

IN THE SUPREME COURT OF THE STATE OF NEVADA

9352 Cranesbill Trust, Teal Petal St. Trust, and Iyad Haddad, Appellants, v. Wells Fargo Bank, N.A., Respondent.	No.: 76017 DOCKETING STATEMENT CIVIL APPEALS Electronically Filed Jul 10 2018 02:49 p.m. Elizabeth A. Brown Clerk of Supreme Court
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GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department VII

County Clark Judge Linda Marie Bell

District Ct. Case No. A-12-671509-C

2. Attorney filing this docketing statement:

Attorney Charles L. Geisendorf, Esq. Telephone (702) 873-5868

Firm GEISENDORF & VILKIN, PLLC

Address 2470 St. Rose Parkway, Suite 309
Henderson, NV 89074

Client(s) 9352 Cranesbill Trust, Teal Petal St. Trust, and Iyad Haddad

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jeffrey Willis Telephone (702) 784-5200

Attorney Erica J. Stutman Telephone (702) 784-5200

Attorney Daniel S. Ivie Telephone (702) 784-5200

Firm SNELL & WILMER

Address 3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 8919

Client(s) Wells Fargo Bank, N.A.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☒ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

☐ Other disposition (specify): _____

- ☐ Dismissal
- ☐ Lack of jurisdiction
- ☐ Failure to state a claim
- ☐ Failure to prosecute
- ☐ Other (specify): _____
- ☐ Divorce Decree:
- ☐ Original ☐ Modification

5. Does this appeal rise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.* bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Quiet title/declaratory relief as to an HOA foreclosure sale. Summary judgment was granted to Wells Fargo Bank, N.A. and against the purchaser of the property at an HOA foreclosure sale, declaring that the bank's deed of trust was not extinguished by the sale and remains a valid, first priority lien against the subject property.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the HOA foreclosure sale extinguished the bank's deed of trust pursuant to *SFR Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (2014).

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

There are a number of such cases raising similar issues but appellant believes there are discrete facts that differentiate most of those from the instant appeal. Appellant is not aware of a pending appeal with the identical issues although there may be.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
- ☐ Yes
- ☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

Is so, explain

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter does not fall into any of the categories in NRCP 17(a) or (b).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in the appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: April 27, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Date written notice of entry of judgment or order was served: April 30, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was Service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed: May 29, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other: NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Appellant is appealing from the granting of respondent's Motion for Summary Judgment and the denial of appellant's Motion for Summary Judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff/Counter Defendant/Cross Defendant: Venise Abelard

Defendant/Counter Claimant/Cross Claimant/Counter Defendant: 9352 Cranesbill Trust

Defendant/Third Party Defendant: Teal Petal St. Trust

Defendant: Iyad Haddad

Defendant: Fort Apache Square Homeowners Association

Defendant: Mesa Management

Defendant/Cross Defendant: Alessi & Koenig LLC

Defendant: Las Vegas Association Mgmt LLC

Intervenor/Cross Claimant/Counter Claimant/Third Party Plaintiff: Wells Fargo Bank, N.A

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, *e.g.* formally dismissed, not served, or other:

All claims against Plaintiff/Counter Defendant/Cross Defendant Venise Abelard were resolved by the Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment on April 27, 2018 and the Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment Against Venise Abelard on June 19, 2018.

All claims against Defendant Fort Apache Square Homeowners Association appear to be resolved by the Stipulation and Order to Dismiss Wells Fargo Bank, N.A.'s Claims Against Fort Apache Square Homeowners Association on May 25, 2018 and settlement conference on April 3, 2018.

All claims against Defendant Mesa Management appear to be resolved by the settlement conference on April 3, 2018.

Defendant/Cross Defendant: Alessi & Koenig LLC filed for Chapter 7 bankruptcy protection on December 13, 2016.

Defendant Las Vegas Association Mgmt LLC apparently was never served.

23. Give a brief description (3 or 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff/Counter Defendant/Cross Defendant Venise Abelard claimed quiet title/declaratory relief/FDCPA/fraud/Violation of NRS 116.3116 and 598.0923/fiduciary duty. These claims were resolved by the Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment on April 27, 2018 and the Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment Against Venise Abelard on June 19, 2018. The claims against Alessi & Koenig LLC were resolved by the Chapter 7 bankruptcy protection on December 13, 2016. It is understood that Ms. Abelard's remaining claims were resolved at a settlement conference on April 3, 2018.

Defendant/Counter Claimant/Cross Claimant/Counter Defendant: 9352 Cranesbill Trust claimed quiet title/declaratory relief/injunctive relief. These claims were resolved by the Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment on April 27, 2018 and the Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment Against Venise Abelard on June 19, 2018.

Intervenor/Cross Claimant/Counter Claimant/Third Party Plaintiff: Wells Fargo Bank, N.A. claimed quiet title/declaratory relief/wrongful foreclosure/violation of NRS 116.1113/intentional interference with contract. These claims were resolved by the Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment on April 27, 2018 and Stipulation and Order to Dismiss Wells Fargo Bank, N.A.'s Claims Against Fort Apache Square Homeowners Association on May 25, 2018.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Plaintiff/Counter Defendant/Cross Defendant Venise Abelard's claims for quiet title/declaratory relief/FDCPA/fraud/Violation of NRS 116.3116 and 598.0923/fiduciary duty against Defendants Fort Apache Square Homeowners Association, Mesa Management and Alessi & Koenig LLC.

Intervenor/Cross Claimant/Counter Claimant/Third Party Plaintiff Wells Fargo Bank, N.A.'s claims for quiet title/declaratory relief/wrongful foreclosure/violation of NRS 116.1113/intentional interference with contract against Fort Apache Square Homeowners Association.

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Plaintiff/Counter Defendant/Cross Defendant Venise Abelard's claims against Alessi & Koenig LLC were resolved by the Chapter 7 bankruptcy protection on December 13, 2016. It is understood that Ms. Abelard's remaining claims were resolved at a settlement conference on April 3, 2018.

Intervenor/Cross Claimant/Counter Claimant/Third Party Plaintiff Wells Fargo Bank, N.A.'s claims for quiet title/declaratory relief/wrongful foreclosure/violation of NRS 116.1113/intentional interference with contract against Fort Apache Square Homeowners Association were resolved by the Stipulation and Order to Dismiss Wells Fargo Bank, N.A.'s Claims Against Fort Apache Square Homeowners Association on May 25, 2018.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

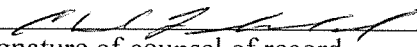
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

9352 Cranesbill Trust, Teal Petal St. Trust,
and Iyad Haddad
Name of appellant

Charles L. Geisendorf, Esq.
Name of counsel of record

7-10-18
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE


I certify that on the 10th day of July, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

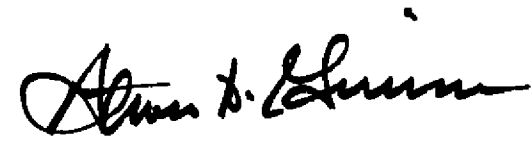
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jeffrey Willis
Erica J. Stutman
Daniel S. Ivie
SNELL & WILMER
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 8919

Dated this 10th day of July, 2018


Signature

PLAINTIFF'S SECOND
AMENDED COMPLAINT FOR
DECLARATORY RELIEF,
DAMAGES, VIOLATIONS OF
THE FDCPA, FRAUD AND
DEMAND FOR JURY TRIAL



CLERK OF THE COURT

ACOM

Debra A. Bookout, Esq.
Nevada Bar No.: 11765C

Dan L. Wulz, Esq.
Nevada Bar No.: 5557

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Attorneys for Plaintiff Venise Abelard

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

IYAD HADDAD, Individually and as Trustee
for CRANESBILL CT. TRUST; 9352
CRANESBILL CT. TRUST; TEAL PETALS
ST. TRUST; FORT APACHE SQUARE
HOMEOWNERS ASSOCIATION; MESA
MANAGEMENT, LLC; LAS VEGAS
ASSOCIATION MANAGEMENT, LLC;
ALESSI & KOENIG, LLC; and DOES I
through X, and ROE COMPANIES I through
X, inclusive,

Defendants.

9352 CRANESBILL CT. TRUST

Defendant/CounterClaimant,

vs.

VENISE ABELARD,

Plaintiff/CounterDefendant.

Case No.: A-12-671509-C

Dept No.: XIV

**SECOND AMENDED COMPLAINT FOR
DECLARATORY RELIEF, DAMAGES,
VIOLATIONS OF THE FDCPA, FRAUD
AND DEMAND FOR JURY TRIAL**

EXEMPT FROM ARBITRATION:

Title to Real Property

Declaratory Relief

WELLS FARGO BANK, N.A.
Intervenor/Counterclaimant,
vs.
9352 CRANESBILL CT. TRUST, a Nevada
Trust,
CounterDefendant.

WELLS FARGO BANK, N.A.,
Intervenor/Cross-Claimant,
vs.
FORT APACHE SQUARE HOMEOWNERS
ASSOCIATION, a Nevada non-profit
corporation; ALESSI & KOENIG, LLC, a
Nevada limited Liability company;
Cross-Defendants,

WELLS FARGO BANK, N.A.
Intervenor/Third-Party Plaintiff,
vs.
TEAL PETALS ST., TRUST, a Nevada trust;
and DOES I through X and ROE
COMPANIES I through X, inclusive;
Third-Party Defendants.

Plaintiff, VENISE ABELARD, (hereinafter referred to as “Plaintiff”) by and through her
attorney of record, Debra A. Bookout, Esq., of Legal Aid Center of Southern Nevada, Inc., files
her Second Amended Complaint against Defendants, Iyad Haddad, Individually and as Trustee
for Cranesbill Ct. Trust, Cranesbill Ct. Trust, Teal Petals St. Trust, Fort Apache Square

1 Homeowners Association, Mesa Management, LLC, Las Vegas Association Management, LLC,
2 Alessi & Koenig, LLC, and Does I Through X, and Roe Companies I through X, inclusive,
3 alleges and states as follows:

4 **I. INTRODUCTION**

5 1. This Second Amended Complaint arises from the wrongful foreclosure of real
6 property commonly known as 9352 Cranesbill Court, Las Vegas, NV 89149. Fort Apache
7 Square Homeowners Association acting on its own and through its agents, Mesa Management,
8 LLC, Las Vegas Association Management, LLC, and Alessi & Koenig, LLC wrongfully
9 foreclosed on Ms. Abelard's property and sold it to Iyad Haddad and Cranesbill Court Trust
10 whose Trustee, Resources Group, LLC later conveyed the property to Teals Petals St. Trust.
11 This Second Amended Complaint is brought for declaratory relief and quiet title and for damages
12 pursuant to federal and state statutes.
13
14

15 2. Plaintiff Ms. Abelard seeks declaratory relief as an equitable remedy and/or
16 pursuant to NRS 30.101 et seq. for a declaration of the rights, status or other relations of the
17 parties, and primarily seeks a declaratory judgment to declare that Defendants Iyad Haddad,
18 Cranesbill Court Trust, and Teal Petals St. Trust is without any right whatsoever, and have no
19 legal or equitable right, claim or interest in her property.
20

21 **II. STATEMENT OF COMPLETED MEDIATION**

22 3. Pursuant to Nev. Rev. Stat. 38.310, the parties participated in mediation on June
23 24, 2014 and an agreement was not reached. See attached Exhibit 1 (Affidavit, Mediation
24 Certificate and Statement).
25

26 If the parties participate in mediation and an agreement is not obtained, any party may
27 commence a civil action in the proper court concerning the claim that was submitted to
28 mediation. Any complaint filed in such an action must contain a sworn statement
indicating that the issues addressed in the complaint have been mediated pursuant to the
provisions of NRS 38.300 to 38.360, inclusive, but an agreement was not obtained.

1 Nev. Rev. Stat. Ann. § 38.330 (West)

2 **III. PARTIES**

3 4. Plaintiff, Venise Abelard (hereinafter “Ms. Abelard”) is and at all relevant times
4 herein has been a resident of the State of Nevada, Clark County.

5 5. Defendant Haddad (hereinafter “Haddad”) and Cranesbill Court Trust (hereinafter
6 “Cranesbill Trust”) and/or Teal Petals St. Trust claim to be the owner of the subject property and
7 Cranesbill Trust and Teal Petals St. Trust is believed to be a trust formed for the sole purpose of
8 holding this property. Defendant Haddad was served with the original summons and complaint
9 on November 20, 2012 at 221 Desert View St., Las Vegas, Nevada 89107. Haddad counsel’s
10 was served with the First Amended Complaint on September 12, 2014.

11 6. Defendant Fort Apache Square Homeowners Association (hereinafter “HOA”) is
12 and at all relevant times herein has been the homeowner’s association for 9352 Cranesbill Court,
13 Las Vegas, NV 89149. Defendant HOA was served the original summons and complaint on
14 November 21, 2012 through its registered agent, Mesa Management, LLC, at 9512 W. Flamingo
15 #107, Las Vegas, Nevada 89147.

16 7. Defendant Mesa Management, LLC (hereinafter “Mesa”) was one of the
17 management companies that the association used to manage the association property. Defendant
18 Mesa was served the original summons and complaint on November 21, 2012 at 9512 W.
19 Flamingo Rd., #107, Las Vegas, Nevada 89147.

20 8. Defendant Las Vegas Association Management, LLC, (hereinafter “LVAM”) was
21 one of the management companies that the association used to manage the association property.
22 Defendant LVAM was served the original summons and complaint on November 20, 2012
23
24
25
26
27
28

1 through its registered agent, Yvonne Culliver, at 8871 W. Flamingo Rd, Ste. 202, Las Vegas,
2 Nevada 89147.

3 9. Defendant Alessi & Koenig, LLC (hereinafter "A&K"), is and at all times
4 relevant herein a law firm acting as the collection agent for the association. Defendant A&K was
5 served the original summons and complaint through its registered agent, Robert Koenig, on
6 November 20, 2012 at 9500 W. Flamingo Rd., #205, Las Vegas, Nevada 89147.
7

8 10. Pursuant to NRCP 10(a) and Bender v. Clark Equipment Co., 111 Nev. 844, 845,
9 897 P.2d 208, 209 (Nev., 1995), the identity of Defendants designated as DOES I through X,
10 inclusive and ROES I through X inclusive, are unknown at the present time and may be
11 individuals, partnerships, or corporations; however, it is alleged and believed that these
12 Defendants were involved in the initiation, approval, support, or execution of the wrongful acts
13 upon which this litigation is premised, or of similar actions directed against Plaintiff about which
14 he is presently unaware. As the specific identities of these parties are revealed through the
15 course of discovery, the DOE or ROE business entitles appellation will be replaced to identify
16 these parties by their true names and capacities.
17
18

19 **IV. FACTUAL ALLEGATIONS**

20 11. Venise Abelard purchased the property at 9352 Cranesbill Court, Las Vegas, NV
21 89149 on or about November 27, 2007.
22

23 12. Ms. Abelard paid monthly assessments to the Fort Apache Homeowners
24 Association through several different management companies.

25 13. At some point, Mesa Management took over as the management company for the
26 Fort Apache Homeowners Association and sent Ms. Abelard a letter stating they were new
27 management. This letter did not include a statement of any assessments owing or past due.
28

1 14. Unbeknownst to Ms. Abelard, on June 28, 2011, Alessi & Koenig prepared a
2 letter to Ms. Abelard which enclosed a Notice of Delinquent Assessment and stated that she
3 owed an assessment balance of \$2, 398.58 on her account. See attached Exhibit 2.

4 15. Unbeknownst to Ms. Abelard, on July 12, 2011, Alessi & Koenig recorded a
5 Notice of Delinquent Assessment against the property which claimed that Ms. Abelard owed \$2,
6 337.58 and that amount included collection costs and attorney's fees. See attached Exhibit 3.

7 16. Unbeknownst to Ms. Abelard, on September 15, 2011, Alessi & Koenig recorded
8 a Notice of Default and Election to Sell which stated that Ms. Abelard owed \$3, 403.58. See
9 attached Exhibit 4.
10

11 17. On May 25, 2012, Ms. Abelard received a Notice of Trustee's Sale affixed to her
12 door. The Notice advised that the sale was for the purpose of satisfying the amount of \$3,
13 932.58 which Ms. Abelard owed on her assessments, including "reasonable costs, expenses and
14 advances at the time of the initial publication of the Notice of Sale ..." See attached Exhibit 5.
15

16 18. When Ms. Abelard received the Notice of Trustee's Sale, she immediately
17 contacted Alessi & Koenig as directed on the Notice.
18

19 19. Ms. Abelard spoke to a woman named Catherine Kettles at Alessi & Koenig.

20 20. After speaking to Ms. Kettles, Ms. Abelard wrote a letter disputing that she was
21 delinquent on her assessments. Ms. Abelard brought the letter to Alessi & Koenig's office on
22 May 31, 2012.
23

24 21. On May 31, 2012, Ms. Abelard spoke again to Ms. Kettles, who told her that a
25 woman named "Gina" was in charge of her account. At that time, Ms. Abelard asked for a full
26 accounting of her HOA assessments account.
27
28

1 22. On June 4, 2012, Ms. Abelard received a ledger of her HOA account from Alessi
2 & Koenig which showed an initial balance of \$1, 204.58, which was not itemized.

3 23. Ms. Abelard emailed Ms. Kettles on June 5, 2012 disputing the initial balance of
4 \$1, 204.58.

5 24. Ms. Abelard followed up with a phone call to Ms. Kettles, who told her that
6 Alessi & Koenig would look into the matter.

7 25. Ms. Abelard disputed that she was delinquent in her assessments and could show
8 proof that she paid her assessments.

9 26. Alessi & Koenig told Ms. Abelard that the sale would be postponed while they
10 investigated her account.

11 27. Through the rest of the month of June 2012, Ms. Abelard continued to follow up
12 with Alessi & Koenig about the status of their investigation and her HOA account. Ms. Kettles
13 told Ms. Abelard that Alessi & Koenig had sent a request for information to the management
14 company and were awaiting an answer from them.

15 28. Ms. Abelard did not receive any communication from Alessi & Koenig about her
16 account despite her repeated phone calls throughout the month of June 2012.

17 29. According to a deed filed by Alessi & Koenig, and unbeknownst to her, Ms.
18 Abelard's home was sold on July 12, 2012 to Cranesbill Court Trust for \$4, 900.00.

19 30. On July 12, 2012, Ms. Abelard received a Notice to Vacate Property attached to
20 her door.

21 31. Ms. Abelard immediately contacted Alessi & Koenig and again spoke with Ms.
22 Kettles, who told her that the sale of Ms. Abelard's home was "impossible."

1 32. On July 12, 2012, Ms. Mary Endolucia, from Alessi & Koenig, called Ms.
2 Abelard and asked her to send over the documents showing her payments so that they could stop
3 the transaction. Ms. Endolucia told Ms. Abelard that her previously submitted documents had
4 not been sent to the management office as she had been led to believe.

5 33. On July 18, 2012, a Trustee's Deed Upon Sale was recorded against the property.
6

7 34. On July 27, 2012, Resources Group, LLC, a Nevada Limited Liability Company,
8 as Trustee of the Cranesbill Court Trust conveyed the subject property to Teal Petals St. Trust
9 via a Grant, Bargain, Sale Deed.

10 35. As a result of the foregoing, Plaintiff was damaged, but the nature and extent of
11 her damages depend upon whether or not the sale of her home is upheld herein, as alleged below.
12

13 V. CLAIMS FOR RELIEF

14 A. **First Claim For Relief - Declaratory Relief** 15 **(Defendants Haddad, Cranesbill C.t Trust, Teal Petals St. Trust)**

16 36. Whether viewed as an equitable remedy for the legal theories of recovery
17 mentioned below, or as an equitable cause of action, Plaintiff also seeks a Declaratory Judgment.

18 37. The allegations contained in paragraphs 1 through 35 are restated and realleged as
19 though here fully set forth.
20

21 38. Declaratory relief is an historical equitable remedy. In addition, the State of
22 Nevada has enacted the Uniform Declaratory Judgments Act, NRS 30.10 et seq.

23 39. The facts of this case state a justiciable controversy in which a claim of right is
24 asserted against one who has an interest in contesting it.

25 40. The controversy is between persons whose interests are adverse.
26

27 41. Ms. Abelard has a legally protectable interest in the controversy.

28 42. The issue involved in the controversy is ripe for determination.

1 43. This court has the power by law to declare the rights, status and other legal
2 relations of the parties whether or not further relief is or could be claimed, and a declaration may
3 be either affirmative or negative in form and effect, and such declarations have the force and
4 effect of a final judgment or decree

5 44. Defendants Haddad and Teal Petals St. Trust and/or Cranesbill Ct. Trust claim an
6 interest in the property adverse to Plaintiff Ms. Abelard herein.

7 45. Ms. Abelard seeks declaration from this Court that any claim of Defendants
8 Haddad and Cranesbill Ct. Trust and Teal Petals St. Trust is without any right whatsoever, and
9 said Defendants have no legal or equitable right, claim or interest in said subject property.
10

11 46. Assuming Plaintiff prevails on her First and Second Claims for Relief, Plaintiff
12 has been damaged in having to assert her rights and has incurred attorney's fees and costs.
13

14 **B. Second Claim For Relief - Quiet Title**
15 **(Defendants Haddad, Cranesbill Court Trust, Teal Petals St. Trust)**

16 47. The allegations contained in paragraphs 1 through 46 are restated and realleged as
17 though here fully set forth.

18 48. Ms. Abelard acquired title to the property on or about November 27, 2007.

19 49 Defendants Haddad and Teal Petals St. Trust and/or Cranesbill Ct. Trust claim an
20 interest in the subject property.
21

22 50. Any claim of Defendants Haddad and Teals Petals St. Trust and/or Cranesbill Ct.
23 Trust to the subject property is without any right whatsoever, and said Defendants do not have
24 any estate, mortgage, title, or interest in the said subject property or any part thereof.
25

26 51. Defendants Haddad and Teal Petals St. Trust and Cranesbill Ct. Trust cannot meet
27 their burden of proving that they are a bona fide purchaser for value.
28

1 52. Assuming Plaintiff prevails on her Second Claim for Relief, Plaintiff has been
2 damaged in having to assert her rights and has incurred attorney's fees and costs.

3 **C. Third Claim For Relief - Violation of NRS 116.3116**
4 **(Defendants HOA, Mesa, LVAM, A&K).**

5 53. The allegations contained in paragraphs 1 through 52 are repeated and realleged
6 as if here fully set forth.

7 54. NRS 116.3116(1) provides generally that an HOA may record a lien against a unit
8 owner as follows:

9 The association has a lien on a unit for any construction penalty that is
10 imposed against the unit's owner pursuant to NRS116.310305, **any**
11 **assessment levied against that unit** or any fines imposed against the
12 unit's owner from the time the construction penalty, assessment or fine
13 becomes due. Unless the declaration otherwise provides, **any penalties,**
14 **fees, charges, late charges, fines and interest charged pursuant to**
15 **paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are**
16 **enforceable as assessments under this section.** If an assessment is
17 payable in installments, the full amount of the assessment is a lien from
18 the time the first installment thereof becomes due. (emphasis added)

19 55. As applicable here, only delinquent assessments and amounts enforceable as
20 assessments can trigger the legitimate steps toward lien enforcement by foreclosure sale, under
21 NRS 116.3116.

22 56. The Notice of Delinquent Assessment, Notice of Default and Election to Sell and
23 Notice of Sale filed by Alessi & Koenig against Ms. Abelard's property improperly included
24 costs which cannot be included in the lien to be enforced through foreclosure.

25 57. As here applicable, NRS 116.3116.3102(1)(j) through (n) mean that only
26 assessments and interest on unpaid assessments are enforceable by foreclosure sale.

27 58. As a result of the Defendant HOA, Mesa, LVAM, and A&K's failure to properly
28 prepare the notices to accurately reflect only the delinquent assessments and interest on unpaid

1 assessments owed pursuant to NRS 116.3116, Ms. Abelard was foreclosed upon and has suffered
2 financial and non-monetary losses.

3 59. Assuming Plaintiff prevails on her Third Claim for Relief, but if the foreclosure
4 sale of Ms. Abelard's home is upheld herein, then Plaintiff has been damaged through the loss of
5 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).

6 60. Assuming Plaintiff prevails on her Third Claim for Relief, but if the foreclosure
7 sale of Ms. Abelard's home is not upheld herein, then Plaintiff has been damaged in having to
8 assert her rights and has incurred attorney's fees and costs.

10 **D. Fourth Claim For Relief - Deceptive trade practices violations pursuant to NRS**
11 **598.0923**
12 **(Defendants HOA, Mesa, LVAM, A&K)**

13 61. The allegations contained in paragraphs 1 through 60 are repeated and realleged
14 as if here fully set forth.

15 62. NRS 598.0923(3) states that "[a] person engages in a 'deceptive trade practice'
16 when in the course of his or her business or occupation he or she knowingly violates a state or
17 federal statute or regulation relating to the sale or lease of goods or services."

18 63. The allegations of violations of NRS Chapter 116 outlined above are state statutes
19 which govern the Defendant HOA, Mesa, LVAM and A&K's conduct in carrying out the
20 foreclosure on Ms. Abelard's home.

21 64. The Defendants HOA, Mesa, LVAM, and A&K have violated NRS 598.0923(3)
22 by knowingly violating the provisions of NRS 116 relating to the sale of services.

23 65. Defendant A&K has violated NRS 598.0923(3) by knowingly violating the
24 provisions of the FDCPA as alleged in the Fifth Claim for Relief.

1 66. By violating NRS 598.0923(3), the Defendants engaged in “consumer fraud,” as
2 that term is defined in NRS 41.600(2)(e).

3 67. Assuming Plaintiff prevails on her Fourth Claim for Relief, but if the foreclosure
4 sale of Ms. Abelard’s home is upheld herein, then Plaintiff has been damaged through the loss of
5 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).

6 68. Assuming Plaintiff prevails on her Fourth Claim for Relief, but if the foreclosure
7 sale of Ms. Abelard’s home is not upheld herein, then Plaintiff has been damaged in having to
8 assert her rights and has incurred attorney’s fees and costs.

9
10 **E. Fifth Claim For Relief - FDCPA violation 15 U.S.C. § 1692f, 1692f(1) and 1692e(5).**
11 **(Defendant A&K)**

12 69. The allegations contained in paragraphs 1 through 68 are repeated and realleged
13 as if here fully set forth.

14 70. 15 U.S.C. § 1692a(6) defines “debt collector” as any person who uses any
15 instrumentality of interstate commerce or the mails in any business the principal purpose of
16 which is the collection of any debts . . .”

17 71. The management companies and the HOA hired A&K to collect on Ms. Abelard’s
18 alleged debt to the HOA. As such, A&K is a debt collector. See NRS 649.020(1) and (3)(a).

19 72. 15 U.S.C. § 1692f prohibits a debt collector from using unfair or unconscionable
20 means to collect or attempt to collect any debt. Specifically, 15 U.S.C. § 1692f(1) prohibits “The
21 collection of any amount . . . unless such amount is expressly authorized by the agreement
22 creating the debt or permitted by law.”

23 73. The filing of a lien is debt collection activity. Including in a lien amounts which
24 are not permitted by law renders the lien invalid. Filing an invalid lien violates multiple
25 provisions of the FDCPA, including 15 U.S.C. Secs. 1692f, 1692f(1) and 1692e(5).
26
27
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1 74. The Defendant A&K violated the FDCPA by attempting to collect amounts, such
2 as collections costs and attorney's fees, that were not expressly authorized by the agreement
3 creating the debt or permitted by law by filing foreclosure liens and by foreclosure sale. See
4 NRS 116.3116(1).

5 75. Alessi & Koenig recorded a Notice of Default and Notice of Sale which included
6 amounts which are not authorized pursuant to NRS 116.3116(1).

7 76. Ms. Abelard has been damaged as a result of the actions of Defendant A&K, their
8 agents, servants, and/or employees, as a result of the false, deceptive and misleading
9 representations, practices and violations outlined herein, and have otherwise suffered damages.
10

11 77. As a result of Defendant A&K's violation of 15 U.S.C. § 1692f, 1692f(1) and
12 1692e(5), Plaintiff is entitled to statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
13 1692k(a)(2)(A).
14

15 78. Ms. Abelard is entitled to costs and reasonable attorney's fees under 15 U.S.C. §
16 1692k(a)(3).
17

18 79. Assuming Plaintiff prevails on her Fifth Claim for Relief, but if the foreclosure
19 sale of Ms. Abelard's home is upheld herein, then Plaintiff has been damaged through the loss of
20 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).
21

22 80. Assuming Plaintiff prevails on her Fifth Claim for Relief, but if the foreclosure
23 sale of Ms. Abelard's home is not upheld herein, then Plaintiff has been damaged in having to
24 assert her rights and has incurred attorney's fees and costs.

25 **F. Sixth Claim For Relief - Violation of Fiduciary Duty**
26 **(Defendants HOA, Mesa, LVAM, A&K).**

27 81. The allegations contained in paragraphs 1 through 80 are repeated and realleged
28 as if here fully set forth.

1 82. Nevada law deems a relationship “fiduciary” when one party must to act for the
2 benefit of the other party. Hoopes v. Hammargren, 102 Nev. 425, 431 (1986). In other words, a
3 fiduciary relationship exists when one has the right to expect trust and confidence in the integrity
4 and fidelity of another. Powers v. United Servs. Auto. Ass'n, 114 Nev. 690 (1998) opinion
5 modified on denial of reh'g, 115 Nev. 38 (1999). As a matter of Nevada law, specific
6 relationships impose a fiduciary duty including, but not limited to: insurers and insured,
7 attorneys and clients, spouses, and corporate officers or directors of a corporation. Giles v. Gen.
8 Motors Acceptance Corp., 494 F.3d 865, 880-81 (9th Cir. 2007). Additionally, Nevada law
9 imposes a fiduciary relationship between real-estate buyers and mortgage brokers or agents, NRS
10 645B.0147; and between patients and physicians, Hoopes, 102 Nev. 425 at 431. The existence
11 of these relationships as a matter of law should not be interpreted to limit the existence of other
12 fiduciary duties; the Nevada Supreme Court held they exist when one party must act for the
13 benefit of the other party. Id.

16 83. NRS 116A.630, Standards of Practice for Community Managers was passed to
17 ensure homeowners living within associations are treated fairly. Ms. Abelard is a member of the
18 class of persons these statutes were intended to protect and the damages she incurred were of the
19 type these statutes were intended to prevent.

21 84. NRS 116A.630(1)(a) provides that a community manager acts as a fiduciary in
22 any client relationship.

24 85. Pursuant to NRS 116.3103, “[t]he executive board [of a homeowners association]
25 acts on behalf of the association. In the performance of their duties, the officers and members of
26 the executive board are fiduciaries and shall act on an informed basis, in good faith and in the
27 honest belief that their actions are in the best interest of the association.”
28

1 86. The HOA and the management companies owed a special fiduciary duty to Ms.
2 Abelard.

3 87. The Defendants HOA, Mesa, LVAM, and A&K breached their duty to Ms.
4 Abelard by failing to determine the status and standing of her account with respect to any
5 outstanding assessments, and amounts enforceable as assessments.

6 88. Assuming Plaintiff prevails on her Sixth Claim for Relief, but if the foreclosure
7 sale of Ms. Abelard's home is upheld herein, then Plaintiff has been damaged through the loss of
8 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).

9 89. Assuming Plaintiff prevails on her Sixth Claim for Relief, but if the foreclosure
10 sale of Ms. Abelard's home is not upheld herein, then Plaintiff has been damaged in having to
11 assert her rights and has incurred attorney's fees and costs.

12
13
14 **G. Seventh Claim For Relief - Constructive Fraud**
15 **(Defendants HOA, Mesa, LVAM, A&K)**

16 90. The allegations contained in paragraphs 1 through 89 are restated and realleged
17 as though here fully set forth.

18 91. Constructive fraud is the "breach of some legal or equitable duty which,
19 irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others
20 or to violate confidence." Long v. Towne, 639 P.2d 528, 529-30 (Nev. 1982). "Constructive
21 fraud is characterized by a breach of duty arising out of a fiduciary or confidential relationship."
22 Id.

23
24 92. NRS 116A.630, Standards of Practice for Community Managers was passed to
25 ensure homeowners living within associations are treated fairly. Ms. Abelard is a member of
26 the class of persons these statutes were intended to protect and the injuries she suffered were of
27 the type these statutes were intended to prevent.

1 93. The HOA and management companies owed a special fiduciary duty to Ms.
2 Abelard as the HOA was created to protect homeowners.

3 94. Ms. Abelard believed that the management companies and the HOA were
4 operating in good faith in dealing with her and would not foreclose on her home while
5 investigating her claim that she was current on her assessments.

6 95. The Defendants HOA, Mesa, LVAM and A&K violated the duty owed to Ms.
7 Abelard by selling her home despite assuring her that they would seriously investigate her claim
8 that her assessments had been paid and implying that the sale would be postponed.

9 96. Assuming Plaintiff prevails on her Seventh Claim for Relief, but if the foreclosure
10 sale of Ms. Abelard's home is upheld herein, then Plaintiff has been damaged through the loss of
11 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).

12 97. Assuming Plaintiff prevails on her Seventh Claim for Relief, but if the foreclosure
13 sale of Ms. Abelard's home is not upheld herein, then Plaintiff has been damaged in having to
14 assert her rights and has incurred attorney's fees and costs.

15 **VI. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests the following relief against Defendant:

- 17
- 18 1. For actual damages in excess of Ten Thousand Dollars (\$10, 000.00;
 - 19 2. Consequential damages in an amount to be proven at trial;
 - 20 3. Statutory damages in the amount of \$1,000.00 under 15 U.S.C. §
 - 21 1692k(a)(2)(A);
 - 22 4. Attorney's fees pursuant to NRS 18.010(2)(a) in the event Ms. Abelard recovers
 - 23 less than \$20,000.00.
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DATED this 12th day of January, 2016.

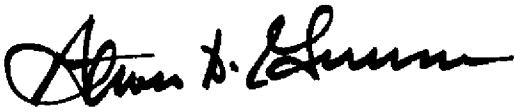
/s/Debra Bookout
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Facsimile: (702) 388-1452
dbookout@lacsnsn.org
Attorneys for Plaintiff Venise Abelard

I hereby certify that I served the following document: **SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, VIOLATIONS OF THE FDCPA, FRAUD AND DEMAND FOR JURY TRIAL** via the Court's electronic system (EFS E-File & Serve) on January 12, 2016, to the following:

Bradley Bace
Alessi and Koenig
9500 W. Flamingo Road, #205
Las Vegas, NV 89147
eserve@alessikoenig.com

18

IYAD HADDAD AND 9352
CRANESBILL TRUST'S
ANSWER AND COUNTERCLAIM


CLERK OF THE COURT

1 **ANSW**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 125
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for defendants 9352 Cranesbill Trust and Iyad Haddad

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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD

Plaintiffs,

vs.

9352 CRANESBILL TRUST, FORT APACHE
SQUARE HOMEOWNERS ASSOCIATION,
MESA MANAGEMENT, LAS VEGAS
ASSOCIATION MANAGEMENT, LLC,
BENCH MARCH ASSOCIATION
SERVICES, IYAD HADDAD; et. al.

Defendants

CASE NO.: A671509
Dept. No. : XIV

9352 CRANESBILL TRUST

Counterclaimant

vs.

VENISE ABELARD,

Counter defendant

ANSWER AND COUNTERCLAIM

Defendants Iyad Haddad, and 9352 Cranesbill Trust, by and through their attorney, Michael F. Bohn, Esq., answer the plaintiffs complaint as follows:

1. Answering defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 36, and 46.

2. Answering defendants are without sufficient information upon which to admit or deny the allegations contained in paragraphs 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47 and 48, and, upon that basis, denies the same.

5 || 3. Answering defendant denies the allegations contained in paragraph 13.

6 FIRST COUNT

7 | 4. Answering defendant repeats its responses to the allegations to paragraphs 1 through 48.

8 5. Answering defendant denies the allegations contained in paragraphs 50, 51, 53, 54, and 55.

9 | 6. Answering defendant admits the allegations contained in paragraph 52.

10 || SECOND COUNT

11 || 7. Answering defendant repeats its responses to the allegations to paragraphs 1 through 56.

12 || 8. Answering defendant admits the allegations contained in paragraphs 57 and 58.

13 || 9. Answering defendant denies the allegations contained in paragraph 59.

14 THIRD COUNT

15 10. Answering defendant repeats its responses to the allegations to paragraphs 1 through
16 59.

17 11. Answering defendant is without sufficient information upon which to admit or deny
18 the allegations contained in paragraphs 61, 62, 63, and 64, and, upon that basis, denies the same.

19 || **FOURTH COUNT**

20 12. Answering defendant repeats its responses to the allegations to paragraphs 1 through 64.

21 13. Answering defendant denies the allegations contained in paragraphs 66, 67, 68, 69, 70,
22 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

23 **FIFTH COUNT**

24 14. Answering defendant repeats its responses to the allegations to paragraphs 1 through 89.

15. Answering defendants are without sufficient information upon which to admit or deny the allegations contained in paragraphs 91, 92, 93, 94, 95, 96, and 97, and, upon that basis, denies the same.

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SIXTH COUNT

16. Answering defendant repeats its responses to the allegations to paragraphs 1 through 99.

17. Answering defendant is without sufficient information upon which to admit or deny the allegations contained in paragraphs 100, 101, 102, 103, 104, 105, 106 and, upon that basis, denies the same.

SEVENTH COUNT

18. Answering defendant repeats its responses to the allegations to paragraphs 1 through 106.

19. Answering defendant is without sufficient information upon which to admit or deny the allegations contained in paragraphs 107, 108, 109, 110, 111, and 112 and, upon that basis, denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

The plaintiffs' damages, if any were caused by their own acts or omissions

THIRD AFFIRMATIVE DEFENSE

The plaintiffs breached their agreement with the defendant, and that breach excuses any further performance on the part of the defendant.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by third persons over whom this answering defendant has no control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are guilty of laches and unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by virtue of the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiffs have failed to mitigate their damages.

WHEREFORE, defendant prays as follows:

1. That the plaintiffs take nothing by way of their Complaint on file herein;
2. For costs and attorney's fees incurred herein; and
3. For such other and further relief as this Court may deem just and proper.

COUNTERCLAIM AND CROSS CLAIM

Defendant/counterclaimant 9352 Cranesbill Trust, by and through it's attorney, Michael F. Bohn, Esq. alleges as it's counterclaim against Venise Abelardas follows:

1. Defendant/counterclaimant 9352 Cranesbill Trust is the owner of the real property commonly known as 9352 Cranesbill Court, Las Vegas, Nevada.
2. Counterclaimant obtained title by way of foreclosure deed recorded on July 18, 2012.
3. The counterclaimant's title arises from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Apache Square Homeowners Association, pursuant to NRS Chapter 116.
4. Counter defendant is the former owner of the subject real property.
7. The interest of the counter defendant has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the plaintiff to the Hometown Encore Owners Association, pursuant to NRS Chapter 116.
8. Counterclaimant is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.
9. The counterclaimant is entitled to an award of attorneys fees and costs.

SECOND CLAIM FOR RELIEF

10. Counterclaimant repeats the allegations contained in paragraphs 1 through 9.
11. Counterclaimant seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.
12. Counterclaimant is entitled to an award of attorneys fees and costs.

///

1 ///

2 WHEREFORE, Counterclaimant prays for Judgment as follows:

3 1. For a determination and declaration that counterclaimant is the rightful holder of title to
4 the property, free and clear of all liens, encumbrances, and claims of the plaintiff.

5 2. For a determination and declaration that the plaintiff has no estate, right, title, interest or
6 claim in the property.

7 3. For a judgment forever enjoining the plaintiff from asserting any estate, right, title, interest
8 or claim in the property; and

9 4. For such other and further relief as the Court may deem just and proper.

10 DATED this 24th day of April, 2013

11 LAW OFFICES OF
12 MICHAEL F. BOHN, ESQ., LTD.

13 By: /s/ /Michael F. Bohn/
14 MICHAEL F. BOHN, ESQ.
15 376 East Warm Springs Road, Ste. 125
16 Las Vegas, Nevada 89119
17 Attorneys for defendants Trust and Haddad

18 **CERTIFICATE OF MAILING**

19 I HEREBY CERTIFY that on the 24th day of April, 2013, I served a photocopy of the
20 foregoing **ANSWER AND COUNTERCLAIM** by placing the same in a sealed envelope with first-
21 class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

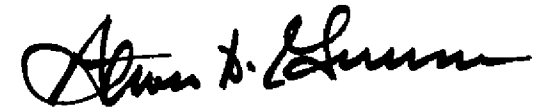
22 Ryan M. Kerbow, Esq.
23 Alessi & Koenig, LLC.
24 9500 W. Flamingo Rd., #205
25 Las Vegas, NV 89147

26 Michael Joe, Esq.
27 Legal Aid Center
28 800 S. Eighth St.
Las Vegas, NV 89101

/s/ /Esther Maciel-Thompson/
An employee of the LAW OFFICES
OF MICHAEL F. BOHN, ESQ., LTD.

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DEFENDANT'S ANSWER
TO AMENDED COMPLAINT
AND COUNTERCLAIM



CLERK OF THE COURT

1 **AACC**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
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9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for defendants 9352 Cranesbill Trust and Iyad Haddad

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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD

Plaintiffs,

vs.

9352 CRANESBILL TRUST, FORT APACHE
SQUARE HOMEOWNERS ASSOCIATION,
MESA MANAGEMENT, LAS VEGAS
ASSOCIATION MANAGEMENT, LLC,
BENCH MARCH ASSOCIATION
SERVICES, IYAD HADDAD; et. al.

Defendants

CASE NO.: A671509
Dept. No. : XIV

9352 CRANESBILL TRUST

Counterclaimant

vs.

VENISE ABELARD,

Counter defendant

ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM

Defendants Iyad Haddad, and 9352 Cranesbill Trust, by and through their attorney, Michael F. Bohn, Esq., answer the plaintiffs complaint as follows:

1. Answering defendant denies the allegations contained in paragraphs 1, 2, 12, 14, 15, 16 and 34.

2. Answering defendants are without sufficient information upon which to admit or deny the allegations contained in paragraphs 3, 10, 13, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31 and 32 and, upon that basis, denies the same.

4 3. Answering defendants admit the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 11,
5 17, 18, 29, 30 and 33

FIRST CLAIM FOR RELIEF

7 4. Answering defendants repeat their responses to the allegations to paragraphs 1 through
8 36, 46, 52, 60, 68, 80 and 89.

9 || 5. Answering defendants admit the allegations contained in paragraphs 35, 37, 42 and 43.

10 6. Answering defendant denies the allegations contained in paragraphs 38, 39, 40, 41, 44
11 and 45.

SECOND CLAIM FOR RELIEF

13 7. Answering defendants repeat their responses to the allegations to paragraphs 1 through
14 46.

15 || 8. Answering defendants admit the allegations contained in paragraphs 47 and 48.

16 9. Answering defendant denies the allegations contained in paragraphs 49, 50 and 51.

THIRD CLAIM FOR RELIEF

18 10. Answering defendants repeat their responses to the allegations to paragraphs 1 through
19 52.

11. Answering defendants are without sufficient information upon which to admit or deny the allegations contained in paragraphs 53, 54, 55, 56, 57, 58 and 59, and, upon that basis, denies the same.

FOURTH CLAIM FOR RELIEF

24 12. Answering defendants repeat their responses to the allegations to paragraphs 1 through
25 60.

13. Answering defendants are without sufficient information upon which to admit or deny the allegations contained in paragraphs 61, 62, 63, 64, 65, 66 and 67, and, upon that basis, denies the same.

1 **FIFTH CLAIM FOR RELIEF**

2 14. Answering defendants repeat their responses to the allegations to paragraphs 1 through
3 68.

4 15. Answering defendants are without sufficient information upon which to admit or deny
5 the allegations contained in paragraphs 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79, and, upon that
6 basis, denies the same.

7 **SIXTH CLAIM FOR RELIEF**

8 16. Answering defendants repeat their responses to the allegations to paragraphs 1 through
9 80.

10 17. Answering defendants admit the allegations contained in paragraphs 81, 82, 83, 84 and
11 85.

12 18. Answering defendants are without sufficient information upon which to admit or deny
13 the allegations contained in paragraphs 86, 87 and 88, and, upon that basis, denies the same.

14 **SEVENTH CLAIM FOR RELIEF**

15 19. Answering defendants repeat their responses to the allegations to paragraphs 1 through
16 89.

17 20. Answering defendants admit the allegations contained in paragraphs 90, 91 and 92.

18 21. Answering defendants are without sufficient information upon which to admit or deny
19 the allegations contained in paragraphs 93, 94, 95 and 96, and, upon that basis, denies the same.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint fails to state a claim against this answering defendant.

23 **SECOND AFFIRMATIVE DEFENSE**

24 The plaintiffs' damages, if any were caused by their own acts or omissions

25 **THIRD AFFIRMATIVE DEFENSE**

26 The plaintiffs breached their agreement with the defendant, and that breach excuses any
27 further performance on the part of the defendant.

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FOURTH AFFIRMATIVE DEFENSE

Plaintiffs’ damages, if any, were caused by third persons over whom this answering defendant has no control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are guilty of laches and unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by virtue of the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiffs have failed to mitigate their damages.

WHEREFORE, defendant prays as follows:

- 1. That the plaintiffs take nothing by way of their Complaint on file herein;
- 2. For costs and attorney's fees incurred herein; and
- 3. For such other and further relief as this Court may deem just and proper.

COUNTERCLAIM AND CROSS CLAIM

Defendant/counterclaimant 9352 Cranesbill Trust, by and through it’s attorney, Michael F. Bohn, Esq. alleges as it’s counterclaim against Venise Abelardas follows:

- 1. Defendant/counterclaimant 9352 Cranesbill Trust is the owner of the real property commonly known as 9352 Cranesbill Court, Las Vegas, Nevada.
- 2. Counterclaimant obtained title by way of foreclosure deed recorded on July 18, 2012.
- 3. The counterclaimant’s title arises from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Apache Square Homeowners Association, pursuant to NRS Chapter 116.
- 4. Counter defendant is the former owner of the subject real property.
- 5. The interest of the counter defendant has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the plaintiff to the Hometown Encore Owners Association, pursuant to NRS Chapter 116.
- 6. Counterclaimant is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or

1 claim to the subject property.

2 7. The counterclaimant is entitled to an award of attorneys fees and costs.

3 **SECOND CLAIM FOR RELIEF**

4 8. Counterclaimant repeats the allegations contained in paragraphs 1 through 7.

5 9. Counterclaimant seeks a declaration from this court, pursuant to NRS 40.010, that title in
6 the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants
7 herein have no estate, right, title or interest in the property, and that defendants are forever enjoined
8 from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

9 10. Counterclaimant is entitled to an award of attorneys fees and costs.

10 WHEREFORE, Counterclaimant prays for Judgment as follows:

11 1. For a determination and declaration that counterclaimant is the rightful holder of title to
12 the property, free and clear of all liens, encumbrances, and claims of the plaintiff.

13 2. For a determination and declaration that the plaintiff has no estate, right, title, interest or
14 claim in the property.

15 3. For a judgment forever enjoining the plaintiff from asserting any estate, right, title, interest
16 or claim in the property; and

17 4. For such other and further relief as the Court may deem just and proper.

18 DATED this 27th day of October, 2014

19 LAW OFFICES OF
20 MICHAEL F. BOHN, ESQ., LTD.

21 By: /s/ /Michael F. Bohn, Esq./
22 MICHAEL F. BOHN, ESQ.
23 JEFF ARLITZ, ESQ.
24 376 East Warm Springs Road, Ste. 140
25 Las Vegas, Nevada 89119
26 Attorneys for defendants Trust and Haddad
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
3 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 27th day of October, 2014, an electronic copy
4 of ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM was served on opposing counsel
5 via the Court's electronic service system to the following counsel of record:

6 Ryan M. Kerbow, Esq.
Alessi & Koenig, LLC.
7 9500 W. Flamingo Rd., #205
Las Vegas, NV 89147
8

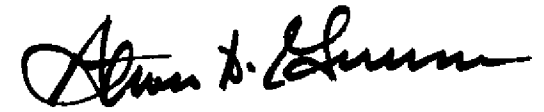
9 Michael Joe, Esq.
Legal Aid Center
10 800 S. Eighth St.
Las Vegas, NV 89101
11

12 /s/ /Esther Maciel-Thompson/
13 An employee of the LAW OFFICES
14 OF MICHAEL F. BOHN, ESQ., LTD.
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WELLS FARGO BANK, N.A.'S
ANSWER IN INTERVENTION
TO 9352 CRANESBILL
TRUST'S COUNTERCLAIM

and

WELLS FARGO BANK, N.A.'S
COUNTERCLAIMS,
CROSS-CLAIMS, AND
THIRD-PARTY COMPLAINT



CLERK OF THE COURT

Amy F. Sorenson, Esq. (NV Bar No. 12495)
Erica J. Stutman, Esq. (NV Bar No. 10794)
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divie@swlaw.com

*Attorneys for Intervenor
Wells Fargo Bank, N.A.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

VENISE ABELARD,

Plaintiff,

vs.

9352 CRANESBILL TRUST; FORT APACHE
SQUARE HOMEOWNERS ASSOCIATION;
MESA MANAGEMENT, LAS VEGAS
ASSOCIATION MANAGEMENT, LLC;
BENCHMARK ASSOCIATION SERVICES;
IYAD HADDAD, an individual; ALESSI &
KOENIG, LLC; NEVADA ASSOCIATION
SERVICES and DOES I through X and ROE
COMPANIES I through X, inclusive.,

Defendants.

9352 CRANESBILL TRUST,

Counterclaimant,

vs.

VENISE ABELARD,

Counter-defendant.

WELLS FARGO BANK, N.A.,

Intervenor/Counterclaimant,

vs.

Case No. A-12-671509-C.

Dept. VII

**WELLS FARGO BANK, N.A.'S
ANSWER IN INTERVENTION TO
9352 CRANESBILL TRUST'S
COUNTERCLAIM
and
WELLS FARGO BANK, N.A.'S
COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY COMPLAINT**

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

9352 CRANESBILL TRUST, a Nevada trust,
Counter-defendant.

WELLS FARGO BANK, N.A.,
Intervenor/Cross-Claimant,

vs.

FORT APACHE SQUARE HOMEOWNERS
ASSOCIATION, a Nevada non-profit
corporation; ALESSI & KOENIG, LLC, a
Nevada limited liability company;
Cross-defendants,

WELLS FARGO BANK, N.A.,
Intervenor/Third-Party
Plaintiff,

vs.

TEAL PETALS ST. TRUST, a Nevada trust;
and DOES I through X and ROE COMPANIES
I through X, inclusive;
Third-party Defendants.

Intervenor Wells Fargo Bank, N.A. ("Wells Fargo" or "Intervenor"), through its counsel
of record, the law firm of Snell & Wilmer L.L.P, hereby submits its Answer in Intervention to
Defendant/Counterclaimant 9352 Cranesbill Trust's ("Cranesbill Trust") Counterclaim as
follows:

FIRST CLAIM FOR RELIEF

1. Wells Fargo lacks sufficient knowledge or information to respond, and therefore
denies the allegations in paragraph 1.

2. Answering paragraph 2, Wells Fargo admits that a foreclosure deed was recorded
against the property on July 18, 2012. As for the remaining allegations in paragraph 2, Wells
Fargo lacks sufficient knowledge or information to respond, and therefore denies them.

3. Wells Fargo lacks sufficient knowledge or information to respond, and therefore
denies the allegations in paragraph 3.

1 4. Wells Fargo lacks sufficient knowledge or information to respond, and therefore
2 denies the allegations in paragraph 4.

3 5. Wells Fargo denies the allegations in paragraph 5.

4 6. Wells Fargo denies the allegations in paragraph 6.

5 7. Wells Fargo denies the allegations in paragraph 7.

6 **SECOND CLAIM FOR RELIEF**

7 8. Wells Fargo repeats and re-alleges the allegations set forth above.

8 9. The allegations contained in paragraph 9 do not contain facts for which a response
9 is required. Notwithstanding, to the extent this paragraph does require a response, Wells Fargo
10 denies the allegations contained therein.

11 10. Wells Fargo denies the allegations in paragraph 10.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 Cranesbill Trust's Counterclaim fails to state a claim against Wells Fargo upon which
16 relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Priority)**

19 Cranesbill Trust took title of the Property subject to Wells Fargo's first priority deed of
20 trust, thereby forestalling any injunction/extinguishment of the Wells Fargo's interest in the
21 Property.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Assumption of Risk)**

24 Cranesbill Trust, at all material times, calculated, knew and understood the risks inherent
25 in its situations, actions, omissions, and transactions upon which it now bases its various claims
26 for relief, and with such knowledge, Cranesbill Trust undertook and thereby assumed such risks
27 and is consequently barred from all recovery by such assumption of risk.

28 ///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Commercial Reasonableness)**

3 The HOA lien foreclosure sale by which Cranesbill Trust took its interest was
4 commercially unreasonable if it extinguished Wells Fargo's Deed of Trust as Cranesbill Trust
5 contends. The sales price when compared to the fair market value of the Property demonstrates
6 that the sale was not conducted in good faith as a matter of law, and such a windfall to Cranesbill
7 Trust at the expense of a priority lien-holder is commercially unreasonable.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 **(Equitable Doctrines)**

10 Cranesbill Trust's claims are barred by the equitable doctrines of unclean hands or failure
11 to do equity in the matters alleged in the Complaint.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 **(Waiver and Estoppel)**

14 By reason of Cranesbill Trust's acts and omissions, Cranesbill Trust has waived its rights
15 and is estopped from asserting the claims against Wells Fargo.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Due Process Violations)**

18 The foreclosure sale pursuant to statute through which Cranesbill Trust claims an interest
19 in the Property violated Wells Fargo's rights to due process under the Fifth and Fourteenth
20 Amendments to the United States Constitution and relevant portions of the Nevada Constitution.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **(Mitigation)**

23 Cranesbill Trust failed to mitigate, minimize, or otherwise avoid its losses, damages, or
24 expenses.

25 **NINTH AFFIRMATIVE DEFENSE**

26 **(Bad Faith)**

27 Cranesbill Trust has acted in bad faith and is entitled to no damages as a result.

28 ///

1 TENTH AFFIRMATIVE DEFENSE

2 (Good Faith)

3 At all times relevant to Cranesbill Trust's allegations, Wells Fargo's actions were taken in
4 good faith, for legitimate purposes, and for just cause, and at no time did Wells Fargo act
5 wrongfully or with malice or reckless indifference toward Cranesbill Trust's purported rights.

6 ELEVENTH AFFIRMATIVE DEFENSE

7 (Takings)

8 The actions of Cranesbill Trust and other relevant parties related to the foreclosure sale
9 violated the Takings Clause of the United States and Nevada Constitutions.

10 TWELFTH AFFIRMATIVE DEFENSE

11 (Wrongful Foreclosure)

12 The foreclosure through which Cranesbill Trust alleges it obtained an interest in the
13 property was conducted in violation of Nevada law and is void.

14 THIRTEENTH AFFIRMATIVE DEFENSE

15 (Public Policy)

16 The claims contained in the Counterclaim violate Nevada's well-established homeowner
17 protection laws and violate Nevada's public policy.

18 FOURTEENTH AFFIRMATIVE DEFENSE

19 (Preemption)

20 The actions of the Cranesbill Trust and other relevant entities in conducting the
21 foreclosure sale under the authority of NRS 116.3116 *et. seq.* are void because NRS 116.3116 *et.*
22 *seq.* is preempted by federal law, including 12 U.S.C. § 4617(j)(3).

23 FIFTEENTH AFFIRMATIVE DEFENSE

24 (Additional Affirmative Defenses)

25 Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, all possible affirmative
26 defenses, including defenses based on federal law, may not have been alleged insofar as sufficient
27 facts are not available after reasonable inquiry upon the filing of Cranesbill Trust's Counterclaim.
28 Therefore, Wells Fargo reserves the right to amend this Answer to allege additional affirmative

1 defenses and claims, counterclaims, cross claims, or third-party claims, as applicable, upon
2 further investigation and discovery.

3 PRAYER

4 WHEREFORE, Intervenor Wells Fargo prays for judgment as follows:

- 5 1. That the Court make a judicial determination that Wells Fargo's deed of trust is
6 superior to Cranesbill Trust's claim of title;
- 7 2. That the Court make a judicial determination that Wells Fargo's deed of trust
8 survived the HOA Sale;
- 9 3. That the Court make a judicial determination that Cranesbill Trust took title
10 subject to Wells Fargo's deed of trust;
- 11 4. That Cranesbill Trust recover nothing on account of the claims made in the
12 Counterclaim and each of its purported claims;
- 13 5. For reasonable attorney's fees and costs; and
- 14 6. For any such other and further relief as the Court may deem just and proper in the
15 case.

16 DATED this 10th day of September 2015.

17 SNELL & WILMER L.L.P.

18
19 By: /s/ Daniel S. Ivie

20 Amy F. Sorenson, Esq.

21 Erica J. Stutsman, Esq.

22 Daniel S. Ivie, Esq.

23 3883 Howard Hughes Parkway, Suite 1100

24 Las Vegas, NV 89169

25 Telephone: (702) 784-5200

26 Facsimile: (702) 784-5252

27 asorenson@swlaw.com

28 rperkins@swlaw.com

divie@swlaw.com

Attorneys for Intervenor/Counterclaimant

Wells Fargo Bank, N.A.

1 WELLS FARGO BANK, N.A.'S COUNTERCLAIMS, CROSS-CLAIMS,
2 AND THIRD-PARTY COMPLAINT

3 Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel, Snell & Wilmer
4 L.L.P, submits its Counterclaims, Cross-Claims, and Third-Party Complaint and states as follows:

5 PARTIES, JURISDICTION, AND VENUE

6 1. Wells Fargo is now and at all times relevant herein the assigned Beneficiary under
7 the deed of trust executed by Plaintiff Venise Abelard ("Abelard") and recorded on November 28,
8 2007, which encumbers the real property, identified as 9352 Cranesbill Court, Las Vegas, Nevada
9 89149; APN 125-18-513-016 (the "Property").

10 2. Upon information and belief, Counter Defendant 9352 Cranesbill Trust
11 ("Cranesbill Trust") is a trust organized under the laws of the State of Nevada.

12 3. Upon information and belief, Cross-Defendant Fort Apache Square Homeowners
13 Association (the "HOA") is a Nevada non-profit corporation incorporated in Nevada and doing
14 business in and with its principal place of business in Clark County, Nevada.

15 4. Upon information and belief, Cross-Defendant Alessi & Koenig, LLC ("Alessi") is
16 a domestic limited liability corporation, licensed to do business in the State of Nevada.

17 5. Upon information and belief, Third-party Defendant Teal Petal St. Trust ("Teal
18 Petals") is a trust organized under the laws of the State of Nevada.

19 6. Wells Fargo is informed and believes and based thereon alleges that Third-Party
20 Defendants DOES 1 through 10, inclusive, and ROES 1 through 10, inclusive, are individuals or
21 entities that are jointly and severally liable to Wells Fargo in the same measure and degree that
22 specifically named Third-party Defendants are under the allegations and causes of action pleaded
23 herein. Wells Fargo is currently unaware of the true identities of such third-party defendants and
24 so names them herein under the referenced fictitious names DOES 1 through 10, inclusive and
25 ROES 1 through 10, inclusive. Upon later discovery of the true identities of said fictitiously
26 named third-party defendants, Wells Fargo will supplement or seek leave of Court to amend this
27 Counterclaim to provide the Court with the true names and identities discovered.

28 ///

7. Jurisdiction and venue are proper in Clark County, Nevada because this action relates to the ownership and title of certain real property located in Clark County, Nevada.

GENERAL ALLEGATIONS

8. This case is about the constitutionality of Nevada Revised Statute ("NRS") 116.3116, both on its face and as applied. In particular, it concerns the purported extinguishment of Wells Fargo's deed of trust—and also a large debt owed to Wells Fargo—by the purported foreclosure of a small homeowners' association lien on the Property, though the mortgage debt was incurred and deed of trust was recorded before the lien arose.

9. Nevada Revised Statute Chapter 116 generally provides a non-judicial foreclosure scheme for a homeowners' association to conduct a non-judicial foreclosure where the unit owner fails to pay its monthly assessments.

10. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property with one limited exception: a homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2)(c).

11. On or about November 20, 2007, Borrower executed a promissory note secured by a deed of trust that encumbers the Property in favor DHI Mortgage Company, LTD. ("DHI") for the amount of \$226,081.00 (the "Deed of Trust"), with Mortgage Electronic Registration Systems, Inc. ("MERS") named as beneficiary, solely as nominee for DHI. The Deed of Trust was recorded in the Clark County Recorder's Office ("Recorder's Office") on November 28, 2007, as Instrument Number 20071128-0003832.

12. As set forth in the Deed of Trust, the mortgage is an FHA mortgage insured by the Department of Housing and Urban Development ("HUD").

///

1 13. On or about July 12, 2011, a Lien for Delinquent Assessments was recorded with
2 the Clark County Recorder's Office as Instrument Number 020110712-0001465 (the "HOA
3 lien"). The HOA lien was submitted by Alessi on behalf of the HOA for outstanding amounts
4 owed as of June 28, 2011, in the amount of \$2,337.58.

5 14. On or about September 15, 2011, a Notice of Default and Election to Sell Under
6 Homeowners Association Lien was recorded in the Clark County Recorder's Office as Instrument
7 Number 20110915-0001788 (the "HOA Notice of Default"). The HOA Notice of Default was
8 submitted by Alessi on behalf of the HOA for outstanding amounts owed as of August 25, 2011,
9 in the amount of \$3,403.58.

10 15. On or about May 7, 2012, a Notice of Trustee's Sale was recorded in the Clark
11 County Recorder's Office as Instrument Number 20120507-0002189 (the "HOA Notice of
12 Sale"). The HOA Notice of Sale was submitted by Alessi on behalf of the HOA for outstanding
13 amounts owed as of May 1, 2012 in the amount of \$3,932.58.

14 16. On or about July 18, 2012, a Trustee's Deed Upon Sale was recorded in the Clark
15 County Recorder's Office as Instrument Number 20120718-0003166 (the "HOA Foreclosure
16 Deed"). The HOA Foreclosure Deed was submitted by Alessi on behalf of the HOA and showed
17 that Cranesbill Trust purchased the Property at public auction on July 11, 2012 for the amount of
18 \$4,900.00.

19 17. On or about July 27, 2012, Cranesbill transferred the Property to Third-party
20 Defendant Teal Petals via a Grant, Bargain, Sale Deed (the "GBS Deed") recorded in the Clark
21 County Recorder's Office as Instrument No. 20120727-0002642.

22 18. On October 17, 2012, an Assignment of Mortgage, whereby MERS assigned all
23 beneficial interest in the Deed of Trust to Wells Fargo Bank, N.A., was recorded in the Clark
24 County Recorder's Office as Instrument Number 20121017-0001249.

25 19. On or about May 23, 2014, a Substitution of Trustee whereby Quality Loan
26 Service Corporation ("Quality") was substituted as trustee under the Deed of Trust recorded in
27 the Clark County Recorder's Office as Instrument Number 20130206-0002936.

28 ///

20. Wells Fargo is the beneficiary of the Deed of Trust, with standing and authority to initiate this action.

21. On or about July 11, 2012, the HOA and Alessi wrongfully foreclosed against the Property in reliance upon NRS 116.3116 *et seq.* (the "Statute").

22. The purported foreclosure sale under NRS 116.3116 *et seq.* did not extinguish Wells Fargo's Deed of Trust.

23. The Deed of Trust continues to constitute a valid encumbrance against the Property.

24. Upon information and belief, the HOA and Alessi failed to give notice, and/or failed to give constitutionally adequate notice to Wells Fargo and/or its predecessor of the HOA's assessment lien as required by the Supreme Court in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), given that NRS 116.3116 *et seq.* on its face violates Wells Fargo's rights to due process secured by both the Fifth and Fourteenth Amendments to the United States Constitution.

25. Upon information and belief, the HOA and Alessi also failed to give notice, and/or failed to give constitutionally adequate notice to Wells Fargo or its predecessor of the HOA Notice of Default.

26. Upon information and belief, the HOA and Alessi also failed to give notice, and/or failed to give constitutionally adequate notice to Wells Fargo or its predecessor of the HOA's Notice of Trustee's Sale.

27. The HOA and Alessi failed to identify the super-priority amount claimed by the HOA and failed to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1) in the HOA Notice of Default.

28. The HOA and Alessi failed to identify the super-priority amount claimed by the HOA and failed to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1) in the HOA Notice of Trustee's Sale.

29. The HOA and Alessi failed to provide notice of the purported super-priority lien amount, where to pay the amount, how to pay the amount, or the consequences for the failure to do so in any of the recorded documents.

1 30. The HOA and Alessi failed to identify the amount of the alleged lien that was for
2 late fees, interest, fines/violations, or collection fees/costs in any of the recorded documents.

3 31. The HOA and Alessi failed to identify if the HOA was foreclosing on the super-
4 priority portion of its lien, if any, or on the sub-priority portion of its lien in any of the recorded
5 documents.

6 32. The HOA and Alessi failed to specify in any of the recorded documents that Wells
7 Fargo's interest in the Property would be extinguished by the HOA foreclosure.

8 33. The HOA and Alessi failed to market, sell, or auction the Property for a
9 commercially reasonable value.

10 34. Counter Defendant Cranesbill Trust purports to have purchased the Property at the
11 July 11, 2012, foreclosure sale for \$4,900.00.

12 35. The Property has an approximate fair market value well in excess of the \$4,900.00
13 purchase price by Cranesbill Trust.

14 36. The sale and purchase of the Property were unconscionable and commercially
15 unreasonable.

16 37. Concurrent with filing this Counterclaim, and pursuant to NRS 30.130, Wells
17 Fargo has notified the Nevada Attorney General's Office of this constitutional challenge to NRS
18 116.3116, *et seq.*

19 **FIRST CAUSE OF ACTION**

20 **(Declaratory Relief Under Amendment V to the United States Constitution –**
21 **Takings Clause, Quiet Title – Against Counter Defendant, Cross-Defendants, and Third-**
22 **Party Defendant)**

23 38. Wells Fargo repeats and re-alleges the allegations set forth above.

24 39. NRS 30.040 provides as follows: "Any person . . . whose rights, status or other
25 legal relations are affected by a statute, municipal ordinance, contract or franchise, may have
26 determined any question of construction or validity arising under the instrument, statute,
27 ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations
28 thereunder."

1 40. The HOA foreclosure conducted on July 11, 2012, pursuant to NRS 116.3116 *et*
2 *seq.* effected a regulatory taking of Wells Fargo's secured interest in the Property without just
3 compensation, in violation of the Fifth Amendment to the United States Constitution which
4 prohibits "private property be[ing] taken without just compensation." U.S. Const. amend. V.

5 41. NRS 116.3116 *et seq.* on its face effects a regulatory taking of Wells Fargo's
6 secured interest in the Property without just compensation, in violation of the Fifth Amendment.

7 42. An actual and justiciable controversy exists between Wells Fargo and the Counter
8 Defendant, Cross-Defendants, and Third Party Defendant regarding the purported HOA
9 foreclosure sale, the rights associated with the HOA foreclosure sale, and current title to the
10 Property.

11 43. Without declaratory relief, an interpretation of NRS 116.3116 *et seq.*, and an
12 interpretation of the constitutional validity of NRS 116.3116 *et seq.*, Wells Fargo's rights and
13 secured interest in the Property will be adversely affected.

14 44. Based upon the foregoing, Wells Fargo requests an order declaring that the
15 purported HOA foreclosure sale under NRS 116.3116 *et seq.* did not extinguish Wells Fargo's
16 Deed of Trust, which continued as a valid encumbrance against the Property.

17 45. Based upon the foregoing, Wells Fargo requests an order declaring that the
18 purported HOA foreclosure sale be voided and set aside because the foreclosure pursuant to NRS
19 116.3116 *et seq.* effected a regulatory taking of Wells Fargo's secured interest in the Property
20 without just compensation, in violation of the Fifth Amendment to the United States Constitution.

21 46. Wells Fargo has been damaged by the HOA's, Alessi's, and Cranesbill Trust's
22 conduct as specified herein in an amount to be proven at trial hereof.

23 47. Wells Fargo has been compelled to retain the undersigned counsel to represent it in
24 this matter and has and will continue to incur attorney's fees and costs..

25 ///

26 ///

27 ///

28 ///

1 55. Based upon the foregoing, Wells Fargo requests an order declaring that the
2 purported HOA foreclosure sale be voided and set aside because NRS 116.3116 *et seq.* on its face
3 violates Wells Fargo's rights to due process under the Fifth and Fourteenth Amendments to the
4 United States Constitution.

5 56. Wells Fargo has been damaged by the HOA's, Alessi's, and Cranesbill Trust's
6 conduct as specified herein in an amount to be proven at trial hereof. Wells Fargo has been
7 compelled to retain the undersigned counsel to represent it in this matter and has and will
8 continue to incur attorney's fees and costs.

9 **THIRD CAUSE OF ACTION**

10 **(Declaratory Relief under Article IV, Section 3 of the United States Constitution --**
11 **Supremacy Clause -- Against Counter Defendant, Cross-Defendants, and Third Party**
12 **Defendant)**

13 57. Wells Fargo repeats and re-alleges the allegations set forth above.

14 58. NRS 30.040 provides as follows: "Any person . . . whose rights, status or other
15 legal relations are affected by a statute, municipal ordinance, contract or franchise, may have
16 determined any question of construction or validity arising under the instrument, statute,
17 ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations
18 thereunder."

19 59. Title 12 United States Code Section 4617(j)(3) states that, while the Federal
20 Housing Finance Agency acts as Conservator, "[no] property of the Agency shall be subject to
21 levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency."

22 60. Underscoring the Supremacy Clause issues present here, the federal government
23 has indicated an unwillingness to have its rights abridged in connection with HOA foreclosures of
24 super-priority liens.

25 61. Specifically, the Federal Housing Finance Agency has not consented, nor will it
26 consent to the "foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or
27 other property interest in connection with HOA foreclosures of super-priority liens." Statement
28 on HOA Super-Priority Lien Foreclosures, Federal Housing Finance Agency (April 21, 2015),
available at <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority->

1 [Lien-Foreclosures.aspx](#).

2 62. The extinguishment of Wells Fargo's security interest in the Property, with a
3 federally insured mortgage, is barred by the Supremacy Clause of the United States Constitution
4 set forth in Article 4, Section 3. U.S. Const. art. IV, § 3, cl. 2.

5 63. An actual and justiciable controversy exists between Wells Fargo and Counter
6 Defendant, Cross Defendants and Third-Party Defendant regarding the purported foreclosure sale
7 and the rights associated with the foreclosure sale.

8 64. Without declaratory relief, an interpretation of NRS 116.3116 *et seq.*, and an
9 interpretation of the constitutional validity of NRS 116.3116 *et seq.*, Wells Fargo's rights and
10 secured interest in the Property will be adversely affected.

11 65. Based upon the foregoing, Wells Fargo requests an order declaring that the
12 purported HOA foreclosure sale under NRS 116.3116 *et seq.* did not extinguish Wells Fargo's
13 Deed of Trust, which continues as a valid encumbrance against the Property.

14 66. Based upon the foregoing, Wells Fargo requests an order declaring that the
15 purported foreclosure sale be voided and set aside because foreclosure of a federally insured
16 mortgage pursuant to NRS 116.3116 *et seq.* is barred by the Supremacy Clause of the United
17 States Constitution.

18 67. Wells Fargo has been damaged by Counter Defendant's and Cross Defendants'
19 and Third-Party Defendants' conduct as specified herein in an amount to be proven at trial hereof.

20 68. Wells Fargo has been compelled to retain the undersigned counsel to represent it in
21 this matter and has and will continue to incur attorney's fees and costs.

22 **FOURTH CAUSE OF ACTION**

23 **(Wrongful Foreclosure against the HOA, Alessi, and Cranesbill Trust)**

24 69. Wells Fargo repeats and re-alleges the allegations set forth above.

25 70. Cranesbill Trust wrongfully purported to purchase the Property in violation of
26 NRS 116.3116 *et seq.* and common law.

27 71. The HOA foreclosure sale was wrongful, because the HOA foreclosure itself was
28 contrary to law, in that:

1 (a) NRS 116.3116 *et seq.* on its face violates Wells Fargo's constitutional rights, in
2 particular those rights to due process secured by the Fifth and Fourteenth
3 Amendments to the United States Constitution which provide that the government
4 shall not deprive any person "of life, liberty, or property, without due process of
5 law" and is thus void and unenforceable. U.S. Const. amend. V, XIV.

6 (b) The HOA foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory
7 taking of Wells Fargo's secured interest in the Property without just compensation,
8 in violation of the Fifth Amendment to the United States Constitution which
9 prohibits "private property be[ing] taken without just compensation." U.S. Const.
10 amend. V.;

11 (c) Any purported notice of the HOA foreclosure provided to Wells Fargo was also
12 inadequate, insufficient, and in violation of Wells Fargo's rights to due process
13 under the Fifth and Fourteenth Amendments to the United States Constitution.

14 72. Counter Defendant Cranesbill Trust is not a bona fide purchaser of the Property.

15 73. Counter Defendant Cranesbill Trust's \$4,900.00 purchase price for the Property
16 was unconscionable.

17 74. Counter Defendant Cranesbill Trust's \$4,900.00 purchase price for the Property
18 was not commercially reasonable.

19 75. Based upon the foregoing, Wells Fargo requests an order declaring that the
20 purported HOA foreclosure sale did not extinguish Wells Fargo's Deed of Trust, which continues
21 as a valid encumbrance against the Property.

22 76. Based upon the foregoing, Wells Fargo requests an order declaring that the
23 purported HOA foreclosure sale be voided and set aside because neither Cranesbill Trust nor Teal
24 Petals is a bona fide purchaser of the Property.

25 77. Based upon the foregoing, Wells Fargo requests an order setting aside the
26 purported HOA foreclosure sale as void because Counter Defendant Cranesbill Trust's \$4,900.00
27 purchase price for the Property was not commercially reasonable.

28 ///

79. Wells Fargo has been damaged by the HOA's, Alessi's, and Cranesbill Trust's conduct as specified herein, by the potential loss of its security interest in the Property, in an amount to be proven at trial hereof. Wells Fargo has been compelled to retain the undersigned counsel to represent it in this matter and has and will continue to incur attorney's fees and costs.

(Violation of NRS 116.1113 *et seq.* – Against the HOA and Alessi)

81. The HOA and Alessi wrongfully foreclosed upon the Property in violation of the

SIXTH CAUSE OF ACTION

83. Wells Fargo repeats and re-alleges the allegations set forth above.

84. Wells Fargo had a valid contract with Abelard as evidenced by the promissory note and Deed of Trust, which included as part of the benefit of the bargain a first priority secured interest in the Property.

85. The HOA, Alessi, Cranesbill Trust, and Teal Petals knew or should have known of the contract between Wells Fargo and Abelard.

86. The HOA and Alessi knowingly interfered with the contract between Wells Fargo and the Abelard by failing to market, sell, or auction the Property for a commercially reasonable or fair market value at the HOA foreclosure sale, thus evidencing intent to harm Wells Fargo.

17

1 87. Cranesbill Trust and Teal Petals knowingly interfered with the contract between
2 Wells Fargo and the Abelard by wrongfully obtaining possession of the Property for an
3 unconscionable and commercially unreasonable amount, thus evidencing intent to harm Wells
4 Fargo.

5 88. Cranesbill Trust knowingly interfered with the contract between Wells Fargo and
6 Abelard by wrongfully obtaining possession of the Property and attempting to extinguish Wells
7 Fargo's security interest in the Property.

8 89. The HOA, Alessi, Cranesbill Trust, and Teal Petals all lacked justification for
9 these interferences, because of the many constitutional infirmities in NRS 116.3116 *et seq.*
10 described within this Complaint, including:

11 (a) NRS 116.3116 *et seq.* on its face violates Wells Fargo's constitutional rights, in
12 particular those rights to due process secured by the Fifth and Fourteenth
13 Amendments to the United States Constitution which provide that the government
14 shall not deprive any person "of life, liberty, or property, without due process of
15 law" and is thus void and unenforceable. U.S. Const. amend. V, XIV;

16 (b) The foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory taking of
17 Wells Fargo's secured interest in the Property without just compensation, in
18 violation of the United States Constitution. U.S. Const. amend. V;

19 (c) Any purported notice provided was also inadequate, insufficient, and in violation
20 of Wells Fargo's rights to due process under the Fifth and Fourteenth Amendments
21 to the United States Constitution. U.S. Const. amend. V, XIV.

22 90. Wells Fargo has been damaged by Counter Defendant's, Cross-Defendants,' and
23 Third-Party Defendant's conduct as specified herein, by the potential loss of its security interest
24 in the Property, in an amount to be proven at trial hereof. Wells Fargo has been compelled to
25 retain the undersigned counsel to represent it in this matter and has and will continue to incur
26 attorney's fees and costs.

27 ///

28 ///

SEVENTH CAUSE OF ACTION

(Quiet Title -- Against Counter Defendant, Cross-Defendants, and Third-party Defendant)

91. Wells Fargo repeats and re-alleges the allegations set forth above.

92. For all of the independent reasons cited above in Causes of Action 1-6, the HOA sale did not extinguish Wells Fargo's Deed of Trust.

93. For all of the independent reasons cited above in Causes of Action 1-6, Wells Fargo requests an order declaring that the purported HOA foreclosure sale did not extinguish Wells Fargo's Deed of Trust, which continues as a valid encumbrance against the Property.

94. For all of the independent reasons cited above in Causes of Action 1-6, Wells Fargo requests an order declaring that the purported HOA foreclosure sale be voided and set aside because Cranesbill Trust is not a bona fide purchaser of the Property.

95. For all of the independent reasons cited above in Causes of Action 1-6, Wells Fargo requests an order setting aside the purported HOA foreclosure sale as void because Cranesbill Trust's \$4,900.00 purchase price for the Property was not commercially reasonable.

96. For all of the independent reasons cited above in Causes of Action 1-6, Wells Fargo requests an order declaring that the purported HOA foreclosure sale be voided and set aside because Cranesbill Trust's \$4,900.00 purchase price for the Property was unconscionable.

97. Wells Fargo has been damaged by Counter Defendant's and Cross-Defendants' conduct as specified herein, by the potential loss of its security interest in the Property, in an amount to be proven at trial hereof. Wells Fargo has been compelled to retain the undersigned counsel to represent it in this matter and has and will continue to incur attorney's fees and costs.

98. Accordingly, Wells Fargo requests that title be quieted in its name, or that its Deed of Trust continue as a valid encumbrance against the Property.

WHEREFORE, Wells Fargo requests a judgment in its favor against Counter Defendant 9352 Cranesbill Court Trust, Cross-Defendants Fort Apache Square Homeowners Association and Alessi & Koenig, LLC, and Third-Party Defendant Teal Petals as follows:

1. A declaration in favor of Wells Fargo that the HOA foreclosure did not extinguish the Deed of Trust and it continues as a valid encumbrance against the Property;

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2. A declaration that title in the Property be quieted in Wells Fargo or that the Deed of Trust continues as an encumbrance on the Property;
3. A declaration that Wells Fargo's Deed of Trust is superior to the interest of the HOA, Cranesbill Trust, Teal Petals and any other parties;
4. That the July 11, 2012 HOA foreclosure sale be declared void and set aside;
5. For judgment in an amount proven at trial in excess of \$10,000;
6. That Wells Fargo be awarded attorney's fees and costs, plus interest accruing thereon, in its favor at the maximum rate allowed by law; and
7. That the Court award such other and further relief as it may deem appropriate.

DATED this 10th day of September 2015.

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie

Amy F. Sorenson, Esq.
Erica J. Stutsman, Esq.
Daniel S. Ivie, Esq.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
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asorenson@swlaw.com
rperkins@swlaw.com
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*Attorneys for Intervenor
Wells Fargo Bank, N.A.*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing WELLS FARGO BANK, N.A.'S ANSWER IN INTERVENTION TO 9352 CRANESBILL TRUST'S COUNTERCLAIM and WELLS FARGO BANK, N.A.'S COUNTERCLAIM, CROSS-CLAIMS, AND THIRD-PARTY COMPLAINT by the method indicated:

- _____ U. S. Mail
- _____ U.S. Certified Mail
- _____ Facsimile Transmission
- _____ Federal Express
- X Electronic Service through Wiznet
- _____ E-mail

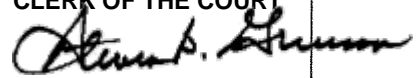
A copy was also sent by U.S. Mail to:

Office of the Attorney General
Attn: Gina Long
555 E. Washington Ave.
Suite 3900
Las Vegas, NV 89101

DATED this 10th day of September 2015.

/s/Gaylene Kim
An employee of Snell & Wilmer LLP.

9352 CRANESBILL COURT
TRUST'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING SUMMARY
JUDGMENT AGAINST VENISE
ABELARD



1 **ORDER**

2 GEISENDORF & VILKIN, PLLC
3 Charles L. Geisendorf, Esq. (6985)
4 2470 St. Rose Parkway, Suite 309
5 Henderson, Nevada 89074
6 Tel: (702) 873-5868
7 Email: charles@gvattorneys.com
8 Attorney for 9352 Cranesbill Trust,
9 Teal Petal St. Trust and Iyad Haddad

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 VENISE ABELARD,
10
11 Plaintiff,

12 vs.

13 IYAD HADDAD, Individually and as Trustee
14 for CRANESBILL CT. TRUST; 9352
15 CRANESBILL TRUST; TEAL PETALS ST.
16 TRUST; FORT APACHE SQUARE
17 HOMEOWNERS ASSOCIATION; MESA
18 MANAGEMENT, LLC; LAS VEGAS
19 ASSOCIATION MANAGEMENT, LLC;
20 ALESSI & KOENIG, LLC; and DOES I through
21 X, and ROE COMPANIES I through X,
22 inclusive,

23 Defendants.

24
25 9352 CRANESBILL CT. TRUST,

26 Defendant/CounterClaimant,

27 vs.

28 VENISE ABELARD,

Plaintiff/CounterDefendant.

WELLS FARGO BANK, N.A.,

Intervenor/ Counterclaimant,

Case No. A-12-671509-C
Dept No. VII

Findings of Fact, Conclusions of Law, and
Order Granting Summary Judgment Against
Venise Abelard

Hearing Date: March 6, 2018
Hearing Time: 9:00 a.m.

1 vs.

2 9352 CRANESBILL CT. TRUST,

3 CounterDefendant.

4
5 WELLS FARGO BANK, N.A.,

6 Intervenor/ Cross-Claimant,

7 vs.

8 FORT APACHE SQUARE HOMEOWNERS
9 ASSOCIATION, a Nevada non-profit
10 corporation; ALESSI & KOENIG, LLC, a
11 Nevada limited liability company;

12 Cross-Defendants,

13 WELLS FARGO BANK, N.A.,

14 Intervenor/Third-Party Plaintiff,

15 vs.

16 TEAL PETALS ST., TRUST, a Nevada trust;
17 and DOES I through X and ROE COMPANIES
18 I through X, inclusive,

19 Third-Party Defendants.

20 Iyad Haddad, Teal Petal St. Trust, and 9352 Cranesbill Ct. Trust's motion for summary
21 judgment against Venise Abelard having come before the court on March 6, 2018; Charles L.
22 Geisendorf, Esq. of Geisendorf & Vilkin, PLLC appeared on behalf of Iyad Haddad, Teal Petal St.
23 Trust, and 9352 Cranesbill Ct. Trust; Jeffrey Willis, Esq. and Daniel S. Ivie, Esq. of Snell & Wilmer,
24 LLP appeared on behalf of Wells Fargo Bank, N.A.; Joice B. Bass, Esq. of Legal Aid Center of
25 Southern Nevada appeared on behalf of Venise Abelard; and Elizabeth Lowell, Esq. of Pengilly Law
26 Firm appeared on behalf of Fort Apache Square Homeowners Association.

27 Based on the Court's consideration of the full briefing on the motions, the record on this
28 case on file herein, and argument of counsel at the hearing, the court makes the following

1 findings of fact and conclusions of law.

2 **FINDINGS OF FACT**

3 1. This matter involves real property located at 9352 Cranesbill Court, Las Vegas,
4 Nevada 89149, APN 125-18-513-016 ("Property").

5 2. On or about November 20, 2007, Venise Abelard ("Plaintiff") purchased the Property
6 with proceeds from a mortgage loan provided by DHI Mortgage Company, LTD. ("DHI").

7 3. A Deed of Trust naming Plaintiff and non-party Marcus Compere as borrowers
8 and DHI as the lender was recorded as instrument no. 20120718-0003166 on November 28, 2007,
9 granting DHI a security interest in the Property ("Deed of Trust").

10 4. On October 17, 2012, Wells Fargo became the beneficiary of the Deed of Trust via
11 an Assignment of Mortgage recorded against the Property as instrument no. 20121017-0001249.

12 5. On July 12, 2011, Alessi & Koenig ("A&K"), acting on behalf of Fort Apache Square
13 Homeowners Association ("HOA"), recorded a Notice of Delinquent Assessment Lien ("Notice of
14 Lien").

15 6. On September 15, 2011, acting on behalf of the HOA, A&K recorded a Notice of
16 Default and Election to Sell Under Homeowners Association Lien ("NOD").

17 7. On May 7, 2012, acting on behalf of the HOA, A&K recorded a Notice of Trustee's
18 Sale ("Notice of Sale").

19 8. On July 11, 2012, A&K, foreclosed on the Property on behalf of the HOA and sold
20 it to 9352 Cranesbill Ct. Trust, pursuant to NRS Chapter 116.

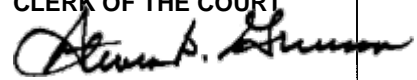
21 9. On July 27, 2012, 9352 Cranesbill Ct. Trust transferred title to the Property by grant
22 deed to Teal Petals St. Trust.

23 10. Plaintiff filed this suit seeking quiet title against Iyad Haddad, 9352 Cranesbill Ct.
24 Trust, and Teal Petals St. Trust ("Defendants").

25 11. Defendants filed a Counterclaim for quiet title and declaratory relief against Plaintiff.

26 12. On July 22, 2015, an order was entered requiring Plaintiff Venise Abelard to pay the
27 property insurance, taxes and HOA dues if she is to continue occupying the property.

INTERVENOR'S NOTICE OF
ENTRY OF STIPULATION AND
ORDER TO DISMISS WELLS
FARGO BANK N.A.'S CLAIMS
AGAINST FORT APACHE
SQUARE HOMEOWNERS
ASSOCIATION



Jeffrey Willis, Esq.
 Nevada Bar No. 4797
 Erica J. Stutman, Esq.
 Nevada Bar No. 10794
 Daniel S. Ivie, Esq.
 Nevada Bar No. 10090
 SNELL & WILMER L.L.P.
 3883 Howard Hughes Parkway
 Suite 1100
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 asorenson@swlaw.com
 jwillis@swlaw.com
 estutman@swlaw.com
 divie@swlaw.com

Attorneys for Intervenor Wells Fargo Bank, N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

9352 CRANESBILL TRUST; FORT APACHE
 SQUARE HOMEOWNERS ASSOCIATION;
 MESA MANAGEMENT, LAS VEGAS
 ASSOCIATION MANAGEMENT, LLC;
 BENCHMARK ASSOCIATION SERVICES;
 IYAD HADDAD, an individual; ALESSI &
 KOENIG, LLC; NEVADA ASSOCIATION
 SERVICES and DOES I through X and ROE
 COMPANIES I through X, inclusive,

Defendants.

And all related Parties and Actions.

Case No. A-12-671509-C

Dept. VII

NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
DISMISS WELLS FARGO BANK,
N.A.'S CLAIMS AGAINST FORT
APACHE SQUARE HOMEOWNERS
ASSOCIATION

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1 PLEASE TAKE NOTICE that the STIPULATION AND ORDER TO DISMISS WELLS
2 FARGO BANK, N.A.'S CLAIMS AGAINST FORT APACHE SQUARE HOMEOWNERS
3 ASSOCIATION was entered with this Court on May 25, 2018, a copy of which is attached
4 hereto.

5 Dated this 25th day of May 2018.

SNELL & WILMER L.L.P.

6
7 By: /s/Daniel S. Ivie

Jeffrey Willis, Esq.

Erica J. Stutsman, Esq.

Daniel S. Ivie, Esq.

3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

Attorneys for Intervenor Wells Fargo Bank,
N.A.

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, DECLARE UNDER PENALTY OF PERJURY, THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS, AND I AM NOT A PARTY TO, NOR INTERESTED IN, THIS ACTION. ON THIS DATE, I CAUSED TO BE SERVED A TRUE AND CORRECT COPY OF THE FOREGOING **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS WELLS FARGO BANK, N.A.'S CLAIMS AGAINST FORT APACHE SQUARE HOMEOWNERS ASSOCIATION** BY THE METHOD INDICATED:

 X U. S. Mail
 U.S. Certified Mail
 Federal Express
 X Electronic Service
 E-mail

Via Electronic Service

Charles L. Geisendorf, Esq.
 GEISENDORF & VILKIN, PLLC
 2470 St. Rose Parkway, Suite 309
 Henderson, Nevada 89074
*Attorney for Defendants/Counterclaimants
 Iyad Haddad and 9352 Cranesbill Trust*

Via Electronic Service

Steven T. Loizzi, Jr., Esq.
 HOA LAWYERS GROUP
 9500 W. Flamingo Road, Suite 204
 Las Vegas, NV 89147
Attorneys for Alessi Koenig, LLC

Via U.S. Mail

Office of the Attorney General
 Attn: Gina Long
 555 E. Washington Ave.
 Suite 3900
 Las Vegas, NV 89101

DATED this 20th day of May 2018.

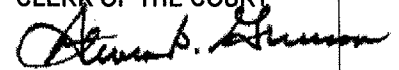
Via Electronic Service

Debra A. Bookout, Esq.
 Joice B. Bass, Esq.
 LEGAL AID CENTER OF SOUTHERN
 NEVADA, INC.
 725 E. Charleston Blvd.
 Las Vegas, Nevada 89101
Attorney for Plaintiff Venise Abelard

Via Electronic Service

James W. Pengilly, Esq.
 Elizabeth B. Lowell, Esq.
 PENGILLY LAW FIRM
 1995 Village Center Cir. Suite 190
 Las Vegas, NV 89134
Attorneys for Fort Apache Square HOA

/s/ Gaylene Kim
 An employee of Snell & Wilmer L.L.P.



1 **SAO**

2 Jeffrey Willis, Esq.
3 Nevada Bar No. 4797
4 Erica J. Stutman, Esq.
5 Nevada Bar No. 10794
6 Daniel S. Ivie, Esq.
7 Nevada Bar No. 10090
8 SNELL & WILMER L.L.P.
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jwillis@swlaw.com
estutman@swlaw.com
divie@swlaw.com

10 *Attorneys for Intervenor Wells Fargo Bank, N.A.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **VENISE ABELARD,**

14 **Plaintiff,**

15 **vs.**

16 **9352 CRANESBILL TRUST; FORT APACHE**
17 **SQUARE HOMEOWNERS ASSOCIATION;**
18 **MESA MANAGEMENT, LAS VEGAS**
19 **ASSOCIATION MANAGEMENT, LLC;**
20 **BENCHMARK ASSOCIATION SERVICES;**
IYAD HADDAD, an individual; ALESSI &
KOENIG, LLC; NEVADA ASSOCIATION
SERVICES and DOES I through X and ROE
COMPANIES I through X, inclusive,

21 **Defendants.**

22 **And all related Parties and Actions.**

Case No. A-12-671509-C

Dept. VII

**STIPULATION AND ORDER TO
DISMISS WELLS FARGO BANK,
N.A.'S CLAIMS AGAINST FORT
APACHE SQUARE HOMEOWNERS
ASSOCIATION**

24 Pursuant to Nevada Rule of Civil Procedure 41(a)(2), it is hereby stipulated and agreed
25 between Intervenor Wells Fargo Bank, N.A. ("Wells Fargo") and Cross-Defendant Fort Apache
26 Square Homeowners Association ("Fort Apache"), by and through their respective counsel, that:

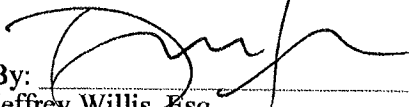
4811-0236-2982.1

1. Wells Fargo hereby dismisses, without prejudice, all its claims made against Fort Apache in Wells Fargo's Answer in Intervention and Counterclaims, Cross-Claims and Third-Party Complaint filed on September 10, 2015;

2. The Parties shall bear their own attorneys' fees and costs associated with this action; and

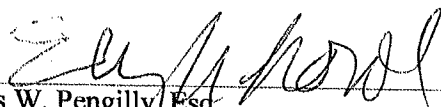
Respectfully submitted by:

SNELL & WILMER L.L.P.

By: 
Jeffrey Willis, Esq.
Erica J. Stutsman, Esq.
Daniel S. Ivie, Esq.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Intervenor Wells Fargo Bank,
N.A.

Respectfully submitted by:

PENGILLY LAW FIRM

By: 
James W. Pengilly, Esq.
Elizabeth B. Lowell, Esq.
1995 Village Center Cir. Suite 190
Las Vegas, NV 89134
Attorneys for Fort Apache Square Homeowners
Association

ORDER

IT IS ORDERED that Wells Fargo's claims against Fort Apache are dismissed without prejudice;

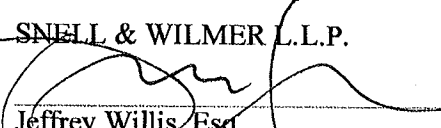
IT IS FURTHER ORDERED that each party shall bear their own attorneys' fees and costs associated with this action; and

IT IS SO ORDERED.

Dated this 28th day of May, 2018.

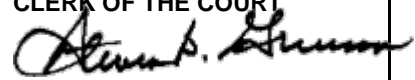
Respectfully submitted by:

SNELL & WILMER L.L.P.


Jeffrey Willis, Esq.
Erica J. Stutsman, Esq.
Daniel S. Ivie, Esq.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Intervenor Wells Fargo Bank,
N.A.


DISTRICT COURT JUDGE

9352 CRANESBILL TRUST'S
NOTICE OF ENTRY OF
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING SUMMARY
JUDGMENT AGAINST VENISE
ABELARD



1 **NEO**
2 GEISENDORF & VILKIN, PLLC
3 Charles L. Geisendorf, Esq. (6985)
4 2470 St. Rose Parkway, Suite 309
5 Henderson, Nevada 89074
6 Tel: (702) 873-5868
7 Email: charles@gvattorneys.com
8 Attorney for 9352 Cranesbill Trust,
9 Teal Petal St. Trust and Iyad Haddad

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 VENISE ABELARD,
10
11 Plaintiff,

12 vs.

13 IYAD HADDAD, Individually and as Trustee
14 for CRANESBILL CT. TRUST; 9352
15 CRANESBILL TRUST; TEAL PETALS ST.
16 TRUST; FORT APACHE SQUARE
17 HOMEOWNERS ASSOCIATION; MESA
18 MANAGEMENT, LLC; LAS VEGAS
19 ASSOCIATION MANAGEMENT, LLC;
20 ALESSI & KOENIG, LLC; and DOES I through
21 X, and ROE COMPANIES I through X,
22 inclusive,

23 Defendants.

24
25 9352 CRANESBILL CT. TRUST,

26 Defendant/CounterClaimant,

27 vs.

28 VENISE ABELARD,

Plaintiff/CounterDefendant.

WELLS FARGO BANK, N.A.,

Intervenor/ Counterclaimant,

Case No. A-12-671509-C
Dept No. VII

Notice of Entry of Findings of Fact,
Conclusions of Law, and Order Granting
Summary Judgment Against Venise Abelard

1 vs.

2 9352 CRANESBILL CT. TRUST,

3 CounterDefendant.

4
5 WELLS FARGO BANK, N.A.,

6 Intervenor/ Cross-Claimant,

7 vs.

8 FORT APACHE SQUARE HOMEOWNERS
9 ASSOCIATION, a Nevada non-profit
10 corporation; ALESSI & KOENIG, LLC, a
11 Nevada limited liability company;

12 Cross-Defendants,

13 WELLS FARGO BANK, N.A.,

14 Intervenor/Third-Party Plaintiff,

15 vs.

16 TEAL PETALS ST., TRUST, a Nevada trust;
17 and DOES I through X and ROE COMPANIES
18 I through X, inclusive,

19 Third-Party Defendants.

20 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

21 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order Granting
22 Summary Judgment Against Venise Abelard has been entered on June 19, 2018, a copy of which is

23
24 ///

25 ///

26 ///

1 attached hereto.

2

3 Dated this 19th day of June, 2018

4

GEISENDORF & VILKIN PLLC

5

6

/s/ Charles L. Geisendorf

7

Charles L. Geisendorf, Esq. (6985)

2470 St. Rose Parkway, Suite 309

8

Henderson, Nevada 89074

Tel: (702) 873-5868

9

Email: charles@gvattorneys.com

10

Attorney for 9352 Cranesbill Trust, Teal Petal St. Trust
and Iyad Haddad

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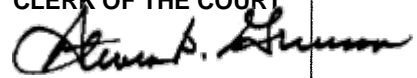
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CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Geisendorf & Vilkin, PLLC, and on the 19th day of June, 2018, an electronic copy of the foregoing was filed on Odyssey File and Serve 2017, and I requested that it be e-served via the Court's electronic service system to all persons who have registered for e-service for this case.

/s/ Stacie Geisendorf
an employee of Geisendorf & Vilkin, PLLC



1 **ORDER**

2 GEISENDORF & VILKIN, PLLC
3 Charles L. Geisendorf, Esq. (6985)
4 2470 St. Rose Parkway, Suite 309
5 Henderson, Nevada 89074
6 Tel: (702) 873-5868
7 Email: charles@gvattorneys.com
8 Attorney for 9352 Cranesbill Trust,
9 Teal Petal St. Trust and Iyad Haddad

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 VENISE ABELARD,
10
11 Plaintiff,

12 vs.

13 IYAD HADDAD, Individually and as Trustee
14 for CRANESBILL CT. TRUST; 9352
15 CRANESBILL TRUST; TEAL PETALS ST.
16 TRUST; FORT APACHE SQUARE
17 HOMEOWNERS ASSOCIATION; MESA
18 MANAGEMENT, LLC; LAS VEGAS
19 ASSOCIATION MANAGEMENT, LLC;
20 ALESSI & KOENIG, LLC; and DOES I through
21 X, and ROE COMPANIES I through X,
22 inclusive,

23 Defendants.

24
25 9352 CRANESBILL CT. TRUST,

26 Defendant/CounterClaimant,

27 vs.

28 VENISE ABELARD,

Plaintiff/CounterDefendant.

WELLS FARGO BANK, N.A.,

Intervenor/ Counterclaimant,

Case No. A-12-671509-C
Dept No. VII

Findings of Fact, Conclusions of Law, and
Order Granting Summary Judgment Against
Venise Abelard

Hearing Date: March 6, 2018
Hearing Time: 9:00 a.m.

1 vs.

2 9352 CRANESBILL CT. TRUST,

3 CounterDefendant.

4
5 WELLS FARGO BANK, N.A.,

6 Intervenor/ Cross-Claimant,

7 vs.

8 FORT APACHE SQUARE HOMEOWNERS
9 ASSOCIATION, a Nevada non-profit
corporation; ALESSI & KOENIG, LLC, a
Nevada limited liability company;

10 Cross-Defendants,

11
12 WELLS FARGO BANK, N.A.,

13 Intervenor/Third-Party Plaintiff,

14 vs.

15 TEAL PETALS ST., TRUST, a Nevada trust;
16 and DOES I through X and ROE COMPANIES
I through X, inclusive,

17 Third-Party Defendants.

18 Iyad Haddad, Teal Petal St. Trust, and 9352 Cranesbill Ct. Trust's motion for summary
19 judgment against Venise Abelard having come before the court on March 6, 2018; Charles L.
20 Geisendorf, Esq. of Geisendorf & Vilkin, PLLC appeared on behalf of Iyad Haddad, Teal Petal St.
21 Trust, and 9352 Cranesbill Ct. Trust; Jeffrey Willis, Esq. and Daniel S. Ivie, Esq. of Snell & Wilmer,
22 LLP appeared on behalf of Wells Fargo Bank, N.A.; Joice B. Bass, Esq. of Legal Aid Center of
23 Southern Nevada appeared on behalf of Venise Abelard; and Elizabeth Lowell, Esq. of Pengilly Law
24 Firm appeared on behalf of Fort Apache Square Homeowners Association.

25 Based on the Court's consideration of the full briefing on the motions, the record on this
26 case on file herein, and argument of counsel at the hearing, the court makes the following
27

1 findings of fact and conclusions of law.

2 **FINDINGS OF FACT**

3 1. This matter involves real property located at 9352 Cranesbill Court, Las Vegas,
4 Nevada 89149, APN 125-18-513-016 ("Property").

5 2. On or about November 20, 2007, Venise Abelard ("Plaintiff") purchased the Property
6 with proceeds from a mortgage loan provided by DHI Mortgage Company, LTD. ("DHI").

7 3. A Deed of Trust naming Plaintiff and non-party Marcus Compere as borrowers
8 and DHI as the lender was recorded as instrument no. 20120718-0003166 on November 28, 2007,
9 granting DHI a security interest in the Property ("Deed of Trust").

10 4. On October 17, 2012, Wells Fargo became the beneficiary of the Deed of Trust via
11 an Assignment of Mortgage recorded against the Property as instrument no. 20121017-0001249.

12 5. On July 12, 2011, Alessi & Koenig ("A&K"), acting on behalf of Fort Apache Square
13 Homeowners Association ("HOA"), recorded a Notice of Delinquent Assessment Lien ("Notice of
14 Lien").

15 6. On September 15, 2011, acting on behalf of the HOA, A&K recorded a Notice of
16 Default and Election to Sell Under Homeowners Association Lien ("NOD").

17 7. On May 7, 2012, acting on behalf of the HOA, A&K recorded a Notice of Trustee's
18 Sale ("Notice of Sale").

19 8. On July 11, 2012, A&K, foreclosed on the Property on behalf of the HOA and sold
20 it to 9352 Cranesbill Ct. Trust, pursuant to NRS Chapter 116.

21 9. On July 27, 2012, 9352 Cranesbill Ct. Trust transferred title to the Property by grant
22 deed to Teal Petals St. Trust.

23 10. Plaintiff filed this suit seeking quiet title against Iyad Haddad, 9352 Cranesbill Ct.
24 Trust, and Teal Petals St. Trust ("Defendants").

25 11. Defendants filed a Counterclaim for quiet title and declaratory relief against Plaintiff.

26 12. On July 22, 2015, an order was entered requiring Plaintiff Venise Abelard to pay the
27 property insurance, taxes and HOA dues if she is to continue occupying the property.

13. The annual property insurance is \$1,400.00; the annual property taxes are \$1,845.00, the annual HOA dues are \$744.00.

14. Additionally, while occupying the property, Plaintiff caused 9352 Cranesbill Trust and/or Teal Petals St. Trust to incur approximately \$2,000.00 in HOA violations.

15. Although ordered, Plaintiff paid nothing while continuing to occupy the property.

16. Defendants acquired title to the property on July 18, 2012. At this point, more than 5.5 years later, Plaintiff Venise Abelard owes Teal Petal St. Trust \$21,939.50 property insurance, taxes and HOA dues plus \$2,000.00 in HOA violations, for a total of \$23,939.50.

CONCLUSIONS OF LAW

1. Defendants' motion for summary judgment as to Plaintiff Venise Abelard is granted.

2. That title to the real property commonly known as 9352 Cranesbill Court, Las Vegas, Nevada 89149, and legally described as:

Lot 16 in Block B of Final Map of Fort Apache Ranch, as shown by map thereof on file in Book 123 of Plats, Page 73, in the office of the County Recorder of Clark County, Nevada.

APN 125-18-513-016

is hereby quieted in the name of Teal Petals St. Trust as to any claim of Venise Abelard.

3. That as a result of the foreclosure sale conducted on July 11, 2012 and the foreclosure deed recorded July 18, 2012 as instrument number 201207180003166, the interest of Venise Abelard as well as the interests of her heirs or assigns are extinguished.

4. That Venise Abelard, as well as her heirs or assigns have no further, right, title or claim to the property commonly known as 9352 Cranesbill Court, Las Vegas, Nevada 89149.

5. That Venise Abelard, as well as her heirs or assigns are forever enjoined from asserting any estate right, title or interest commonly known as 9352 Cranesbill Court, Las Vegas, Nevada 89149.

/// /// ///

///

6. That based on the foregoing findings of fact and conclusions of law, the Court hereby enters judgment against Venise Abelard in the sum of \$\$23,939.50.

IT IS SO ORDERED.

DATED this 14 day of June, 2018.


DISTRICT COURT JUDGE

Respectfully Submitted by:

GEISENDORF & VILKIN, PLLC

By: _____
Charles L. Geisendorf, Esq.
2470 St. Rose Parkway, Suite 309
Henderson, Nevada 89074
Attorney for 9352 Cranesbill Trust,
Teal Petal St. Trust and Iyad Haddad

Approved as to form and content:

SNELL & WILMER, LLP

By: _____
 Jeffrey Willis, Esq.
 Erica J. Stutsman, Esq.
 Daniel S. Ivie, Esq.
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, Nevada 89169
 Attorneys for Wells Fargo Bank, N.A.

Approved as to form and content:

PENGILLY LAW FIRM

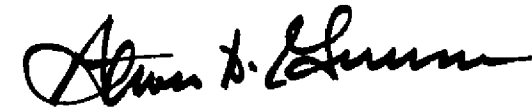
By: James W. Pengilly, Esq.
Elizabeth B. Lowell, Esq.
1995 Village Center Circle, Suite 190
Las Vegas, NV 89134
Attorneys for Fort Apache Square HOA

Approved as to form and content:

LEGAL AID CENTER OF SOUTHERN
NEVADA, INC.

By: _____
Debra A. Bookout, Esq.
Joice B. Bass, Esq.
725 E. Charleston Blvd.
Las Vegas, Nevada 89101
Attorneys for Venise Abelard

**ALESSI & KOENIG, LLC and
MESA MANAGEMENT, LLC'S
SUGGESTION OF BANKRUPTCY**



CLERK OF THE COURT

BANK

Steven Loizzi, Jr., Esq.
Nevada Bar No. 10920
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
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Attorneys for Defendants
ALESSI & KOENIG, LLC and MESA
MANAGEMENT, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

IYAD HADDAD, Individually and as Trustee
for 9352 CRANESBILL TRUST; 9532
CRANESBILL TRUST; FORT APACHE
SQUARE HOMEOWNERS ASSOCIATION;
MESA MANAGEMENT, LLC; LAS VEGAS
ASSOCIATION MANAGEMENT, LLC;
ALESSI & KOENIG, LLC; and DOES I
through X, and ROE COMPANIES I through
X, inclusive,

Defendants.

AND ALL RELATED CLAIMS

Case No. A-12-671509-C
Dept. No. VII

SUGGESTION OF BANKRUPTCY

PLEASE TAKE NOTICE that Defendant ALESSI & KOENIG, LLC has filed for Chapter 7 bankruptcy pursuant to Title 11 of the United States Code on December 13, 2016, in the United States Bankruptcy Court, District of Nevada under Case No. 16-16593. The filing invokes an automatic stay under 11 U.S.C. § 362. Under 11 U.S.C. § 362, no further Orders can

1 be entered against ALESSI & KOENIG, LLC. A copy of the Notice of Bankruptcy Filing is
2 attached hereto.

3 DATED this 15th day of December, 2016.

4 ALESSI & KOENIG, LLC

5 /s/ Steven Loizzi, Jr.

6 Steven Loizzi, Jr., Esq.

7 Nevada Bar No. 10920

8 *Attorney for Third Party Defendant*

9 *Alessi & Koenig, LLC.*

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2016, I caused service of a true and correct copy of the foregoing **SUGGESTION OF BANKRUPTCY** to be made by the Court's mandatory electronic service system to those registered to receive service:

Debra A. Bookout, Esq.
Dan L. Wulz, Esq.
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725 E. Charleston Blvd.
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702-386-1070 ph
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*Attorney for 9352 Cransebill Trust
& Iyad Haddad*

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elowell@pengillylawfirm.com
*Attorneys for Fort Apache Square
Homeowners Association*

/s/ Jona Lepoma
An employee of Alessi & Koenig

United States Bankruptcy Court
District of Nevada

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 12/13/2016 at 11:50 AM and filed on 12/13/2016.

ALESSI & KOENIG, LLC
9500 W. FLAMINGO RD., STE. 205
LAS VEGAS, NV 89147
Tax ID / EIN: 26-3435721



The case was filed by the debtor's attorney:

RYAN ALEXANDER
RYAN ALEXANDER, CHTD.
3017 W. CHARLESTON BLVD., STE 58
LAS VEGAS, NV 89102
(702) 868 3311

The case was assigned case number 16-16593.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.nvb.uscourts.gov> or at the Clerk's Office, 300 Las Vegas Blvd., South, Las Vegas, NV 89101.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Mary A. Schott
Clerk, U.S. Bankruptcy
Court

PACER Service Center
Transaction Receipt
12/13/2016 11:50:45

COURT MINUTES
ON APRIL 3, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****April 03, 2018**

A-12-671509-C Venise Abelard, Plaintiff(s)
 vs.
 9352 Cranesbill Trust, Defendant(s)

April 03, 2018**1:30 PM****Settlement Conference****HEARD BY:** Wiese, Jerry A.**COURTROOM:****COURT CLERK:** Phyllis Irby**RECORDER:****REPORTER:****PARTIES****PRESENT:**

Bass, Joice B.

Attorney for the Plaintiff

Ivie, Daniel

Attorney for Counter Claimant

Lowell, Elizabeth B.

Attorney for the Defendant

JOURNAL ENTRIES

- VENISE ABELARD V. FORT APACHE SQUARE HOMEOWNERS ASSOCIATION, ET AL.

The above-referenced matter came on for a settlement conference with Judge Jerry Wiese on Tuesday, April 3, 2018. The Plaintiff, Venise Abelard, was present, and was represented by Joyce Bass, Esq. Fort Apache Square Homeowners Association (HOA) was present through Mandy Endelman and Janette Hill (community managers), and Nicole Benavidez (of Farmers Insurance), and was represented by Elizabeth Lowell, Esq. Nevada Association Services (NAS), was present through Brandon Wood, Esq. Wells Fargo Bank was present through Phillip Cargioli, and was represented by Dan Ivy, Esq. (They were excused before the remainder of the case settled) The parties agreed to a resolution and settlement of all claims. It is the intention of the parties that this settlement will resolve the entire case. The parties and attorneys will work together to prepare and execute all necessary settlement documents, including a Stipulation and Order for Dismissal of All Claims. Each party is to bear its own attorney s fees and costs. The case is now referred back to the originating department for further handling and closure.

