

**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 21 2019 03:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 75890

**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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**RESPONDENT'S NOTICE OF WITHDRAWAL OF MOTION TO DISMISS  
AND MOTION FOR NEW DEADLINE TO FILE BRIEF**

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Respondent Nationstar Mortgage LLC (**Nationstar**) withdraws its motion to dismiss and stay substantive briefing filed on February 11, 2018. Nationstar respectfully moves the Court to set a deadline for Nationstar to file its responsive brief on March 14, 2019—twenty-one days from the date of this filing.

### **PROCEDURAL HISTORY**

SFR seeks to appeal a district court order granting Nationstar’s motion for summary judgment and denying SFR’s motion for summary judgment. (Vol. V, JA\_1120.) At the time the motion to dismiss was filed, SFR’s filings before this Court represented that the district court order was entered on April 11, 2018, (*id.* at JA\_1137 (Notice of Appeal)) and that a notice of entry of judgment was electronically served the same day (*id.* at JA\_1141 (Amended Case Appeal Statement)). The district court’s docket appeared to confirm that the notice was served electronically and made available the same day it was filed—April 11, 2018. (Mot. to Dismiss, Ex. A.) SFR filed a notice of appeal on May 14, 2018, thirty-three days after the notice of entry of judgment was purportedly filed and served. (*Id.* at JA\_1136-37.)

On February 8, 2019, Nationstar filed a Motion to Dismiss, arguing that this Court lacked jurisdiction over the appeal given SFR’s untimely filing of its notice of appeal. (Mot. to Dismiss at 2-5.) On February 13, 2019, SFR filed an errata to the docketing statement stating that the notice of entry of judgment was actually

filed on April 12, 2018. The next day, SFR submitted an opposition arguing that the appeal was timely given that the notice of entry of judgment was filed on April 12. (Opp. at 2-6).

## **ARGUMENT**

Nationstar respectfully withdraws its motion to dismiss and requests that the Court set a new deadline for Nationstar to file its responsive brief. Per this Court’s January 11, 2019 Order, the responsive brief was due on February 8, the same day Nationstar filed its motion to dismiss. Nationstar had good cause to believe—based on SFR’s own admissions—that this Court lacked jurisdiction to hear the appeal. Accordingly, Nationstar moved to dismiss the appeal, and to stay substantive briefing until the Court determined whether it had jurisdiction. Nationstar was unaware that SFR had not actually received notice on April 11, 2018. Indeed, SFR represented to the contrary in at least three documents filed with this Court:

- SFR’s case appeal statement states that “[o]n April 11, 2018, the District Court granted Nationstar’s Motion for Summary Judgment, and a notice of the order was served the same day.” (Case Appeal Stmt. at 3.)
- SFR’s docketing statement says that the notice of entry of judgment was served on April 11, 2018 by “mail/electronic/fax” (Docketing Stmt. at 7.)

- SFR’s opening brief states that “[t]his Court has jurisdiction pursuant to NRAP 3A, as the Order granting Nationstar Mortgage LLC’s Renewed Motion for Summary Judgment, entered on April 11, 2018, notice of entry of wh[i]ch was entered the same day . . . .” (SFR Br. at vii.)

Nationstar’s motion to dismiss was based on a good-faith belief that SFR’s repeated affirmations that the written notice of entry of judgment was served on April 11, 2018, was accurate. Had the written notice been served on the date SFR initially provided, the notice of appeal would have been untimely under NRAP 4(a)(1) and this Court would have been required to dismiss the case. *Ford v. Showboat Operating Co.*, 877 P.2d 546, 549 n.4 (Nev. 1994) (this Court has “consistently held that the timely filing of a notice of appeal is mandatory and jurisdictional”).

Respondent’s brief was initially due on December 20, 2018. On December 12, 2018, the court granted a telephonic request to extend the time to file the brief to January 9, 2019. On January 3, 2019, the court granted a second request for an extension of time to file the answering brief, setting the deadline at February 8, 2019. If the Court grants this motion, the new deadline for the responsive brief would be March 14, 2019.

## **CONCLUSION**

Nationstar withdraws its motion to dismiss and stay substantive briefing, and respectfully requests that the Court set a new deadline for Nationstar to file its responsive brief for March 14, 2019.

DATED February 21st, 2019.

AKERMAN, LLP

/s/ Donna M. Wittig

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed on February 21, 2019, the foregoing **RESPONDENT'S NOTICE OF WITHDRAWAL OF MOTION TO DISMISS AND MOTION FOR NEW DEADLINE TO FILE BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List to the following:

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I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena  
An employee of Akerman LLP