the witness  
10 was, by me, duly sworn to testify to the truth and  
11 that I thereafter transcribed my said shorthand  
12 notes into typewriting, and that the typewritten  
13 transcript of said deposition is a complete, true,  
14 and accurate transcription of said shorthand notes;  
15 that I am not a relative or employee of any of the  
16 parties involved in said action, nor a relative or  
17 employee of an attorney involved in nor a person  
18 financially interested in said action; further, that  
19 the reading and signing of the transcript was  
20 requested.

21

IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of  
23 Nevada, this 19th day of February, 2016.

24

  
CCR 887 - LST

25

ANDREA N. MARTIN, CRR, CCR NO. 887

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.	)	Volume II, Page 75 to 107
	)	
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;	)	March 23, 2016
and ROES 1-10, inclusive	)	at 8:38 a.m.
	)	
Defendants.	)	
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	)	

)  
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  
(Volume II, Pages 75 to 107)

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

on Wednesday, March 23, 2016  
8:38 a.m.

Job No. 21962  
Depo International - Las Vegas  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter



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

2 8:38 a.m.

3 -oOo-

4 (In an off-the-record discussion held  
5 prior to the commencement of the  
6 proceedings, counsel agreed to waive the  
7 court reporter's requirements under Rule  
8 30(b)(4) of the Nevada Rules of Civil  
9 Procedure.)

10 ROBERT FERGUSON,  
11 having been first duly sworn by the court reporter  
12 to testify to the truth, the whole truth, and  
13 nothing but the truth, was examined and testified  
14 under oath as follows:

15 EXAMINATION

16 BY MR. VILKIN:

17 Q Can you state your name for the record.

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

19 Q Mr. Ferguson, good morning.

20 My name is Richard Vilkin, and I represent  
21 Third Party Defendant, Nevada Association Services,  
22 Inc., trustee for the homeowners association for  
23 closing on the property that's at issue in this  
24 case.

25 We appreciate you being here today.

1 MR. VILKIN: First, I'd like to get  
2 straight how we're going to be handling the  
3 exhibits, because we don't have the originals here.  
4 However, Ms. Ebron has made a full set of copies  
5 that have been distributed to everyone.

6 And do we have agreement of all counsel  
7 that when we refer to those exhibits, we are  
8 referring to what is contained in the originals?

9 MR. DELIKANAKIS: Yes.

10 MS. EBRON: Yes. And that's Exhibits 1  
11 through 29 from the deposition that we began on  
12 February 10th, 2016, at 3 p.m.

13 MR. VILKIN: Thank you.

14 BY MR. VILKIN:

15 Q And we're going to add one exhibit, which  
16 will be Exhibit 30, which is the First Amended  
17 Notice of Continued 30(b)(6) Deposition of U.S. Bank  
18 prepared by Ms. Ebron's office and dated  
19 March 18th, 2016.

20 (Deposition Exhibit 30 was marked for  
21 identification.)

22 BY MR. VILKIN:

23 Q Mr. Ferguson, at the first session of your  
24 deposition, you were allowed to review Exhibit 1,  
25 which I'm going to give to you again. As I recall

1 your testimony, you stated you had reviewed that  
2 document prior to the first session of your  
3 deposition and that you were the person designated  
4 to testify to those topics; is that correct?

5 **A That's correct.**

6 Q And I'll give you Exhibit 30, which I  
7 believe contains the exact same topics. The only  
8 change in that document is the date upon which the  
9 second session of your deposition is occurring.

10 I just ask you again: Are you designated  
11 to testify to the topics in Exhibit 30?

12 **A Yes.**

13 Q Okay. Thank you.

14 Now, the transcript of your first -- the  
15 first session of your deposition that was taken on  
16 February 10th, 2016 has been prepared. Have you  
17 had a chance to review that yet?

18 **A I have.**

19 Q Have you signed it or made any changes to  
20 it?

21 **A I haven't signed it, and I don't plan on  
22 making any changes to the testimony.**

23 Q So is it fair to say that after review of  
24 the transcript, there's nothing in there that you  
25 would change as of the beginning of this deposition

1 here today?

2 **A No, there's nothing I would change.**

3 Q Okay. Thank you.

4 And at the beginning of the first session  
5 of your deposition, Ms. Ebron went through a series  
6 of explanations of how a deposition works and the  
7 ground rules, and we generally call them  
8 "admonitions."

9 Would you like me to repeat those, or can  
10 you recall those from the first session of your  
11 deposition?

12 **A I can recall them from my first session.**

13 Q Okay. Thank you.

14 So let's get to some real questions.

15 In the first session of your deposition,  
16 you were referring to a loan servicing platform.  
17 I'd just like to get some more information on that  
18 from you.

19 Is that a computer program that's  
20 maintained to collect information about the  
21 promissory note and deed of trust concerning the  
22 property in this case?

23 **A Yes, it contains information from the note**  
24 **and the deed of trust. That's correct.**

25 Q And am I correct that the loan servicing

1 platform is then used to record information  
2 subsequent to the promissory note and deed of trust  
3 concerning those documents or related to those  
4 documents?

5 MR. DELIKANAKIS: Objection to the form of  
6 the question.

7 **A The servicing platform contains**  
8 **information related to the servicing of the note and**  
9 **the deed of trust.**

10 BY MR. VILKIN:

11 Q And so, for example, if your company was  
12 to receive information related to those -- related  
13 to the servicing of those promissory notes and deeds  
14 of trust, you would expect that information to be  
15 recorded in one form or another in your loan  
16 servicing platform?

17 **A Yes.**

18 Q Let's just say, for example, you were to  
19 get a notice of foreclosure sale relative to the  
20 property involved with that promissory note and deed  
21 of trust.

22 Does the loan servicing platform record  
23 the date that document was received by your company?

24 **A It would.**

25 Q Does it also record separately the date



1 upon which that information was entered into the  
2 loan servicing platform, if that makes sense to you?  
3 I can explain a little more, if you'd like.

4 **A Maybe is it -- rephrase it.**

5 Q What I'm trying to find out: Does the  
6 loan servicing platform distinguish between the date  
7 a document is physically received at your company,  
8 as opposed to the date the information is entered  
9 into the loan servicing platform?

10 **A If there's any variance in those dates, it**  
11 **would be noted in the loan servicing platform.**

12 Q Typically, when is it -- let's just say  
13 you receive a notice of foreclosure sale.  
14 Typically, how long should it take between when the  
15 document is physically received at your company when  
16 the information is entered into the loan servicing  
17 platform?

18 **A Within a business day of receipt. If the**  
19 **loan is able to be -- if the document is able to be**  
20 **identified as belonging to a specific loan, that**  
21 **information should be notated within a business day**  
22 **of receipt on that loan.**

23 Q And if there's some problem identifying  
24 which loan it is, it could take an unknown amount of  
25 time, as long as it takes to figure out which loan

1 it pertains to? Is that what you're communicating?

2 **A Yes.**

3 Q Now, if someone were to request a copy of  
4 a document from your company and you were to --  
5 could you print it out from the loan servicing  
6 platform?

7 **A What would be housed in the loan servicing**  
8 **platform would be the notation of the receipt of the**  
9 **document. The copy of the document would be housed**  
10 **in a different system.**

11 Q What system was that?

12 **A Our loan imaging system.**

13 Q And is there some sort of coding or  
14 linkage between the loan servicing platform and the  
15 imaging system to allow you to find something?

16 MR. DELIKANAKIS: Objection to the form of  
17 the question.

18 If you understand what he's asking.

19 **A There's a common loan number associated**  
20 **with both systems, so the same loan number you would**  
21 **use to look up the loan in our loan servicing**  
22 **platform would be the same number you would use to**  
23 **look up the loan in the loan imaging system.**

24 BY MR. VILKIN:

25 Q So if I wanted to find out the date upon

1     which a document was received, would you advise me  
2     to ask for a printout of the information pertaining  
3     to that document in the loan servicing platform or  
4     the imaging platform or both?

5             **A     The -- both.**

6             Q     And what information -- let's just start  
7     with the loan servicing platform.

8                     Do I understand your prior testimony to  
9     be -- correct me if I'm wrong -- that if a document  
10    like a notice of sale was received and assuming it  
11    could be immediately identified to match up with one  
12    of your loan numbers, there would be some sort of  
13    documentation or notation in the loan servicing  
14    platform indicating the date received of that  
15    document?

16            **A     Yes.**

17            Q     And can you tell me how that -- what sort  
18    of information would be in the loan servicing  
19    platform relative to that document?

20            **A     A general description of what was**  
21    **received, and then there would be the date on which**  
22    **the note was entered.**

23            Q     Okay. That would be on the loan servicing  
24    platform; right?

25            **A     Correct.**

1           Q     Is there any language that says when it  
2     was received?

3           A     There could be, if the rep notating  
4     receipt of the document took the time to further  
5     detail their note. It would be up to the individual  
6     user, as to what they input.

7           Q     If there was some problem when a document  
8     was received, in terms of identifying it or  
9     connecting it to a loan number, would you expect  
10    there to be a notation in the loan servicing  
11    platform to that effect? For example, you know, it  
12    took us two weeks to figure this one out and  
13    determine which loan number this is.

14          A     I haven't seen a notation such as that, so  
15    I'm not sure if that would be typical.

16               What you normally see is identification of  
17    a document, the date that -- date and time stamp  
18    when the entry was made, and then there will be a  
19    corresponding document in the imaging system, and  
20    the imaging -- the image of that document would  
21    contain more specifics, if there was a date stamp or  
22    anything like that was placed on the document, you  
23    would see it in there.

24          Q     When you say "if there was a date stamp,"  
25    are you talking about a date stamp applied to the

1 document when received by your company?

2 **A Correct.**

3 Q Is that a common practice of your company,  
4 to date stamp documents with a stamp the date they  
5 are received?

6 **A Yes, in most areas, that's common for a**  
7 **stamp to be placed on it or some other type of**  
8 **notation that the bank has identified the loan.**

9 **Some departments use a stamp; some don't.**  
10 **Some will write on the document; some don't.**

11 Q If you could take a look at Exhibit 16.  
12 Did this document come from your imaging system?

13 **A I believe it did not come from our imaging**  
14 **system.**

15 Q And why do you believe that?

16 **A I reviewed the documents in the imaging**  
17 **system dated from origination to the date of the**  
18 **foreclosure sale, and I did not see this document in**  
19 **my review.**

20 Q Did you see any reference to it in the  
21 loan servicing platform?

22 **A I did not.**

23 Q If you could go to Exhibit 18. Just tell  
24 me when you've had a chance to review that.

25 **A Okay.**

1 Q Was this document in your imaging system?

2 A Not that I saw.

3 Q Well, you looked at it. You looked at all  
4 the document in your imaging system relative to this  
5 loan?

6 A Correct. Right. And I'll just say it may  
7 be part of your imaging system now, but at the time  
8 of the foreclosure sale to origination, it did not  
9 exist in that population of documents.

10 Q And how do you know that?

11 A Because I reviewed all the documents in  
12 the imaging system and did not see this one.

13 Q That were received prior to March 1st of  
14 2013?

15 A Correct.

16 Q Take a look, if you would, at Exhibit 19.  
17 Just tell me when you've had a chance to familiarize  
18 yourself with that.

19 A Okay.

20 Q Was this document received and in your  
21 imaging system prior to March 1st of 2013?

22 A It was not.

23 Q And how do you know that?

24 A Because I reviewed all of the documents in  
25 the imaging system and did not see this document.

1 Q Did you see any reference to it in the  
2 loan servicing platform?

3 A I did not.

4 Q Just to go back for one second, did you  
5 see any references in your loan servicing platform  
6 to Exhibit 18?

7 A No.

8 Q What company do you currently work for?

9 A Wells Fargo Bank, NA.

10 Q And you are -- what's your relationship to  
11 Wells Fargo, in terms of this property or this loan?

12 A I work for Wells Fargo. I'm not sure of  
13 your question.

14 Typically, do you mean in relationship to  
15 U.S. Bank.

16 MR. VILKIN: To U.S. Bank. Sorry.

17 A Wells Fargo Bank is the servicer on behalf  
18 of U.S. Bank, as trustee for the pool of loans that  
19 contain the Parks' loan.

20 BY MR. VILKIN:

21 Q So the loan servicing platform is  
22 maintained and controlled by Wells Fargo?

23 A That's correct.

24 Q Now, if you could look at Exhibit 17.

25 Just tell me when you've had a chance to familiarize

1     yourself with that.

2           **A     Okay.**

3           Q     Can you just describe in general terms  
4     what was happening in this document.

5           **A     This is a recorded document that is**  
6     **assigning the mortgage, which has been introduced in**  
7     **this -- in the prior exhibit as Exhibit 3, and it's**  
8     **assigning the mortgage from Wells Fargo to U.S. Bank**  
9     **National Association, and then there's the name of**  
10    **the trust that follows.**

11          Q     And there's an address in that document  
12    for Wells Fargo at One Home Campus, Des Moines,  
13    Iowa. Do you see that?

14          **A     I do.**

15          Q     And then there's another address for U.S.  
16    Bank, et al., at 60 Livingston Avenue in Saint Paul;  
17    correct?

18          **A     I see that.**

19          Q     Now, if some third party wanted to send a  
20    notice concerning this mortgage after the date of  
21    this recording, on June 7th, 2012, which address  
22    should it have sent it to?

23          **A     The address for -- that's listed in the**  
24    **Secretary of State website for Nevada, I believe,**  
25    **gives Wells Fargo's proper service address.**



1 Q Well, if a party sent the notice to  
2 60 Livingston Avenue, would it have ended up in your  
3 servicing platform and imaging system -- or should  
4 it have, I guess is the proper way to say it?

5 A I'm unsure what U.S. Bank's processes were  
6 for dealing with mail.

7 Q Well, I believe in the first session of  
8 your deposition you testified there was some sort of  
9 agreement associated with this assignment between  
10 Wells Fargo and U.S. Bank; is that correct?

11 MR. DELIKANAKIS: Objection --

12 BY MR. VILKIN:

13 Q Is there a separate agreement?

14 MR. DELIKANAKIS: Objection: Form of the  
15 question.

16 A There is agreement governing Wells Fargo  
17 role as servicer and U.S. Bank's role as trustee,  
18 and it's the pooling and servicing agreement.

19 BY MR. VILKIN:

20 Q To your recollection, does the pooling and  
21 servicing agreement put any obligations on behalf of  
22 either party in terms of what to do with a document  
23 such as notices associated with the loan?

24 A I haven't studied the servicing agreement  
25 related to that question.

1 Q So the answer would be, as you sit here  
2 today, you don't know?

3 A That's correct.

4 Q Why is it that, in answering my prior  
5 question, you indicated that notices should be sent  
6 after the recording of Exhibit 17 to Wells Fargo, as  
7 opposed to U.S. Bank, since this -- since Exhibit 17  
8 was an assignment from Wells Fargo to U.S. Bank?

9 A The assignment is a recorded document  
10 that's done in preparation of the bank's foreclosure  
11 on the first deed of trust, and so before we can  
12 foreclose in the proper name of the trust, we have  
13 to assign it from the servicer, who is Wells Fargo  
14 in this case, and the originator of the loan to the  
15 name of the trust so that we can foreclose in the  
16 proper name.

17 That's what I understand the reason is for  
18 the assignment of mortgage. I don't think it has  
19 anything specific to do with how third parties would  
20 serve Wells Fargo with legal documents, or the like,  
21 or provide notice to either entity listed on this  
22 document.

23 Q Now, you're, I think, aware, as of today,  
24 at least, that there was foreclosure by the HOA on  
25 an assessment lien on this property; correct?

1           **A     That 's correct .**

2           Q     When you looked at your loan servicing  
3 platform, did you see any reference to any kind of  
4 delinquency or foreclosure by the HOA that was  
5 entered into your system prior to March 1st of  
6 2013, which I'll represent to you is the date of the  
7 foreclosure sale by the HOA?

8           MR. DELIKANAKIS: Objection to the form of  
9 the question.

10          **A     Not before the sale. I did see**  
11 **information related to the HOA foreclosure sale in**  
12 **our loan servicing platform and our image system on**  
13 **March 5th, so four days after the sale.**

14 BY MR. VILKIN:

15          Q     Let's start with the loan servicing  
16 platform.

17               What information did you see entered into  
18 your loan servicing platform as of March 5th,  
19 2013?

20          **A     I saw a notation from our trustee -- I**  
21 **believe it was National Default -- indicating that**  
22 **they received a notice of foreclosure sale on this**  
23 **property, and that was the extent of the note.**

24          Q     What form was that information? Was it an  
25 e-mail? Was it a document? A letter?

1           **A**     It was a notation by -- I can't think of  
2     their name right now, but it was a notation by an  
3     employee of the trustee --

4           Q     National Default --

5           **A**     Yes.

6                 -- communicating through a system called  
7     "LPS," which links the trustee, National Default, to  
8     Wells Fargo servicing platform for purposes of  
9     communicating.

10          Q     What does "LPS" stand for, just for the  
11     record, if you know?

12          **A**     I don't know.

13          Q     So I assume that that system, the LPS  
14     system, allows, essentially, in a simplistic  
15     description, electronic communications between  
16     entities?

17          **A**     Correct, between the trustee and  
18     Wells Fargo.

19          Q     Does that entry indicate on what date  
20     National Default received the notice of the sale?

21          **A**     No, just the note at which the person at  
22     National Default entered it.

23          Q     As you recall, does the note say that they  
24     found out that there was a sale or a notice of a  
25     sale?

1           **A**     The note just says there was a document  
2     pertaining to a foreclosure on the property and that  
3     they uploaded the same to our system, which I  
4     believe turned into an exhibit in our first session.

5           Q     Would that be -- if you could take a look  
6     at 18 and 19, is it one of those two?

7           **A**     It is not 18 or 19.

8           Q     Is it 16 --

9           **A**     I can find it.

10          Q     -- or 20?

11          **A**     It is not 16. It is not 15. Let me  
12     just -- do you want me to go through them and pull  
13     out --

14          Q     Sure.

15                 MS. EBRON: Are you looking for notes?

16                 THE WITNESS: No.

17                 MR. VILKIN: He's looking for the document  
18     that was uploaded.

19     BY MR. VILKIN:

20          Q     Correct, Mr. Ferguson --

21          **A**     Yes.

22          Q     -- the document uploaded to your system on  
23     March 5th, 2013; correct?

24          **A**     That's correct.

25          Q     So your answer is the document that was

1 uploaded to your system is a document previously  
2 marked as Exhibit 27 to your deposition?

3 **A That's correct.**

4 Q And so if I understand what you're saying,  
5 what you're testifying to, when you looked through  
6 your imaging system, you saw Exhibit 27; correct?

7 **A I did.**

8 Q Was it date stamped in any way by your  
9 company?

10 **A No. It appears as it does on this**  
11 **exhibit.**

12 Q And is that because it was received  
13 through LPS, as opposed to mailed or delivered to  
14 your job physically?

15 MR. DELIKANAKIS: Objection to the form of  
16 the question.

17 **A I do not know.**

18 BY MR. VILKIN:

19 Q Well, that actually raises another  
20 question.

21 We were talking before about your loan  
22 servicing platform and what would happen to  
23 documents that were mailed to your company.

24 If something was sent electronically,  
25 would you also expect it to be "Received" stamped by

1 your company?

2           **A**     If it's sent electronically directly to  
3 Wells Fargo, there would be -- well, if it was  
4 faxed, there would be a system-generated date  
5 stamped.

6                   If it was sent electronically via e-mail,  
7 there would be the associated e-mail, which would,  
8 again, be date stamped.

9           Q     Okay. Well, in the case of Exhibit 27,  
10 which you have indicated that you saw in your  
11 imaging system, is there any information that you  
12 saw in either your loan servicing platform or  
13 imaging system that indicated when this document was  
14 received by Wells Fargo?

15           **A**     It was received by Wells Fargo on the  
16 5th of March.

17           Q     And again, if you would -- I'm sorry if  
18 I'm repeating it, but how do you know that?

19           **A**     It appears on our imaging system on that  
20 date, and there's a corresponding note in our system  
21 that was entered by National Default as a  
22 communication to Wells Fargo referencing the same  
23 document.

24           Q     And just to finish up -- and if I'm  
25 repeating, I apologize, but as I understand it now,

1 based on your testimony, your system does not have  
2 any information to indicate when National Default  
3 received Exhibit 27; is that correct?

4 **A That's correct.**

5 Q Now, when you were reviewing your  
6 system -- and if I've asked this previously, I  
7 apologize, but I think my understanding is -- if you  
8 can just confirm it -- you didn't see any reference  
9 that you ever received Exhibits 16, 18, 19, and  
10 20 -- or, excuse me, 16, 18, and 19 prior to  
11 March 1st of 2013; correct?

12 **A That is correct.**

13 Q But is it true that you did receive those  
14 sometime after March 1st, 2013, or any of those?

15 **A I believe all of these recorded documents**  
16 **were pulled from the Clark County Records Office**  
17 **sometime after March 2013, in preparation for**  
18 **this -- or in the efforts regarding this particular**  
19 **lawsuit.**

20 Q So do I understand you to be saying that  
21 you believe these documents, 16, 18, and 19, were  
22 first received by Wells Fargo sometime after the  
23 commencement of the current lawsuit?

24 **A That's correct.**

25 Q And did you see any information in the



1 either the loan servicing platform or the imaging  
2 system that had dates associated with 16, 18, or 19,  
3 as to when there were first received?

4 **A I did not.**

5 Q Are you saying it doesn't exist or you  
6 just don't remember seeing it?

7 **A It doesn't exist between the date of the**  
8 **HOA foreclosure sale and the origination of the**  
9 **mortgage.**

10 Q So that's up to and including March 1st,  
11 2013; correct?

12 **A Well, and I obviously looked in our system**  
13 **a view days after the sale, because that's when I**  
14 **found what we've referred to as Exhibit 27 in the**  
15 **corresponding note, which was on March 5th.**

16 Q But what about the time period between  
17 March 5th -- let's just use that date -- 2013, if  
18 that's the date you looked at it, which I believe is  
19 correct, and the date this lawsuit was filed?

20 **A I wouldn't have looked at documents in our**  
21 **system between those dates.**

22 Q So they could be reflected at some point  
23 in there; you just didn't look at them in  
24 preparation for this deposition; is that correct?

25 **A That's correct.**

1 Q Since the first session of your deposition  
2 on February 10th, 2016, did you review any  
3 additional documents --

4 A The.

5 Q -- other than the transcript from  
6 February 10th?

7 A The transcript and I re-reviewed servicing  
8 notes in -- that were between originations and the  
9 foreclosure sale date, but no new documents besides  
10 the transcript.

11 Q Just one more topic. Almost done.

12 In reviewing the loan servicing platform,  
13 did you see any references to a bankruptcy case?

14 A I did.

15 Q Can you just tell us what you recall  
16 seeing in the notes on the loan servicing platform  
17 relative to a bankruptcy case?

18 A The borrower filed, I believe, a  
19 Chapter 11 bankruptcy, and it stuck out because  
20 usually it's a 7 or 13; and the bank finally was  
21 granted relief from stay in December of '12 from  
22 that bankruptcy.

23 Q Is that all you can recall at this  
24 point --

25 A Yes.

1 Q -- today?

2 MR. VILKIN: I don't have anything  
3 further. Thank you.

4 EXAMINATION

5 BY MR. WAITE:

6 Q I just have one question.

7 It's the LPS system?

8 **A Yes.**

9 Q Who has access to that? Meaning who can  
10 input into that system, and do they -- go ahead.

11 **A The trustee and Wells Fargo.**

12 Q Do people have to have a -- do those  
13 people have to have a log-in?

14 **A Yes.**

15 Q And is that somehow noted in the system,  
16 that this person is the person associated with this  
17 note?

18 **A In the LPS system, yes.**

19 **In the mortgage servicing platform,**  
20 **Wells Fargo system, the note comes over as a generic**  
21 **LPS note.**

22 Q Is there anyone else that has access to  
23 that system and input?

24 **A Just team members at Wells Fargo that are**  
25 **associated with default servicing, and then specific**

1 trustees that Wells Fargo has engaged to perform  
2 nonjudicial foreclosures on behalf of the bank.

3 Q Once something's input into that system,  
4 is that permanent or can it be deleted?

5 A It's permanent.

6 Q And so there's no way to get rid of it?

7 A That's correct.

8 MR. WAITE: That's all I have.

9 MS. EBRON: Off the record for a second.

10 (Pause in proceedings.)

11 MS. EBRON: That's it.

12 MR. DELIKANAKIS: Thank you.

13 MR. VILKIN: All right. Thank you.

14 THE REPORTER: All instructions same as  
15 last time?

16 MR. VILKIN: Yes.

17 MR. DELIKANAKIS: Yes.

18 THE REPORTER: Thank you.

19 (Proceedings concluded at 9:14 a.m..)

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CERTIFICATE OF DEPONENT

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\* \* \* \* \*

I, Robert Ferguson, Deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be Volume II of my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition, under penalty of perjury.

\_\_\_\_\_  
Robert Ferguson, Deponent

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1 STATE OF NEVADA )  
COUNTY OF CLARK )

2

3

CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a duly commissioned and  
5 licensed court reporter, Clark County, State of  
6 Nevada, do hereby certify:

7

That I reported the taking of Volume II of the  
8 deposition of Robert Ferguson, commencing on  
9 Wednesday, March 23, 2016, at the hour of 8:38 a.m.;  
10 that the witness was, by me, duly sworn to testify  
11 to the truth and that I thereafter transcribed my  
12 said shorthand notes into typewriting, and that the  
13 typewritten transcript of said deposition is a  
14 complete, true, and accurate transcription of said  
15 shorthand notes; that I am not a relative or  
16 employee of any of the parties involved in said  
17 action, nor a relative or employee of an attorney  
18 involved in nor a person financially interested in  
19 said action; further, that the reading and signing  
20 of the transcript was requested.

21

IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of  
23 Nevada, this 1st day of April, 2016.

24

25

ANDREA N. MARTIN, CRR, CCR NO. 887

1 STATE OF NEVADA )  
COUNTY OF CLARK )

2

3 CERTIFICATE OF REPORTER

4 I, Andrea N. Martin, a duly commissioned and  
5 licensed court reporter, Clark County, State of  
6 Nevada, do hereby certify:

7 That I reported the taking of Volume II of the  
8 deposition of Robert Ferguson, commencing on  
9 Wednesday, March 23, 2016, at the hour of 8:38 a.m.;  
10 that the witness was, by me, duly sworn to testify  
11 to the truth and that I thereafter transcribed my  
12 said shorthand notes into typewriting, and that the  
13 typewritten transcript of said deposition is a  
14 complete, true, and accurate transcription of said  
15 shorthand notes; that I am not a relative or  
16 employee of any of the parties involved in said  
17 action, nor a relative or employee of an attorney  
18 involved in nor a person financially interested in  
19 said action; further, that the reading and signing  
20 of the transcript was requested.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of  
23 Nevada, this 1st day of April, 2016.

24

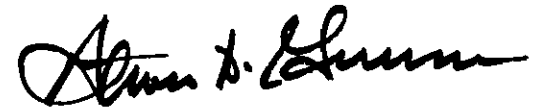
  
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25

ANDREA N. MARTIN, CRR, CCR NO. 887



# **TAB 26**



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13 Attorney for defendant,

14 NV WEST SERVICING, LLC a Nevada limited

15 liability company, as trustee for NASHVILLE

16 TRUST 2270

17 DISTRICT COURT

18 CLARK COUNTY, NEVADA

19 SFR INVESTMENTS POOL; 1, LLC a Nevada  
20 limited liability company,

21 Plaintiff,

22 vs.

23 US BANK, N.A., a national banking  
24 association as Trustee for the Certificate Holder  
25 of Wells Fargo Asset Securities Corporation,  
26 Mortgaged Pass-Through Certificates, Series  
27 2006-AR4, a Nevada non-profit corporation  
28 and LUCIA PARKS, an individual, DOES I  
through X; and ROE CORPORATIONS I  
through X, inclusive,

Defendant.

CASE NO.: A-13-678814-C

Consolidated with

CASE NO.: A-13-688734-C

DEPT NO.: XXXI

**NV WEST SERVICING, LLC'S JOINDER  
TO U.S. BANK'S OPPOSITION TO SFR  
INVESTMENT POOL 1, LLC'S MOTION  
FOR SUMMARY JUDGMENT**

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

3 Plaintiff

4 vs

5 U.S. BANK, N.A., a national banking  
6 association as Trustee for the Certificate Holder  
7 of Wells Fargo Asset Securities Corporation,  
8 Mortgaged Pass-Through Certificates, Series  
9 2006-AR4; NV WEST SERVICING, LLC a  
Nevada limited liability company, as trustee for  
NASHVILLE TRUST 2270; DOES I-X; and  
ROES I-10, inclusive,

10 Defendants

11 NV WEST SERVICING, LLC a Nevada  
12 limited liability company, as trustee for  
NASHVILLE TRUST 2270

13 Crossclaimant

14 vs

15 NATIONAL DEFAULT SERVICING  
16 CORPORATION an Arizona Corporation; does  
XI through XX,

17 Third Party Defendant.

18  
19 NV WEST SERVICING, LLC a Nevada limited liability company, as trustee for NASHVILLE  
20 TRUST 2270, by and through it's attorney Michael F. Bohn, Esq. hereby joins U.S. Bank's opposition  
21 to SFR Investments Pool 1, LLC's Motion for Summary Judgment filed on February 7, 2017.

22 DATED this 5th day of May 2017.

23 LAW OFFICES OF  
24 MICHAEL F. BOHN, ESQ., LTD.

25  
26 By: /s/ Michael F. Bohn  
27 MICHAEL F. BOHN, ESQ.  
28 376 East Warm Springs Road, Suite 140  
Las Vegas, Nevada 89119  
Attorneys for Nashville Trust 2270

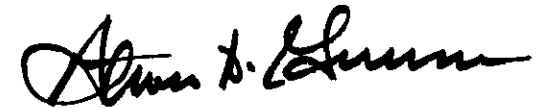
## CERTIFICATE OF SERVICE

Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 5th day of May 2017, an electronic copy of the **NV WEST SERVICING, LLC'S JOINDER TO U.S. BANK'S OPPOSITION TO SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

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/s/ /Marc Sameroff/  
An Employee of the LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

# **TAB 27**



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NV WEST SERVICING, LLC a Nevada limited  
liability company, as trustee for NASHVILLE

TRUST 2270

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

US BANK, N.A., a national banking  
association as Trustee for the Certificate Holder  
of Wells Fargo Asset Securities Corporation,  
Mortgaged 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,

Defendant.

CASE NO.: A-13-678814-C

Consolidated with

CASE NO.: A-13-688734-C

DEPT NO.: XXXI

**NV WEST SERVICING, LLC'S JOINDER  
TO U.S. BANK'S OPPOSITION TO  
COPPER RIDGE COMMUNITY  
ASSOCIATION'S RENEWED MOTION  
FOR SUMMARY JUDGMENT**

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

3 Plaintiff

4 vs

5 U.S. BANK, N.A., a national banking  
6 association as Trustee for the Certificate Holder  
7 of Wells Fargo Asset Securities Corporation,  
8 Mortgaged Pass-Through Certificates, Series  
9 2006-AR4; NV WEST SERVICING, LLC a  
Nevada limited liability company, as trustee for  
NASHVILLE TRUST 2270; DOES I-X; and  
ROES I-10, inclusive,

10 Defendants

11 NV WEST SERVICING, LLC a Nevada  
12 limited liability company, as trustee for  
NASHVILLE TRUST 2270

13 Crossclaimant

14 vs

15 NATIONAL DEFAULT SERVICING  
16 CORPORATION an Arizona Corporation; does  
XI through XX,

17 Third Party Defendant.

18  
19 NV WEST SERVICING, LLC a Nevada limited liability company, as trustee for NASHVILLE  
20 TRUST 2270, by and through it's attorney Michael F. Bohn, Esq. hereby joins U.S. Bank's opposition  
21 to Copper Ridge Community Association's Renewed Motion for Summary Judgment filed on February  
22 8, 2017.

23 DATED this 5th day of May 2017.

24  
25 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

26  
27 By: /s/ Michael F. Bohn  
MICHAEL F. BOHN, ESQ.  
376 East Warm Springs Road, Suite 140  
28 Las Vegas, Nevada 89119  
Attorneys for Nashville Trust 2270

## CERTIFICATE OF SERVICE

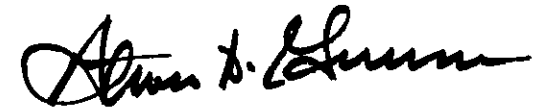
Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 5th day of May 2017, an electronic copy of the **NV WEST SERVICING, LLC'S JOINDER TO U.S. BANK'S OPPOSITION TO COPPER RIDGE COMMUNITY ASSOCIATION'S RENEWED MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

<b>Alverson Taylor Mortensen &amp; Sanders</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Adam Knecht	<a href="mailto:aknecht@alversonmortensen.com">aknecht@alversonmortensen.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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<b>Kim Gilbert Ebron</b>		
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Tomas Valerio	<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
<b>Law Offices of Richard Vilkin, P.C.</b>		
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Richard Vilkin	<a href="mailto:richard@vilkinlaw.com">richard@vilkinlaw.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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Brandon E. Wood	<a href="mailto:brandon@nas-inc.com">brandon@nas-inc.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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Maricris Williams	<a href="mailto:mawilliams@swlaw.com">mawilliams@swlaw.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
Richard C. Gordon	<a href="mailto:rgordon@swlaw.com">rgordon@swlaw.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
Robin Perkins	<a href="mailto:rperkins@swlaw.com">rperkins@swlaw.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>

/s/ /Marc Sameroff/  
An Employee of the LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.



# **TAB 28**



CLERK OF THE COURT

1 **JMSJ**  
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7 Attorney for defendant,  
8 NV WEST SERVICING, LLC a Nevada limited  
liability company, as trustee for NASHVILLE  
9 TRUST 2270

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

16 US BANK, N.A., a national banking  
17 association as Trustee for the Certificate Holder  
of Wells Fargo Asset Securities Corporation,  
18 Mortgaged Pass-Through Certificates, Series  
2006-AR4, a Nevada non-profit corporation  
19 and LUCIA PARKS, an individual, DOES I  
through X; and ROE CORPORATIONS I  
20 through X, inclusive,

21 Defendant.

CASE NO.: A-13-678814-C  
Consolidated with  
CASE NO.: A-13-688734-C

DEPT NO.: XXXI

**NV WEST SERVICING, LLC'S JOINDER  
TO U.S. BANK'S RENEWED MOTION  
FOR SUMMARY JUDGMENT**

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

3 Plaintiff

4 vs

5 U.S. BANK, N.A., a national banking  
6 association as Trustee for the Certificate Holder  
7 of Wells Fargo Asset Securities Corporation,  
8 Mortgaged Pass-Through Certificates, Series  
9 2006-AR4; NV WEST SERVICING, LLC a  
Nevada limited liability company, as trustee for  
NASHVILLE TRUST 2270; DOES I-X; and  
ROES I-10, inclusive,

10 Defendants

11 NV WEST SERVICING, LLC a Nevada  
12 limited liability company, as trustee for  
NASHVILLE TRUST 2270

13 Crossclaimant

14 vs

15 NATIONAL DEFAULT SERVICING  
16 CORPORATION an Arizona Corporation; does  
XI through XX,

17 Third Party Defendant.

18  
19 NV WEST SERVICING, LLC a Nevada limited liability company, as trustee for NASHVILLE  
20 TRUST 2270, by and through it's attorney Michael F. Bohn, Esq. hereby joins U.S. Bank's Renewed  
21 Motion for Summary Judgment filed on January 24, 2017.

22 DATED this 5th day of May 2017.

23 LAW OFFICES OF  
24 MICHAEL F. BOHN, ESQ., LTD.

25  
26 By: /s/ Michael F. Bohn  
MICHAEL F. BOHN, ESQ.  
27 376 East Warm Springs Road, Suite 140  
Las Vegas, Nevada 89119  
28 Attorneys for Nashville Trust 2270

## CERTIFICATE OF SERVICE

Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 5th day of May 2017, an electronic copy of the **NV WEST SERVICING, LLC'S JOINDER TO U.S. BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

<b>Alverson Taylor Mortensen &amp; Sanders</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Adam Knecht	<a href="mailto:aknecht@alversonmortensen.com">aknecht@alversonmortensen.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
Kurt R. Bonds	<a href="mailto:efie@alversonmortensen.com">efie@alversonmortensen.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
Kurt R. Bonds	<a href="mailto:kbonds@alversonmortensen.com">kbonds@alversonmortensen.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
Trevor R. Waite	<a href="mailto:twaiter@alversonmortensen.com">twaiter@alversonmortensen.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
<b>Kim Gilbert Ebron</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Diana Cline Ebron	<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
E-Service for Kim Gilbert Ebron	<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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<b>Law Offices of Richard Vilkin, P.C.</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
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<b>NAS</b>		
<b>Name</b>	<b>Email</b>	<b>Select</b>
Brandon E. Wood	<a href="mailto:brandon@nas-inc.com">brandon@nas-inc.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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<b>Name</b>	<b>Email</b>	<b>Select</b>
Candy Charlet - Legal Secretary	<a href="mailto:ccharlet@swlaw.com">ccharlet@swlaw.com</a>	<input checked="" type="checkbox"/> <input type="checkbox"/>
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/s/ /Marc Sameroff/  
An Employee of the LAW OFFICES OF  
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# **TAB 29**

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**NOTC**

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*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

**NOTICE OF BANKRUPTCY ORDER  
GRANTING RETROACTIVE  
ANNULMENT OF THE AUTOMATIC  
STAY**

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

SFR Investments Pool 1, LLC ("SFR") hereby files its NOTICE OF BANKRUPTCY ORDER GRANTING RETROACTIVE ANNULMENT OF THE AUTOMATIC STAY. As promised in SFR's Motion for Summary Judgment and during the Status Check of April 21, 2017, SFR hereby provides the written order regarding the retroactive annulment of the bankruptcy of Lucia Parks. This order is hereby attached as Exhibit 1.

DATED this 19th day of May 2017.

**KIM GILBERT EBRON**

/s/ Jaqueline A. Gilbert, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of May 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **NOTICE OF BANKRUPTCY ORDER GRANTING RETROACTIVE ANNULMENT OF THE AUTOMATIC STAY**, to the following parties.

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*/s/ Zachary Clayton*

An employee of Kim Gilbert Ebron



# EXHIBIT 1

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address David I. Brownstein (SBN 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 checked="" type="checkbox"/> Attorney for Movant <input type="checkbox"/> Movant appearing without an attorney</p>	<p>FOR COURT USE ONLY</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"><p><b>FILED &amp; ENTERED</b></p><p><b>MAY 15 2017</b></p><p>CLERK U.S. BANKRUPTCY COURT Central District of California BY <b>steinber</b> DEPUTY CLERK</p></div>
<p><b>UNITED STATES BANKRUPTCY COURT</b> <b>CENTRAL DISTRICT OF CALIFORNIA – <u>SANTA ANA</u> DIVISION</b></p>	
<p>In re:</p> <p><b>RICHARD PARKS, and LUCY PARKS,</b></p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 8:10-bk-21738-TA CHAPTER: 11</p>
	<p><b>ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)</b></p>
	<p>DATE: 3/28/2017 TIME: 10:30 am COURTROOM: 5B PLACE: Ronald Reagan Federal Building 411 W. Fourth Street, 5<sup>th</sup> Fl. Santa Ana, CA 92701</p>
<p><b>Movant:</b> SFR INVESTMENTS POOL 1, LLC</p>	

1. The Motion was: ☒ Opposed ☐ Unopposed ☐ Settled by stipulation

2. The Motion affects the following real property (Property):

Street address: 2270 Nashville Ave  
Unit/suite number: \_\_\_\_\_  
City, state, zip code: Henderson, NV 89052

Legal description or document recording number (including county of recording):  
LOT FIVE (5) IN BLOCK FIVE (5) OF FINAL MAP OF PARCEL 40, A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 71 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED DECEMBER 18, 1996 AS INSTRUMENT/FILE NO. 959 IN BOOK 961218 AND AS SHOWN BY MAP THEREOF ON FILE IN BOOK 77 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA Parcel No. 178-19-712-012  
☐ See attached page.

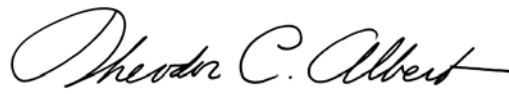
3. The Motion is granted under:
- ☒ 11 U.S.C. § 362(d)(1)
  - ☐ 11 U.S.C. § 362(d)(2)
  - ☐ 11 U.S.C. § 362(d)(3)
  - ☐ 11 U.S.C. § 362(d)(4). The filing of the bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved:
    - ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of the secured creditor or court approval; and/or
    - ☐ Multiple bankruptcy cases affecting the Property.
    - ☐ The court ☐ makes ☐ does not make ☐ cannot make a finding that the Debtor was involved in this scheme.
    - If recorded in compliance with applicable state laws governing notices of interests or liens in real property, this order shall be 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 this order by the court, except that a debtor in a subsequent case under this title may move for relief from this order based upon changed circumstances or for good cause shown, after notice and a hearing. Any federal, state or local government unit that accepts notices of interests or liens in real property shall accept any certified copy of this order for indexing and recording.
4. ☒ As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:
- ☒ Terminated as to the Debtor and the Debtor's bankruptcy estate.
  - ☐ Modified or conditioned as set forth in Exhibit \_\_\_\_\_ to this order.
  - ☒ Annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay.
5. ☐ Movant may enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.
6. ☐ Movant must not conduct a foreclosure sale of the Property before (date) \_\_\_\_\_.
7. ☐ The stay shall remain in effect subject to the terms and conditions set forth in the Adequate Protection Agreement contained within this order.
8. ☐ In chapter 13 cases, the trustee must not make any further payments on account of Movant's secured claim after entry of this order. The secured portion of Movant's claim is deemed withdrawn upon entry of this order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the trustee any payments received from the trustee on account of Movant's secured claim after entry of this order.
9. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, as to the same terms and conditions as to the Debtor.
10. ☒ The 14-day stay as provided in FRBP 4001(a)(3) is waived.
11. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.
12. 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.

13. Upon entry of this 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).
14. ☐ A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy case concerning the Property for a period of 180 days from the hearing of this Motion
- (a) ☐ without further notice.
- (b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
15. ☐ This order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.
16. ☐ This 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:
- (a) ☐ without further notice.
- (b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
17. ☐ This order is binding and effective in any future bankruptcy case, no matter who the debtor may be
- (a) ☐ without further notice.
- (b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
18. ☒ Other (*specify*):

Items # 4(a) and (c) above, are also applied to provide relief, and 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.

###

Date: May 15, 2017



Theodor C. Albert  
United States Bankruptcy Judge

# **TAB 30**

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*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 NV WEST SERVICING,  
LLC'S JOINDER TO U.S. BANK'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT AND OPPOSITION TO  
SFR'S MOTION FOR SUMMARY  
JUDGMENT**

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

SFR Investments Pool 1, LLC (“SFR”) hereby files its Opposition to NV WEST SERVICING, LLC’S Joinder To U.S. BANK’S Renewed Motion for Summary Judgment and Opposition to SFR’S Motion for Summary Judgment.

SFR has fully articulated in its Motion for Summary Judgment as to why the First Deed of Trust (“FDOT”) was extinguished during the Association’s foreclosure sale of March 1, 2013. Based on this, the Bank lacked authority to foreclose on the FDOT when it foreclosed on July 18, 2013. Logically it follows that Nashville Trust #2270 and its Trustee, NV West Servicing, LLC, could have purchased nothing from the Bank as the Bank lacked authority to foreclose on July 18, 2013.

Under Nevada law, for a buyer to qualify as a *bona fide* purchaser, that buyer cannot have notice, actual or constructive, of another party's unrecorded interest in the property. Huntington v. Mila, Inc., 119 Nev. 355, 357, 75 P.3d 354, 356 (2003). A duty of inquiry arises where circumstances put a reasonable person on notice of another's rights in the property. *Id.* Thus, any purchaser, including Nashville Trust #2270, was at least constructively aware of the Association’s foreclosure sale as the foreclosure deed was a publically recorded document. See SFR’s Motion for Summary Judgment, Exhibit 2-A. Additionally, the purchaser would have been aware of the Lis Pendens filed by SFR on March 22, 2013. See SFR’s Motion for Summary Judgment, Exhibit 1-M.

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1 Thus, despite a later recording of the district court's wrongful order dismissing SFR's  
2 complaint and expunging the lis pendens, an experienced investor such as Nashville Trust #2270  
3 and its Trustee NV West Servicing, LLC, would had been aware of the amount of litigation over  
4 NRS 116 pending at the time of this order and should have been aware of the specific facts of this  
5 case. As such, NV West Servicing, LLC at least had constructive notice that the order had been  
6 appealed. As such, Nashville Trust #2270 and its Trustee NV West Servicing, LLC, will not be  
7 able to avail itself of the equitable defense of being a BFP and thus should not be considered a  
8 BFP in any balancing analysis the court undertakes under Shadow Wood. Quiet Title against  
9 Nashville Trust #2270 and its Trustee, NV West Servicing, LLC, should be granted.

10  
11 DATED this 19th day of May 2017.

**KIM GILBERT EBRON**

/s/ Jaqueline A. Gilbert, Esq.

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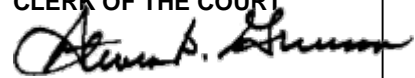
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of May 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 OPPOSITION TO NV WEST SERVICING, LLC JOINDER TO U.S. BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO SFR'S MOTION FOR SUMMARY JUDGMENT**, to the following parties.

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*/s/ Zachary Clayton*  
An employee of Kim Gilbert Ebron

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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 REPLY IN SUPPORT OF  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

Defendant U.S. Bank, N.A., a national banking association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series  
2006-AR4 ("U.S. Bank"), by and through its attorneys at the law firm of Snell & Wilmer L.L.P.,  
submits the following Reply in Support of its Renewed Motion for Summary Judgment (the  
"Motion")

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

#### 4 I. INTRODUCTION

5 U.S. Bank is entitled to summary judgment in this matter and SFR's Opposition has not  
6 changed that fact. SFR's Opposition fails for several reasons.

7 First, SFR argues that the sale was not commercially unreasonable for a number of  
8 reasons, all of which fail. SFR incorrectly summarizes the state of Nevada law on commercial  
9 unreasonableness and improperly excludes the Supreme Court's latest ruling in *Shadow Wood v.*  
10 *N.Y. Bancorp*, which holds that the price obtained at an HOA foreclosure sale is grossly  
11 inadequate as a matter of law if it falls below 20% of the property's fair market value. SFR also  
12 incorrectly asserts that evidence of fair market value is inapplicable to HOA foreclosure sales.  
13 This contention once again contradicts settled Nevada law, including *Shadow Wood*. Finally,  
14 SFR incorrectly asserts that U.S. Bank has not provided any evidence of fraud, unfairness or  
15 oppression to justify setting aside the sale. To the extent such evidence is even required in this  
16 case, U.S. Bank has shown that the existence of the automatic stay, as well as U.S. Bank's lack of  
17 notice of the HOA foreclosure action, both significantly contributed to the inadequate price  
18 obtained at the sale. The standard, however, requires only "slight" evidence. Thus, the sale is  
19 commercially unreasonable and should be set aside.

20 Second, SFR incorrectly asserts that U.S. Bank has not met its burden to prove that SFR is  
21 not a bona fide purchaser. In making this assertion, SFR ignores Nevada law that is directly on  
22 point and firmly establishes that the burden of proof actually lies with the party seeking protection  
23 as a bona fide purchaser—which in this case is SFR, not U.S. Bank. Further, SFR cannot dispute  
24 that it knew of U.S. Bank's competing interest in the property and that it was fully aware that  
25 purchasing the property would result in litigation. Thus, SFR cannot meet its burden of  
26 establishing that it is a bona fide purchaser entitled to title to the property.

1 For each of these reasons, as well as the arguments set forth fully in U.S. Bank's Motion<sup>1</sup>,  
2 summary judgment should be granted in U.S. Bank's favor.

## 3 II. ARGUMENT

### 4 A. SFR's Arguments Regarding the Commercial Reasonableness of the HOA 5 Foreclosure Sale Miss the Mark.

#### 6 1. SFR Misstates Nevada Law on Inadequacy of Price.

7 SFR's Opposition gives an inaccurate picture of the state of Nevada law regarding  
8 commercial reasonableness. SFR repeats the holdings in *Golden v. Tamiyasu* and *Long v. Towne*,  
9 while at the same time missing (or ignoring) the Nevada Supreme Court's most recent  
10 pronouncement on the topic in *Shadow Wood*.

11 SFR argues that the Supreme Court in *Shadow Wood* cited *Golden* for the proposition that  
12 a grossly inadequate price cannot be the basis for voiding the sale. However, there, the Court  
13 cited *Golden* in support of the proposition that "our post-NRS 107.030(8) cases reaffirm that  
14 courts retain the power, in an appropriate case, to set aside a defective foreclosure sale on  
15 equitable grounds." *Shadow Wood*, 366 P.3d at 1111. As the Court did not cite *Golden* for the  
16 purpose SFR now seeks to use it, that citation does not speak to the issue of price as a basis for  
17 voiding a sale.

18 Furthermore, the Court in *Shadow Wood* relied on the Restatement (Third) of Property:  
19 Mortgages § 8.3, which states that a "foreclosure sale price obtained pursuant to a foreclosure  
20 proceeding that is otherwise regularly conducted in compliance with applicable law does not  
21 render the foreclosure defective **unless the price is grossly inadequate.**" See *Shadow Wood*  
22 *Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105,  
23 1112-13 (2016) (emphasis added). The Court further relied on the Restatement approach for  
24 guidance on what constitutes a grossly inadequate price, advising that while "[g]ross inadequacy  
25 cannot be precisely defined in terms of a specific percentage of fair market value, [g]enerally ... a

26 <sup>1</sup> For the reasons explained in U.S. Bank's Renewed Motion for Summary Judgment, U.S. Bank contends that NRS  
27 116.3116 *et seq.* is facially unconstitutional because it violates both the Due Process and Takings clauses of the U.S.  
28 and Nevada constitutions. U.S. Bank recognizes that the Nevada Supreme Court declined to adopt these arguments  
in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev. Adv. Op. 5 (Nev. Jan 16,  
2017), but U.S. Bank preserves this issue here should the U.S. Supreme Court elect to consider the issue and decide  
differently.

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

3 Thus, the current state of the law under *Golden, Long, and Shadow Wood* is that any sale  
4 that falls below 20% of the fair market value of the property is “obviously inadequate” and  
5 therefore commercially unreasonable as a matter of law. *Shadow Wood*, 366 P.3d at 1112. There  
6 is no further inquiry necessary. Only where a sale exceeds the 20% threshold must a party make  
7 a showing of “fraud, unfairness or oppression” to justify overturning a sale. *Id.*

8 Here, the HOA foreclosure sale was clearly below the 20% threshold, as the \$14,000.00  
9 purchase price equaled only 6% of the property’s fair market value of \$228,000.00 at the time of  
10 the sale. The price was therefore grossly inadequate as a matter of law under *Shadow Wood* and  
11 the Restatement approach and must be set aside.

12 2. *Even if the Sales Price Is not Grossly Inadequate, there Is Ample Evidence*  
13 *of Fraud, Unfairness and Oppression to Justify Setting Aside the Sale.*

14 Even if Nevada law required evidence of fraud, oppression, or unfairness in addition to a  
15 grossly inadequate sale price in order to set aside an HOA foreclosure sale as commercially  
16 unreasonable, U.S. Bank has provided ample evidence of such to justify setting aside the sale.

17 SFR’s Opposition strangely ignores U.S. Bank’s Motion and asserts that U.S. Bank has  
18 not offered any evidence of fraud, unfairness or oppression in this case. (Opp’n, 7:15-16.)  
19 Whether SFR questions the weight such evidence should be given is one matter, but SFR cannot  
20 seriously argue that there is no such evidence in this case. As mentioned many times now  
21 throughout the briefing, there is significant evidence of fraud, unfairness and oppression here

22 First, the HOA foreclosure sale was unfair, fraudulent and oppressive because it violated  
23 the bankruptcy court’s automatic stay. The importance of this point cannot be overstated.  
24 Whether SFR is ultimately successful in retroactively annulling the automatic stay  
25 notwithstanding, the fact that the stay was in place at the time of the sale is a significant  
26 abnormality in the sale process. Parks’ bankruptcy was a matter of public record and therefore  
27 served as constructive notice to all bidders that purchasing the Property at the sale carried a  
28

1 significant risk that sale would be void. The sales price was necessarily depressed due to the  
2 likelihood that the sale would be voided due to the automatic stay.

3 Second, the sale was unfair because U.S. Bank did not have any of the foreclosure notices  
4 and had no notice of the foreclosure proceedings. Ex. 2 to Mot. for Summ. J., Ferguson Depo.,  
5 61:10-16; 62:1-5. U.S. Bank cannot be charged with failing to act to protect its interest in the  
6 Property when it had no notice whatsoever that its interest might be in jeopardy in this case.<sup>2</sup>  
7 This resulted in a significantly lower sales price, because the bidders at the sale knew that the  
8 Property was encumbered by a deed of trust.

9 It is important to note that overwhelming evidence is not required in order to invalidate a  
10 sale. Instead, “where the inadequacy is palpable and great, *very slight additional evidence* of  
11 unfairness or irregularity is sufficient to authorize the granting of the relief sought.” *Golden*, 79  
12 Nev. at 515 (emphasis added). U.S. Bank submits that the evidence in this case is anything but  
13 “very slight,” and certainly a sale yielding only 6% of the property’s fair market value must be  
14 considered greatly inadequate. The sale should be set aside.

15 3. *Fair Market Value Is Unquestionably the Standard in Nevada for*  
16 *Evaluating Commercial Reasonableness.*

17 SFR’s assertion that “fair market value has no applicability” to the evaluation of an HOA  
18 foreclosure sale contradicts long-established Nevada law. (Opp’n, 9:24-25.) SFR’s reliance on  
19 *BFP v. Resolution Trust Corporation* is misplaced and should be disregarded. (*Id.*)

20 Nevada law, including *Shadow Wood*, has consistently established that the benchmark to  
21 perform a commercial reasonableness analysis is fair market value, not SFR’s “disposition  
22 value.” No authority binding on this Court holds that disposition value or fair forced value has  
23 any role in determining commercial reasonableness.

24 Contrary to SFR’s unsubstantiated assertion, fair market value is unquestionably the legal  
25 standard in Nevada for determining whether a foreclosure sale price is commercially reasonable.

26  
27 <sup>2</sup> SFR’s Opposition makes the unsubstantiated allegation that “the Bank’s internal document handling caused [the  
28 Notice of Sale] to not be handled until a month later,” and that “this is an internal problem with the Bank and not an  
issue of fraud, oppression or unfairness.” Opp’n, 9:9-11. This is complete conjecture by SFR and its counsel. There  
is absolutely zero evidence that the delay in receipt of any document was caused by U.S. Bank or its servicer, Wells  
Fargo.

1 Indeed, using the fair market value of a foreclosed property as the standard to measure  
2 commercial reasonableness has been in effect in Nevada since at least 1963. *Golden*, 79 Nev. at  
3 505, 387 P.2d at 990. In *Golden*, the Nevada Supreme Court held that “[a]lthough the evidence is  
4 in conflict, there is substantial support of the court’s finding that the land has a market value of  
5 \$2,500 an acre. As five acres had been released from the deed of trust, there remained  
6 approximately 80 acres valued at a total of approximately \$200,000. As against the inadequacy of  
7 the bid of \$18,025.73 as compared with this valuation[...].” *Id.* (1963) (emphasis added).

8 Further, in *Shadow Wood*, the Supreme Court took notice of an appraisal of the property  
9 and suggested that an appraisal of the property as of the date of the foreclosure sale could be used  
10 to establish the fair market value of the property at the time of the foreclosure sale for purposes of  
11 determining commercial reasonableness. *Shadow Wood*, 366 P.3d at 1113, n.3. SFR’s contention  
12 that fair market value is irrelevant flies in the face of established Nevada law.

13 **B. The Burden of Establishing BFP Status Is on SFR and it Has not Met its**  
14 **Burden.**

15 SFR incorrectly contends that U.S. Bank bears the burden of proving that SFR is *not* a  
16 bona fide purchaser (“BFP”). (Opp’n, 11:22) (“The Bank has failed to meet its burden to prove  
17 that SFR is not a Bona Fide Purchaser.”) In truth, it is SFR’s burden to prove that it is entitled to  
18 protection as a BFP. *Berge v. Fredericks*, 95 Nev. 183, 186 591 P.2d 246, 247 (1979) (“a party  
19 claiming title to the land by a subsequent conveyance **must show** that the purchase was made in  
20 good faith, for a valuable consideration; and that the conveyance of the legal title was received  
21 before notice of any equities of the prior grantee.”)

22 SFR relies on the California case *First Fidelity v. Alliance Bank*, 60 Cal. App. 4th 1433,  
23 71 Cal Rptr. 2d 295 (Cal. Ct. App. 1998), to claim that “the burden is on the party claiming  
24 [equitable title] to allege and prove that the person holding legal title is not a bona fide  
25 purchaser.” (Opp’n, 11:24-27.) However, not *First Fidelity* supports SFR’s contention. Instead,  
26 the California Court of Appeal agreed with the *Berge* holding: “The general rule places the  
27 burden of proof **upon a person claiming bona fide purchaser status** to present evidence that he  
28 or she acquired interest in the property without notice of the prior interest.” *Id.* at 1442. Where a



1 party claims equitable rather than legal title, “the burden of proof is upon the person asserting that  
2 title.” Since SFR has asserted protection as a BFP, the burden of proving that it is entitled to such  
3 protection remains with it. As U.S. Bank set out in its Motion, SFR has failed to meet this  
4 burden.

### 5 **III. CONCLUSION**

6 For the foregoing reasons, U.S. Bank respectfully requests that this Court GRANT its  
7 Motion for Summary Judgment in its entirety.

8 DATED June 2, 2017.

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie

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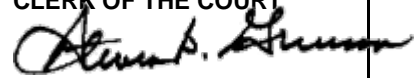
*Attorneys for Defendant U.S. BANK, N.A., a  
national banking association as Trustee for  
the Certificate Holders of Wells Fargo Asset  
Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4*

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/s/ *Tonya C. Stephenson*  
An Employee of Snell & Wilmer L.L.P.

AA 1157

# **TAB 32**



1 **TRAN**

2  
3 **EIGHTH JUDICIAL DISTRICT COURT**  
4 **CIVIL/CRIMINAL DIVISION**  
5 **CLARK COUNTY, NEVADA**

6 SFR INVESTMENTS POOL 1, LLC, ) CASE NO. A-13-678814  
7 Plaintiff, ) A-13-688734  
8 vs. ) (Consolidated)  
9 U.S. BANK, et al, ) DEPT. NO. XXXI  
10 Defendants. )  
11

12 BEFORE THE HONORABLE JOANNA KISHNER, DISTRICT COURT JUDGE  
13 TUESDAY, JUNE 6, 2017

14 ***TRANSCRIPT RE:***  
15 **ALL PENDING MOTIONS**

16 **APPEARANCES:**

17 For the Plaintiff: KAREN L. HANKS, ESQ.  
18 For Wells Fargo Bank: JOHN S. DELIKANAKIS, ESQ.  
19 For NV West Servicing, LLC: MICHAEL F. BOHN, ESQ.  
20 For Copper Ridge Community Association: TREVOR R. WAITE, ESQ.

21  
22  
23  
24 **RECORDED BY: Sandra Harrell, Court Recorder**

AA\_1159

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 6, 2017, 10:35 A.M.

2 \* \* \* \* \*

3 THE COURT: SFR Investments versus U.S. Bank, et al; 678814.

4 MR. DELIKANAKIS: Good morning, Your Honor. John Delikanakis from  
5 Snell & Wilmer on behalf of Wells Fargo.

6 THE COURT: Thank you.

7 MS. HANKS: Karen Hanks on behalf of SFR.

8 MR. WAITE: Trevor Waite on behalf of the HOA.

9 THE COURT: Okay. Since I have --

10 MR. BOHN: Michael Bohn.

11 THE COURT: Sorry, go ahead.

12 MR. BOHN: NV West Servicing.

13 THE COURT: Thank you.

14 Counsel, you're here --

15 UNIDENTIFIED SPEAKER: I'm here just --

16 THE COURT: Observing?

17 UNIDENTIFIED SPEAKER: Yes.

18 THE COURT: Everyone is just observing? Because this is the last one  
19 I show on this morning's calendar. That's why I want to make sure someone  
20 doesn't think that --

21 UNIDENTIFIED SPEAKER: Same. Just observing.

22 THE COURT: Okay, no worries.

23 THE CLERK: And I apologize, I didn't get their appearances.

24 COURT RECORDER: I didn't either.

1 THE COURT: I'm sorry. I'm going to ask you --

2 THE CLERK: Let's do it slower.

3 MS. HANKS: Go ahead, counsel.

4 MR. DELIKANAKIS: John Delikanakis from Snell & Wilmer on behalf of  
5 Wells Fargo.

6 MR. WAITE: Trevor Waite on behalf of the HOA.

7 MR. BOHN: Michael Bohn on behalf of NV West Servicing.

8 MS. HANKS: And Karen Hanks on behalf of SFR.

9 THE COURT: Okay, welcome. So the reason why the Court just was  
10 confirming is because this was the last one I showed on my docket and I just wanted  
11 to make sure everyone was fully taken care of.

12 Okay. So we have today three various motions for summary judgment  
13 and a motion in limine, okay. So it's going to make the most sense really to deal  
14 with the summary judgments first. I will tell you the Court is going to -- the main  
15 Court's area of question is going to be -- it's not really an inclination, but if you care  
16 it's really the nuance here about, no surprise, the bankruptcy, okay, the bankruptcy  
17 stay that was in place back in March of 2013. And the Court's question is going  
18 to be to all parties, although I appreciate where we have kind of -- as you all know  
19 because you did all the pleadings, you did the pleadings, there were stays, it's been  
20 some time, various things have happened procedurally in the federal court world,  
21 in the state court world, in the -- well, so far not in the U.S. Supreme Court world  
22 yet or withdrawn in the U.S. Supreme Court world and kind of filed in the supreme  
23 court world.

24 So I'm going to just phrase my general question in the area that I'd

1 like the parties, in addition to whatever else you wish to address, is the impact of  
2 the automatic -- the bankruptcy proceeding being in place at the time of the March  
3 2013 HOA foreclosure sale and its impact by each party's position as to your  
4 various arguments on your various motions for summary judgment. So it's kind of  
5 just I assume you all are going to cover that anyway, but.

6           So who wants to go first with their motion for summary judgment?  
7 Are we doing SFR's, are we doing bank's or are we doing HOA's?

8           MR. DELIKANAKIS: If I might suggest, since the issues overlap, if you would  
9 like us just seriatim to kind of give our arguments. Otherwise we'll be here all day  
10 doing the --

11          MS. HANKS: Right. Just once.

12          MR. DELIKANAKIS: Yeah, just once.

13          MS. HANKS: I agree.

14          MR. DELIKANAKIS: If that's okay with the Court, I'm fine with that.

15          MS. HANKS: I'm in complete agreement with that. So each just speak once.

16          MR. WAITE: I'm okay with that.

17          THE COURT: Once, once, once, and joinder party once?

18          MR. BOHN: Sure.

19          MR. DELIKANAKIS: Yeah, I think we'll just go right down the line.

20          MS. HANKS: I'm much in agreement with that.

21          THE COURT: Okay.

22          MR. DELIKANAKIS: And, you know, with the Court's indulgence, we'll focus  
23 on your question.

24          MS. HANKS: Right.

1 MR. DELIKANAKIS: And if you have other questions, you just ask us.

2 THE COURT: And I'm not limiting it, I'm just -- I might as well give you the  
3 heads up --

4 MR. DELIKANAKIS: Appreciate it.

5 THE COURT: -- because, you know, a lot of the other arguments we've  
6 seen a lot. This has got that nuance and I presume that's the reason why you're  
7 here and why you have a gallery of people watching to see the impact of some of  
8 that nuance. So --

9 MS. HANKS: Your Honor --

10 THE COURT: So whoever is going -- Are you going first?

11 MR. DELIKANAKIS: Yeah, please, go ahead.

12 THE COURT: Sure.

13 MS. HANKS: Sorry. Plaintiff, so I kind of figured. Hopefully I can dispel  
14 pretty quickly the bankruptcy issue. On May 19, 2017, we filed a notice of the  
15 retroactive annulment of the stay. And in that order that's filed, the box is clearly  
16 checked that there was no violation of the stay. The bankruptcy court retroactively  
17 annulled it, so it basically blessed everything that happened with respect to the  
18 sale in terms of anything that may have been a violation. If you want to look that up,  
19 Your Honor, you can certainly. I was going to bring a copy, but it was filed so I didn't  
20 do that.

21 THE COURT: And I did look at that.

22 MS. HANKS: Yeah, it comes out of California, so it's a different looking order  
23 than what you would typically see from our court.

24 THE COURT: Oh, I'm very familiar.



1 MS. HANKS: Yeah. So, I thought it was weird, too, when I first saw it, but  
2 if you look at the -- I guess the first or second page there's boxes and they checked  
3 the box that said no violation of the automatic stay. They grant the retroactive  
4 annulment and they checked the box that said there's no violation of the automatic  
5 stay.

6 THE COURT: Okay. I'm going to --

7 MS. HANKS: Sure.

8 THE COURT: My follow-up question to that is going to be, because, you  
9 know, I did see that, did read that, what -- since this is a *nunc pro tunc* retroactive,  
10 however you'd like to phrase it order, okay --

11 MS. HANKS: You mean ex parte or --

12 THE COURT: Well, no. It's a retroactive order --

13 MS. HANKS: Right.

14 THE COURT: -- meaning it wasn't in place back in 2013.

15 MS. HANKS: Right.

16 THE COURT: I mean, there was no permission -- at least no one has  
17 argued that in March of 2013 the HOA or the HOA's agent -- the Court not taking  
18 any position on the agency, but NAS or the HOA did not seek it at the time.

19 MS. HANKS: Correct.

20 THE COURT: SFR didn't seek it at the time of purchase. Only the bank  
21 when it did it subsequent did. And I'm appreciative, because this order was filed  
22 afterwards, is does the order by saying that there's no violation of the bankruptcy  
23 stay, does that validate -- does that validate a 2013 HOA sale?

24 MS. HANKS: Yes.

1 THE COURT: Is that your argument?

2 MS. HANKS: Yeah.

3 THE COURT: Go ahead.

4 MS. HANKS: And that's exactly what -- that's the purpose for it because  
5 there's -- I think it's like an eight or a twelve part standard that the party bringing it,  
6 such as SFR, has to show. And that's why typically it's brought by parties that  
7 weren't involved in the bankruptcy or a party that might not be involved with getting  
8 the stay originally, or even a party that was, but typically when it's SFR there's  
9 another type -- there's a list of -- a litany of standards that you have to show. And  
10 essentially what the retroactive annulment is saying is go back in time and lift the  
11 stay as to that point in time as if it was filed at that time by the collection company  
12 or the HOA. And we met that standard and the California bankruptcy court agreed  
13 with that and said, yes, I'm going to lift it as if it was filed at that time.

14 So that's what the purpose of the retroactive annulment is. It's not  
15 as if they say the stay doesn't apply now. That's obvious because the discharge  
16 happened and we're way past that. It had to go back in time and essentially say,  
17 yes, I would have granted the stay -- I would have lifted the stay at this time if this  
18 party had filed it and I'm going to retroactively do it. And essentially there's been --  
19 and it actually says on the box that is checked it's not that they just lift the stay, it  
20 actually says there was no violation of the stay based on what was recorded in this  
21 case. So they actually checked the box that says that. There was no violation of  
22 the stay. They made that finding because they retroactively lifted it, essentially.

23 So for our purpose, Your Honor, and for your purpose there is no  
24 more argument with respect to the bankruptcy stay violation. Now, we have other

1 arguments, you know, that we argue that the bank doesn't have standing to bring it.  
2 There's a decision out of our district that has ruled that way. We have a state court  
3 case where something similar happened where a retroactive annulment was  
4 granted and the bank in that case appealed it to the bankruptcy panel here and  
5 the bankruptcy panel said you don't even have standing to fight that. You're not  
6 the party that has standing to bring any claim for a retroactive annulment and that  
7 it was, you know, granted or not granted rightfully.

8           So we don't have to really get there, though, because that was kind of  
9 our first argument before we went in and asked for a retroactive annulment, but that  
10 is clearly what you're asking the court to do in that application. I don't believe it was  
11 even ex parte in this case because we knew, so we notified the bank. The bank  
12 had the opportunity to oppose it. Unfortunately I'm not in a position to know if they  
13 did. I did not look at those pleadings in California, so I'll let counsel comment on  
14 that. But --

15           THE COURT: The box is marked opposed.

16           MS. HANKS: Okay, so they opposed it. The bankruptcy court considered  
17 their opposition, rejected it and said no, we're going to essentially go back in time  
18 and essentially lift the stay for all intents and purposes, so anything that was done  
19 that was technically a violation of the stay is now no longer a violation because they  
20 lifted it. That's what the retroactive annulment is. And so it does bless everything  
21 NAS did and say that whatever NAS did is not --

22           THE COURT: Okay. And this is really a question on whether or not I'm going  
23 to need subsequent briefing on this issue. And sorry I'm interrupting --

24           MS. HANKS: No, that's fine, Your Honor. That's fine.

1 THE COURT: -- but it's really getting to the heart of it.

2 MS. HANKS: You're right, this is really the issue, right? This case is pretty  
3 clean otherwise. There's really nothing -- you know, they have the constitutional  
4 argument.

5 THE COURT: The bank and the HOA have a little different viewpoint.

6 MS. HANKS: Of course, but you know -- no, you're right. So if you do --  
7 and I would agree. When we submitted all of our briefing I don't believe -- it was  
8 all briefed before the order came from the bankruptcy court. So if the question is  
9 now that I have this retroactive annulment order what is the effect of that, does it  
10 do exactly what I'm saying it does, then I would ask for supplemental briefing on  
11 that as opposed -- because really it is a legal issue. There's really no reason to  
12 go to trial. It's not going to be a factual issue. You either have to say was there  
13 a stay violation or not, and we're saying there is no stay violation because it was  
14 annulled.

15 THE COURT: Okay. So here's -- trying to hone down into -- and I'm sorry  
16 it's a little bit more of a Q & A, but it's really hopefully to everyone's efficiency to  
17 kind of focus on where the arguments are and the issues. Is box 4-- Do you happen  
18 to have a copy of it with you?

19 MS. HANKS: I don't. Unfortunately I did not bring a copy. I've looked at it  
20 before I came.

21 THE COURT: Does anybody else have a copy by chance?

22 MR. DELIKANAKIS: I have a copy here. There you go.

23 MS. HANKS: Thank you.

24 THE COURT: Does anyone need us to make --

1 MR. WAITE: Could we get a couple copies?

2 THE COURT: You do or do not? Anybody else have copies by chance?

3 MR. DELIKANAKIS: I have another copy here we can look at together if  
4 you'd like.

5 THE COURT: Can you share with counsel at your table?

6 MR. DELIKANAKIS: Yeah.

7 THE COURT: And Mr. Bohn, on behalf of the joinder party, do you have it  
8 by chance or have it online? Okay, because where I'm going is Box 4, okay. Do  
9 you see Box 4? It's X'd. And then the box says, "As to movant" -- and you all were  
10 movant, right? SFR was movant, correct?

11 MS. HANKS: SFR filed it. Yes, Your Honor.

12 THE COURT: Okay. It says, "As to movant, its successors, transferees and  
13 assigns, the stay of 11 U.S.C. Section 362 (a) is:" -- and then under that there's an  
14 A, B and C box.

15 MS. HANKS: Uh-huh.

16 THE COURT: The A box everyone sees is X'd. There's an X in the A box.

17 MR. DELIKANAKIS: Yes.

18 THE COURT: And the A box says, "Terminated as to the debtor and debtor's  
19 bankruptcy estate." Everyone so far in agreement that that's what it says? Okay.

20 MS. HANKS: Right.

21 THE COURT: The B box is not checked or not X'd, it's blank.

22 MS. HANKS: Right.

23 THE COURT: The C box has got an X in it and it says, "Annulled retroactively  
24 to the bankruptcy petition date. Any post-petition acts taken by movant to enforce

1 its remedies regarding the property do not constitute a violation of the stay.” Okay,  
2 was that right? That’s the language that you’re relying on, right?

3 MS. HANKS: Yeah. Well, the box that was checked. Right.

4 THE COURT: The box that was checked. Okay.

5 MS. HANKS: I think it’s a summary of kind of what the statute provides.

6 THE COURT: What the Court’s question, and this is just -- it’s really a  
7 question. I’m really going to ask you all if you need supplemental briefing and I hate  
8 the fact that you had to wait a little bit, you know, but the reason why you had ten  
9 o’clock is you knew we would be having the earlier motion calendar. Since that  
10 language says “any post-petition acts by the movant” -- actually it doesn’t say the  
11 movant, it says “taken by movant to enforce its remedies regarding the property  
12 do not constitute a violation of the stay.” Okay. It doesn’t say -- it’s not broader.  
13 Does that matter from each party’s position?

14 MS. HANKS: Your Honor --

15 THE COURT: Because you asserted that what NAS did, NAS in its role as --

16 MS. HANKS: Collection agent.

17 THE COURT: -- collection agent. Whether there’s truly an agency, I’m not  
18 going into any arguments you may have with regards to NAS or not NAS. But it  
19 doesn’t say HOA, it doesn’t say NAS --

20 MS. HANKS: And if I can --

21 THE COURT: Go ahead.

22 MS. HANKS: -- understand your question because I’m going to have to ask  
23 for supplemental briefing because I’m not a bankruptcy attorney. I don’t file these  
24 petitions. I have a general understanding of what we do. We’ve done multiples

1 of them. But if I could just understand what you're saying so I can then respond.

2 MR. DELIKANAKIS: I think we can answer.

3 MR. WAITE: We can clear it up. Box 18.

4 MR. DELIKANAKIS: Box 18, Your Honor.

5 THE COURT: Okay.

6 MR. DELIKANAKIS: If I could direct the Court to look at Box 18.

7 THE COURT: Going to Box 18: Other. Specify. Okay. "Items No. 4 A  
8 and C above are also applied to provide relief and annulment of the automatic stay  
9 retroactive to the petition date for any and all actions in support of the foreclosure  
10 taken with respect to the property by the Copper Ridge Community Association  
11 and/or its agent, Nevada Association Services." So --

12 MS. HANKS: If I could just ask a question so I can understand where I think  
13 you're --

14 THE COURT: Sure. Of course.

15 MS. HANKS: Is the question because SFR asked for it, the retroactive  
16 annulment, that it does not -- it's different because the HOA or NAS didn't ask for it?  
17 I mean, I guess this -- I would say this is what it does. I mean, and so I don't -- Is  
18 that the hang up? Is that what the question is? Because it uses the term movant  
19 and obviously we weren't the party doing anything with respect to foreclosing on  
20 the property, so enforcing the remedies. But I'm thinking that other -- I was about to  
21 argue this and it looks like the other box is applying that, that it doesn't matter who's  
22 actually applying for the retroactive annulment. Oftentimes you will see -- because  
23 I know we've done this multiple times, oftentimes you will see it will be a party that  
24 is affected by it but wasn't involved in the bankruptcy or the stay or enforcing the,

1 you know, *in rem* right, but it's applying it. It's applying and it's blessing the actions  
2 of a different party even though that's not the party moving for it.

3 THE COURT: My question really was just kind of -- going back to my initial,  
4 the broad aspect is what is the impact of the bankruptcy's order as to the issues  
5 before this Court, is probably more concise and encompassing, you know what  
6 I mean, because --

7 MS. HANKS: And from my --

8 THE COURT: -- that's really the question.

9 MS. HANKS: And from SFR's perspective this order answers that, you know.

10 THE COURT: Okay. Go ahead, finish your argument and then I'm going to  
11 let everyone else.

12 MS. HANKS: Okay. It says it's lifted and then it says that nothing that they  
13 did would constitute a violation of the stay. So I think for SFR's purposes there's no  
14 stay issue, there's no violation of a stay issue at any point now that that order was  
15 filed on May 19, 2017. So essentially the bankruptcy issue has been resolved.

16 The other claim that the bank argues is the due process, which at this  
17 point in time that's resolved. Saticoy Bay has ruled -- the Nevada Supreme Court  
18 has ruled that due process is not implicated because the HOA and/or its agent or  
19 collection agent is not a state actor, so due process is not indicated. Now, I know  
20 that they did not appeal that decision, this bank did not appeal the Saticoy decision,  
21 but the Bourne Valley decision has been appealed. And so --

22 THE COURT: To the U.S. Supreme Court.

23 MS. HANKS: To the U.S. Supreme Court. Right. And so whatever finding  
24 the U.S. Supreme Court -- in other words, if the U.S. Supreme Court affirms the



1 Ninth Circuit and says there is a state actor, then this Court would be bound by that.  
2 But at this point in time the state of the law in the state of Nevada, Saticoy Bay has  
3 resolved the issue. There is no constitutional issue because the bank can't even  
4 claim a violation of due process because there's no state actor. So I don't think this  
5 Court can rule on something that might happen in the future.

6 Now, I don't know if the bank is going to get up here and ask for you  
7 to stay the case. We would just say that there's no reason to do that at this time.  
8 Really, it is very up in the air what the U.S. Supreme Court is going to do. And  
9 frankly, if the U.S. Supreme Court denies cert, then it doesn't change anybody's  
10 position. The state law as it stands in Saticoy Bay still applies. So -- and we just  
11 don't know when that's going to happen. And so to rule on what ifs at this point in  
12 time, SFR would say that's not necessary. You can rule on what the state of the  
13 law is and due process is not indicated. So that argument fails and doesn't defeat  
14 SFR's right to quiet title and summary judgment.

15 They also claim wrongful foreclosure. That claim fails. SFR was not  
16 the party foreclosing. I'm not saying it might not -- I'm not saying it fails maybe to  
17 some other parties, but at least from SFR versus bank perspective it fails. SFR  
18 is not the party foreclosing. Even so, the elements of that claim are quite simple.  
19 The claim is you didn't have a breach upon which you could exercise your authority  
20 to sell. There is no dispute in this case that the homeowners failed to pay their  
21 assessments and that there was a breach to the association. So even if SFR was  
22 somehow the party that was foreclosing, which it wasn't, that basic element of  
23 that claim cannot be met here. And the bank has not made any argument that the  
24 homeowner did not in fact fail to pay the assessments and that there was in fact

1 a breach which the association could exercise its right to foreclose under NRS 116.  
2 So that claim fails as a matter of law. It cannot defeat SFR's right to summary  
3 judgment.

4           They also generically allege violation of 116, but in their motion and  
5 both their oppositions I didn't see anything where they talked about any violation of  
6 the actual statute. As I'm sure this Court is aware, there's multiple steps NAS has to  
7 follow and we -- although we don't have the burden to prove the sale was valid or all  
8 that was followed, they have the burden to prove that because it's presumed under  
9 Nevada law that both the deed and the sale are valid. We went the extra mile and  
10 within our motion we showed how NAS complied in every respect with NRS 116.  
11 How they recorded the notice of default and then mailed it to all the proper parties  
12 which show the proof of mailings. How they recorded the notice of sale and mailed  
13 it to all the proper parties. How they published the notice of sale. How they put it  
14 in -- posted it in three public places. How they served it or posted it on the actual  
15 property. Every step of the process of NRS 116, NAS followed, so there's no doubt  
16 that there's no violation of NRS 116 here.

17           Now, the bank in their opposition says we didn't receive the notice  
18 of sale. And we have a recent decision or order -- sorry, it's not a decision, it's an  
19 order, and I have copies if the Court would like to see it, where the 3-panel judges  
20 at the Nevada Supreme Court said no, receipt is not required. The statute only  
21 requires it be mailed. You do not have to prove receipt and it's not on the -- it's  
22 not incumbent upon the purchaser to prove it. Nevertheless, we have the proof of  
23 mailing where Wells Fargo -- or excuse me, U.S. Bank as trustee for Wells Fargo  
24 signed the green card. They received the notice of sale on February 11, 2013.

1 The sale happened in this case on March 1st, 2013.

2           So it's a complete misnomer to say you didn't receive it. It very well  
3 might not be scanned into your system, so the 30(b)(6) witness who was claiming  
4 that might not have seen it in his system. I can't explain that, only they can explain  
5 that. But we have a green card from NAS because they were required to mail the  
6 notice of sale via certified mail, which they did, and we have the signed green card.  
7 So there's no doubt, even though we don't have to prove receipt and even though  
8 receipt is not required under NRS 116, that's the only thing I saw that they were  
9 complaining about, that we didn't receive the notice of sale. That's what they said  
10 in their opposition. And you did. There's a signed green card saying that you --  
11 and it's stamped February 11, 2013, so some three weeks before the sale.

12           Now, the other claim they have -- so that claim fails, Your Honor.  
13 There's nothing where they've shown here there's a violation of NRS 116. In other  
14 words, they have offered no evidence to rebut the presumptions that are in favor of  
15 SFR that the sale was both valid and the deed is valid.

16           Then they have the intentional interference with a contract claim. That  
17 claim equally fails. You would have to show that SFR knew about the contract. And  
18 let's just say for the sake of argument that SFR had constructive notice of the deed  
19 of trust being recorded, and we all know if there's a deed of trust recorded there's  
20 a promissory note related to it and that the borrowers are, you know, bound by that  
21 promissory note. So let's say for the sake of argument SFR had knowledge of that.  
22 There is absolutely no evidence that SFR in any way encouraged or participated in  
23 the borrowers' default under that promissory note. And that's what they would have  
24 to prove for an intentional interference with a contract.

1           That's the contract they're talking about that you interfered. And  
2 in fact, what they say is that we interfered by purchasing the property at the  
3 foreclosure sale. I can't even follow the argument, frankly, that we interfered with  
4 the contract because we purchased the property at the foreclosure sale, which  
5 obviously under the statute extinguished the homeowners' interest in the property  
6 and therefore -- what? They still have a duty under the promissory note to pay  
7 you. The homeowner is not absolved of their obligation to pay. You just lost your  
8 security interest for it. You just lost the collateral that secured the promissory note.

9           So there's no interference with the promissory note and there's  
10 certainly no evidence in this case that SFR had any communications with the  
11 homeowner prior to purchasing the property. Frankly, I don't think there's any  
12 evidence that they even communicated with the homeowner after purchasing the  
13 property. So there's certainly zero evidence that SFR encouraged the homeowners  
14 to stop paying their mortgage. And they don't talk about the assessments, but let's  
15 assume they say that was also another contract. There's no evidence that SFR  
16 encouraged the homeowners to not pay their assessments. Most of these -- this  
17 default in this case occurred way before SFR was even in existence and occurred  
18 way before SFR even attended the sale. So that claim fails as a matter of law.

19           So, Your Honor, there's no -- oh, I'm sorry, and then their final  
20 argument, Your Honor --

21           THE COURT: Commercial reasonableness.

22           MS. HANKS: Commercial reasonableness. Right. And so the argument is,  
23 well, the sale was not -- it was below 20 percent of the fair market value. And in  
24 this decision that I have here that I can give to you, Your Honor, once again I think

1 it's been affirmed at least five or six times now by the Nevada Supreme Court that  
2 inadequate price, no matter how gross, is not enough to set aside a sale. You have  
3 to show fraud, oppression or unfairness. Now, they claim, well, it was unfair, we  
4 didn't receive the notice. That's what they claim. That's not the unfairness that  
5 we're talking about. The fraud, oppression and unfairness has to account for or  
6 bring about the low price. That's what the case says, Golden v. Tomiyasu, which  
7 was adopted by the supreme court in Long v. Towne and then reaffirmed recently.

8           So you have to show some type of fraud, oppression or unfairness  
9 that accounts for or brings about the low price, and the only thing I saw in their  
10 opposition where they cite unfairness was we didn't receive the notice of sale.  
11 Well, we dispelled that. You did receive the notice of sale. I don't know why it's  
12 not in your system, but you did receive it because we have a signed green card  
13 that you signed for it.

14           So, but even so, that's not unfairness. Your receipt or non-receipt  
15 of the notice of sale would have nothing to do with what SFR bid on the property.  
16 In other words, SFR doesn't have any knowledge of whether you received the notice  
17 of sale. That didn't dictate how the property was bid up at the auction. That's the  
18 type of unfairness we're talking about. Unfairness would be an example of keeping  
19 the price low, is not publishing the sale, not opening it up to the public so you had  
20 competitive bidding or telling SFR I'm going to let you bid this amount and that's it;  
21 you don't have to bid anything more and I'm going to give you the property. That's  
22 the type of stuff and that's those cases that cite Golden v. Tomiyasu that are  
23 dealing with fraud, oppression or unfairness are dealing with, something that favors  
24 someone there in terms of bidding on the property so they can get it for that price.

1 I think one of the cases that Golden v. Tomiyasu cites, there was a situation where  
2 that was actually told to the bidder that you only have to bid this amount. And that's  
3 where they said no, no, no, now we get to look behind a little bit and see what was  
4 going on here.

5 None of that's here. There's no evidence of that. SFR had no  
6 communications with NAS about how much it could bid for the property. No  
7 communications with the HOA. There's testimony no communications with other  
8 bidders. I could -- maybe another example might be if the bidders all colluded to  
9 say, hey, I won't bid against you. That never happened. It was highly competitive.  
10 You have testimony they didn't even talk to each other. So there's nothing here to  
11 show, other than price alone. That's what they want to rely on. They haven't shown  
12 any unfairness, fraud or oppression that accounted for or brought about the price  
13 paid by SFR.

14 At the end of the day SFR went to a public sale that the bank could  
15 have even attended themselves and bid -- it would have been a credit bid up to the  
16 point what they were owed -- and drove up the bid, but they didn't. And at the end  
17 of the day there was not one bidder present who was willing to bid a dollar more  
18 than SFR. So that's the price of the property. That's what it went for and it went  
19 after a publicly-noticed sale. There was nothing to say the sale was commercially  
20 unreasonable.

21 In fact, under the UCC, commercial reasonableness, the time, place  
22 and manner of the sale, everything about the sale was commercially reasonable.  
23 The time was reasonable. It was put in the notice of sale. It took place at a public  
24 place, NAS's office. They usually have it outside on the street. It was publicly

1 noticed and posted and published in public papers that you could find out about it.  
2 In fact, that's how SFR found out about it. And everyone was free to attend. The  
3 manner in which it was held was a normal NRS 116 auction, sold to the highest  
4 cash bidder. There's nothing that suggests that -- oh, held in the county where the  
5 HOA was located, which is required by the statute.

6           So every respect of the sale was commercially reasonable and they  
7 really just want to rely on price alone without showing the extra element that's  
8 required. And I know they want this Court to say that the Nevada Supreme Court  
9 has adopted the Restatement and its bright line rule that if it's 20 percent or below  
10 it's per se unreasonable, but that's just not the standard. And they've done it many  
11 times and they've reversed decisions. And the decision I have here with me where  
12 they -- I'm sorry, it's not a decision, it's an order -- where they have said they granted  
13 -- they affirmed a summary judgment granted by the court.

14           THE COURT: Are you talking about Stone Hollow, version 3?

15           MS. HANKS: No.

16           THE COURT: Oh.

17           MS. HANKS: No, Your Honor. No. Stone Hollow is completely out. That  
18 was reversed.

19           THE COURT: No, but that's why I said version 3.

20           MS. HANKS: No, Your Honor. I have another decision, Your Honor. It is  
21 PNC Bank versus --

22           THE COURT: Oh, okay. I know which one you're talking about.

23           MS. HANKS: And it's an unpublished decision -- excuse me, order. I keep  
24 on saying decision. It's an unpublished -- here you go, counsel -- it's an unpublished

1 order that came out on May 25th, 2017. It's PNC Bank v. Saticoy Bay.

2 THE COURT: Uh-huh.

3 MS. HANKS: And frankly, we have the pleasure of having Mr. Bohn here,  
4 who was the counsel on this representing Saticoy Bay, the purchaser. And he got  
5 a great order affirming a summary judgment. He got granted summary judgment in  
6 favor of his purchaser. And one of the arguments was commercial reasonableness,  
7 and again the bank said price alone is not enough. You have to show some fraud,  
8 oppression or unfairness that accounts for or brought about the price. So they said  
9 the court did not err in granting summary judgment. And so -- and this was also,  
10 they also said the court didn't err in granting summary judgment even though the  
11 bank argued they didn't receive notice. And they said, no, no, no, no, no, the statute  
12 only requires mailing; you don't have to prove receipt. And then they went even so  
13 far as saying let's be clear, the purchaser has no burden to prove any of this. They  
14 don't have to prove the validity of the sale. So that's where the supreme court is.  
15 That's where they always have been in terms of commercial reasonableness. And  
16 there's just really no basis to say that there's this 20 percent bright line rule.

17 And finally, Your Honor, with respect to the BFP issue, I think they say,  
18 well, SFR can't be a BFP because they took notice that we had notice of our deed  
19 of trust and they didn't pay adequate consideration. Fourteen thousand was just  
20 too little. And again we have the Shadow Wood decision that dispelled both of  
21 those notions. It actually dealt with that very argument that notice of a deed of trust  
22 would be sufficient to dispel a BFP, and they said no, no, no, then we would never  
23 have a BFP and they said we're not going to do that. They said having notice that  
24 there might be a potential for someone coming back and disputing the sale is not



1 enough to defeat a bona fide purchaser. You have to have interest of a superior  
2 interest in the property. And because NRS 116 extinguishes a first deed of trust,  
3 as long as the lien still has super priority amounts, then there is no notice of an  
4 interest just because a deed of trust is recorded.

5 And then they also went further and explained the adoption in the  
6 Berge case that, hey, adequate consideration is not the same as valuable  
7 consideration. What we mean by valuable consideration is something more than  
8 free; more than a gift. As long as someone has paid something, it doesn't matter  
9 that the money paid is not equal to the value of what you think the property is worth.  
10 That's not what we mean by valuable consideration. We just mean not free.

11 So their argument that SFR is not a BFP because of those two, took  
12 notice because we purchased the property knowing that the deed of trust was  
13 recorded, and two, fourteen thousand dollars in their mind is not adequate, it fails  
14 as a matter of law based on the current state of the law in Nevada.

15 Now, I think they also argued takings in their papers, and again the  
16 Saticoy Bay decision that held constitutionality is not triggered because there's  
17 no state actor also dispelled the takings. They said there's no takings. So that  
18 argument fails as a matter of law. I think that was -- I think some of these briefs,  
19 like you had mentioned, Your Honor, were done before these decisions, but now  
20 that we have the decisions they can't win the day at this point.

21 And finally, Your Honor, with respect to SFR being entitled to summary  
22 judgment, this is a -- it kind of has a nuance because this is a case where the bank  
23 foreclosed after the association foreclosed and we have a third party purchaser  
24 coming in and buying it at the bank foreclosure. That purchaser cannot possibly be

1 a bona fide purchaser. They -- at the time they purchased the property, at the time  
2 they had that bank foreclosure, SFR had filed a lis pendens on March 22nd, 2013.  
3 Now, I know there was a court order entered on June 11th, 2013 that expunged  
4 that lis pendens, but less than a month later on July 12th, 2013, SFR appealed that  
5 order. And this sale, the bank sale didn't happen until July 18th, 2013, so at that  
6 moment the purchaser -- I think it's Nashville Trust -- took notice that SFR did have  
7 a superior interest and disputed the title in this case, and so they could not possibly  
8 be a bona fide purchaser when they purchased the property at the foreclosure  
9 sale. So quiet title in both respect to the bank and Nashville Trust is appropriate.  
10 There's no issues of fact.

11 Of course if Your Honor wants supplemental briefing on the  
12 bankruptcy, I would ask for that because I think when we were briefing this it was  
13 more at that time the stay wasn't lifted, so the argument was different. So I wouldn't  
14 want a decision based on that argument, but I do believe the order more than  
15 covers it. But of course --

16 THE COURT: In their reply, though, they mention that -- and it's in the  
17 moving papers as well, that the bankruptcy also had an impact with regards to the  
18 unfairness and the commercial reasonableness. I mean, I'm paraphrasing. They  
19 said it more eloquently, but.

20 MS. HANKS: I don't know what impact it could have had, Your Honor.  
21 SFR didn't have any knowledge that there was a bankruptcy. It wouldn't have  
22 constructive notice of it because there was nothing recorded on the Recorder's  
23 website. So it didn't affect -- there's no testimony in this case that that accounted for  
24 or brought about the price. In other words, SFR didn't say, well, I only paid fourteen

1 thousand and wasn't willing to pay a dime more because I knew the homeowners  
2 had filed bankruptcy. That's what they have to show.

3 THE COURT: I think their argument was focused a little bit more because  
4 the bankruptcy would be a matter of public record, they said it reduced the price.  
5 I don't think they said it reduced the number of people coming to bid on it, but  
6 basically that that was an impact that should have been evaluated as well as the  
7 unique aspect.

8 MS. HANKS: It's highly speculative. I think that's a stretch. It's really just  
9 argument. In what way did it impact anything? Did it impact your ability to come to  
10 the sale? Did it impact your ability, bank, to pay the super priority portion to protect  
11 your interest? I mean, that's what we're talking about here. In what way did the  
12 bankruptcy -- and I don't believe the constructive notice of a publicly-filed document  
13 where you have to actually be registered to Pacer to even get notice to even access  
14 it is the same as a Recorder's website. So I would posture that that's not the same  
15 because you do have to have a log-in and have access to Pacer. It's not publicly  
16 available, unlike the state court where anyone can get on there and look at it, not  
17 like Wiznet but like Odyssey, whereas bankruptcy filings are not public record in  
18 terms of you have to actually apply for a Pacer account and then be able to log  
19 onto it.

20 And so nothing is recorded for SFR. I'm sure counsel asked SFR  
21 that question. As I sit here today I don't have a hundred percent recollection of the  
22 deposition, but I'm sure they asked it. I know for a fact that SFR didn't have any  
23 knowledge of the bankruptcy filing at the time of the sale. May have found out  
24 after the lawsuit was filed and this became an issue. But frankly, I don't think we

1 knew it until the stay started becoming an argument, so that's why we went for the  
2 retroactive annulment. So that certainly tells you that it didn't dictate what SFR paid.  
3 And I haven't seen any other bidders named as witnesses in this case to suggest  
4 that that's why they didn't bid a dollar more. I mean, you'd be highly -- you'd be in  
5 the territory of highly speculative and really it runs afoul of the summary judgment  
6 standard. That is definitely gossamer whims of thread of speculation to say I think  
7 some of the purchasers there didn't bid on this property because of the bankruptcy  
8 filing.

9           And frankly, it didn't affect the bank's position. The bank's position  
10 always could have paid the super priority amount, but we have testimony from this  
11 very witness saying that wasn't Wells Fargo's policy. Wells Fargo never paid the  
12 super priority amount. Their policy -- we have testimony, binding testimony from this  
13 witness, Mr. Ferguson, saying Wells Fargo's policy was to pay after we foreclosed.  
14 So they wouldn't have changed anything. They didn't change their position. They  
15 didn't alter their position in any way. They did exactly what they would have done  
16 in any case. And nothing affected them from attending the sale, even if that was  
17 the case. They could have gone to the sale and said, hey, we dispute this, there's  
18 a bankruptcy, or bid. They would have essentially made a credit bid. They could  
19 have bid up this property to the point of what they were owed if they wanted to and  
20 they didn't. So that's really speculation, Your Honor.

21           And so we submit that there's really no issues of fact here, that  
22 summary judgment is warranted on both, against the bank and against the third  
23 party purchaser at the bank foreclosure.

24           THE COURT: I appreciate it. Thank you so very much.

1 MR. DELIKANAKIS: Good morning, Your Honor. We seem to have gone  
2 far afield from the moving papers, but I'm going to focus first on your initial question.  
3 What is the impact, if any, of the bankruptcy court's decision in California? And I  
4 would like to focus, because I know you've had experience in bankruptcy, is that  
5 when the bankruptcy court in California made this decision to annul the stay, it was  
6 looking through the lens, of course, of a bankruptcy court and relation to the debtor.

7 I think my colleague to my right overstates it by somehow that this  
8 decision, like a big sponge that God wields, washes away all sins and washes away  
9 the conduct that actually occurred. This Court sitting in equity should apply a  
10 different analysis because its concern is different as to what actually occurred and  
11 what unfairness. And I'm tying this to the unfairness component of the commercial  
12 unreasonableness and that's why I think this Court at the end of the day -- what this  
13 order bought my colleagues' client, SFR, is it robbed this Court of the foundation to  
14 declare that the sale was void ab initio, which is what probably would have occurred  
15 had this been a violation of the stay.

16 Granted, that's gone, but what is not gone is the conduct that occurred,  
17 and that's why this Court has to take cognizance of what occurred and how did it  
18 unfairly prejudice the bank at the time. And the reason why this is important, you  
19 only have to look at the timeline. Wells Fargo filed a bank notice of default on  
20 February 24th, 2010. It filed a bank's notice of trustee sale July 12th of 2010.  
21 The borrower filed bankruptcy on August 23rd of 2010. The bank properly, on  
22 July 2nd, 2012, filed a motion for relief of automatic stay. Now, it's operating in the  
23 legal realm, like we're not going to proceed with our foreclosure until we get a lift  
24 of the stay.

1           The HOA then on May 24th of 2012 files a notice of delinquent lien.  
2 We get an order, the bank -- oh, and the HOA in July of 2012 files a notice of default.  
3 The bank obtains then an order in August of 2012 granting relief from bankruptcy  
4 stay. The HOA's conduct is not absolved by the bankruptcy's order, especially if this  
5 Court is doing the analysis as to was there some fundamental unfairness about this  
6 transaction which accrued to the detriment of the bank. The HOA then ignored,  
7 for whatever reason, didn't bother didn't get a lift of stay; sold the property. Bank of  
8 America -- excuse me, Wells Fargo followed the law. Wells Fargo did not proceed  
9 with its foreclosure. It did not race to foreclose in violation of the stay.

10           So that is kind of the unfairness that occurred here. That's why I think  
11 the effect of the bankruptcy court's order is somewhat limited. You don't just ignore  
12 the facts because the bankruptcy court said for the purposes of the analysis of a  
13 bankruptcy court as to the debtor's estate and the debtor we're going to lift this stay  
14 because it really didn't harm the debtor. At the end -- and maybe we can talk about  
15 this in further briefing, but at the end of the day this Court still has to look at the  
16 conduct for the analysis under Nevada law as to what was fundamentally unfair  
17 when you have a commercially unreasonable price, which is only six percent of the  
18 fair market value.

19           THE COURT: Do I have any evidence that the bank did anything differently  
20 because the bankruptcy stay was in effect? Because as you know through -- starting  
21 with SFR back in September 2014, September 18th, I believe it was, you know the  
22 Nevada Supreme Court talks about, you know, banks could have done X, Y, Z to  
23 protect their interests. But do I have any evidence -- and this is my overall challenge  
24 on this case is because the order came down after you all had the briefing, is I don't

1 know if the HOA knew about the bankruptcy. I don't know if the HOA's agent knew  
2 about the bankruptcy. But then I'm limited to the pleadings before me in ruling on  
3 a motion. I don't know if the bank took action, didn't take certain action because  
4 it says, oh, there's a bankruptcy out here, I don't have to worry about this piece of  
5 property or not, you know what I mean. I don't know. These are all things --

6 MR. DELIKANAKIS: That's a reasonable inference, Your Honor, if the  
7 bank --

8 THE COURT: It's not even an --

9 MR. DELIKANAKIS: Yeah.

10 THE COURT: These are all I don't know. And so -- but you mentioned in  
11 your reply in your motion -- and I'm not leaving you out, it's just you're not really at  
12 this stage, you know, back at the first one because -- but you mentioned that the  
13 bankruptcy has an impact and that's really why I was asking the question, you know  
14 what I mean. There seems to be this great unknown. I mean, I'm appreciative of  
15 the lens and the rubric in which a bankruptcy looks at it. A bankruptcy doesn't look  
16 to protect the HOA's interest, subsequent purchaser's interest --

17 MR. DELIKANAKIS: Of course.

18 THE COURT: -- the bank lienholder's interest and even first subsequent  
19 purchaser's interest. It's looking -- its jurisdiction is over debtor and does this impact  
20 what happened with regard to debtor and the creditors in that debtor's estate.

21 MR. DELIKANAKIS: Exactly.

22 THE COURT: And I'm not minimizing it, it's a great role, I'm just saying it's  
23 different than what I'm looking at here. So, anyway.

24 MR. DELIKANAKIS: Exactly. And that's the point. That's why I think my

1 colleague overstates it when they said the bankruptcy order somehow validates and  
2 approves of the entire process of the sale. That's not what the bankruptcy court did  
3 and I don't think the Court should read the bankruptcy order as doing that. This  
4 Court has to look at the time that the stay was in place what conduct, if any, by the  
5 HOA and SFR accrued to some unfairness to Wells Fargo. The unfairness is that  
6 it violated the stay and proceeded to race to foreclose on the property well before  
7 Wells Fargo could actually finish their foreclosure because Wells Fargo followed the  
8 law. And that's the kink in this transaction and that's why at the end of the day it's  
9 probably a fact question as to whether there was some fundamental unfairness in  
10 this transaction. As a matter of law I think you could rule, but, you know, there might  
11 be some differing opinions.

12               So that is -- I hope I answered at least some aspect of your question.

13           THE COURT: I appreciate it. Go ahead.

14           MR. DELIKANAKIS: Okay.

15           THE COURT: I just was looking at some of the documents because normally  
16 I have -- and I didn't remember seeing it here, normally you all attach the whole  
17 NAS/Alessi file, whatever the file may be showing all the records and showing that  
18 they did a diligent search before they did do it. I don't remember seeing that in this  
19 one and that's why I was quickly checking.

20               Sorry, counsel. Go ahead with your argument.

21           MR. DELIKANAKIS: My recollection is that there was some deposition  
22 testimony, and I wish I could point it to you, but I don't think they bothered to look  
23 for bankruptcy, to be blunt. I don't know if it was the deposition of the HOA or it was  
24 the deposition of SFR. I imagine it would be HOA. But anyway --



1 THE COURT: I'm sorry. Go ahead, counsel. I interrupted you. Sorry,  
2 go ahead, please.

3 MR. DELIKANAKIS: I'll withdraw that because I can't point you to it, so I'd  
4 rather not speculate. So at the end of the day was this transaction commercially  
5 unreasonable? I think it was. And at the end of the day is there some fundamental  
6 unfairness when a party follows the law and refrains from foreclosing -- especially  
7 when they filed their notice of default back in 2010 -- because of this stay and  
8 doesn't then proceed until after they bother to get a lift of stay. And that's the part,  
9 you know, the other parties, SFR and the HOA can't get around. They're stuck  
10 with --

11 THE COURT: The 196 days. Okay.

12 MR. DELIKANAKIS: They're stuck with that fact. It did occur and I don't  
13 think this Court should use the bankruptcy order to somehow wash away that fact  
14 to grant summary judgment in this case.

15 With regard to the Bourne Valley matter, I understand this Court's  
16 practice is not to grant stays, so I'm not going to *sua sponte* ask for a stay because  
17 I think it's going to be denied and it would be improper. If we wanted to file a motion  
18 to stay, we would. Do I think it would be prudent to wait until the U.S. Supreme  
19 Court, which this Court is bound by, to wait on the issue of the due process should  
20 be decided? Yeah, I think it would be prudent. But I understand that's kind of a  
21 non-starter pursuant to other decisions by this Court.

22 And aside from that, you know, I mean, I could go through -- this has  
23 been extensively briefed. To sit here and say that there are no genuine issues of  
24 material fact as to, for example unfairness, I think the question of fact is did we

1 receive notice. I understand there's a difference of opinion. You have cards, they  
2 said they were signed. Mr. Ferguson testified they did not receive it. I think there's  
3 another question as to whether the wording of the HOA foreclosure notice put  
4 U.S. Bank on notice that the security interest was in jeopardy. The notice was the  
5 generic notice that basically did not delineate that you had to pay the super priority  
6 amount. If anything, that's probably why Bank of -- excuse me, Wells Fargo Bank  
7 said we didn't change our procedure because we basically go ahead and proceed  
8 and foreclose and then pay it off. But there is a genuine question as to what is the  
9 effect of the notice on the bank that receives it if it does not delineate that they're  
10 in jeopardy of losing their collateral if they don't take some action.

11 And so once again, whether the bankruptcy automatic stay U.S.  
12 Bank's abiding by versus the HOA's violation of it created a situation of unfairness  
13 at the HOA sale, yes. And also, the fact of the matter is is that if property is being  
14 sold and the debtor is in bankruptcy as a matter of public record, I think it did impact  
15 the fair market value sale.

16 So in this case it was six percent. It was \$14,000 versus I think  
17 \$128,000. This Court would be well within its power to declare at least as a matter  
18 of law that that dollar amount sale was so unconscionable that you can then at least  
19 proceed to the fact portion of the analysis as to the unfairness and allow the trier  
20 of fact to make a decision as to whether there was some unfairness, combined with  
21 this absurdly low price.

22 And unless the Court has any other questions --

23 THE COURT: I do not. Thank you so very much.

24 MR. DELIKANAKIS: Okay, thank you. Very good.

1 THE COURT: I appreciate it. Thank you.

2 Go ahead, HOA.

3 MR. WAITE: Your Honor, I'm not going to belabor much of what's said. My  
4 colleague for SFR did a fine job, and so I will just take what she said and say amen  
5 to that. And to answer your question, Your Honor, I'd like to read just the black and  
6 white words of this order from California. Box 18 checked: "Other. Specify. Items  
7 Number 4 A and C above are also applied to provide relief and annulment of the  
8 automatic stay retroactive to the petition date for any and all actions in support of  
9 the foreclosure taken with respect to the property by the Copper Ridge Community  
10 Association and/or its agent, Nevada Association Services."

11 I guess if God has a sponge that he wipes away things with, this  
12 would be the equivalent of the bankruptcy court sponge here. This says any and  
13 all actions taken, not the ones that we might think are okay or -- I don't even think  
14 they took a position other than bankruptcy stay gone as far as we've laid it out here.  
15 NAS, Copper Ridge and the movant, SFR, those are the only people we're worried  
16 about in this case, Your Honor. I would submit, just as my colleague for SFR did,  
17 this bankruptcy order does exactly what this Court needed it to be able to make  
18 a decision as to whether or not there was a violation of the bankruptcy stay, and  
19 that is it was annulled retroactively and because of that it is as if it never existed  
20 for purposes of the foreclosure sale.

21 And so if we were to take what the bank wants us to and say, well,  
22 that's just what the paper says, but we think it's unfair, we don't think that it should  
23 be construed as broadly as they wrote it, that's not for us, that's not for the Court  
24 to decide whether or not we should construe another court's order broadly or not

1 based on the wording. So we would submit, Your Honor, that this does take care  
2 of any issue with regard to a violation of the bankruptcy stay inasmuch as it relates  
3 to the foreclosure sale by NAS and the HOA.

4 THE COURT: Okay. But the bankruptcy code provision, right, any creditor  
5 can move forward, right, to lift the stay with relationship to an asset that's part of the  
6 debtor's estate in bankruptcy.

7 MR. WAITE: Yes.

8 THE COURT: Are you saying that the bankruptcy order applies Nevada law  
9 and says what can and cannot be done under a Golden v. Tomiyasu analysis, or  
10 are you saying that their limited focus -- and I don't have the benefit of the pleadings  
11 that even went before the bankruptcy court --

12 MR. WAITE: Right.

13 THE COURT: -- but, I mean --

14 MR. WAITE: And neither do I, Your Honor.

15 THE COURT: Right. So, do we know, was the bankruptcy court asked to  
16 just merely opine on whether or not an action that was taken against an asset of a  
17 debtor's estate, whether the fact that it was foreclosed on that it had no impact as to  
18 the debtor's estate, or are you saying that it was broader in front of the bankruptcy  
19 court?

20 MR. WAITE: What we're saying --

21 THE COURT: Hence the double lens that counsel for the bank is saying,  
22 you know what I mean. There's two aspects. The void ab initio aspect --

23 MR. WAITE: Right.

24 THE COURT: -- and then the second is, no, it just now goes back to what

1 impact, if I'm putting a lens on for what the parties knew in 2013, it goes back to  
2 that aspect.

3 MR. WAITE: I understand, Your Honor. What we're saying is with regard to  
4 the void ab initio this order should be pretty clear.

5 THE COURT: I don't think anyone disagrees that it's no longer void ab initio --

6 MR. WAITE: Right.

7 THE COURT: -- because the bankruptcy court says what the bankruptcy  
8 court says. Right?

9 MR. WAITE: Right.

10 THE COURT: Are you contending that it's not -- I think you're conceding that,  
11 right? I heard you concede it.

12 MR. DELIKANAKIS: Yes. Yes, Your Honor. Absolutely.

13 THE COURT: Joinder party. You're not -- I'll wait to hear from you to see if  
14 they have a different position.

15 MR. BOHN: We're conceding. Yes.

16 THE COURT: Okay.

17 MR. WAITE: With regard to applying the Nevada law, applying the facts and  
18 what affect the bankruptcy would have had on the foreclosure sale or the price that  
19 was paid, the prices that were bid, we're not saying that this dispels with that aspect.

20 THE COURT: Okay.

21 MR. WAITE: But I will get to another point that was brought up with regard to  
22 the notice of the bankruptcy. It is very true that you can't just go on the Recorder's  
23 Office and see, just like you can if there's a lis pendens or other recorded documents  
24 with the Assessor or the Recorder's website that something is pending, something

1 is out there. You can't do that with bankruptcy, at least not that I'm aware of. And  
2 so I don't -- because I cannot speak for NAS, I don't know what NAS did or did not  
3 know. It is my understanding, based on the facts that I have from NAS, that they  
4 were not aware of the bankruptcy or the stay. Certainly I can represent to Your  
5 Honor that the HOA itself had no idea. We first heard about the bankruptcy when  
6 it was brought up as an issue, and I don't have any other evidence to show that  
7 either NAS or the HOA were sent notice, were put on notice.

8 THE COURT: They weren't given a creditor's notice as having outstanding  
9 HOA payments?

10 MR. WAITE: We --

11 THE COURT: I mean, this is far afield. I mean, I'm just -- let's put it -- I take  
12 back my question. That was more of a --

13 MR. WAITE: Well, I understand what you're asking and the answer is to the  
14 best of my knowledge, no, I do not believe the HOA was listed as a creditor on the  
15 bankruptcy petition, which would have been listed as a -- on the mailing list for the  
16 notices. I don't have the pleading in front of me, the petition. I'm fairly certain that  
17 that's what the fact was, but again, I'm just going off of my recollection.

18 THE COURT: No worries. No worries.

19 MR. WAITE: And so I can't say whether or not the bankruptcy did or did  
20 not affect the price that anyone was willing to pay. Certainly we don't have any  
21 evidence. Nothing has been presented to this Court in pleadings, testimony, to say  
22 that anything did affect it -- that anything was affected, rather, by the bankruptcy.

23 We agree that SFR -- or we agree with SFR that Saticoy Bay does  
24 dispel or dispense with all the unconstitutionality claims. We would likewise not seek

1 or we would oppose a stay or a continuance. We feel Your Honor has the ability and  
2 the authority to act and to make a decision based on the current state of Nevada law  
3 in that regard.

4 And for purposes of time, Your Honor, again, I will just incorporate what  
5 my colleague for SFR has said about the other issues that the bank has brought up.  
6 And if Your Honor has any other questions, I'll be happy to answer them.

7 THE COURT: I appreciate it.

8 MR. WAITE: Thank you.

9 THE COURT: The spouse was Richard Parks, right?

10 MR. DELIKANAKIS: Excuse me, Your Honor?

11 THE COURT: Spouse was Richard Parks, the spouse's name?

12 MS. HANKS: Yes. I believe so, Your Honor.

13 THE COURT: Okay, thank you.

14 MS. HANKS: I don't know about Richard. I just know Parks. Sorry. I'm not  
15 clear on that.

16 THE COURT: No worries. I just was trying to get the husband's --

17 MR. DELIKANAKIS: Yeah. I don't know, Your Honor.

18 MS. HANKS: And it was Parks. Yeah.

19 THE COURT: Okay. Go ahead.

20 MR. BOHN: Thank you, Your Honor. Michael Bohn for NV West Servicing.  
21 I'm in an unusual position in this case. This isn't my normal big client I'm here on  
22 most of the time. It's a different client and we have a different position here in that  
23 my client acquired the property at the foreclosure sale done on the trust deed held  
24 by U.S. Bank. We only filed joinders to U.S. Bank's position. If the Court rules

1 that the sale to SFR was not valid and they don't have good title, then my client has  
2 good title. If you rule in favor of SFR, then we have to have a long talk with the  
3 people at U.S. Bank. But we have just filed joinders and don't have anything to add  
4 other than what's already been presented to Your Honor.

5 THE COURT: Okay. I appreciate it.

6 Have I given everyone an opportunity to speak? Anyone wish, in light  
7 of anybody's else, since they went first or second or third, think that there's anything  
8 more? Okay.

9 Well, I'm kind of back where I was at the beginning of this. And I  
10 appreciate the excellent oral argument. See, and I can't tell you that if you were to  
11 Google in people's name and type the word bankruptcy what might pop up or not  
12 pop up because that's not before me. I think I need subsequent -- as much as I'm  
13 appreciative of cost and expense, I really do think in this case if any party wishes  
14 to give me subsequent briefing of the impact of the bankruptcy on the sale, not the  
15 issue of the -- it seems you all agree, please let me know if somebody disagrees,  
16 that the fact that the bankruptcy did a retroactive order relating to the stay, that that  
17 takes away the bank's argument about being void ab initio and it would take away  
18 any oppositions, you know what I mean, that you disagreed with that, right?

19 So, but what still is left out there potentially, the Court takes no ruling,  
20 is the bank in both its motion for summary judgment and in its opposition -- U.S.  
21 Bank, I'll be more appropriate, U.S. Bank N.A. in its motion for summary judgment,  
22 opposition to SFR's motion and opposition to Copper Ridge's motion and indirectly  
23 by the joinders, since yours was a global joinder, it wasn't a limited joinder of the  
24 joinder party is that the Court should be evaluating the commercial reasonableness



1 in a two-prong step. One is the straight 20 percent. Sorry, the Court is not going  
2 there. I don't think the Nevada Supreme Court goes there. But the second prong --  
3 There's enough unpublished decisions. PNC is not the first of the unpublished  
4 decisions. There's a couple others. I say decisions, unpublished orders, excuse  
5 me, where the court has clarified it. In fact, very recently after Shadow Wood, it  
6 was about a month later was Judge Delaney's case. I think it was Centennial, but  
7 I'm pretty close.

8 But the second prong of looking at price plus, is the way I'm going to  
9 phrase it. Some people called it price plus, so -- and I'm not saying that that's the  
10 sole standard, but I think the Court in sitting in equity has to give the parties an  
11 opportunity if they choose, and if they don't wish to that's perfectly fine, but to  
12 evaluate whether or not the aspect of there being a bankruptcy of the underlying  
13 borrower or borrowers. I mean, some of you have called it borrower because only  
14 she's named, but yet in the bankruptcy petition it initially had both parties, it looks  
15 like, but whatever, party or individual borrower or borrowers. So I'll say Ms. Parks  
16 or the Parks, however you all wish to phrase it. That's going to be up to you. What  
17 impact that had that the Court should or should not -- whether the Court should or  
18 should not be considering the fact that there was that bankruptcy that was filed and  
19 as -- I'm looking at a lens of 2013 and what, if any, impact the Court should be  
20 looking at with regards to that and what -- you know, with regards to the pending  
21 motion for summary judgment.

22 Go ahead. You have a question for clarification?

23 MR. DELIKANAKIS: Yes, Your Honor.

24 THE COURT: Okay, of course. Go ahead.

1 MR. DELIKANAKIS: Does this accrue to the claim that the sale was  
2 commercially unreasonable? Is that where the Court is going with this?

3 THE COURT: The equitable aspect that ties into the commercial  
4 unreasonableness. Yes.

5 MR. DELIKANAKIS: Yes. Okay. Thank you.

6 THE COURT: That's -- I'm limiting it to that. I think the other arguments that  
7 are fleshed out in your motions are fleshed out very well. I mean, I think everything  
8 is fleshed out very well, but I don't have the nuance in the other that I think that  
9 there is -- no one has asserted that there's any intervening law, any intervening  
10 factual scenario. While I'm appreciative I'm, what, I guess judge number three on  
11 this case, that doesn't matter for purposes -- I can read the record. But I think if  
12 I'm looking at dispositive motions where it's at least -- and the reason why the Court  
13 finds it's appropriate to ask for supplemental briefing because it was brought up  
14 in the bank's motion and opposition that this is an aspect that the Court should be  
15 looking at. And I think, though, now that you have an order and now that there is  
16 a little bit more known about the bankruptcy that I should give all the parties an  
17 opportunity if they choose to do so to do some supplemental briefing about what  
18 impact, if any, the bankruptcy -- you know, whether I'm looking at a lens that is 2013  
19 or should I be looking at only a lens in 2017? Do you understand what I mean by  
20 that distinction?

21 MS. HANKS: Yes.

22 THE COURT: Okay.

23 MR. DELIKANAKIS: Yes, Your Honor.

24 MR. WAITE: Yes.

1 THE COURT: Okay. Or maybe I should be looking at it both or maybe it  
2 should only be '17. I mean, any of those are options. And so I'm going to offer it  
3 out there if anyone thinks they want to potentially take it up. If everybody says you  
4 want me to rule today, I'll rule today.

5 MS. HANKS: Well, Your Honor, I think I would like to avoid a trial if at all  
6 possible, so if supplemental briefing might help in that, I would like to do that. It  
7 doesn't mean we might not end up with doing a trial and that there will be issues of  
8 fact that still appear, but I think it is certainly prudent to do a honed-in supplemental  
9 briefing on that very issue where we really just focus on that and then see where  
10 it goes.

11 MR. DELIKANAKIS: I would certainly welcome the opportunity to provide  
12 supplemental briefing.

13 MR. WAITE: Same.

14 MR. BOHN: I concur with counsel, yes.

15 THE COURT: Okay. Well, since I have everybody wanting to do it, you know  
16 what I mean -- like I said, it's optional. I'm not going to require it. But since at least  
17 one person wants to take me up on it, then I'm not going to rule today. And I think  
18 the cleaner, easier way really, although there's other arguments raised in each of the  
19 respective motions, is to do this in one fell-swoop order versus doing it piecemeal,  
20 particularly since if anyone wants any further -- whatever people may want or may  
21 not any further.

22 MS. HANKS: Understood.

23 THE COURT: Does anyone disagree with that concept?

24 MS. HANKS: No.

1 MR. WAITE: No.

2 MR. DELIKANAKIS: Just so I understand, we're all going to submit one  
3 brief --

4 THE COURT: Yeah.

5 MR. DELIKANAKIS: -- stating our position?

6 THE COURT: On the commercial reasonableness. I'm going to phrase it  
7 as commercial -- I'm not narrowing it by calling it commercial reasonableness. The  
8 assertion of -- I'll call it the equity arguments of what the Court should look at, the  
9 impact of the bankruptcy with regards to the equity arguments raised by the various  
10 parties in their briefs or responded to in their oppositions. Okay?

11 MR. DELIKANAKIS: Very good, Your Honor.

12 THE COURT: And then I think one brief, everyone to do it at the same time,  
13 because this is an informational brief, this isn't an argument brief.

14 MS. HANKS: Right.

15 THE COURT: And that way if anyone doesn't want to do it, you know. Do  
16 you want me to give you two days after the briefing date if somebody wants to do  
17 a joinder?

18 MS. HANKS: Sure.

19 MR. DELIKANAKIS: Sure.

20 THE COURT: Or do you just want a straight briefing date? I'm not trying to  
21 have people incur costs and fees. That's why --

22 MS. HANKS: Let's do two days. That way if parties just want to join and they  
23 don't want to --

24 MR. BOHN: I'll likely just do a joinder.

1 MS. HANKS: Yeah. Let's do that, two days to join.

2 THE COURT: Okay. So I'm going to give you -- are you going to agree  
3 upon a date that everybody, if you wish to file a briefing you file it by X date, and if  
4 anybody didn't file a briefing but they want a joinder, then their joinder is two days.  
5 But, you know, a joinder is --

6 MS. HANKS: We join.

7 THE COURT: -- to that, it's not a you get two extra days. Okay? Is that fair  
8 to everybody?

9 MR. DELIKANAKIS: Understood.

10 MR. WAITE: Understood.

11 THE COURT: Okay. So what date do you want?

12 MR. DELIKANAKIS: Three weeks?

13 MS. HANKS: Yeah, I --

14 MR. DELIKANAKIS: Is that enough?

15 MS. HANKS: When is our trial? I'm sorry. When is our stack?

16 MR. DELIKANAKIS: There's no trial --

17 MR. WAITE: I don't think we have one.

18 MS. HANKS: June 26th?

19 MR. DELIKANAKIS: I don't think we're on a stack, Your Honor.

20 MS. HANKS: Oh, we're not?

21 THE COURT: You do not currently have a trial date in this case --

22 MR. DELIKANAKIS: Yeah, which is --

23 THE COURT: -- which is where we were going next, because of your  
24 bankruptcy, remember?

1 MR. DELIKANAKIS: Right. Yeah. So there's no trial set.

2 THE COURT: I had to deal with the bankruptcy order first and so we couldn't  
3 set anything.

4 MS. HANKS: Okay. Then as much as I would hate to ask for this much time,  
5 since we're not pressed I would like to do something in July because I have a trial  
6 in June. My June calendar is just a nightmare.

7 THE COURT: The Court is going to be out of the jurisdiction for a couple  
8 weeks in July, so please don't pick a hearing date that -- Now, do you all want a  
9 hearing date or do you just want to all submit briefs and I rule in chambers?

10 MR. DELIKANAKIS: I don't think we need a hearing.

11 MR. WAITE: I don't think we need --

12 MS. HANKS: I always welcome the opportunity to ask any other questions,  
13 but I'm --

14 THE COURT: I'm going to set it for chambers. I'm going to set it for  
15 chambers and then if there's a request for a hearing someone is going to need to  
16 put it on there --

17 MR. DELIKANAKIS: That's fine.

18 THE COURT: -- and give me a reason why you need a request for hearing.

19 MR. DELIKANAKIS: Okay, that's fine.

20 THE COURT: Does that work?

21 MR. WAITE: That works. That's fine.

22 MR. BOHN: Yes.

23 THE COURT: Because then, you know what I mean, you can think it over  
24 and discuss it among yourselves. Okay.

1 MS. HANKS: Particularly because we're not going to be able to respond,  
2 maybe we might.

3 THE COURT: Okay. I'm going to set it for a chambers decision. If I receive  
4 a request for hearing, it needs to have some reason why you need a hearing on --  
5 you know what I mean, this aspect. Any requests for hearings, five days after the  
6 submission of the briefs.

7 MS. HANKS: Okay.

8 MR. DELIKANAKIS: Okay. You know, I had one --

9 THE COURT: Of course. Go ahead, counsel.

10 MR. DELIKANAKIS: -- one concern because this is what happens with these  
11 requests for hearings, they turn into opposition briefs. And, you know, if we're going  
12 to go down that road, then we're just going to do it uniformly. So if we just want to  
13 have -- you know, let's just, if we can, just agree that we're going to have a hearing  
14 because then it just turns in a whole slew -- everyone then feels compelled to file  
15 a response to the motion.

16 THE COURT: Okay.

17 MR. DELIKANAKIS: You know, it becomes very cumbersome. I've been  
18 there before.

19 MS. HANKS: And I'm okay doing it with chambers. It doesn't matter to me.

20 MR. DELIKANAKIS: We can -- yeah.

21 MS. HANKS: I'm confident in our briefing. I don't think we ever leave  
22 anything out. I just know that you had questions here today, and so it's always nice  
23 if you have some other questions, that's all. But --

24 THE COURT: I've been pretty exhaustive in my questions.

1 MS. HANKS: Yeah.

2 THE COURT: I mean, I wasn't trying to put anyone on the spot, but that's  
3 really where the heart of when I saw this --

4 MS. HANKS: Okay.

5 MR. DELIKANAKIS: Sure.

6 THE COURT: -- and I saw the order is this one has that unique aspect,  
7 you know.

8 MS. HANKS: I'm fine either way.

9 THE COURT: You're fine either way?

10 MR. DELIKANAKIS: I'm fine either way.

11 MS. HANKS: I'm fine with that, too.

12 MR. DELIKANAKIS: I just don't want to go through this request oral  
13 argument. Yeah.

14 THE COURT: HOA?

15 MR. WAITE: I'm good with that as well.

16 THE COURT: Which one?

17 MR. WAITE: We can set it for chambers. That's fine.

18 THE COURT: Okay.

19 MR. BOHN: I'm happy with chambers calendar, Your Honor.

20 THE COURT: Okay. Okay, so I'm going to set it for chambers, okay. And  
21 today being June 6th, so I'm either going to have to set it for -- I'm either going to  
22 have to give you two weeks -- well, if you wanted two weeks you'd have to do it  
23 by June 20th and I'd set it for chambers for June 30th. If you don't want to do that,  
24 then what I'm going to do is I'm not going to set it until chambers until July 28th



1 because I'm gone for a couple weeks in the July time period and I'm not going to --

2 MS. HANKS: That would be --

3 THE COURT: There's no reason to ask you to have briefs sitting around  
4 here when I'm not here.

5 MS. HANKS: That would be perfect.

6 THE COURT: Unless you want to have briefs sitting around here when I'm  
7 not here. That's your choice, too.

8 MR. DELIKANAKIS: No. July would work.

9 MS. HANKS: No. That will be perfect. That would give us --

10 THE COURT: If I want chambers on July 28th, that means I need briefs by  
11 July 18th.

12 MR. DELIKANAKIS: Very good, Your Honor.

13 THE COURT: Does that work?

14 MR. DELIKANAKIS: Yep.

15 MR. WAITE: Yes.

16 THE COURT: Is that too much time? Is that too little time?

17 MR. DELIKANAKIS: That's plenty of time.

18 MR. WAITE: That's plenty.

19 THE COURT: Okay. And then depending on the Court's ruling, what we'll do  
20 is after the Court's ruling what I'm going to -- I'll probably -- well, depending on how  
21 I rule on each of those, you may or may not get at the bottom of the minute order  
22 that says the Court is then setting either a telephonic status check regarding trial  
23 setting or you won't get it depending on how I rule, right?

24 MR. DELIKANAKIS: Exactly.

1 MS. HANKS: And do we want to reset our motion in limine?  
2 MR. DELIKANAKIS: Yeah, can we --  
3 THE COURT: Do you want it today or you want it --  
4 MS. HANKS: I'd say reset it --  
5 MR. DELIKANAKIS: I'd like to reset it, Your Honor.  
6 MS. HANKS: -- because it might be moot.  
7 THE COURT: Is it moot? I mean, it's pretty much asking for -- I mean, it's  
8 a standard --  
9 MS. HANKS: You've actually already ruled on a similar motion, so I imagine --  
10 THE COURT: I mean, it's an NRCP 16 motion with a carve-out that if it's  
11 new information the new information comes in at the time of trial, but you have to  
12 establish it's new information.  
13 MS. HANKS: Oh, that's our motion. Yes, Your Honor. Then you're right;  
14 that's our motion. I was referring to -- I forgot we had our own motion.  
15 THE COURT: Yeah, you had your motion. That's what I was --  
16 MS. HANKS: They have also a motion in limine, so.  
17 THE COURT: Right.  
18 MS. HANKS: But you're right, our motion doesn't really -- it doesn't matter  
19 when you hear it. It's not that --  
20 THE COURT: When do you want yours heard?  
21 MR. DELIKANAKIS: Before trial. Later.  
22 THE COURT: Okay.  
23 MR. DELIKANAKIS: Yeah.  
24 THE COURT: So then we'll --

1 MR. DELIKANAKIS: The Court has dealt with this issue before, so.

2 THE COURT: It seems to me that if I need a telephonic, depending on the  
3 ruling on the 28th, then the Court is then at the bottom say the parties need to  
4 coordinate and set up a telephonic, because you're going to probably want just  
5 a telephonic to pick a new hearing date, if that's -- I mean, I'm not -- that's no way  
6 advance ruling, I'm just saying if there's anything left we'll do it that way. Is that  
7 the cleanest, easiest way, instead of having you come in for a status check?

8 MS. HANKS: That sounds good.

9 MR. DELIKANAKIS: We appreciate it.

10 THE COURT: And then we'll figure out then if you have to do a status check  
11 and reset hearings. Does that work for everyone?

12 MS. HANKS: Yes.

13 MR. DELIKANAKIS: Yes, Your Honor.

14 MR. BOHN: Yes.

15 THE COURT: Does that work for you as well? Okay, then we'll do it that way.  
16 So now that I've confused my clerk, because I have a wonderful clerk helping me this  
17 week that's not used to kind of the way I do these multi-step things, so July 28th is  
18 going to be the chambers calendar for a decision on the three pending motions for  
19 summary judgment and for the scheduling, if applicable, of the outstanding motions  
20 in limine. Okay?

21 THE CLERK: Okay.

22 THE COURT: So we'll move -- those motions in limine will be moved to the  
23 28th of July, but realize there's not going to have a decision on that day, it's just we  
24 can't just leave things hanging out in dates. So it's going to be moved there, but

1 that's going to be for scheduling of those. Okay? And then July 28th is also going  
2 to be for setting up a telephone conference for trial scheduling if appropriate or if  
3 applicable. Okay? So that's in no way advance ruling, but that way at least we  
4 show what still is outstanding in this case.

5 MR. DELIKANAKIS: Very good, Your Honor.

6 THE COURT: It looks like you don't have -- I mean, of course you all are  
7 tracking your respective statute of limitations issues, right? And it looks like --  
8 anybody think that somebody needs to expedite something?

9 MS. HANKS: I'm not aware of anything on our end.

10 MR. DELIKANAKIS: No.

11 MR. WAITE: No.

12 THE COURT: Okay. Then I think I've taken care of everything that was  
13 before me. Is there any other outstanding matters? Settlement conference in this  
14 case? I always ask. A lot of these cases have been resolved through the settlement  
15 conference procedure, honestly. I mean, there's a couple of judges who have done  
16 multiple of these and there's other judges who have done less than multiple but still  
17 have done them. A lot of them are resolving. Is this one --

18 MS. HANKS: We've resolved cases, too. My experience is we don't need  
19 a settlement conference.

20 THE COURT: Okay.

21 MS. HANKS: Both parties are sophisticated; it's just numbers. We don't  
22 really need a mediator.

23 MR. DELIKANAKIS: Not at this point, Your Honor. That might change after  
24 your Court's ruling.

1 THE COURT: Okay. Sounds great. Then I won't at this juncture. Thank you  
2 so very much for your time. Thank you for your patience. I hope everyone has a  
3 nice rest of your week.

4 MR. DELIKANAKIS: Thank you, Your Honor.

5 MR. WAITE: Thank you, Your Honor.

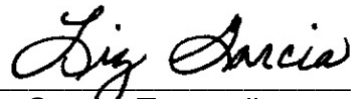
6 MR. BOHN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (PROCEEDINGS CONCLUDED AT 11:43 A.M.)

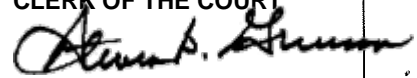
9 \* \* \* \* \*

10  
11 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
12 audio/video proceedings in the above-entitled case to the best of my ability.

13 

14 Liz Garcia, Transcriber  
15 LGM Transcription Service  
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# **TAB 33**



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

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS.

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

Dept. XXXI

**U.S. BANK'S SUPPLEMENTAL  
BRIEF RE: UNFAIRNESS**

Defendant U.S. Bank, N.A., a national banking association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series  
2006-AR4 ("U.S. Bank"), by and through its attorneys at the law firm of Snell & Wilmer L.L.P.,  
submits the following supplemental brief regarding the unfairness of the HOA foreclosure sale.

///

///

## I. INTRODUCTION

At the last hearing on the parties' motions for summary judgment, the Court requested additional briefing regarding the issue of unfairness in the context of the HOA foreclosure sale at issue in this case. This brief responds to that request.

As a preliminary matter, the bankruptcy court's decision to retroactively annul the automatic stay to prevent the HOA sale from being voided does not mean that the HOA sale and the circumstances surrounding it are retroactively "fair." The standard applied by a bankruptcy court when considering whether to retroactively annul an automatic stay is entirely separate and distinct from the standard this Court must apply when evaluating the commercial reasonableness of the HOA foreclosure sale.

Second, when analyzed under the correct standard of "fairness" as defined by the Nevada Supreme Court, it becomes clear that the HOA sale in this case should be invalidated because it was fundamentally unfair to U.S. Bank. As the authorities discussed below demonstrate, the Nevada Supreme Court will invalidate transactions and protect a party's interests where the fairness and equity demand. This is just such a case. Additionally, authorities from Nevada federal courts and courts across the country agree that equity demands that an unfair foreclosure sale be set aside as a matter of equity.

Based on upon these supplemental authorities, as well as those contained in U.S. Bank's fully briefed motion for summary judgment, this Court should invalidate the HOA sale and enter a finding that U.S. Bank's deed of trust remains as a valid security interest on the property.

## II. ARGUMENT

### A. The Bankruptcy Court's Retroactive Annulment Order Is Not Evidence that the HOA Foreclosure Sale Was Conducted Fairly.

SFR is likely to argue that the bankruptcy court's decision to retroactively annul the automatic stay, thereby removing the basis for U.S. Bank's position that the HOA sale was void, confirms that the HOA sale was conducted fairly and is therefore commercially reasonable. However, the argument is flawed and should be rejected because it relies on the faulty premise that the bankruptcy court's decision was based on the same or similar standard that this Court



1 must apply in evaluating the commercial reasonableness of the sale. That is not the case. The  
2 bankruptcy court applied a distinct and wholly irrelevant standard in deciding to retroactively  
3 annul the automatic stay.

4 Bankruptcy courts have authority to make exceptions to, or to annul, an automatic stay  
5 under 11 U.S.C. § 362(d). *In re Fjeldsted*, 293 B.R. 12, 24–25 (9th Cir. B.A.P. 2003).  
6 Bankruptcy courts in the Ninth Circuit evaluate whether cause exists for annulment of the  
7 automatic stay by using a “balancing of equities” test. *Id.* Although the *Fjeldsted* court  
8 articulated twelve factors, it also emphasized that those factors are merely a framework and not a  
9 scorecard to be mechanistically applied. *Id.* at 25. The *Fjeldsted* court also noted “[t]he general  
10 trend has been to focus on two factors in determining whether cause exists to annul the stay: “(1)  
11 whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in  
12 unreasonable or inequitable conduct, or prejudice would result to the creditor.” *Id.* Moreover, in  
13 any given case, one factor may so outweigh the others as to be dispositive. *Id.*

14 In this case, the bankruptcy court noted that several of the *Fjeldsted* factors (1, 2, 4, 6, and  
15 11) were simply inapplicable to this case as the debtors (the Parks) were not even involved in the  
16 reopened bankruptcy case. The bankruptcy court also noted that the ninth factor (how quickly  
17 SFR moved for annulment) weighed against SFR as it waited a considerable time to file its  
18 annulment motion after realizing that it had violated the automatic stay. *See* Annulment Order, p.  
19 12, a copy of which is attached hereto as **Exhibit 7**. However, the bankruptcy court noted that the  
20 seventh (ease of restoring parties to status quo ante), eighth (cost of annulment to debtors and  
21 creditors), and twelfth (judicial economy and other efficiencies) factors favored annulment  
22 because denying annulment would result in voiding the sale to SFR, which would then create a  
23 chain of events and complications to undo the sale. **Ex. 7**, p. 12. The bankruptcy court was  
24 concerned that if the sale was deemed void, SFR would seek reimbursement from the debtor  
25 and/or U.S. Bank for the alleged funds it expended in rehabilitating the property. **Ex. 7**, p. 12.

26 The Bankruptcy Court concluded that it would be difficult to restore the status quo ante.  
27 That factor, coupled with the fact that the debtors themselves had no position on the outcome of  
28 the annulment motion, and that the bankruptcy estate, the debtor, and all other creditors were

bystanders to the two party dispute between SFR and U.S. Bank, led the Court to grant annulment as it saw no bankruptcy purpose furthered by the denial of the annulment motion.

These factors, however, are irrelevant here.

**B. Under Nevada Law, The Retroactively Annulled Stay Created A Fundamental Unfairness Which Justifies Overturning The HOA Sale.**

The Court's task in this matter is to assess whether the HOA sale, including the totality of the facts and circumstances *as they were known and considered at the time of the sale*, was conducted in a fair and commercially reasonable manner. When analyzed under Nevada Supreme Court authority concerning fairness in this and related contexts, it is clear that the sale was fundamentally unfair and should be invalidated.

The Nevada Supreme Court has not fully articulated what constitutes "fairness" as it relates to HOA foreclosure sales. However, it is well settled that a Nevada court, sitting in equity, may set aside an otherwise valid foreclosure sale (of whatever type) so long as two factors are present: (1) the sales price was inadequate<sup>1</sup>; and (2) there is evidence of fraud, unfairness, or oppression related to the sale. *Golden v. Tomiyasu*, 79 Nev. 503, 504, 387 P.2d 989 (1963); *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 366 P.3d 1105, 1112, 132 Nev. Adv. Op. 5 (2016).

Nevada first adopted this rule in *Golden v. Tomiyasu*, where the Nevada Supreme Court held "that inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price." *Id.* at 514.

**The *Golden* court went on to clarify that where the price "inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought." *Id.*, at 515, 995 (internal citation omitted, emphasis supplied).**

Stated another way, "if there be great inadequacy<sup>2</sup>, slight circumstances of unfairness in the

<sup>1</sup> U.S. Bank has previously argued that Nevada law holds that a sales price less than 20% of the fair market value of the property is grossly inadequate as a matter of law, and therefore sufficient to invalidate a sale. See U.S. Bank's Renewed Motion for Summary Judgment, 8:11-11:19. U.S. Bank reasserts that argument here.

<sup>2</sup> U.S. Bank has previously demonstrated that the sales price at the HOA sale here was wholly inadequate. SFR paid only \$14,000 for the property, which is a mere 6.1% of the fair market value of the property at the time of the sale (\$228,000).

1 conduct of the party benefitted by the sale will be sufficient to justify setting it aside.” ZYZZX2,  
2 at \*4 (citing *Ballentyne*, 205 U.S. at 290).

3 The Nevada Supreme Court recently reiterated this rule in *Shadow Wood HOA v. N.Y.*  
4 *Cnty. Bancorp*, 366 P.3d 1105, 1112, 132 Nev. Adv. Op. 5 (2016). In that case, the court  
5 confirmed that Nevada law gives courts “the power, in an appropriate case, to set aside a  
6 defective foreclosure sale on equitable grounds.” *Id.* at 1111. The *Shadow Wood* court expressly  
7 affirmed that an HOA foreclosure sale can be properly set aside where an inadequate price is  
8 combined with “a showing of fraud, unfairness or oppression.” *Id.* at 1112.

9 In addition to the authorities cited above which discuss unfairness in the context of  
10 foreclosure sales, the Nevada Supreme Court has addressed what constitutes “fairness” in a  
11 number of other contexts, some of which are instructive here. A review of these cases  
12 demonstrates that the HOA’s violation of the automatic stay was fundamentally unfair to U.S.  
13 Bank in the context of the HOA sale.

14 1. *It Is Unfair To Retroactively Alter Legal Requirements To Benefit One*  
15 *Party And The Detriment Of Another.*

16 In *City of Reno v. Nev. First Thrift*, 100 Nev. 483, 686 P.2d 231 (1984), the Nevada  
17 Supreme Court reviewed whether a city may retroactively enforce zoning regulations against a  
18 contractor that acquired its permits under the prior code. *Id.*, 100 Nev. at 485. There, non-party  
19 Vari-Build submitted construction plans for a residential complex in Reno. *Id.* After reviewing  
20 the plans, the city approved the project and issued Vari-Build a building permit. Later, Vari-  
21 Build obtained financing from Nevada First Thrift to complete construction. *Id.* During  
22 construction, the city amended the zoning code and the project no longer met the requirements.  
23 *Id.* These new zoning code prevented Vari-Build from qualifying for a business license or renting  
24 the units. *Id.* As a result, Vari-Build defaulted on its obligation with Nevada First. *Id.*

25 Nevada First foreclosed and then obtained a writ of mandamus to compel the city to issue  
26 it a business license to complete the units and begin renting them. *Id.* The city appealed. *Id.*  
27 The Nevada Supreme Court, however, affirmed the writ finding “the City . . . acted unfairly by  
28 attempting to retroactively enforce the new interpretation of [the code].” *Id.* at 489. In essence,

1 the Nevada Supreme Court ruled that it was unfair for the one party to disadvantage the other by  
2 retroactively applying the rules. Here, the City knowingly adopted changes that would adversely  
3 affect Vari-Build's interest in the project. **Changing the rules at that stage of the project—**  
4 **when the project was complete and ready to lease—was patently unfair.** The Court also  
5 found that the city's actions were not merely unfair, they violated public policy as well. "It would  
6 . . . offend public policy if cities were allowed to retroactively apply modified building rules and  
7 zoning changes so late in the life of a project." *Id.* at 487 (*quoting Deer Park Civic Assoc. v. City*  
8 *of Chicago*, 347 Ill. App. 346, 106 N.E.2d 823, 825 (1952)). Fairness does not allow one party to  
9 change the rules to its benefit and the detriment of others late in the interaction.

10 Applying *Nevada First Thrift* to this situation demonstrates that the retroactive annulment  
11 of the automatic stay to benefit SFR was inherently unfair to U.S. Bank. U.S. Bank complied  
12 with the automatic stay and delayed its own proper foreclosure action once the homeowner filed  
13 bankruptcy. U.S. Bank properly sought and obtained relief from the automatic stay in order to  
14 continue its foreclosure of the property. The HOA, on the other hand, and by extension SFR,  
15 violated the automatic stay by pressing forward and conducting the HOA sale while the  
16 homeowner's bankruptcy was still active, to the detriment of U.S. Bank. SFR then surreptitiously  
17 reopened the homeowner's bankruptcy proceedings and moved to annul the stay, without  
18 notifying U.S. Bank or the other parties to this litigation.<sup>3</sup>

19 The bankruptcy court's decision to retroactively annul the stay operated to unfairly benefit  
20 SFR and disadvantage U.S. Bank in these proceedings. Under the Nevada Supreme Court's  
21 decision in *Nevada First Thrift*, this retroactive changing of the rules to benefit one party created  
22 a fundamentally unfair situation vis-à-vis U.S. Bank.

23  
24  
25 <sup>3</sup> SFR never notified U.S. Bank of its efforts to reopen the bankruptcy or to retroactively annul the automatic stay and  
26 never served copies of its moving papers on U.S. Bank. Indeed, counsel for U.S. Bank did not learn of SFR's furtive  
27 actions in the bankruptcy court until SFR filed its Opposition to U.S. Bank's Renewed Motion for Summary  
28 Judgment on February 13, 2017, less than 24 hours before the scheduled hearing on SFR's motion to retroactively  
annul the automatic stay on February 14, 2017. At no time during the course of its efforts to annul the automatic stay  
did counsel for SFR contact counsel for U.S. Bank to ascertain whether they were aware of the proceedings in the  
California bankruptcy court or if U.S. Bank intended to appear, despite the fact that SFR knew that U.S. Bank had  
raised the bankruptcy issue in its Motion for Summary Judgment filed in August, 2016.

2. *It Is Inherently Unfair To Punish A Party For Taking Steps To Avoid Adverse Consequences.*

In *Wheeler Springs Plaza v. Beemon*, 119 Nev. 260, 71 P.3d 1258 (2003), the Nevada Supreme Court examined whether a party's satisfaction of a judgment eliminated that party's right to appeal the judgment. *Id.*, 119 Nev. at 262. In this case, Wheeler Springs owned a multi-family residential complex, and Beemon was a tenant. *Id.* Beemon sued Wheeler Springs for breach of contract and misrepresentation and the trial court entered judgment in favor of Beemon. *Id.* at 263. Although Wheeler Springs timely appealed, it did not seek to stay the judgment, but chose to satisfy the judgment while the appeal progressed. *Id.* On appeal, Beemon argued that Wheeler Springs had waived its right to appeal the judgment by satisfying it. *Id.* The Nevada Supreme Court rejected this argument because of the "inherent unfairness" to Wheeler Springs. The Court found it "inherently unfair" to extinguish a judgment debtor's right to appeal merely because that debtor acted in good faith to satisfy that judgment. *Id.*

Applying *Wheeler Springs* to the facts of this case demonstrates "inherent unfairness" in this HOA foreclosure sale. As discussed above, U.S. Bank halted its own foreclosure sale upon learning of the homeowner's bankruptcy in order to comply with the bankruptcy code and the automatic stay. In contrast, the HOA pressed forward with its own sale in violation of the automatic stay and federal law. Similar to *Wheeler Springs*, this Court should not allow the HOA sale to stand because doing so would result in punishing U.S. Bank for following the law and properly halting its own sale, while rewarding the HOA and SFR for violating the stay. It would be inherently unfair to punish U.S. Bank for complying with federal law while rewarding the HOA and SFR for flouting that same law, intentionally or not.

**C. Persuasive Authorities Outside Of Nevada Likewise Support A Finding Of Unfairness Justifying The Setting Aside Of The HOA Foreclosure Sale.**

Though Nevada authorities in this area are somewhat limited, persuasive authorities from Nevada federal courts and from state and federal courts outside of Nevada provide significant support for finding that the HOA sale here was substantially unfair and should be set aside as commercially unreasonable.

///

1. *Slight Irregularities In A Foreclosure Sale Justify Setting Aside HOA Sales In Nevada Federal Court.*

The first and perhaps most persuasive case comes from the federal district court in Nevada. In *ZYZZX2 v. Dizon*, 2016 WL 1181666 (D.Nev. March 22, 2017), Judge Mahan was faced with the task of determining whether an HOA foreclosure sale was commercially unreasonable under Nevada's HOA foreclosure statute. *Id.* at \*4-5. In *Dizon*, the property was sold for \$15,000, just seven percent of the fair market value of the property. *Id.* at \*5. Additionally, the HOA "represented to both the general public as well as Wells Fargo that the association's foreclosure would not extinguish the first deed of trust." *Id.* The HOA's governing documents, which the court noted were publicly available, also included a mortgage protection clause which provided that the HOA's lien was subordinate to the lender's deed of trust. *Id.* After the sale, the purchaser filed suit to quiet title and extinguish the deed of trust. The lender countered that the HOA sale was commercially unreasonable due to the extremely low sales price and the unfairness of the HOA's representation that the deed of trust would not be extinguished. *Id.* at \*4.

Analyzing this issue under Nevada's foreclosure and commercial reasonableness authorities, including *Golden v. Tomiyasu*, *Long v. Towne* and *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, the *Dizon* court first found that the \$15,000 sales price was "disproportionately low". *Id.* Noting that "[w]hen a sale price is demonstrably inadequate, courts in equity may invalidate a sale upon a showing of any slight defect in the sale," the court proceeded to analyze the circumstances of the sale for any evidence of "slight circumstances of unfairness in the conduct of the party benefited by the sale". *Id.* The court seized on the HOA's representations that the sale would not extinguish the lender's deed of trust and as evidence that the sale was unfair. *Id.* In particular, the court noted that the HOA's representations were "legally inaccurate and resulted in an unreasonably low sale price." *Id.* The court found that "[h]igher bidders were dissuaded from offering a commercially reasonable price based on the assertions that they would take title subject to the mortgage loan. This defect in sale, coupled with a disproportionately low price, demonstrates that the foreclosure was unfair and

1 commercially unreasonable.<sup>4</sup> *Id.* (emphasis supplied).

2 The facts in *Dizon* and Judge Mahan's reasoning in that case are analogous to this matter.  
3 Here, the HOA sale produced a similar and extremely inadequate sales price equal to just six  
4 percent of the property's fair market value, one percent lower than in *Dizon*. Additionally, the  
5 HOA's sale of the property in this case, while the automatic stay was in place, similarly operated  
6 to dissuade higher bidders from offering a commercially reasonable price based on the knowledge  
7 that the sale could later be voided for violating the stay. This resulted in a foreclosure sale that  
8 was patently unfair for the same reasons expressed in *Dizon*. This Court should follow the  
9 reasoning of the federal district court and find that the HOA sale was commercially unreasonable  
10 due to the inadequate price and the unfairness of the automatic stay violation.

11 2. *Foreclosing Agent Has Duty to Take Reasonable and Appropriate Steps to*  
12 *Avoid Sacrifice of Property.*

13 In *Baskurt v. Beal*, 101 P.3d 1041 (Ala. 2004), the Alaska Supreme Court was faced with  
14 whether to set aside a foreclosure sale under a deed of trust. The applicable deed of trust covered  
15 two separate parcels of property and gave the foreclosure trustee the option of selling the parcels  
16 as a unit or separately. *Id.* at 1042. When the borrower defaulted, the trustee elected to sell the  
17 parcels as a whole and sold the entire property for the single bid of \$25,781.81, one dollar above  
18 the minimum opening bid and less than twelve percent of the property's fair market value. *Id.* at  
19 1043, 1046. The borrower later moved to set aside the sale, arguing that the inadequate price  
20 combined with the trustee's decision to sell the property as one parcel justified setting the sale  
21 aside. *Id.* at 1043. The trial court agreed and set aside the sale. *Id.*

22 On appeal, the Alaska Supreme Court affirmed the trial court's decision setting aside the  
23 sale. The court applied the Restatement's "grossly inadequate" sales price rule, which likely  
24 would have been enough to set aside the sale on its own, as the sales price was below the  
25 Restatement's 20 percent threshold. *Id.* at 1045. However, the *Baskurt* court went beyond the

26 <sup>4</sup> In a similar Nevada federal case, Judge Larry Hicks held that a lender's commercial unreasonableness claim was  
27 properly plead because the lender "sufficiently demonstrated that the price of the property was 'grossly inadequate'"  
28 under the Restatement of Property Mortgages § 8.3 and because the lender alleged that the HOA sale was defective  
because the HOA's lien improperly included costs of collection. *Deutsche Bank National Trust Co. v. TBR I LLC*,  
2016 WL 3965195, \*4-5 (D.Nev. July 22, 2016). While Judge Hicks did not rule that the sale was commercially  
unreasonable at this stage (the matter came before the court via a motion to dismiss), this case demonstrates the  
court's acceptance of the "slight circumstances of unfairness" standard.

1 grossly inadequate price and analyzed the specific circumstances of the sale for evidence of  
2 unfairness. The court ruled that a foreclosure trustee has a “duty to take reasonable and  
3 appropriate steps to avoid sacrifice of the debtor’s property and interest.” *Id.* at 1046. In this  
4 case, the court found that the trustee’s decision to sell the property in bulk, rather than in separate  
5 parcels, constituted an “unreasonable failure” justifying the invalidation of the sale.<sup>5</sup> *Id.* The  
6 court found that selling either parcel individually would likely have generated sufficient proceeds  
7 to satisfy the amount due. *Id.*

8 *Baskurt* is applicable to this case. First, the court found that the trustee’s decision to sell  
9 the property in bulk was unreasonable, despite the fact that the deed of trust allowed the trustee to  
10 choose whether to sell it as one or separate parcels. By selling the property in bulk, the trustee  
11 failed to “take reasonable and appropriate steps” to avoid sacrificing the property. Here, the  
12 HOA and SFR failed to take reasonable steps to determine whether the borrower was in an active  
13 bankruptcy proceeding. Such information was publicly available to both parties, although neither  
14 even attempted to check for a bankruptcy. *See* Exhibit 4 to U.S. Bank’s Renewed Motion for  
15 Summary Judgment, Kelso Depo., 27:8-20; *see also* Deposition of Sharon Bergeron, attached  
16 hereto as **Exhibit 8**, 48:19-49:2. As a consequence, the sale was conducted in violation of the  
17 automatic stay. The HOA had a duty to take reasonable and appropriate steps to avoid sacrificing  
18 the property by conducting a sale in violation of the stay. The presence of the stay chilled  
19 potential bidders from participating in the sale, resulting in a severely inadequate price. Just like  
20 in *Baskurt*, this Court should set aside the HOA foreclosure sale as commercially unreasonable.

21 3. *Courts Will Find Unfairness Where “Justice Is Not Otherwise Done”.*

22 In *Wells Fargo Bank v. McClusky*, 999 N.E.2d 321, 376 Ill Dec. 438 (Ill. 2013), the  
23 Illinois Supreme Court analyzed the factors that justify setting aside a foreclosure sale. There,  
24 McClusky defaulted on her mortgage obligation with Wells Fargo Bank. *Id.* at 323. The bank  
25 then initiated foreclosure proceedings against McClusky, who failed to answer or otherwise

26  
27 <sup>5</sup> In a similar case, the United States Bankruptcy Court for the District of Massachusetts set aside a foreclosure where  
28 foreclosing party advertised the sale by the most limited means permitted by the statute. *See In re Edry*, 201 B.R.  
604 (Bankr. Mass. 1996). Although the advertising scheme technically conformed to the statute, the court in *In re*  
*Edry* nevertheless overturned the sale because it concluded that “the Bank did not make, in good faith, a diligent  
effort to protect the interest of the Debtor.” *Id.* at 607.



1 respond to the notices of foreclosure. *Id.* Accordingly, the trial court entered a default judgment  
2 in favor of the bank. *Id.*

3 Seven months after the default judgment, McClusky filed an emergency motion to stay the  
4 foreclosure sale and set aside the default judgment. *Id.* at 323–24. She argued that her husband  
5 had since found gainful employment after the default judgment and could now meet the mortgage  
6 obligation. *Id.* Wells Fargo agreed to postpone its foreclosure for seventy-five days to negotiate  
7 a loan modification with McClusky. *Id.* Negotiations failed, however, and the trial court denied  
8 McClusky’s motion to set aside the default judgment finding that she voluntarily withdrew the  
9 motion when she agreed to postpone the foreclosure sale. *Id.* at 324.

10 On appeal to the Illinois Supreme Court, the court examined Illinois’s foreclosure statute,  
11 which states:

12 [T]he court shall confirm the sale unless the court finds that: (i) proper  
13 notice of the sale was not given; (ii) the terms of the sale were  
14 unconscionable; (iii) the sale was conducted fraudulently; or (iv) *justice*  
*was not otherwise done.*

15 *Id.* at 444 (citing 735 ILCS 5/15-1508(b) (West 2010) (emphasis added). Admittedly, the  
16 McClusky court analyzed a foreclosure statute unlike Nevada’s. However, the court clarified that  
17 Illinois’ statute “merely codif[ied] the long-standing discretion of the courts of equity to refuse to  
18 confirm a judicial sale.” *Id.* It continued, “[l]ong before the codification of Foreclosure Law,  
19 courts have retained the power to vacate a sale where unfairness is shown that is prejudicial to an  
20 interested party.” *Id.* (emphasis added). In other words, a court may unwind a foreclosure sale  
21 when one party’s actions adversely affect the other party’s interest in a property and prevent  
22 justice from being done. *Id.*; see also, *Fleet Mortg. Corp. v. Deale*, 287 Ill.App.3d 385, 678  
23 N.E.2d 35 (Ill. App. Ct. 1997) (finding that justice was not otherwise done when a lender’s error  
24 prevented a borrower from exercising redemption rights); *Comm. Credit Loans, Inc. v. Espinoza*,  
25 293 Ill.App.3d 915, 689 N.E.2d 282 (Ill. App. Ct. 1997) (justice was not otherwise done when a  
26 sales price of one-sixth of property’s fair market value combined with lender ignoring borrower’s  
27 requests to cure default prevented borrower from exercising her rights to redeem).

28 ///