

**Case No. 75890**

IN THE SUPREME COURT OF NEVADA

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

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Respondent.

Electronically Filed  
Feb 14 2019 09:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court, Clark County  
The Honorable MICHAEL VILLANI, District Judge  
District Court Case No. A-13-684715-C

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**SFR INVESTMENTS POOL 1, LLC'S RESPONSE TO RESPONDENT'S MOTION TO  
DISMISS AND TO STAY SUBSTANTIVE BRIEFING**

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JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593

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Nevada Bar No. 10580

KIM GILBERT EBRON  
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Appellant SFR Investments Pool 1, LLC (SFR) hereby responds to Respondent's ["Nationstar"] Motion to Dismiss and for a Stay of Substantive Briefing. This response is based on the points and authorities below and the Declaration of Michael Sturm, attached hereto as **Exhibit 1**. As set forth below SFR's Notice of Appeal was timely and jurisdiction lies with this Court.

### **ARGUMENT**

SFR timely filed its Notice of Appeal because the Notice of Entry of Order was not transmitted to SFR until April 12, 2018. Thirty days from the service of the Notice of Entry was May 12, 2018, a Saturday. The next court day was Monday, May 14, 2018, the date on which SFR filed its Notice of Appeal.

SFR inadvertently submitted its Docketing Statement with the filing date of the Notice of Entry of the Order, instead of the date the Notice of Entry of Order was transmitted to SFR. SFR has now filed a Second Amended Case Appeal Statement in the district court and an Errata to the Docketing Statement with this Court with the correct information. As such, Nationstar's motion to dismiss should be denied and the motion to stay substantive briefing is moot.

#### **I. UNDER THE RULES OF ELECTRONIC FILING, SFR'S NOTICE OF APPEAL WAS TIMELY**

Nationstar asks this Court to dismiss this appeal based on SFR's notice of appeal being a day late. As explained above, SFR was not late. Although

Nationstar believes SFR relies on the three-day mailing extension for making its Notice of Appeal timely, this is incorrect. What SFR did in its Amended Case Appeal Statement was mistake the file-stamp date on the Notice of Entry for the date SFR was actually served with the Notice of Entry.

**A. Electronic service at the time the subject Notice of Entry of Order was not complete until the clerk of the court accepted the document and transmitted it to the parties.**

Pursuant to EDCR 8.06(d), electronic service is complete at the time the court transmits the service “as required by Rule 8.05(a).”

**EDCR 8.06(d) *Electronic service is complete at the time of transmission of the service required by Rule 8.05(a).*** For the purpose of computing time to respond to documents received via electronic service, any document served on a day or at a time when the court is not open for business shall be deemed served at the time of the next opening of the court for business.”

(Emphasis added.)

While on the face of the Notice of Entry, it appears the document was served on April 11, 2018, because the file stamp reads 4/11/2018 3:46 PM,<sup>1</sup> the reality of when the document was actually served on SFR is different. SFR never received the Notice of Entry until April 12, 2018. As stated in EDCR 8.06(d), service is determined by the “time of transmission of the service required by Rule 8.05(a).”

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<sup>1</sup> A true and correct copy of the Notice of Entry is attached hereto as **Exhibit 2**.

EDCR 8.05(a) states:

**EDCR 8.05(a)** All documents in the E-Filing System will be served through E-Service. Each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCF 5(b)(2)(D). ***An E-Filed document accepted by the Clerk will be electronically served on all parties registered in that case through the E-Filing System.***"

(Emphasis added.)

At the time the Notice of Entry was filed, the Eighth Judicial District Court's Odyssey File and Serve documents were served at the time of court acceptance, not upon submission. This policy changed on June 4, 2018, when the EJDC changed its policy to "Electronic Service via File & Serve will be effectuated upon submission. This is a departure from the current procedure of serving filing at the time of court acceptance." See Email announcing change, attached hereto as **Exhibit 3.**

As a means of reference, the old procedure for the EJDC was similar to the process used this Court; a document is filed but not served until accepted. The difference between this Court and the EJDC's prior procedure is that here a document may be timely submitted but appear to be late if not accepted until the next day, due to the file-stamp indicating the time the Court accepted the document. However, the opposite was true under the old procedures in the EJDC; a document may be timely submitted but not accepted and served until the next day,

but because the file stamp shows the time of submission—and not acceptance and transmission—mistakes as to deadlines can be understood.

**B. The Notice of Entry was not transmitted until April 12, 2018, making the Notice of Appeal timely.**

While the Notice of Entry was submitted on April 11, 2018, it was not served/transmitted to SFR until April 12, 2018 at 7:18 A.M. *See* email from [efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net), attached hereto as **Exhibit 4**. The email received from Odyssey states it is a “NOTIFICATION OF SERVICE” and “This is a notification of service for the filing listed.” Until such an email was sent, service was not effectuated, as indicated in the Announcement email from the court. *See* Exhibit 2. In fact, prior to receiving the email, SFR would have had no knowledge the Notice of Entry had been filed.<sup>2</sup> Thus, the procedures and result here do not run afoul of NRAP 25(c)(3), which, as Nationstar notes, states that “[s]ervice by electronic means is ‘complete upon transmission’” The Notice of Entry was not “transmitted” to SFR until April 12, 2018. And the thirty day clock does not begin until the Notice of Entry has been **served**.

Put simply, the actual transmission and service of the Notice of Entry of Order Granting Nationstar Mortgage Llc’s [sic] Renewed Motion for Summary

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<sup>2</sup> SFR notes that Nationstar spends significant time discussing SFR’s counsel’s knowledge of the system. Nationstar’s counsel, similarly, had knowledge of the system, and when it changed.

Judgment did not take place until April 12, 2018. Thirty days from the service of the Notice of Entry was May 12, 2018, a Saturday. The next court day was Monday, May 14, 2018, the date on which SFR filed its Notice of Appeal. SFR's Notice of Appeal was timely and jurisdiction is properly vested in this Court.

**II. THE BANK'S MOTION TO STAY SHOULD BE DENIED AS MOOT.**

Based on the foregoing, this Court should deny Nationstar's motion to stay as moot. The briefing schedule should be reinstated and this Court should issue a decision on the merits.

**CONCLUSION**

Nationstar's Motion to Dismiss and for a Stay of Substantive Briefing should be denied as SFR's Notice of Appeal was timely based on the date of transmission of the Notice of Entry.

DATED this 13th day of February, 2019.

**KIM GILBERT EBRON**

/s/Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorneys for Appellant,*

*SFR Investments Pool 1, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of February 2019. Electronic service of the foregoing **SFR Investments Pool 1, LLC's Response to Respondent's Motion to Dismiss and Motion to Stay Substantive Briefing** shall be made in accordance with the Master Service List as follows:

**Docket Number and Case Title:** 75890 - SFR INV.'S POOL 1, LLC VS. NATIONSTAR MORTG. LLC

**Case Category** Civil Appeal

**Information current as of:** Feb 13 2019 07:00 p.m.

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**Electronic notification will be sent to the following:**

Ariel Stern  
Donna Wittig  
Melanie Morgan  
Tenesa Powell

Dated this 13th day of February, 2019.

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

# EXHIBIT 1



I, Michael L. Sturm, declare as follows:

1. I am a resident of Clark County, Nevada, over eighteen years of age and able to make this declaration in support of SFR Investments Pool 1, LLC's ("SFR") Response to Respondent's Motion to Dismiss and to Stay Substantive Briefing.

2. I have personal knowledge of the facts set forth herein and am able to testify to the same.

3. I am an employee at Kim Gilbert Ebron ("KGE"), who represents SFR in Case No. 75890, SFR Investments Pool, 1, LLC v. Nationstar Mortgage, LLC. One of my primary responsibilities at KGE is to maintain the calendar for the attorneys, including deadlines for filings, such as notices of appeal.

4. I am copied on all emails sent to KGE from electronic filing and service programs from the various courts in which the attorneys practice, including the Eighth Judicial District Court, Clark County, Nevada ("EJDC"). I receive those emails at or about the same time they are received by the attorneys.

5. I keep and preserve emails from the various electronic filing and service programs at or near the time of receipt, including those received from the Odyssey program used in the EJDC.

6. Attached to SFR's Response as **Exhibit 3** is a true and correct copy of an email I received from e-filing support on May 31, 2018 regarding changes to the EDJC Electronic Service which the email stated would take place on June 4, 2018.

7. Attached to SFR's Response as **Exhibit 4**, is a true and correct copy of an email I received from the EJDC efilng system which stated it was sent on April 12, 2018. This email was the Notification of Service of the Notice of Entry of Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment. Upon receipt of this email, I am able to click on the link at the bottom of the page entitled "Served Document" and download the document. Prior to receipt of this email, I had no knowledge of the filing of the document.

8. I calendared the last day to file the notice of appeal based on thirty days from the date the email stated it was transmitted, April 12, 2018. Thirty days fell on May 12, 2018, a Saturday, so the last day to file became Monday, May 14, 2018, as set forth in NRCp 6(a); EDJC Rule 1.14; NRAP 26(a)(3). I did not rely on a three-day mailing extension in computing time.

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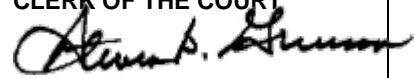
9. After June 4, 2018, I was able to file documents using the EDJC Odyssey system and the document would be served at time of submission. One of the ways I know this was that I receive email service of documents filed from this office shortly after filing.

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

DATE: February 13, 2019

/s/ Michael L. Sturm  
Michael L. Sturm

# EXHIBIT 2



1 **NOE**

2 MELANIE D. MORGAN, ESQ.

3 Nevada Bar No. 8215

4 TENESA POWELL, ESQ.

5 Nevada Bar No. 12488

6 AKERMAN LLP

7 1635 Village Center Circle, Suite 200

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11 Email: melanie.morgan@akerman.com

12 Email: tenesa.scaturro@akerman.com

13 *Attorneys for Nationstar Mortgage, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 IGNACIO GUTIERREZ, an individual,

17 Plaintiff,

18 vs.

19 SFR INVESTMENTS POOL 1, LLC; NEVADA  
20 ASSOCIATION SERVICES, INC.; HORIZON  
21 HEIGHTS HOMEOWNERS ASSOCIATION;  
22 KB HOME MORTGAGE COMPANY, a foreign  
23 corporation; DOE Individuals I through X; ROE  
24 Corporations and Organizations I through X,

25 Defendants.

26 SFR INVESTMENTS POOL 1, LLC, Nevada  
27 Limited Liability Company,

28 Counter-Claimant and Third Party Plaintiff,

29 vs.

30 IGNACIO GUTIERREZ, an individual;  
31 NATIONSTAR MORTGAGE, LLC, a Delaware  
32 limited liability company; COUNTRYWIDE  
33 HOME LOANS, INC., a foreign corporation;  
34 DOES I through X; and ROES 1-10, inclusive,

35 Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVII

**NOTICE OF ENTRY OF ORDER  
GRANTING NATIONSTAR MORTGAGE  
LLC'S RENEWED MOTION FOR  
SUMMARY JUDGMENT**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE**  
3 **LLC’S RENEWED MOTION FOR SUMMARY JUDGMENT** was entered on this 11<sup>th</sup> day of  
4 April, 2018 a copy of which is attached hereto as **Exhibit A**.

5 DATED: April 11, 2018

7 **AKERMAN LLP**

9 /s/Tenesa Powell

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Tenesa Powell, Esq.

Nevada Bar No. 12488

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Nationstar Mortgage LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 11th day of April, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY [PROPOSED] ORDER GRANTING NATIONSTAR MORTGAGE LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

P. Sterling Kerr, Esq.  
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2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074

*Attorneys for Ignacio Gutierrez*

Diana S. Ebron, Esq.  
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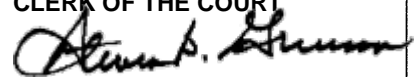
*Attorneys for Nevada Association Services, Inc.*

/s/Christine Weiss  
An employee of Akerman LLP

**EXHIBIT A**

**EXHIBIT A**





**ORD**

MELANIE D. MORGAN, ESQ.  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**[PROPOSED] ORDER GRANTING  
NATIONSTAR MORTGAGE LLC'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim  
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or  
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and  
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and  
6 Judgment.

### 7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home  
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration  
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,  
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a  
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the  
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.  
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed  
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the  
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008  
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which  
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal  
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and  
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed  
26 of Trust to Nationstar.

1           7.       At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the  
2       Loan for Freddie Mac.

3           8.       The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as  
4       owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the  
5       **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.  
6       Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries  
7       for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to  
8       Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9           9.       The Guide provides:

10                   For each Mortgage purchased by Freddie Mac, the Seller and the Servicer  
11                   agree that Freddie Mac may, at any time and without limitation, require  
12                   the Seller or the Servicer, at the Seller's or the Servicer's expense, to make  
13                   such endorsements to and assignments and recordations of any of the  
14                   Mortgage documents so as to reflect the interests of Freddie Mac.

15       Guide at 1301.10.

16           10.      The Guide also provides:

17                   The Seller/Servicer is not required to prepare an assignment of the  
18                   Security Instrument to Freddie Mac. However, *Freddie Mac may, at its*  
19                   *sole discretion and at any time, require a Seller/Servicer, at the*  
20                   *Seller/Servicer's expense, to prepare, execute and/or record assignments*  
21                   *of the Security Instrument to Freddie Mac.*

22       Guide at 6301.6 (emphasis added).

23           11.      The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie  
24       Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25           12.      Accordingly, the Guide also provides for a temporary transfer of possession of the  
26       note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.  
27       However, when in "physical or constructive possession of a Note," the Servicer must "follow  
28       prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at  
29       8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the  
30       servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at  
31       3302.5.

13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (HOA Sale). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 utilizing the "Sales Comparison approach."

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.

22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

### **CONCLUSIONS OF LAW**

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, <sup>or</sup> and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

### **Freddie Mac Ownership / Federal Foreclosure Bar**

1           4.       The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*  
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest  
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case  
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.  
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan  
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like  
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8           5.       With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**  
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for  
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with  
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of  
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from  
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to  
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].  
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to  
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17           6.       Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a  
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of  
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.  
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21           7.       Unless FHFA gives its consent, the federal protection shall be given full effect, which  
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly  
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy  
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*  
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the  
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove  
27 a negative, i.e., that the product was not altered.")  
28

1           8.       FHFA's April 21, 2015 statement confirms that there was no such consent here. In  
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore  
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's  
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.  
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, \*3 (D. Nev. Feb. 27, 2017) (citing and relying on  
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7           9.       At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and  
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's  
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.  
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*  
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4  
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of  
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the  
14 note owner's power to enforce its interest under the security instrument, because the note owner can  
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these  
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17           10.       Freddie Mac's interest in Property secured by the Deed of Trust was a property  
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA  
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.  
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21           11.       Because the Court grants summary judgment in Nationstar's favor based upon 12  
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23       **Fraud, Unfairness, or Oppression Surrounding the Sale**

24           10.       Nationstar contends that the sales price obtained at the HOA Sale was grossly  
25 inadequate and was commercially unreasonable.

26           11.       To set aside an association foreclosure sale on a theory of commercial  
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or  
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,  
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
3 see also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18,  
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for  
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); see also *Golden v. Tomiyasu*, 79  
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be  
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in  
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the  
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”  
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold  
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;  
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639  
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to  
15 consider any other factor bearing on the equities, including actions or inactions of both parties  
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of  
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,  
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression  
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by  
22 the HOA. See *Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the  
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee’s  
24 substantive actions); see also *Centeno*, 2016 WL 1122449, at \*1 (holding “a low sales price is not a  
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).  
26  
27  
28



14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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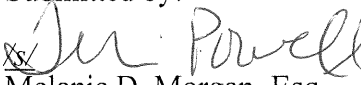
**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

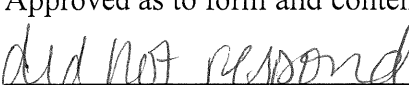
**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that SFR's interest in the Property, if any, is subject to the Deed of Trust.

  
 DISTRICT COURT JUDGE

Submitted by:

  
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# EXHIBIT 3

## Michael L. Sturm

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**From:** e-filing support <donotreply@tylertech.com>  
**Sent:** Thursday, May 31, 2018 10:56 AM  
**To:** Michael L. Sturm  
**Subject:** Eighth Judicial District Court Electronic Service Changes

# Announcing



Effective June 4, 2018 for The Eighth Judicial District Court: Electronic Service via File & Serve will be effectuated upon submission. This is a departure from the current procedure of serving filings at the time of court acceptance.

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# EXHIBIT 4

**From:** efilingmail@tylerhost.net  
**Sent:** Thursday, April 12, 2018 7:18 AM  
**To:** Michael L. Sturm  
**Subject:** Notification of Service for Case: A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Notice of Entry of Judgment - NJUD (CIV), Envelope Number: 2407611



## Notification of Service

Case Number: A-13-684715-C  
Case Style: Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s)  
Envelope Number: 2407611

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-13-684715-C
Case Style	Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s)
Date/Time Submitted	4/11/2018 3:46 PM PST
Filing Type	Notice of Entry of Judgment - NJUD (CIV)
Filing Description	Notice Of Entry Order Granting Nationstar Mortgage Llc's Renewed Motion For Summary Judgment
Filed By	Ariel Stern
Service Contacts	SFR Investments Pool 1 LLC:  KGE E-Service List (eservice@kgelegal.com)  Diana Ebron (diana@kgelegal.com)  KGE Legal Staff (staff@kgelegal.com)  Michael Sturm (mike@kgelegal.com)  tomas tomas (tomas@kgelegal.com)   SFR Investments Pool 1 LLC:  KGE E-Service List (eservice@kgelegal.com)

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