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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

**WELLS FARGO BANK, N.A.'S
SUPPLEMENTAL REQUEST FOR
JUDICIAL NOTICE**

Intervenor Wells Fargo Bank, N.A. ("Wells Fargo"), in connection with its Motion for Summary Judgment, requests that the Court take judicial notice of the documents listed below. Judicial notice of the documents identified in this Supplemental Request for Judicial Notice ("RJN") is appropriate as they consist of matters of public record, including publicly recorded or

1 filed documents, certified copies of which are attached:

2 1. Deed of Trust securing indebtedness of \$226,081.00, recorded on November 28,
3 2007, as Document No. 20071128-0003832, a true and correct certified copy of which is attached
4 hereto as **Exhibit A**.

5 2. Notice of Default and Election to Sell Under Deed of Trust, recorded on
6 November 1, 2010, as Document No. 201011010005253, a true and correct certified copy of
7 which is attached hereto as **Exhibit B**.

8 3. Notice of Rescission of Notice of Default and Election to Sell Under Deed of
9 Trust, recorded on April 26, 2011, as Document No. 201104260003413, a true and correct
10 certified copy of which is attached hereto as **Exhibit C**.

11 4. Assignment of Mortgage, recorded on October 17, 2012, as Document No.
12 201210170001249, a true and correct certified copy of which is attached hereto as **Exhibit D**.

13 5. HOA Notice of Delinquent Assessment Lien, recorded on July 12, 2011, as
14 Document No. 201107120001465, a true and correct certified copy of which is attached hereto as
15 **Exhibit E**.

16 6. HOA Notice of Default and Election to Sell Under Homeowners Association Lien,
17 recorded on September 15, 2011, as Document No. 201109150001788, a true and correct certified
18 copy of which is attached hereto as **Exhibit F**.

19 7. HOA Notice of Trustee's Sale, recorded on May 7, 2012, as Document No.
20 201205070002189, a true and correct certified copy of which is attached hereto as **Exhibit G**.

21 8. HOA Trustee's Deed Upon Sale, recorded on July 18, 2012, as Document No.
22 201207180003166, a true and correct certified copy of which is attached hereto as **Exhibit H**.

23 9. Grant, Bargain, Sale Deed, recorded on July 27, 2012, as Document No.
24 201207270002642, a true and correct certified copy of which is attached hereto as **Exhibit I**.

25 A fact is subject to judicial notice if it is "(a) Generally known within the territorial
26 jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to
27 sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to
28 reasonable dispute." NRS 47.130(2). "A judge shall take judicial notice if requested by a party

1 and supplied with the necessary information.” NRS 47.150(2). “Judicial notice may be taken at
2 any stage of the proceeding prior to submission to the court or jury.” NRS 47.170.

3 The Court may take judicial notice of matters of public record. *See, e.g., Breliant v.*
4 *Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (explaining that a court
5 “may take into account matters of public record, orders, items present in the record of the case,
6 and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state
7 a claim upon which relief can be granted.”); *United States v. 14.02 Acres of Land*, 547 F.3d 943,
8 955 (9th Cir. 2008) (the court “may take judicial notice of matters of public record”) (citations
9 and internal quotation marks omitted); *Wensley v. First Nat. Bank of Nevada*, 874 F. Supp.2d 957,
10 961 n.1 (D. Nev. 2010) (taking judicial notice of deed of trust, substitution of trustee, election to
11 sell and other recorded documents because “a court may judicially notice matters of public
12 record.”); *Harlow v. MTC Financial Inc.*, 865 F. Supp.2d 1095, 1099 (D. Nev. 2012) (explaining
13 that “various title documents recorded in the Clark County Recorder’s Office” are “public records
14 appropriate for judicial notice”); *Valasquez v. Mortgage Elec. Registration Sys., Inc.*, No.
15 C 08-3818 PJH, 2008 WL 4938162, at *2–*3 (N.D. Cal. Nov. 17, 2008) (taking judicial notice
16 of: (1) Deed of Trust, (2) Assignment of Deed of Trust, (3) Notice of Default and Election to Sell
17 Under Deed of Trust, (4) Substitution of Trustee, and (5) Rescission of Notice of Default because
18 they were publicly recorded). Here, the documents were recorded with the Clark County
19 Recorder’s office and, therefore, are matters of public record, the authenticity of which may be
20 readily and accurately determined, and therefore appropriate for judicial notice.

21 The Court may also take judicial notice of documents that are incorporated by reference
22 into a complaint, even if not attached to the same, if: (1) the complaint refers to the document,
23 (2) the document is central to the plaintiff’s claims, and (3) the authenticity of the document is
24 undisputed. *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Branch v. Tunnell*, 14 F.3d 449,
25 454 (9th Cir. 1994) (“documents whose contents are alleged in a complaint and whose
26 authenticity no party questions, but which are not physically attached to the pleading, may be
27 considered in ruling on a Rule 12(b)(6) motion to dismiss”); *Gowen v. Tiltware, LLC*, Case No.
28 2:08-cv-01581-RCJ-RJJ, 2009 U.S. Dist. LEXIS 43970 (D. Nev. May 19, 2009).

1 As such, and for all the foregoing reasons, the Court may take judicial notice of each of
2 the documents attached hereto.

3 Dated this 31st day of January, 2018.

SNELL & WILMER L.L.P.

4
5 By: /s/ Daniel S. Ivie
6 Amy F. Sorenson, Esq.
7 Jeffrey Willis, Esq.
8 Erica J. Stutman, Esq.
9 Daniel S. Ivie, Esq.
10 3883 Howard Hughes Parkway, Suite 1100
11 Las Vegas, Nevada 89169
12 *Attorneys for Intervenor*
13 *Wells Fargo Bank, N.A.*
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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 SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE** by the method indicated:

 X U. S. Mail

 U.S. Certified Mail

 Federal Express

 X Electronic Service

 E-mail

Via Electronic Service

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*

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Dan L. Wulz, Esq.
LEGAL AID CENTER OF SOUTHERN
NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, Nevada 89101
Attorney for Plaintiff Venise Abelard

Via Electronic Service

Via Electronic Service

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PENGILLY LAW FIRM
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Attorneys for Fort Apache Square HOA

Via U.S. Mail

Via Electronic Service

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

DATED this 31st day of January, 2018.

/s/ Gaylene Kim

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

Exhibit A

C12

20071128-0003832

Assessor's Parcel Number:
125-18-513-016
Return To:
DHI Mortgage Company
12357 Riata Trace Pkwy, Suite C150
Austin, TX 78727 000662867
155

Fee: \$25.00
N/C Fee: \$25.00
11/28/2007 14:23:55
T20070206831
Requestor:
DHI TITLE
Debbie Conway KXC
Clark County Recorder Pgs: 12

Prepared By:

Recording Requested By:
DHI Mortgage Company
12357 Riata Trace Pkwy, Suite C150
Austin, TX 78727 000662867
155

[Space Above This Line For Recording Data]
State of Nevada
DEED OF TRUST
FHA Case No.
332-4517568 796
MIN 100020410001775498

THIS DEED OF TRUST ("Security Instrument") is made on November 20, 2007
The Grantor is Venise Abelard, an unmarried woman and
Marcus Compere, a single man

("Borrower"). The trustee is DHI Title NV

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. DHI MORTGAGE COMPANY, LTD.

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FHA Nevada Deed of Trust with MERS - 4/96
4N(NV) (0510) Amended 2/98
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VMP Mortgage Solutions, Inc. *me by VA as attorney in fact*

is organized and existing under the laws of Texas
and whose address is 12357 Riata Trace Pkwy, Suite C150
Austin, TX 78727 . Borrower owes Lender the principal sum of
two hundred twenty-six thousand eighty-one and 00/100
Dollars (U.S. \$226,081.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument
("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
December 1, 2037 . This Security Instrument secures to Lender: (a) the repayment of the
debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b)
the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this
Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security
Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in
trust, with power of sale, the following described property located in
Clark County, Nevada:

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.

which has the address of 9352 Cranesbill Court [Street]
Las Vegas [City], Nevada 89149 [Zip Code]
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all
easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and
additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this
Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title
to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or
custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right to exercise
any or all of these interests, including, but not limited to, the right to foreclose and sell the Property; and
to take any action required of Lender including, but not limited to, releasing or canceling this Security
Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has
the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances
of record. Borrower warrants and will defend generally the title to the Property against all claims and
demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform
covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real
property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of,
and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each
monthly payment, together with the principal and interest as set forth in the Note and any late charges, a
sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold
payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In
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*MC by VA as
attorney in fact*

any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later

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*HC as attorney
in fact.*

sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C.

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as attorney in fact

1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
 - (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.
- (c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.
- (d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.
- (e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums

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secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

332-4517568 796

4N(NV) (0510)

Page 6 of 9

Initials:

000662867

Mc by V. A.
as attorney in
fact.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by applicable law to Borrower and to the persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$0.00

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider

☐ Growing Equity Rider

☐ Other [specify]

☒ Planned Unit Development Rider

☐ Graduated Payment Rider

332-4517568 796

4N(NV) (0510)

Page 7 of 9

Initials: *VA*

000662867

*MC by VA
as attorney in
fact*

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Venise Abelard (Seal)
-Borrower

Marcus Compere by Venise Abelard, as (Seal)
Attorney-in-Fact -Borrower
attorney in fact

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

332-4517568 796

000662867

4N(NV) (0310)

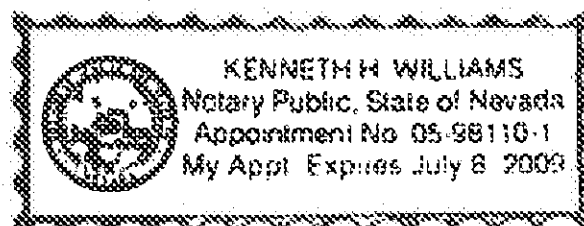
STATE OF NEVADA

COUNTY OF *Clark*

This instrument was acknowledged before me on
Venise Abelard & Marcus Compere

November²⁷ 2007

by



A large, stylized handwritten signature, likely belonging to Venise Abelard & Marcus Compere, written over a horizontal line.

Mail Tax Statements To:

332-4517568 796

 4N(NV) (0510)

Page 9 of 9

Initials: *VA* 000652867

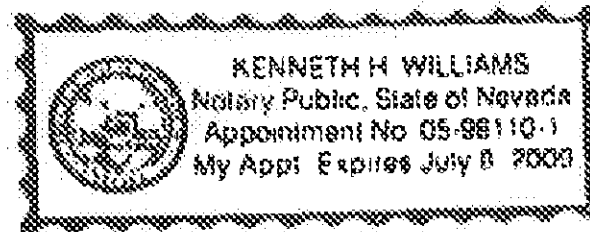
*MC by VA as
attorney in fact*

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me by Venise Abelard, attorney in fact for Marcus Compere, dated this 27th day of November, 2007.



NOTARY PUBLIC
[seal]



PLANNED UNIT DEVELOPMENT RIDER

FHA Case No.

332-4517568 796

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 20th day of November, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to DHI MORTGAGE COMPANY, LTD.

("Lender") of the same date and covering the Property described in the Security Instrument and located at: 9352 Cranesbill Court, Las Vegas, NV 89149

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

Fort Apache Ranch

[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.
- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless

332-4517568 796

000662867

FHA Multistate PUD Rider - 10/95

Wolters Kluwer Financial Services

VMP®-589U (0402) 02

Page 1 of 2

Initials: *VA*

NC by VA as attorney in fact

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Marcus Comper by Verise Abeldard (Seal)
 Marcus Comper by Verise -Borrower
 Abeldard, as
 Attorney-in-Fact

W. H. H. H.

-Borrower

Borrower

-Borrower

000662867

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit B

RECORDING REQUESTED BY:
Premier American Title Agency, Inc.
WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 10-43696-WF-NV
Title Order No. : 61000775

APN: 125-18-513-016

Inet #: 201011010005253

Fees: \$218.00

N/C Fee: \$0.00

11/01/2010 03:25:31 PM

Receipt #: 562112

Requestor:

PREMIER AMERICAN TITLE

Recorded By: RNS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$18,845.43, as of 11/01/2010 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

NDSC File No. : 10-43696-WF-NV

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc.
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: www.ndscorp.com/sales/
HUD Approved Local Housing Counseling Agency: 800/569-4287
Loss Mitigation Contact: Steve Murphy / 803-396-4115

Property Address: 9352 CRANESBILL COURT, LAS VEGAS NV 89149

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

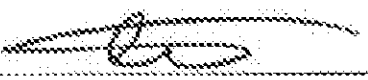
This is an attempt to collect a debt and any information obtained will be used for that purpose.

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee, the duly appointed substituted Trustee or acting as agent for the Trustee or Beneficiary under a Deed of Trust dated 11/20/2007, executed by VENISE ABELARD, AN UNMARRIED WOMAN AND MARCUS COMPERE, A SINGLE MAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC NOMINEE FOR DHI MORTGAGE COMPANY, LTD. ITS SUCCESSORS AND ASSIGNS as beneficiary recorded 11/28/2007, as Instrument No. 20071128-0003832 (or Book, Inst.) of Official Records in the Office of the County Recorder of CLARK County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of \$226,081.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of : FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 03/01/2010 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES; PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEY'S FEES.

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated : November 1, 2010
National Default Servicing Corporation, As Agent for Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc.

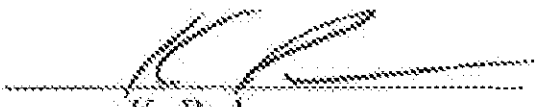

By : Premier American Title Agency, Inc., as Agent
Steve Marshall

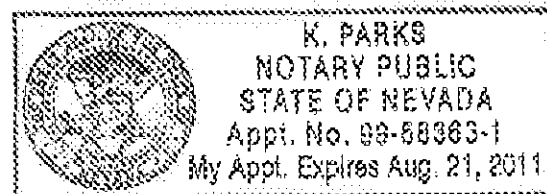
State of Nevada
County of Clark

This instrument was acknowledged before me on 11/1/2010 by
Steven Marshall.

Seal

Appt No. 99-58363-1
Expires Aug. 21, 2011


K. Parks



CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit C

Inst #: 201104260003413

Fees: \$15.00

N/C Fee: \$0.00

04/26/2011 03:09:06 PM

Receipt #: 753768

Requestor:

PREMIER AMERICAN TITLE

Recorded By: RNS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY :

WHEN RECORDED MAIL TO :

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 10-43696-WF-NV

Order No. : 61000775

APN: 125-18-513-016

**NOTICE OF RESCISSION OF NOTICE OF DEFAULT
AND ELECTION TO SELL UNDER DEED OF TRUST**

NOTICE IS HEREBY GIVEN : That National Default Servicing Corporation, an Arizona Corporation, is either the original Trustee, the duly appointed substituted Trustee or acting as agent for the Trustee or Beneficiary under a Deed of Trust dated 11/20/2007, executed by VENISE ABELARD, AN UNMARRIED WOMAN AND MARCUS COMPERE, A SINGLE MAN, as Trustor, to secure certain obligations in favor MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC NOMINEE FOR DII MORTGAGE COMPANY, LTD. ITS SUCCESSORS AND ASSIGNS, as Beneficiary, recorded 11/28/2007, as Instrument No. 20071128-0003832, in book , page , of Official Records in the Office of the Recorder of CLARK County, NV describing land therein as more fully described on the above referenced Deed of Trust.

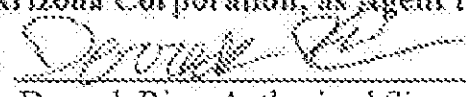
Said obligations including one Note for the sum of \$226,081.00.

Whereas, the present beneficiary under that certain Deed of trust herein above described, heretofore delivered to the Trustee thereunder written Declaration of Default and Demand for Sale; and Whereas, Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Default was recorded on the day and in the book and page set forth below:

Notice of Default was recorded on 11/01/2010 in the office of the recorder of CLARK County, NV, Instrument No. 201011010005253 Book , Page , of Official Records.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that present beneficiary, does hereby rescind, cancel and withdraw said Declaration of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach of default-past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall no way jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.

National Default Servicing Corporation,
an Arizona Corporation, as Agent for the Beneficiary of Record

By : 
Derreck Rice, Authorized Signor

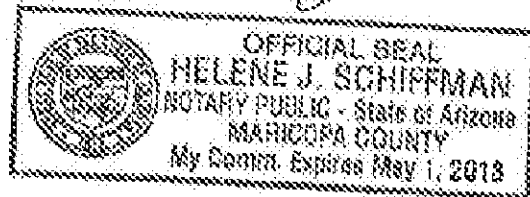
Dated : April 18, 2011

STATE OF ARIZONA
COUNTY OF MARICOPA

On 4/18 2011, before me *Helene J. Schiffman*, a Notary Public for said State, personally appeared *Derreck Rice* who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL



CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit D

APN: 125-18-513-016
State of Nevada
County of Clark
MERS ID:
100020410001775498
MERS Telephone: 1-888-679-6377

RECORDING REQUESTED BY:
WELLS FARGO BANK, N.A.
2701 WELLS FARGO WAY MAC X9999-018
MINNEAPOLIS MN 55467-8000

Inst #: 201210170001249
Fee: \$17.00
N/C Fee: \$0.00
10/17/2012 08:08:37 AM
Receipt #: 1346422
Requestor:
WELLS FARGO BANK, N.A.
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS (herein "Assignor") whose address is BOX 2026 FLINT MI 48501 1901 E VOORHEES ST STE C, DANVILLE, IL 61834, does hereby grant, sell, assign, transfer, and convey, unto WELLS FARGO BANK, NA (herein "Assignee"), whose address is 1 HOME CAMPUS, DES MOINES, IA 50328, a certain Mortgage dated 11/20/2007 and recorded 11/28/2007, made and executed by VENISE ABELARD, AN UNMARRIED WOMAN AND MARCUS COMPERE, A SINGLE MAN, to and in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS upon the following described property. Such Mortgage having been given to secure payment of \$226081.00 which Mortgage is of record in Book, Volume or Liber No. , at Page , as Document No. 20071128-0003832, of the Records of Clark County, State of Nevada, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

Legal Description:

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on 10/17/2012.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS

Lynn Marie Sevick

LYNN MARIE SEVICK, Assistant Secretary

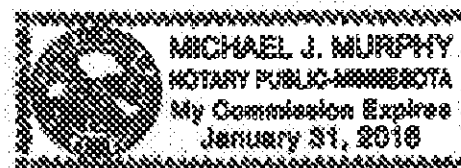
STATE OF MN
COUNTY OF Dakota } s.s.

On 10/17/2012, before me MICHAEL J. MURPHY, Notary Public, personally appeared LYNN MARIE SEVICK, Assistant Secretary personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Michael J. Murphy

MICHAEL J. MURPHY
Commission #: 31045582
My Commission Expires: 01/31/2016



CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit E

Inst #: 201107120001465

Fees: \$14.00

N/C Fee: \$0.00

07/12/2011 09:56:26 AM

Receipt #: 841386

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: SAO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-18-513-016

Trustee Sale # 27031-9352

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, Fort Apache Square Homeowners Association has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **9352 CRANESBILL CT, LAS VEGAS, NV 89149** and more particularly legally described as: **LOT 16 BLOCK B Book 123 Page 73** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **ABELARD VENISE & COMPERE MARCUS**

The mailing address(es) is: **9352 CRANESBILL CT, LAS VEGAS, NV 89149**

The total amount due through today's date is: **\$2,337.58**. Of this total amount **\$2,262.58** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **June 28, 2011**

By:

Gina Garcia

Gina Garcia - Legal Assistant

Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me June 28, 2011

(Seal)



(Signature)

NOTARY PUBLIC

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit F

Inst #: 201109150001788

Fees: \$14.00

N/C Fee: \$0.00

09/15/2011 09:53:36 AM

Receipt #: 813862

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 125-18-513-016


Trustee Sale No. 27031-9352

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,403.58 as of August 25, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Fort Apache Square Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 12, 2011 as document number 0001465, of Official Records in the County of Clark, State of Nevada. Owner(s): ABELARD VENISE & COMPERE MARCUS, of LOT 16 BLOCK B, as per map recorded in Book 123, Pages 73, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 12, 2011, executed by Fort Apache Square Homeowners Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 25, 2011


Gina Garcia, Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit G

Inst #: 201205070002189

Fees: \$17.00

N/C Fee: \$0.00

08/07/2012 02:51:04 PM

Receipt #: 1155288

Requestor:

ALESSI & KOENIG LLC

Recorded By: SAO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-18-513-016

TSN 27031-9352

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On June 06, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 12, 2011, as instrument number 0001465, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.58. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Fort Apache Square Homeowners Association

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit H

Inst #: 201207180003166

Fee: \$17.00 N/C Fee: \$0.00

RPTT: \$25.50 Ex: #

07/18/2012 03:55:24 PM

Receipt #: 1239191

Requestor:

ALESSI & KOENIG LLC

Recorded By: ANI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

②-1

When recorded mail to and
Mail Tax Statements to:
9352 Cranesbill Ct Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No. 125-18-513-016

TS No. 27031-9352

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein: 9352 Cranesbill Ct Trust
The Foreclosing Beneficiary herein was: Fort Apache Square Homeowners Association
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$4,900.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$4,900.00
The Documentary Transfer Tax: \$25.50
Property address: 9352 CRANESBILL CT, LAS VEGAS, NV 89149
Said property is in [] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): ABELARD VENISE & COMPERE MARCUS

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded July 12, 2011 as instrument number 0001465, in Clark County, does hereby grant, without warranty expressed or implied to: 9352 Cranesbill Ct Trust (Grantee), all its right, title and interest in the property legally described as: LOT 16 BLOCK B, as per map recorded in Book 123, Pages 73 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

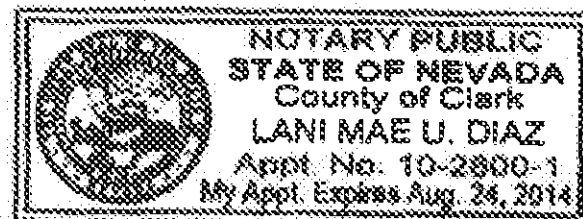
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on July 11, 2012 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me July 18, 2012

WITNESS my hand and official seal.
(Seal)



(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 125-18-513-016
b. _____
c. _____
d. _____

2. Type of Property:

a. <input type="checkbox"/> Vacant Land	b. <input type="checkbox"/> Single Fam. Res.
c. <input checked="" type="checkbox"/> Condo/Twnhse	d. <input type="checkbox"/> 2-4 Plex
e. <input type="checkbox"/> Apt. Bldg	f. <input type="checkbox"/> Comm'l/Ind'l
g. <input type="checkbox"/> Agricultural	h. <input type="checkbox"/> Mobile Home
<input type="checkbox"/> Other	

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property

\$ 4,900.00

b. Deed in Lieu of Foreclosure Only (value of property: _____)

c. Transfer Tax Value: \$ 4,900.00

d. Real Property Transfer Tax Due \$ 25.50

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 9352 Cranesbill Ct Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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DOCUMENT IS A TRUE AND
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ANY REDACTED PORTIONS

2016 11 JUL

Debbie Gray
RECORDED

Exhibit I

Inet #: 201207270002642

Fees: \$19.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

07/27/2012 01:25:02 PM

Receipt #: 1250468

Requestor:

RESOURCES GROUP

Recorded By: MSH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 125-18-513-016

Affix R.P.T.T. Exempt 7

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENT TO:

Teal Petals St. Trust

900 S. Las Vegas Blvd #810

Las Vegas, NV 89101

ESCROW NO:

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Resources Group, LLC, a Nevada Limited Liability Company as Trustee of the Cranesbill Court Trust dated 07-11-12 who acquired title as Cranesbill Court Trust

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

Teal Petals St. Trust

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

- Subject to:
1. Taxes for the current fiscal year, paid current.
 2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this _____ day of _____.

Cranesbill Court Trust dated 7-11-12

By: Resources Group LLC, a Nevada Limited Liability Company, Trustee

BY:

 Yusef Haddad, Manager

STATE OF NEVADA
COUNTY OF CLARK

} ss:

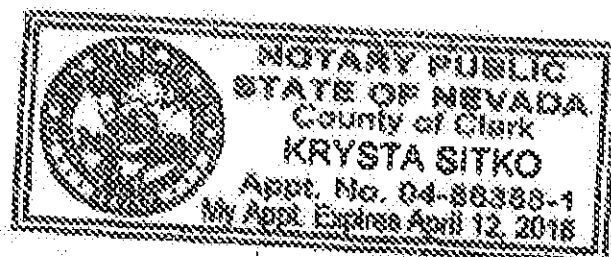
On this July 27, 2012
appeared before me, a Notary Public,

[Signature]

personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.

Notary Public [Signature] KRISTA SITKO

My commission expires: 4/12/16



LEGAL DESCRIPTION

EXHIBIT "A"

Assessor's Parcel No: 125-18-513-018

LOT 18 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.

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s) ☐

- a) 125-18-513-016
b) _____
c) _____
d) _____

2. Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument # _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property: \$ _____
b. Deed in Lieu of Foreclosure Only (value of property): (0.00)
c. Transfer Tax Value: \$ _____
d. Real Property Transfer Tax Due: \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: 7
b. Explain Reason for Exemption: Transfer from a trust to a trust without consideration

5. Partial Interest: Percentage being transferred: _____%

The undersigned Seller/(Grantor)/Buyer (Grantee), declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity Grantor

Signature _____

Capacity Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(REQUIRED)

(REQUIRED)

Print Name: Cranebill Court Trust
Address: 900 S. Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89101

Print Name: Teal Petals St Trust
Address: 900 S. Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89101

COMPANY REQUESTING RECORDING

Print Name: Teal Petals St. Trust
Address: 900 S. Las Vegas Blvd #810
City/State/Zip: Las Vegas, NV 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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2016 11 JUL

Debbie Gray
RECORDED

Dugan, Sonja

From: no-reply@tylerhost.net
Sent: Monday, July 18, 2016 5:28 PM
To: Dugan, Sonja
Subject: Service Notification of Filing Case(Venise Abelard, Plaintiff(s)vs.9352 Cranesbill Trust, Defendant(s)) Document Code:(SUPP) Filing Type:(EFS) Repository ID(8388483)

This is a service filing for Case No. A-12-671509-C, Venise Abelard, Plaintiff(s)vs.9352 Cranesbill Trust, Defendant(s)

This message was automatically generated; do not reply to this email. Should you have any problems viewing or printing this document, please call (800)297-5377.

Submitted: 07/18/2016 11:11:04 AM

Case title: Venise Abelard, Plaintiff(s)vs.9352 Cranesbill Trust, Defendant(s)
Document title: Wells Fargo Bank, N.A.'s Supplemental Request for Judicial Notice
Document code: SUPP Filing Type: EFS
Repository ID: 8388483
Number of pages: 50
Filed By: Snell & Wilmer L.L.P.

To download the document, click on the following link shown below or copy and paste it into your browser's address bar.

<https://na01.safelinks.protection.outlook.com/?url=https%3a%2f%2fwiznet.wiznet.com%2fclarknv%2fSDSubmit.do%3fcode%3d8adbaed1b717cd909a76b6d6ae892f11c66fe7adfebbd55a5464fdd3f6624a6b90f5bab265225c95&data=01%7c01%7cisdugan%40swlaw.com%7c2b74555ea05b4c43e1ac08d3af632343%7c0ff8ccc476b84bd3863803522bc610d8%7c0&data=j3vVq6Sv4QYzzu93afy8%2bmvtosemYIWqdagQWlzYwvE%3d>

This link will be active until 07/28/2016 11:11:04 AM.

Service List Recipients:

Alessi & Koenig
A&K eserve

Alessi & Koenig, LLC
Huong Lam

Law Offices of Michael F. Bohn, Esq.
Eserve Contact
Michael F Bohn Esq

Legal Aid Center of Southern Nevada, Inc.
Amy Berlin
Debra A. Bookout, Esq.

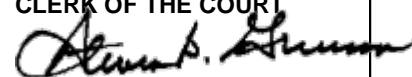
Nevada Association Services, Inc.
Brandon E. Wood
Susan E. Moses

Pengilly Law Firm
Olivia Schulze
Reception

Snell & Wilmer L.L.P.
Casey G. Perkins
Deborah Shuta
Docket
Erica Stutman
Lyndsey Luxford
Ruby Lengsavath
Sonja Dugan

Non Consolidated Cases
EFO \$3.50EFS \$5.50
SO \$3.50

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877
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Amy F. Sorenson, Esq.
Nevada Bar No. 12495
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
Las Vegas, Nevada 89169
Telephone: 702.784.5200
Facsimile: 702.784.5252
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

**WELLS FARGO BANK, N.A.'S
MOTION FOR SUMMARY
JUDGMENT**

Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its attorneys, Snell & Wilmer L.L.P., hereby moves for summary judgment on 9352 Cranesbill Trust's¹ and Teal Petals St. Trust's (together, "Cranesbill")² counterclaims, and on Wells Fargo's counterclaims against Fort

¹ Also known as 9352 Cranesbill Court Trust.

² The current record owner of the property, the Teal Petals Street Trust ("Teal Petals"), acquired the property from Cranesbill on July 27, 2012, less than three weeks after the HOA foreclosure sale. Resources Group, LLC is the trustee for Cranesbill and Teal Petals, both of which also have the same beneficiary. Tr. of Dep. of I. Haddad, as representative of Teal Petals, April 27, 2016 ("Teal Petals Dep.") at 6:15-17;10:10-11, attached as **Exhibit 1**; Tr. Of

1 Apache Square Homeowners' Association (the "HOA"), Mesa Management ("Mesa"), and Alessi
2 & Koenig ("A&K") for declaratory relief, quiet title, wrongful foreclosure, and violations of NRS
3 116.1113.

4 This Motion is based on the Memorandum of Points and Authorities below, the papers
5 and pleadings on file with the Court, and any oral argument that this Court may entertain.

6 Dated this 31st day of January, 2018. SNELL & WILMER L.L.P.

7
8 By: /s/Daniel S. Ivie
9 Amy F. Sorenson, Esq.
10 Jeffrey Willis, Esq.
11 Erica J. Stutsman, Esq.
12 Daniel S. Ivie, Esq.
13 3883 Howard Hughes Parkway, Suite 1100
14 Las Vegas, Nevada 89169
15 Attorneys for Intervenor
16 Wells Fargo Bank, N.A.

17 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL.

18 PLEASE TAKE NOTICE that on the 06 day of March, 2018, at 9:00
19 a.m/~~p.m.~~, or as soon thereafter as counsel can be heard, in Department VII, in the above-
20 mentioned Court, the Court will hear Wells Fargo Bank, N.A.'s Motion for Summary Judgment.

21 Dated this January 31, 2018. SNELL & WILMER L.L.P.

22 By: /s/Daniel S. Ivie
23 Amy F. Sorenson, Esq.
24 Jeffrey Willis, Esq.
25 Erica J. Stutsman, Esq.
26 Daniel S. Ivie, Esq.
27 3883 Howard Hughes Parkway, Suite 1100
28 Las Vegas, Nevada 89169
Attorneys for Intervenor
Wells Fargo Bank, N.A.

Dep. of I. Haddad, as representative of Cranesbill, April 27, 2016 ("Cranesbill Dep.") at 9:9-11, attached as
Exhibit 2. Haddad is the manager of Resources Group, LLC. Teal Petals Dep. at 6:18-20; Cranesbill Dep. at
11:14-16.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Cranesbill is not entitled to the declarations sought in its counterclaim for several reasons. First, the HOA foreclosure sale by which it acquired title was subpriority in nature and, thus, subordinate to Wells Fargo's Deed of Trust. Before the sale, Abelard paid *more than twice* the amount of the nine months of assessments due prior to the initiation of the HOA foreclosure. The payments were accepted and applied by the HOA, thus satisfying the superpriority component of the HOA's lien. Wells Fargo is entitled to an order declaring that its Deed of Trust survived the sale and remains on the Property.

Additionally, the HOA sale was improper and should be set aside because it was not properly conducted. The sale was commercially unreasonable because the HOA and its agents sold the property for a grossly inadequate price after its agent misrepresented to Abelard that the foreclosure had been placed on hold pending a review of her dispute over the validity of the debt allegedly giving rise to the HOA's lien. The sale was also unfair because the HOA was unable to explain the origin or validity of many of the charges on Abelard's account, undermining the HOA's lien and the entire basis for the sale. Alternatively, the Court should declare that Cranesbill took title subject to Wells Fargo's deed of trust because the HOA and A&K failed to provide adequate notice to Wells Fargo of the sale.

In sum, the undisputed evidence shows that the superpriority portion of the lien was satisfied, and that the HOA, Mesa, and A&K failed to conduct the sale in a commercially reasonable manner and failed to provide Wells Fargo with adequate notice of the sale. Additionally, Cranesbill was not a bona fide purchaser. As such, Cranesbill is not entitled to a declaration that it obtained title through the HOA foreclosure sale free and clear of any liens or encumbrances, including Wells Fargo's Deed of Trust. To the contrary, the Court should declare the sale void or, alternatively, that Cranesbill took title subject to Wells Fargo's deed of trust.

///

///

///

1 **II. STATEMENT OF UNDISPUTED FACTS**

2 **A. The Subject Property, Note, and Deed of Trust**

3 1. A Deed of Trust listing Venise Abelard and non-party Marcus Compere as
4 borrowers; DHI Mortgage Company, LTD (“Lender”) as the lender; and Mortgage Electronic
5 Registration Systems, Inc. (“MERS”), as beneficiary solely as nominee for Lender and Lender’s
6 successors and assigns, was recorded on November 28, 2007. Ex. A to Request for Judicial
7 Notice in Support of Wells Fargo’s Motions for Summary Judgment (“RJN”), filed
8 contemporaneously with this Motion.

9 2. The Deed of Trust granted Lender a security interest in the real property
10 commonly known as 9352 Cranesbill Court, Las Vegas, Nevada 89149, APN 125-18-513-016
11 (the “Property”) to secure the repayment of a loan to Abelard and Compere in the original amount
12 of \$226,081.00. Ex. A to RJN, Deed of Trust.

13 3. On November 1, 2010, National Default Servicing Corporation (“NDSC”)
14 recorded a Notice of Default and Election to Sell Under Deed of Trust on behalf of Wells Fargo,
15 in which NDSC identified Wells Fargo as a party with an interest in the Loan. Ex. B to RJN,
16 Notice of Default and Election to Sell Under Deed of Trust.

17 4. On October 17, 2012, an Assignment of Mortgage from MERS to Wells Fargo
18 was recorded. Ex. D to RJN, Assignment.

19 **B. Mesa Management Failures and Inaccurate Records**

20 5. In or around October 2014, Mesa took over management of the Fort Apache
21 Square Homeowner’s Association (“Fort Apache Square Account”). Tr. of Dep. of V. Abelard,
22 Aug. 26, 2015 (“Abelard Dep.”) at 12:20-13:4, attached as **Exhibit 3**; Letter from A&K to
23 Abelard, dated October 5, 2011, attached as **Exhibit 4**.

24 6. When Mesa assumes management of an HOA, its policy is to send a welcome
25 letter to the homeowner and populate its accounting software with reports and ledgers provided
26 by the previous management company. Tr. of Dep. of T. Wozniak, as representative of Mesa,
27 June 8, 2016, (“Wozniak Dep.”) at 21:2-9, attached as **Exhibit 5**.

28

1 7. Mesa did not take any action to verify the accuracy of the reports and information
2 provided by the previous management company regarding Ms. Abelard's account, or to determine
3 whether, and to what extent, any past due amounts related to assessments, late fees, violation
4 fines, attorneys' fees, or other charges. Rather, Mesa's owner and Rule 30(b)(6) designee Tracy
5 Wozniak testified that there is very little Mesa can do to verify the accuracy of the prior
6 management company's records:

7 There isn't a lot we can do on transitions. We send notices out to the homeowner
8 on what their balances are. If there is a dispute, then we'll discuss the dispute
9 when they dispute it. There are times that there are disputes with the transition,
10 but we don't know that if the homeowner doesn't communicate it to us.

11 * * *

12 If we send [the homeowner] a statement and they don't dispute that that's the
13 balance owed, then we don't know to do anything further.

14 Ex. 5, Wozniak Dep. at 21:10-25; *see also* Tr. of Dep. of M. Endelman, as representative of
15 Mesa, June 8, 2016, ("Endelman Dep.") at 31:11-34:24, attached as **Exhibit 6**.

16 8. Abelard did not receive a welcome letter from Mesa or a statement showing the
17 balance owed on her account when Mesa took over management of Fort Apache Square,
18 however. She instead learned from a neighbor that Mesa was the new manager, and on June 30,
19 2011, took it upon herself to send a letter to Mesa requesting payment coupons in which she also
20 enclosed a check for six months of unpaid assessments. Ex. 3, Abelard Dep. at 12:18-14:15.

21 9. Once she was informed that Mesa was managing Fort Apache Square and that her
22 HOA assessments had increased from \$56.00 to \$61.00 per month, Abelard made consistent,
23 though not always timely, assessment payments. ***Between June 2011 and the July 2012***
24 ***foreclosure sale, Abelard paid a total of \$1,164.50.***

25 a. On June 30, 2011, Abelard made a payment of \$366, representing payment
26 of assessments for January through June 2011. Ex. 3, Abelard Dep. at
27 13:13-24; Copy of Check Transaction Detail Posting Date October 7, 2011,
28 attached as **Exhibit 7**.

 b. On September 14, 2011, Abelard made a payment of \$142.00, representing
payment of assessments and late fees for July and August 2011. Ex. 3,

1 Abelard Dep. at 16:24-17:7; Copy of Check Transaction Detail Posting
2 Date October 7, 2011, attached as **Exhibit 8**.

3 c. On February 1, 2012, Abelard made a payment of \$284.00, representing
4 assessment payments and late fees for September through December 2011.
5 Copy of Check Transaction Detail Posting Date February 13, 2012,
6 attached as **Exhibit 9**.

7 d. On April 30, 2012, Abelard made a payment of \$223.50, representing
8 payment of assessments, which had increased to \$64.50 per month in 2012,
9 and late fees for January through March 2012. Copy of Check Transaction
10 Detail Posting Date May 24, 2012, attached as **Exhibit 10**.

11 e. On June 20, 2012, Abelard made her final payment of \$149.00,
12 representing assessments and late fees for April and May 2012. Copy of
13 Duplicate Check Stub dated June 20, 2012, attached as **Exhibit 11**.

14 10. The HOA and its agent, A&K, relied on Mesa to keep accurate records of
15 homeowner accounts, and did not take independent action to verify the accuracy of Mesa's
16 records. Ex. 6, Endelman Dep. at 24:24-25:9; Tr. of Deposition of David Alessi, as representative
17 of Alessi & Koenig, June 3, 2016, ("Alessi Dep. v. 1") at 46:3-23, attached as **Exhibit 12**.

18 **C. The HOA and Alessi & Koenig Foreclosure**

19 11. On July 12, 2011, A&K, acting on behalf of Fort Apache Square, recorded a
20 Notice of Delinquent Assessment Lien ("Notice of Lien"), alleging unpaid amounts due of
21 \$2,337.58. The Notice of Lien does not identify the alleged super-priority amount. Ex. E to RJN.

22 12. Abelard did not receive the Notice of Lien before the HOA foreclosure sale.
23 Ex. 3, Abelard Dep. at 63:20-25; 64:16-25.

24 13. The Notice of Lien was not sent to Wells Fargo. Ex. 12, Alessi Dep. v. 1 at
25 48:2-7.

26 14. On September 15, 2011, A&K, acting on behalf of Fort Apache Square, recorded a
27 Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD"), claiming a
28

1 total amount due of \$3,403.58. The NOD does not identify the superpriority amount or otherwise
2 indicate that Fort Apache Square intends to foreclose on a super-priority lien. Ex. F to RJN.

3 15. Abelard did not receive the NOD before the HOA foreclosure sale Ex. 3, Abelard
4 Dep. at 18:13-17; 63:20-25; 64:16-25.

5 16. The NOD was not sent to Wells Fargo. Ex. 12, Alessi Dep. v. 1 at 55:6-11; *see*
6 *also* Copy of NOD with copies of mailing envelopes and certified mail receipts produced by
7 A&K, attached as **Exhibit 13**.

8 17. On May 7, 2012, A&K, acting on behalf of Fort Apache Square, recorded a Notice
9 of Trustee's Sale ("Notice of Sale"), claiming a total amount due of \$3,932.58 and setting a
10 foreclosure sale for June 6, 2012. The Notice of Sale does not identify the super-priority amount
11 or otherwise indicate that Fort Apache Square intends to foreclose on a super-priority lien. Ex. G
12 to RJN.

13 18. Abelard received the Notice of Sale when it was posted on the front door of her
14 home on May 25, 2012. Ex. 3, Abelard Dep. at 34:5-13; 32:12-16.

15 19. The Notice of Sale was sent to NDSC, but not Wells Fargo. Ex. 12, Alessi Dep. v.
16 1 at 55:6-11, 79:19-25; *see also* Copy of Notice of Sale with copies of mailing envelopes and
17 certified mail receipts produced by A&K, attached as **Exhibit 14**.

18 20. A&K relied on the accuracy of ledgers provided by Mesa when it calculated the
19 amounts stated in the Notice of Lien, NOD, and Notice of Sale. As such, any inaccuracy in the
20 ledgers rendered the amounts stated in the notice unreliable. Ex. 12, Alessi Dep. at 46:3-23.

21 21. After seeing the Notice of Sale posted on her door, Abelard immediately contacted
22 A&K to dispute the claim that she was in arrears on her assessment payments. Ex. 3, Abelard
23 Dep. at 34:16-35:24; 64:16-25; Letter from Abelard to A&K, dated May 30, 2012, attached as
24 **Exhibit 15**.

25 22. In the beginning of June, Abelard finally received a ledger from A&K purporting
26 to reflect the balance of her account. Ex. 3, Abelard Dep. at 28:6-8; Fax Cover Letter from A&K
27 to Abelard with Account Breakdown and Ledger, through July 2, 2012, attached as **Exhibit 16**.
28

23. After reviewing the ledger, Abelard called A&K to request a breakdown or explanation of the “initial balance” of more than \$1,204.58, which she did not believe was accurate because up to that point she had paid her HOA dues, even if sometimes late. Ex. 3, Abelard Dep. at 27:1-29:20; Ex. 15, Letter from Abelard to A&K.

24. The challenged “initial balance” on the Mesa ledger is a carryover from the prior management company’s ledger, but Mesa made no attempt to verify the accuracy of that amount. Ex. 16, Ledger; Ex. 5, Wozniak Dep. at 21:10-25. Further, the ledger provided by the prior management company begins with a balance of \$739.58, an amount that neither the HOA’s representative, nor Mesa’s representative could explain. Prior Management Company Ledger, attached as **Exhibit 17**; Ex. 5, Wozniak Dep. at 21:10-25; Ex. 6, Endelman Dep. at 34:6-24.

25. At A&K’s request, Abelard provided copies of checks showing some payments made to Fort Apache Square, and was told by A&K that her account was being placed on hold until management had an opportunity to review the dispute. Ex. 3, Abelard Dep. at 29:21-30:14.

26. Abelard then called A&K weekly to see what was being done with her account; each time she was told that they were waiting for management review and that the account was still on hold. Ex. 3, Abelard Dep. at 30:16-31:24.

27. A&K never called, emailed, sent a letter, or otherwise contacted Abelard to tell her that the hold had been removed from her account and that A&K intended to proceed with foreclosure. Ex. 3, Abelard Dep. at 30:10-20; Tr. of Deposition of David Alessi, as representative of Alessi & Koenig, June 8, 2016, (“Alessi Dep. v. 2”) at 73:3-74:7, attached as **Exhibit 18**.

28. The Board of Fort Apache Square (the “Board”) has final decision-making authority on whether to foreclose on a homeowner’s Property. Ex. 5, Wozniak Dep. at 49:11-15.

29. The Board is supposed to be notified when a homeowner raises a dispute so that the Board can attempt to resolve the dispute and evaluate whether the foreclosure sale should proceed. Ex. 5, Wozniak Dep. at 24:14-21; Ex. 6, Endelman Dep. at 56:9-16; 59:12-18.

30. There is no evidence that A&K advised Mesa or the Board of Abelard’s payment dispute before proceeding with the HOA Foreclosure Sale. See Ex. 6, Endelman Dep. at 19-22.

1 Despite being initially noticed for June 6, 2012, the sale was postponed and did not go
2 forward on that date. Ex. H to RJN.

3 31. On July 11, 2012, A&K, acting on behalf of Fort Apache Square, sold the Property
4 to Cranesbill for \$4,900 (the “HOA Foreclosure Sale”). A Trustee’s Deed Upon Sale reflecting
5 that sale was recorded on July 18, 2012. Ex. H to RJN.

6 32. In July 2012, after the HOA Foreclosure Sale, Abelard received another notice on
7 her door that the Property had been sold and that she would be required to vacate her home.
8 News of the sale surprised Abelard because A&K never told her that the hold had been removed
9 from her account and that the foreclosure would proceed. Ex. 3, Abelard Dep. at 30:10-20;
10 43:16-44:3.

11 33. At the time of the HOA Foreclosure Sale, the Property had a fair market value of
12 \$94,000.00. Appraisal Report of Scott Dugan, attached as **Exhibit 19**.

13 34. A few weeks after the HOA Foreclosure Sale, Cranesbill transferred its interest in
14 the Property to Teal Petals by means of a Grant, Bargain, Sale Deed recorded on July 27, 2012.
15 Ex. I to RJN.

16 **III. LEGAL ARGUMENT**

17 **A. Legal Standard**

18 Summary judgment is appropriate when the moving party demonstrates that no genuine
19 issue of material fact exists, and it is entitled to judgment as a matter of law. N.R.C.P. 56(c).
20 Summary judgment is not to be treated as a disfavored procedural shortcut, but instead as an
21 integral part of the rules, “which are designed to secure the just, speedy, and inexpensive
22 determination of every action.” *Wood v. Safeway*, 121 Nev. 724, 730, 121 P.3d 1026, 1031
23 (2005) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Indeed, the “purpose of
24 summary judgment ‘is to avoid a needless trial when an appropriate showing is made in advance
25 that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a
26 matter of law.’” *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212,
27 214, 984 P.2d 164, 166 (1999). Thus, Rule 56 requires entry of summary judgment against a
28 party “who fails to make a showing sufficient to establish the existence of an element essential to

1 that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v.*
2 *Catrett*, 477 U.S. 317, 322 (1986).

3 No genuine issues of material fact exist that would preclude summary judgment for Wells
4 Fargo on Cranesbill's claims for quiet title and declaratory relief. Rather, the Court should
5 declare that Cranesbill took the Property subject to Wells Fargo's Deed of Trust because Abelard
6 satisfied the superpriority amount before the HOA Sale. Alternatively, the Court should declare
7 the HOA foreclosure sale void because A&K and Fort Apache Square failed to obtain a
8 commercially reasonable price at the foreclosure sale and conducted the sale in an unfair and
9 oppressive manner. Finally, the Court should declare that Cranesbill took title subject to Wells
10 Fargo's Deed of Trust because A&K and the HOA did not provide Wells Fargo with the required
11 notices of default and sale.

12 **B. The HOA Sale Did Not Extinguish Wells Fargo's Deed Of Trust Because**
13 **Abelard Satisfied The Superpriority Portion Of The HOA Lien Before The**
14 **Sale.**

15 The HOA Sale did not extinguish Wells Fargo's Deed of Trust because the superpriority
16 portion of the HOA's lien was satisfied when Abelard paid more than nine months of assessments
17 prior to the sale.

18 The Nevada Supreme Court has clearly established that NRS 116.3116(2) "splits an HOA
19 lien into two pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v.*
20 *U.S. Bank*, 130 Nev. Adv. Op. 75, ___, 334 P.3d 408, 441 (2014). The superpriority component
21 of an HOA lien consists only of "the assessments for common expenses... which would have
22 become due in the absence of acceleration *during the 9 months immediately preceding institution*
23 *of an action to enforce the lien.*" NRS 116.3116(2) (2012) (emphasis added); *see also Saticoy*
24 *Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank, N.A.*, Order of Affirmance, No.
25 71246, 2017 WL 6597154 (Dec. 22, 2017) (affirming district court's ruling that homeowner's
26 payments prior to HOA sale were sufficient to satisfy and discharge the superpriority component
27 of HOA's lien). "The subpriority piece, consisting of all other HOA fees or assessments, is
28 subordinate to a first deed of trust." *SFR Investments*, Nev. Adv. Op. 75, 334 P.3d at 441. The
Nevada Supreme Court has clarified that "a party has 'instituted proceedings to enforce the lien'

1 for purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment.” *Saticoy*
2 *Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3,
3 ___, 388 P.3d 226, 231 (2017), quoting NRS 116.3116(6).

4 Here, the HOA recorded its Notice of Lien on July 12, 2011. Ex. E to RJN. Any new
5 assessments that accrue after an HOA begins collection are not included in the HOA Lien and do
6 not count towards the superpriority amount. *Id.* (“Although appellant correctly points out that
7 there were new unpaid monthly assessments at the time of the sale, these new unpaid monthly
8 assessments could not have comprised a new superpriority lien absent a new notice of delinquent
9 assessments.”) Thus, in this case, the superpriority component of the HOA Lien was comprised
10 of only the amount of nine months of assessments owing between November, 2010 and July 12,
11 2011.

12 Pursuant to the HOA’s records, the monthly assessment amount for Abelard’s community
13 for November and December 2010 was \$56.00. Ex. 16, Ledger. As of January 1, 2011, the
14 monthly assessment was increased to \$61.00 and remained the same throughout 2011, including
15 when the HOA Notice of Lien was recorded in July, 2011. Ex. 16, Ledger. Thus, the total
16 amount of assessments due during the nine months immediately preceding the recording of the
17 HOA Notice of Lien was \$539.00 (\$56.00 x 2 months, \$61.00 x 7 months).

18 It is undisputed that Abelard made payments to the HOA well in excess of \$539.00 in the
19 months before the Property was sold in July 2012. On June 30, 2011, Abelard made a payment of
20 \$366.00, which she stated was for the months of January 2011 through June 2011. Ex. 7. On
21 September 14, 2011, Abelard remitted a payment of \$142.00. Ex. 8. On February 1, 2012,
22 Abelard made a payment of \$284.00. Ex. 9. On May 24, 2012, Abelard made a payment of
23 \$223.50. Ex. 10. Finally, on June 20, 2012, Abelard made a payment of \$149.00. Ex. 11. Each
24 of these payments was accepted and cashed by the HOA. Exs. 7-11.

25 In total, between June 2011 and June 2012, Abelard remitted \$1,164.50 to the HOA. This
26 amount is *more than double* the \$539.00 which was owed for the nine months of assessments
27 immediately preceding the institution of the action on the HOA Lien. In *Saticoy Bay LLC Series*
28 *2141 Golden Hill v. JPMorgan Chase Bank, N.A.*, the Nevada Supreme Court confirmed that

1 when a former homeowner makes payments sufficient to satisfy the superpriority component of
2 the HOA's lien, the deed of trust is not extinguished. Order of Affirmance, No. 71246, 2017 WL
3 6597154 (Dec. 22, 2017) (finding that, because the former homeowner made enough payments to
4 satisfy the superpriority portion of the HOA's lien, "there was no superpriority component of the
5 HOA's lien that could have extinguished the [lender's] deed of trust") (emphasis added).

6 This Court recently addressed the issue of the impact of payments made by the
7 homeowner on the superpriority portion of an HOA lien. In *Marchai B.T. v. Perez*, A-13-
8 689461-C, the Court recognized that "[s]atisfying the superpriority amount of the lien, not the
9 amounts incurred by any particular months, preserves the deed of trust." See Decision and Order,
10 12:22-24, a copy of which is attached as **Exhibit 20**, citing *Stone Hollow Ave. Trust v. Bank of*
11 *America, N.A.*, 382 P.3d 911 (Nev. Aug. 11, 2016) (unpublished decision). In *Marchai*, the
12 homeowner made periodic payments after the institution of the HOA's foreclosure action which
13 far exceeded the value of nine months of assessments. Ex. 20, Decision and Order, 12:8-13. This
14 Court held that "regardless of which months a payor may request a payment be applied to, *any*
15 *payment which is at least equal to the amount incurred in the nine months preceding the notice*
16 *of delinquent assessment lien is sufficient to satisfy the superpriority lien.*" Ex. 20, Decision
17 and Order, 13:21-23 (emphasis added).

18 Wells Fargo anticipates that opposing parties may argue that the superpriority portion of
19 an HOA lien can only be satisfied the beneficiary of the Deed of Trust, not the homeowner. The
20 Court addressed this issue in its *Marchai* order as well, noting that NRS 116.3116(2) "does not
21 limit who can satisfy the superpriority portion of the lien." Ex. 20, Decision and Order, 13:3-4.
22 As long as the amount equal to or in excess of the superpriority portion is tendered to the HOA
23 before the sale, the superpriority portion of the lien is satisfied. Ex. 20, Decision and Order,
24 13:16-23.

25 Likewise here, Abelard's payment of more than twice the nine months of assessments
26 satisfied the superpriority component of the HOA's Lien. For many of her payments, Abelard
27 specifically indicated that those payments were intended to be applied to her monthly
28 assessments. See, e.g., Ex. 7, Ex. 8, Ex. 9, check posting details. However, regardless of

1 Abelard's intent, any payments made after the recording of the delinquent assessment lien should
2 be applied first to the superpriority portion of the lien, with any remaining funds being applied to
3 the subpriority portion.³ The HOA, therefore, foreclosed only the subpriority portion of the lien,
4 which was subordinate to Wells Fargo's Deed of Trust. *SFR Investments*, 130 Nev. Adv. Op. 75,
5 334 P.3d at 411 ("The subpriority piece, consisting of all other HOA fees or assessments, is
6 subordinate to a first deed of trust."). Wells Fargo's Deed of Trust remains on the Property and
7 Wells Fargo is entitled to summary judgment on that point.

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

9 The failure to sell property in a commercially reasonable manner renders an HOA
10 foreclosure sale voidable. Nevada case law has established "that courts retain the power, in an
11 appropriate case, to set aside a defective foreclosure on equitable grounds." *Shadow Wood HOA*
12 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, ___, 366 P.3d 1105, 1111 (2016); *see also Golden*
13 *v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the California rule that "inadequacy of
14 price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally
15 made; there must be in addition proof of some element of fraud, unfairness, or oppression...");
16 *Nev. Land & Mortg. Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200
17 (1967) ("In the proper case, the trial court may set aside a trustee's sale upon the grounds of fraud
18 or unfairness.").

19 While inadequacy of price alone is not enough to set aside a foreclosure sale, "the
20 price/fair-market-value disparity is a relevant consideration because a wide disparity may require
21 less evidence of fraud, unfairness, or oppression to justify setting aside the sale." *Nationstar*
22 *Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 405
23 P.3d 641 (2017); *see also Golden* ("inadequacy of price is a circumstance of greater or less
24 weight to be considered in connection with other circumstances impeaching the fairness of the
25 transaction as a cause of vacating it, and that, where the inadequacy is palpable and great, very
26

27 ³ Allowing the HOA to choose whether to apply any payments first to subpriority amounts, such as late fees or legal
28 expenses, would in essence transform the entire lien into a superpriority lien because it would allow an HOA to
prioritize the repayment of its own costs and expenses above the monthly assessments. This would contravene the
public policy principle underlying NRS 116.3116 *et seq.*, which this Court noted in *Marchai* "is to ensure that
homeowner association dues are paid first." Ex. 20, Decision and Order, 11:22-23.

1 slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the
2 relief sought.”).

3 Here, Cranesbill bought the Property for just 5.2% of its fair market value. That grossly
4 inadequate sale price, combined with the undisputed evidence of unfairness and possible fraud in
5 the sale process, warrants voiding the HOA foreclosure sale.

6 1. *The HOA Sale was unfair and oppressive because the HOA and A&K*
7 *failed to provide adequate or accurate notice, and foreclosed after telling*
8 *Abelard they would not.*

9 The HOA Foreclosure Sale should be set aside in this case because the sales price was
10 severely inadequate and the sale was marked by conduct that was patently unfair and possibly
11 fraudulent. Cranesbill paid just \$4,900.00 for the Property, or 5.2% of the Property’s \$94,000.00
12 fair market value at the time of the sale. Ex. 19, Dugan Report. Where the price “inadequacy is
13 palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to
14 authorize the granting of the relief sought.” *Golden*, 79 Nev. at 515, 387 P.2d at 995 (internal
15 citation omitted); *Saticoy Bay Series 2227 Shadow Canyon*, 405 P.3d at 643 (“we adhere to the
16 observation in *Golden* that where the inadequacy of the price is great, a court may grant relief
17 based on slight evidence of fraud, unfairness, or oppression”).

18 An abundance of evidence supports setting aside the sale in this case, especially given the
19 great inadequacy in the sale price. First, the HOA and A&K acted unfairly and oppressively in
20 foreclosing on Abelard’s home despite Abelard’s complaints that her account records were not
21 accurate and that she had paid her outstanding monthly assessments, as well as A&K’s assurances
22 that her account had been placed on hold in the month before the HOA Foreclosure Sale so that
23 her complaints could be investigated. Second, the HOA and A&K failed to provide adequate
24 notice to Wells Fargo despite having knowledge of Wells Fargo’s recorded interest in the
25 Property, and cannot demonstrate that it even had a super-priority lien at the time of the HOA
26 Foreclosure Sale.

27 a. The HOA and A&K treated Abelard unfairly in foreclosing on her
28 home.

The HOA and A&K acted unfairly, indeed oppressively, in foreclosing on Abelard’s
property. In the eighteen months preceding the foreclosure sale, Abelard paid \$1,164.00 in

1 assessments and late fees against the \$1,119.00 in assessments that accrued during the same
2 period. *See* Undisputed Fact #10, *infra*. Taking into account that the HOA foreclosed on July 12,
3 2012, the only payment Abelard had not made in the year and a half before the foreclosure sale
4 was for June 2012, the last month before the HOA sold her home and during the time that
5 Abelard was contesting the HOA's records. *See* Undisputed Fact #10, *infra*. This fact alone
6 justifies setting aside the foreclosure sale.

7 Abelard raised the fact that she had always paid her assessments (albeit sometimes late)
8 on multiple occasions, but neither the HOA, Mesa, nor A&K took any action to verify Abelard's
9 insistence that she was not behind on her assessments when Mesa assumed management of the
10 HOA. Ex. 5, Wozniak Dep. at 21:10-25; Ex. 6, Endelman Dep. at 24:24-25:9, 31:11-34:24; Ex.
11 12, Alessi Dep. v. 1 at 46:3-23. Instead, they provided Abelard with a ledger beginning with an
12 "initial balance" of \$1,204.58; an amount Abelard denies owing. Ex. 15, Ledger; Ex. 3, Abelard
13 Dep. at 23:1-29:20.

14 There is no evidence that the HOA or A&K verified the accuracy of Abelard's account
15 records before foreclosing. To the contrary, the HOA did nothing despite Abelard's urging that
16 the records were wrong—in part because A&K apparently never informed the HOA of the
17 dispute. Ex. 6, Endelman Dep. at 31:11-34:24; 59:19-22. And Mesa, the management company
18 responsible for keeping and ensuring the accuracy of those records, admits that it couldn't verify
19 the prior management company's records. Ex. 5, Wozniak Dep. at 21:10-25. Despite that,
20 relying on Mesa's questionable ledger, A&K published notices asserting thousands of dollars in
21 past due assessments and other fees and costs. Ex. E to RJN, Notice of Lien; Ex. F to RJN, NOD;
22 Ex. G to RJN, Notice of Sale; Ex. 12, Alessi Dep. v. 1, at 46:3-23.

23 A&K then misled Abelard into believing it would not foreclose on her home while it
24 investigated her dispute over the validity of the alleged debt. When Abelard received the Notice
25 of Sale posted on her door, she immediately contacted A&K to dispute the validity of the debt.⁴
26 A&K representatives told her that *her account had been placed on hold* until management could
27 review it, and that they would contact her when that review was complete. Ex. 3, Abelard Dep. at
28

⁴ Abelard also contacted the Ombudsman as instructed in the Notice of Sale, and was told to contact A&K. Ex. 3, Abelard Dep. at 36:12-25.

1 29:21-30:14. Abelard called each week for an update, and each time was told that the account
2 was still on hold pending management review. Ex. 3, Abelard Dep. at 30:16-31:24. In the end,
3 A&K compounded Mesa's failure to ensure its records were accurate by foreclosing on Abelard's
4 home without ever advising Mesa or the Board of the pending dispute. Ex. 6, Endelman Dep. at
5 59:19-22. Finally, the HOA and A&K foreclosed on Abelard's Property *without ever informing*
6 *her that the hold had been removed from her account*. Ex. 3, Abelard Dep. at 30:10-20; Ex. 18,
7 Alessi Dep. v. 2 at 73:3-74:7. She only learned that her house had been sold when a copy of the
8 Trustee's Deed was posted on her door. Ex. 3, Abelard Dep. at 43:16-44:3.

9 In sum, Mesa failed to verify the accuracy of Abelard's account information despite
10 Abelard's complaint, and A&K foreclosed on Abelard's home based on faulty information and
11 after putting Abelard at ease by telling her that the foreclosure would not proceed without notice
12 to her. Under those circumstances, the foreclosure of Abelard's home was unfair, oppressive, and
13 possibly fraudulent. Combined with the very low sales price, these facts require voiding the
14 foreclosure sale.

15 b. The HOA and A&K treated Wells Fargo unfairly in attempting to
16 extinguish its interest in the Property.

17 The HOA and A&K also acted unfairly towards Wells Fargo in carrying out the
18 foreclosure because they failed to provide Wells Fargo with adequate notice of the HOA
19 Foreclosure Sale.

20 The HOA and A&K failed to serve a copy of the Notice of Default on a party whose
21 interest A&K and the HOA had notice of well in advance of the foreclosure proceedings. Wells
22 Fargo's interest in the Property was disclosed in the Notice of Default and Election to Sell
23 recorded by NDSC on Wells Fargo's behalf on November 1, 2010. A&K was plainly aware of
24 Wells Fargo's interest because it attempted to serve Wells Fargo with a copy of the Notice of Sale
25 but instead mailed it to NDSC. Ex. 14, Notice of Sale with Certified Mail Receipts. Despite that,
26 neither the HOA nor A&K ever served Wells Fargo with the Notice of Default, nor is there any
27 evidence of Wells Fargo having received either the Notice of Default or the Notice of Sale before
28 the HOA Foreclosure Sale.

1 The above facts illustrate that A&K and the HOA treated both Abelard and Wells Fargo
2 unfairly in foreclosing on Abelard's home. A&K ignored multiple red flags, failed to include the
3 Board in the decision to foreclose when new information came to light regarding Abelard's
4 dispute, unfairly misrepresented to Abelard that her account had been placed on hold and then
5 failed to notify her that the hold was lifted, and failed to send notice to Wells Fargo of the sale.
6 As a consequence, the Court should declare the HOA sale void. Alternatively, given the lack of
7 adequate notice to Wells Fargo and the evidence showing that the HOA did not have a
8 superpriority lien, the Court should declare that the Deed of Trust survived and that any interest
9 Cranesbill or Teal Petals has in the Property is subject to it.

10 2. *Cranesbill is not a bona fide purchaser because it had notice of the Deed*
11 *of Trust and because it did not provide valuable consideration.*

12 Cranesbill cannot assert the bona fide purchaser defense in this matter because it had
13 constructive, if not actual, notice of the Deed of Trust and because it did not provide valuable
14 consideration for the Property. "The bona fide doctrine protects a subsequent purchaser's title
15 against competing legal or equitable claims of which the purchaser had no notice at the time of
16 the conveyance." *25 Corp., Inc. v. Eisenman Chemical Co.*, 101 Nev. 664, 675, 709 P.2d 164,
17 172 (1985). The purchaser, however, is required to demonstrate that "the purchase was made in
18 good faith, for a valuable consideration." *Berge v. Fredericks*, 95 Nev. 183, 186, 591 P.2d 246,
19 247 (1979). Cranesbill cannot establish either of these requirements.

20 First, Cranesbill cannot show that it did not have notice of the Deed of Trust at the time it
21 purchased the Property. "Very little information is necessary to give actual or constructive
22 knowledge to a purchaser sufficient to defeat a bona fide purchaser defense." *Time Warner v.*
23 *Steadfast Orchard Park, L.P.*, 2008 WL 4350054, *10 (C.D. Cal. Sept. 23, 2008). Indeed,
24 "proper recording of a property interest is generally sufficient under state law to provide
25 constructive notice sufficient to defeat a bona fide purchaser." *Wonder-Bowl Properties v. Kim*,
26 161 B.R. 831, 836 (B.A.P 9th Cir. 1993).

27 Here, Cranesbill undoubtedly had notice of the Deed of Trust because it was properly
28 recorded against the Property nearly five years before the HOA Foreclosure Sale. Cranesbill
cannot reasonably claim that, even though the Deed of Trust was properly recorded against the

1 Property long before the HOA Sale, it did not have notice of the competing claim. Moreover, the
2 person who acted on Cranesbill's behalf in purchasing the Property, Iyad Haddad, is an
3 experienced real estate broker. Ex. 2, Cranesbill Dep. at 6:22-24. Haddad also testified that he is
4 well aware of how to access such public records and that he knew buying this Property likely
5 meant he was "buying a lawsuit." Ex. 2, Cranesbill Dep. at 41:18-42:16.

6 Cranesbill is also precluded from raising the bona fide purchaser defense because it did
7 not provide valuable consideration for the Property. Other courts in this district have addressed
8 these issues and found that similar sales did not constitute "valuable consideration." In *SFR*
9 *Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, the Court found that a \$7,000 purchase
10 price was one factor in determining that the plaintiff buyer was not a bona fide purchaser, because
11 the plaintiff did not provide valuable consideration for the property. **Exhibit 21**, Order in *SFR*
12 *Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, at 13-15 & n. 9, (August 5, 2013).
13 Another department likewise held that the purchaser at an HOA foreclosure sale was not a bona
14 fide purchaser, in part because plaintiff purchased for only \$3,743.84 and the deed of trust was
15 \$576,000. **Exhibit 22**, Order in *Design 3.2 LLC v. Bank of New York Mellon*, at 4 (April 8,
16 2013).

17 Here, the HOA Foreclosure Sale purchase price of \$4,900 is 5.2% of the fair market value
18 of the property at the time of the sale, \$94,000. Haddad acknowledges knowing that the sale
19 price was "much less" than fair market value. Ex. 2, Cranesbill Dep. at 55:12-56:3. But it was
20 not just "much less," it was grossly inadequate. And that grossly inadequate price, combined
21 with Cranesbill's constructive knowledge of the Deed of Trust and Wells Fargo's interest in the
22 Property, defeats any claim that Cranesbill was a bona fide purchaser.

23 **D. The Court Should Set Aside the HOA Foreclosure Sale Or Declare Wells**
24 **Fargo's Lien Valid Because Wells Fargo Did Not Receive Notice.**

25 *1. The sale violated NRS 116.3116 because the HOA and A&K did not send*
26 *notice to Wells Fargo.*

27 The HOA and A&K failed to provide Wells Fargo with required notice of the HOA
28 Foreclosure Sale. At the time of the HOA Foreclosure Sale, NRS 116.31163 required the person
conducting the sale to "mail, within 10 days after the notice of default and election to sell is

1 recorded, a copy of the notice” to “each holder of a recorded security interest encumbering the
2 unit owner’s interest who has notified the association, 30 days before the recordation of the notice
3 of default, of the existence of the security interest. This Court previously held, in rejecting Wells
4 Fargo’s facial due process challenge, that to be constitutionally valid, Chapter 116’s notice
5 requirements must be read as requiring the foreclosing homeowners’ association to provide notice
6 to:

7 (2) Any other person holding or claiming an interest subordinate to the
8 association’s lien [by mailing them] copies of the notice of default and election to
9 sell and the notice of sale....This catch-all provision exists to provide notice to any
other interested party whose identity is reasonably ascertainable.

10 Decision and Order Regarding Cranesbill’s and Teal Petals’ Motion to Dismiss Wells Fargo’s
11 Third-Party Complaint, at 11, attached as **Exhibit 22**.

12 The HOA and A&K failed to provide Wells Fargo with the statutorily required notice.
13 Wells Fargo was not the beneficiary of record of the Deed of Trust when A&K recorded and
14 mailed the Notice of Default. Its identity and its interest in the Property were, however, readily
15 ascertainable from a review of the records relating to the Property. Seven months before A&K
16 recorded the Lien, NDSC, acting on behalf of Wells Fargo, recorded a Notice of Default and
17 Election to Sell Under Deed of Trust. Ex. B to RJN. That document plainly states that NDSC is
18 acting on behalf of Wells Fargo and directs any inquiries regarding the notice to Wells Fargo.
19 Moreover, that document gave A&K actual knowledge of Wells Fargo’s interest, as evidenced by
20 the fact that A&K attempted to serve Wells Fargo with the Notice of Sale by mailing a copy to
21 NDSC. Ex. 14, Certified Mail Receipt. Yet, there is no evidence that A&K mailed a copy of the
22 Notice of Default to Wells Fargo, at any address. In failing to do so, A&K fell short of the
23 requirements of NRS 116.31163 and, thus, the foreclosure sale should be set aside. Alternatively,
24 assuming that proper notice was given to other interested parties, the foreclosure sale was
25 ineffective as to Wells Fargo, the Deed of Trust survived the HOA Foreclosure Sale, and
26 Cranesbill took title subject to the Deed of Trust.

2. *The failure to send Wells Fargo sufficient notice violated Wells Fargo's due process rights.*

Wells Fargo's due process rights were violated because it did not receive the notices, as just described. Even if it had received the notices – it did not – they were constitutionally inadequate to put Wells Fargo on notice that the Deed of Trust would be extinguished.

Constitutional notice is that which apprises “interested parties of the pendency of the action and afford[s] them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, “[t]he notice must be of such nature as reasonably to convey the required information” *Id.* Even where a mortgagee had actual knowledge of a delinquent payment of taxes, such knowledge was insufficient to satisfy due process because the mortgagee had to be notified that a tax sale was pending. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). Thus, the content of the notice “requires the best notice practical under the circumstances” *In re Drexel Burnham Lambert Gp. Inc.*, 995 F.2d 1138, 1144 (2nd Cir. 1993) (citing *Mullane*, 339 U.S. at 315). Courts balance the competing interests involved to determine whether the content of the notice meets due process standards. *E.g. Thomas v. Bd. of Trs. of Galveston Indep. Sch. Dist.*, 515 F. Supp. 280, 287 (S.D. Tex. 1981) (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)).

Here, even if they had been sent to Wells Fargo, neither the Notice of Default nor the Notice of Sale was reasonably calculated to notify Wells Fargo that the Deed of Trust could be extinguished if the HOA foreclosed. Exs. 13 and 14. Although the Notices notify the homeowner that she was in jeopardy of losing her home, neither notice makes a reference to the potential loss of priority of Wells Fargo's Deed of Trust. *See* Ex. 13 (“IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME...”); Ex. 14 (“UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME...”). Nothing in the notice informs a lender that the HOA was foreclosing on a superpriority lien. As such, even if the notices had been sent to Wells Fargo, they were not designed to put Wells Fargo on notice that its Deed of Trust could be extinguished, thereby violating Wells Fargo's due process rights.

1 **IV. CONCLUSION**

2 Based upon the foregoing, Wells Fargo respectfully requests that this Court grant
3 summary judgment in its favor on Cranesbill's claims against it and on Wells Fargo's
4 counterclaims against the HOA, Mesa, and A&K, and declare the HOA Foreclosure Sale void and
5 without effect. Alternatively, Wells Fargo requests the Court declare that Cranesbill took title
6 subject to the Deed of Trust.

7 Dated this 31st day of January, 2018.

SNELL & WILMER L.L.P.

8
9 By: /s/Daniel S. Ivie

Amy F. Sorenson, Esq.

Jeffrey Willis, Esq.

Erica J. Stutsman, Esq.

Daniel S. Ivie, Esq.

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 MOTION FOR SUMMARY JUDGMENT** by the method indicated:

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

and addressed to the following:

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

DATED this 31st day of January, 2018.

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

4825-6734-4730.5



CLERK OF THE COURT

ACOM

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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 9352 CRANESBILL TRUST; 9352
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.

Case No.: A-12-671509-C
Dept No.: XIV

**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

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., for
her Amended Complaint against Defendants, Iyad Haddad, Individually and as Trustee for 9352
Cranesbill Trust, 9352 Cranesbill Trust, Fort Apache Square Homeowners Association, Mesa

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

3 **I. INTRODUCTION**

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

12
13 2. Plaintiff Ms. Abelard seeks declaratory relief as an equitable remedy and/or
14 pursuant to NRS 30.101 et seq. for a declaration of the rights, status or other relations of the
15 parties, and primarily seeks a declaratory judgment to declare that Defendants Iyad Haddad and
16 Cranesbill Trust is without any right whatsoever, and have no legal or equitable right, claim or
17 interest in her property.
18

19 **II. STATEMENT OF COMPLETED MEDIATION**

20 3. Pursuant to Nev. Rev. Stat. 38.310, the parties participated in mediation on June
21 24, 2014 and an agreement was not reached. See attached Exhibit 1 (Affidavit, Mediation
22 Certificate and Statement).
23

24 If the parties participate in mediation and an agreement is not obtained, any party may
25 commence a civil action in the proper court concerning the claim that was submitted to
26 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.

27 Nev. Rev. Stat. Ann. § 38.330 (West)
28 ///

III. PARTIES

1
2 4. Plaintiff, Venise Abelard (hereinafter "Ms. Abelard") is and at all relevant times
3 herein has been a resident of the State of Nevada, Clark County.

4 5. Defendant Haddad (hereinafter "Haddad") and 9352 Cranesbill Trust (hereinafter
5 "Cranesbill Trust") claim to be the owner of the subject property and Cranesbill Trust is believed
6 to be a trust formed for the sole purpose of holding this property. Defendant Haddad was served
7 with the original summons and complaint on November 20, 2012 at 221 Desert View St., Las
8 Vegas, Nevada 89107.

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

21 8. Defendant Las Vegas Association Management, LLC, (hereinafter "LVAM") was
22 one of the management companies that the association used to manage the association property.
23 Defendant LVAM was served the original summons and complaint on November 20, 2012
24 through its registered agent, Yvonne Culliver, at 8871 W. Flamingo Rd, Ste. 202, Las Vegas,
25 Nevada 89147.

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

5 10. Pursuant to NRCP 10(a) and Bender v. Clark Equipment Co., 111 Nev. 844, 845,
6 897 P.2d 208, 209 (Nev., 1995), the identity of Defendants designated as DOES I through X,
7 inclusive and ROES I through X inclusive, are unknown at the present time and may be
8 individuals, partnerships, or corporations; however, it is alleged and believed that these
9 Defendants were involved in the initiation, approval, support, or execution of the wrongful acts
10 upon which this litigation is premised, or of similar actions directed against Plaintiff about which
11 he is presently unaware. As the specific identities of these parties are revealed through the
12 course of discovery, the DOE or ROE business entities appellation will be replaced to identify
13 these parties by their true names and capacities.

14
15
16 IV. FACTUAL ALLEGATIONS

17 11. Venise Abelard purchased the property at 9352 Cranesbill Court, Las Vegas, NV
18 89149 on or about November 27, 2007.

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

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

24
25
26 ///

27
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 17. On May 25, 2012, Ms. Abelard received a Notice of Trustee's Sale affixed to her
11 door. The Notice advised that the sale was for the purpose of satisfying the amount of \$3,
12 932.58 which Ms. Abelard owed on her assessments, including "reasonable costs, expenses and
13 advances at the time of the initial publication of the Notice of Sale ..." See attached Exhibit 5.

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

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

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

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

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 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."
23
24
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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 34. As a result, Plaintiff was damaged, but the nature and extent of her damages
7 depend upon whether or not the sale of her home is upheld herein, as alleged below.
8

9 **V. CLAIMS FOR RELIEF**

10 **A. First Claim For Relief - Declaratory Relief**
11 **(Defendants Haddad, Cranesbill Trust)**

12 35. Whether viewed as an equitable remedy for the legal theories of recovery
13 mentioned below, or as an equitable cause of action, Plaintiff also seeks a Declaratory Judgment.
14

15 36. The allegations contained in paragraphs 1 through 35 are restated and realleged as
16 though here fully set forth.

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

19 38. The facts of this case state a justiciable controversy in which a claim of right is
20 asserted against one who has an interest in contesting it.
21

22 39. The controversy is between persons whose interests are adverse.

23 40. Ms. Abelard has a legally protectable interest in the controversy.

24 41. The issue involved in the controversy is ripe for determination.

25 42. This court has the power by law to declare the rights, status and other legal
26 relations of the parties whether or not further relief is or could be claimed, and a declaration may
27
28

1 be either affirmative or negative in form and effect, and such declarations have the force and
2 effect of a final judgment or decree

3 43. Defendants Haddad and Cranesbill Trust claim an interest in the property adverse
4 to Plaintiff Ms. Abelard herein.

5 44. Ms. Abelard seeks declaration from this Court that the claim of Defendants
6 Haddad and Cranesbill Trust is without any right whatsoever, and said Defendants Haddad and
7 Cranesbill Trust have no legal or equitable right, claim or interest in said subject property.

8 45. Assuming Plaintiff prevails on her First and Second Claims for Relief, Plaintiff
9 has been damaged in having to assert her rights and has incurred attorney's fees and costs.
10

11 **B. Second Claim For Relief - Quiet Title**
12 **(Defendants Haddad, Cranesbill Trust)**

13 46. The allegations contained in paragraphs 1 through 45 are restated and realleged as
14 though here fully set forth.

15 47. Ms. Abelard acquired title to the property on or about November 27, 2007.

16 48. Defendants Haddad and Cranesbill Trust claim an interest in the subject property.

17 49. Any claim of Defendants Haddad and Cranesbill Trust to the subject property is
18 without any right whatsoever, and said Defendants do not have any estate, mortgage, title, or
19 interest in the said subject property or any part thereof.
20

21 50. Defendants Haddad and Cranesbill Trust cannot meet their burden of proving that
22 they are a bona fide purchaser for value.
23

24 51. Assuming Plaintiff prevails on her Second Claim for Relief, Plaintiff has been
25 damaged in having to assert her rights and has incurred attorney's fees and costs.
26

27 ///

28 ///

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

3 52. The allegations contained in paragraphs 1 through 51 are repeated and realleged
4 as if here fully set forth.

5 53. NRS 116.3116(1) provides generally that an HOA may record a lien against a unit
6 owner as follows:

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

14 54. As applicable here, only delinquent assessments and amounts enforceable as
15 assessments can trigger the legitimate steps toward lien enforcement by foreclosure sale, under
16 NRS 116.3116.

17 55. The Notice of Delinquent Assessment, Notice of Default and Election to Sell and
18 Notice of Sale filed by Alessi & Koenig against Ms. Abelard's property improperly included
19 costs which cannot be included in the lien to be enforced through foreclosure.
20

21 56. As here applicable, NRS 116.3116.3102(1)(j) through (n) mean that only
22 assessments and interest on unpaid assessments are enforceable by foreclosure sale.
23

24 57. As a result of the Defendant HOA, Mesa, LVAM, and A&K's failure to properly
25 prepare the notices to accurately reflect only the delinquent assessments and interest on unpaid
26 assessments owed pursuant to NRS 116.3116, Ms. Abelard was foreclosed upon and has suffered
27 financial and non-monetary losses.
28

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

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

7
8 **D. Fourth Claim For Relief - Deceptive trade practices violations pursuant to NRS**
9 **598.0923**
10 **(Defendants HOA, Mesa, LVAM, A&K)**

11 60. The allegations contained in paragraphs 1 through 59 are repeated and realleged
12 as if here fully set forth.

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

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

19
20 63. The Defendants HOA, Mesa, LVAM, and A&K have violated NRS 598.0923(3)
21 by knowingly violating the provisions of NRS 116 relating to the sale of services.

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

24
25 65. By violating NRS 598.0923(3), the Defendants engaged in "consumer fraud," as
26 that term is defined in NRS 41.600(2)(e).

27 ///

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

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

7
8 **E. Fifth Claim For Relief - FDCPA violation 15 U.S.C. § 1692f, 1692f(1) and 1692e(5).**
9 **(Defendant A&K)**

10 68. The allegations contained in paragraphs 1 through 67 are repeated and realleged
11 as if here fully set forth.

12 69. 15 U.S.C. § 1692a(6) defines "debt collector" as any person who uses any
13 instrumentality of interstate commerce or the mails in any business the principal purpose of
14 which is the collection of any debts . . ."

15
16 70. The management companies and the HOA hired A&K to collect on Ms. Abelard's
17 alleged debt to the HOA. As such, A&K is a debt collector. See NRS 649.020(1) and (3)(a).

18 71. 15 U.S.C. § 1692f prohibits a debt collector from using unfair or unconscionable
19 means to collect or attempt to collect any debt. Specifically, 15 U.S.C. § 1692f(1) prohibits "The
20 collection of any amount . . . unless such amount is expressly authorized by the agreement
21 creating the debt or permitted by law."

22
23 72. 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 73. The Defendant A&K violated the FDCPA by attempting to collect amounts, such
28 as collections costs and attorney's fees, that were not expressly authorized by the agreement

1 creating the debt or permitted by law by filing foreclosure liens and by foreclosure sale. See
2 NRS 116.3116(1).

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

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

9 76. As a result of Defendant A&K's violation of 15 U.S.C. § 1692f, 1692f(1) and
10 1692e(5), Plaintiff is entitled to statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
11 1692k(a)(2)(A).
12

13 77. Ms. Abelard is entitled to costs and reasonable attorney's fees under 15 U.S.C. §
14 1692k(a)(3).

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

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

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

24 80. The allegations contained in paragraphs 1 through 79 are repeated and realleged
25 as if here fully set forth.
26

27 81. Nevada law deems a relationship "fiduciary" when one party must to act for the
28 benefit of the other party. Hoopes v. Hammargren, 102 Nev. 425, 431 (1986). In other words, a

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

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

19 83. NRS 116A.630(1)(a) provides that a community manager acts as a fiduciary in
20 any client relationship.

21 84. Pursuant to NRS 116.3103, "[t]he executive board [of a homeowners association]
22 acts on behalf of the association. In the performance of their duties, the officers and members of
23 the executive board are fiduciaries and shall act on an informed basis, in good faith and in the
24 honest belief that their actions are in the best interest of the association."

26 85. The HOA and the management companies owed a special fiduciary duty to Ms.
27 Abelard.
28

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

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

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

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

13 89. The allegations contained in paragraphs 1 through 88 are restated and realleged
14 as though here fully set forth.
15

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

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

27 92. The HOA and management companies owed a special fiduciary duty to Ms.
28 Abelard as the HOA was created to protect homeowners.

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

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

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

11
12 96. 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 1. For actual damages in excess of Ten Thousand Dollars (\$10, 000.00);
18
19 2. Consequential damages in an amount to be proven at trial;
20
21 3. Statutory damages in the amount of \$1,000.00 under 15 U.S.C. §
22 1692k(a)(2)(A);
23
24 4. Attorney's fees pursuant to NRS 18.010(2)(a) in the event Ms. Abelard recovers
25 less than \$20,000.00.
26
27 5. That it be declared and adjudged that Plaintiff is the owner of the said subject
28 property, and that Defendant Cranesbill has no estate or interests whatsoever in
 or to said subject property and also that said Defendant Cranesbill be forever

1 barred from asserting any claim whatsoever in or to said subject property adverse
2 to Ms. Abelard or her successors in interest;

3 6. For a declaration and determination that Ms. Abelard is the rightful holder of title
4 to the subject property and that Defendant Cranesbill Trust be declared to have no
5 estate, right, title or interest in said property;

6
7 7. For judgment forever enjoining said Defendant Cranesbill Trust from claiming
8 any estate, right, title or interest in the subject property;

9 8. For Plaintiff's attorney fees;

10 9. For such other and further relief as the Court may deem just and equitable.

11 DATED this 12th day of September, 2014.

12
13 **LEGAL AID CENTER OF**
14 **SOUTHERN NEVADA, INC.**

15 /s/Debra Bookout
16 Debra A. Bookout, Esq.
17 Nevada Bar No. 11765C
18 Dan L. Wulz, Esq.
19 Nevada Bar No. 5557
20 **LEGAL AID CENTER OF**
21 **SOUTHERN NEVADA, INC.**
22 725 E. Charleston Blvd.
23 Las Vegas, NV 89101
24 Telephone: (702) 386-1070 x 1452
25 Facsimile: (702) 388-1452
26 dbookout@lacsnc.org
27 *Attorneys for Plaintiff Venise Abelard*
28

///

///

///

///

///

///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby requests a trial by jury.

3 DATED this 12th day of September, 2014.

4 **LEGAL AID CENTER OF**
5 **SOUTHERN NEVADA, INC.**

6 /s/Debra Bookout

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

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

9 **LEGAL AID CENTER OF**
10 **SOUTHERN NEVADA, INC.**

11 725 E. Charleston Blvd.

12 Las Vegas, NV 89101

13 Telephone: (702) 386-1070 x 1452

14 Facsimile: (702) 388-1452

15 dbookout@laesn.org

16 *Attorneys for Plaintiff Venise Abelard*

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that I served the following document: **AMENDED COMPLAINT**
19 **FOR DECLARATORY RELIEF, DAMAGES, VIOLATIONS OF THE FDCPA, FRAUD**
20 **AND DEMAND FOR JURY TRIAL** via the Court's electronic system (EFS E-File & Serve)
21 on September 12, 2014, to the following:

22 Michael F. Bohn, Esq.
23 Law Offices of Michael R. Bohn, Esq.
24 376 E. Warm Springs Road, Ste. 125
25 Las Vegas, NV 89119
26 mbohn@bohnlawfirm.com
27 office@bohnlawfirm.com

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

/s/ Amy Berlin

An employee of Legal Aid Center
of Southern Nevada Inc.

EXHIBIT 1

1 AFFT

2 DEBRA A. BOOKOUT, ESQ.

3 Nevada Bar No. 11765

4 LEGAL AID CENTER OF

5 SOUTHERN NEVADA, INC.

6 725 E. Charleston Blvd

7 Las Vegas, NV 89104

8 Telephone: (702) 386-1452

9 Facsimile: (702) 386-1452

10 dbookout@lacsu.org

11 Attorney for Plaintiff Venise Abelard

12 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13 IN AND FOR THE COUNTY OF CLARK

14 VENISE ABELARD,

15 Plaintiff,

16 vs.

17 IYAD HADDAD, Individually and as Trustee
18 for 9352 CRANESBILL TRUST; 9352
19 CRANESBILL TRUST; FORT APACHE
20 SQUARE HOMEOWNERS ASSOCIATION;
21 MESA MANAGEMENT, LLC; LAS VEGAS
22 ASSOCIATION MANAGEMENT, LLC;
23 ALESSI & KOENIG, LLC; and DOES I
24 through X, and ROE COMPANIES I through
25 X, inclusive,

26 Defendants.

Case No.: A-12-671509-C

Dept No.: XIV

27 AFFIDAVIT OF DEBRA BOOKOUT, ESQ.

28 STATE OF NEVADA)

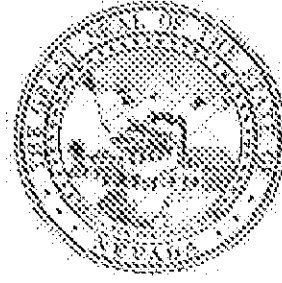
) ss:

COUNTY OF CLARK)

I, DEBRA BOOKOUT, ESQ., after first being duly sworn, deposes and states as follows:

1. I am employed with the Legal Aid Center of Southern Nevada as an attorney and
duly licensed in the State of Nevada.

2. I am the attorney of record for Plaintiff Venise Abelard.



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS PROGRAM
CICombudsman@red.state.nv.us
<http://www.red.state.nv.us>

BRUCE H. BRESLOW
Director

GAIL J. ANDERSON
Administrator

SHARON JACKSON
Ombudsman

COMPLETION CERTIFICATE

June 24, 2014

Venise Abelard
c/o Michael Joe, Esq.
Legal Aid Center of Southern NV
725 E. Charleston Boulevard
Las Vegas, NV 89104

Fort Apache Square Homeowners Association
Alessi & Koenig, LLC
Mesa Management, LLC
c/o Alessi & Koenig, LLC
9500 W. Flamingo Road – Suite 205
Las Vegas, NV 89147

Alternative Dispute Resolution (ADR) Control #: 14-106/ Mediation (Unsuccessful)

Claimant(s): Venise Abelard c/o Michael Joe, Esq.
Respondent(s): Fort Apache Square Homeowners Association, Alessi & Koenig, Mesa Management LLC c/o Alessi & Koenig, LLC

Dear Sir or Madam:

This document will serve as a certificate for the Claimant(s), and Respondent(s) certifying they have completed the Alternative Dispute Resolution process as required by NAC 38.

Anne Conard
Administrative Assistant III
Office of the Ombudsman

cc: File

STATE OF NEVADA
COUNTY OF CLARK

Arbitration and Mediation Solutions, Inc.
5546 Camino Al Norte Ste. 2-449
North Las Vegas, NV 89031

MEDIATION RESULT

Mediator: Dee Newell, J. D. Mediation Date(s): June 24, 14
Case Name: Venise Abelard v Fort Apache Square/Mesa Management Case Number: 14-106
CI Petitioner: Venise Abelard CI Counsel: Michael Joe, Esq.
Resp: Fort Apache Square HOA/Mesa Management Resp Counsel: Bradley Bace, Esq.
Alessi + Koenig
Starting Time: 2:00 pm Ending Time: _____

Outcome

- ☐ The Charge/Dispute has been resolved. Agreement is attached.
☒ The Parties have reached an impasse and the charge/dispute is not resolved.
☐ The Matter has been continued until _____ for further mediation.

The terms of the Agreement reached are as follows:

Attachment Yes ☐ No ☐

The Parties further agree that the mediator will be held harmless for any claim arising from the mediation process.

Charging Party _____ Date _____
(signature)

Charging Party's Representative Michael Joe Date 6/24/14
(signature)

Respondent _____ Date _____
(signature)

Respondent's Representative [Signature] Date 6/24/14
(signature)

Mediator Dee Newell Date 6/24/14
(signature)

EXHIBIT 2

DAVID ALESSI¹
THOMAS BAYARD²
ROBERT KOENIG³
RYAN KERGOW⁴
HUONG LAM⁵

¹ Admitted to the California Bar
² Admitted to the California, Nevada
and Colorado Bar
³ Admitted to the Nevada Bar
⁴ Admitted to the Nevada and California Bar



9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-737-9606

RENO NV
PHONE: 775-636-2323

DIAMOND BAR CA
PHONE: 909-843-6590

June 28, 2011

LIEN LETTER

VIA REGULAR AND CERTIFIED MAIL

ABELARD VENISE & COMPERE MARCUS
9352 CRANESBILL CT
LAS VEGAS, NV 89149

Re: Fort Apache Square Homeowners Association/9352 CRANESBILL CT/HO #27031

Dear ABELARD VENISE & COMPERE MARCUS:

Our office has been retained by Fort Apache Square Homeowners Association to collect the past due assessment balances on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Fort Apache Square Homeowners Association on June 28, 2011. The total amount due is \$2,398.58. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig. Cash will not be accepted.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that you dispute the debt, or any portion thereof, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require our office to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins when you receive this notice, we are required to suspend efforts to collect the debt until we are advised that you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive payment of \$2,398.58, a Notice of Default will be recorded in the public records and additional fees and costs. Should you fail to reinstate your account, we will proceed with foreclosure of the lien.

Sincerely,

ALESSI & KOENIG
Gina Garcia, Legal

Please be advised that Alessi & Koenig, LLC is a debt collector the information obtained will be used for

U.S. Postal Service	
CERTIFIED MAIL - RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	
Collection Fee	
Return Receipt Fee (Insurance Required)	
Registered Mail Fee (Insurance Required)	
ABELARD VENISE & COMPERE MARCUS 9352 CRANESBILL CT LAS VEGAS, NV 89149	
JUL 30 2011	

EXHIBIT 3

Inst#: 201107120001465
Fees: \$14.00
N/C Fee: \$0.00
07/12/2011 09:06:26 AM
Receipt #: 841388
Requestor:
ALESSI & KOENIG LLC (JUNE8
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-18-513-016

Trustee Sale # 27031-9352

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, Fort Apache Square Homeowners Association has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 9352 CRANESBILL CT, LAS VEGAS, NV 89149 and more particularly legally described as: LOT 16 BLOCK B Book 123 Page 73 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): ABELARD VENISE & COMPERE MARCUS

The mailing address(es) is: 9352 CRANESBILL CT, LAS VEGAS, NV 89149

The total amount due through today's date is: \$2,337.58. Of this total amount \$2,262.58 represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. \$75.00 represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: June 28, 2011

By:

Gina Garcia

Gina Garcia - Legal Assistant

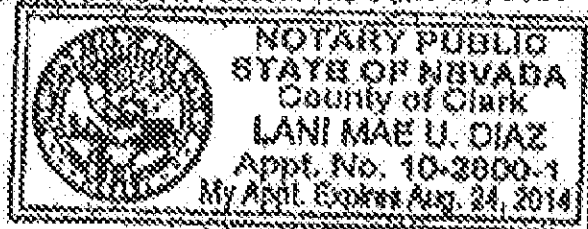
Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me June 28, 2011

(Seal)



(Signature)

NOTARY PUBLIC

EXHIBIT 4

Inst #: 201109160001788

Fee: \$14.00

N/C Fee: \$0.00

08/15/2011 09:53:38 AM

Receipt #: 013002

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 125-18-513-016

Trustee Sale No. 27031-9352

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,403.58 as of August 25, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Fort Apache Square Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 12, 2011 as document number 0001465, of Official Records in the County of Clark, State of Nevada. Owner(s): ABELARD VENISE & COMPERE MARCUS, of LOT 16 BLOCK B, as per map recorded in Book 123, Pages 73, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 12, 2011, executed by Fort Apache Square Homeowners Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 25, 2011



Gina Garcia, Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

EXHIBIT 5

Inet #: 201205070002188
Fees: \$17.00
N/C Fee: \$0.00
06/07/2012 02:51:04 PM
Receipt #: 1166288
Requestor:
ALESSI & KOENIG LLC
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-18-513-016

TSN 27031-9352

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

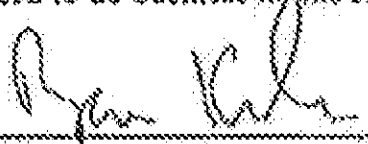
NOTICE IS HEREBY GIVEN THAT:

On June 06, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 12, 2011, as instrument number 0001465, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

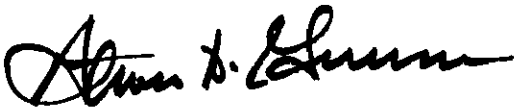
The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.58. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012



By: Ryan Korb, Esq. of Alessi & Koenig LLC on behalf of Fort Apache Square Homeowners Association


CLERK OF THE COURT

1 **AACC**
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 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.

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FIFTH CLAIM FOR RELIEF

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

SEVENTH CLAIM FOR RELIEF

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

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

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

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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

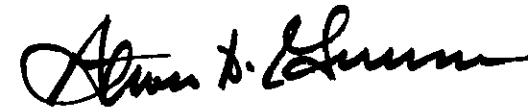
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CERTIFICATE OF SERVICE

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

- Ryan M. Kerbow, Esq.
Alessi & Koenig, LLC.
9500 W. Flamingo Rd., #205
Las Vegas, NV 89147
- Michael Joe, Esq.
Legal Aid Center
800 S. Eighth St.
Las Vegas, NV 89101

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



CLERK OF THE COURT

CCAN
Debra A. Bookout, Esq.
Nevada Bar No.: 11765C
Dan L. Wulz, Esq.
Nevada Bar No.: 5557
**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**
725 E. Charleston Blvd.
Las Vegas, NV 89101
Telephone: (702) 386-1070 x 1452
Facsimile: (702) 388-1452
dbookout@lacsnn.org
Attorneys for Plaintiff Venise Abelard

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

Case No.: A-12-671509-C
Dept No.: XIV

**ANSWER TO DEFENDANT HADDAD
AND 9352 CRANESBILL TRUSTS'
COUNTERCLAIM**

IYAD HADDAD, Individually and as Trustee
for 9352 CRANESBILL TRUST; 9352
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.

9352 CRANESBILL TRUST

Defendant/Counter-Claimant,

Vs.

VENISE ABELARD,

Plaintiff/Counter-Defendant.

1 Plaintiff, VENISE ABELARD, (hereinafter referred to as "Plaintiff" or
2 "Plaintiff/Counter-Defendant) by and through her attorney of record, Debra A. Bookout, Esq., of
3 Legal Aid Center of Southern Nevada, Inc., hereby submits this Answer to Defendant Haddad
4 and 9352 Cranesbill Trusts' Counterclaim to the Amended Complaint in the above-entitled
5 action, and alleges and states as follows:
6

7 1. Answering paragraphs 1, 2, 3 and 4 of Defendant/Counter-Claimant's
8 Counterclaim, Plaintiff/Counter-Defendant DENIES each and every allegation contained therein.

9 2. Answering paragraphs 5, 6, 7, 9, and 10 of Defendant/Counter-Claimant's
10 Counterclaim, Plaintiff/Counter-Defendant contends that said claims call for a legal finding or
11 conclusion which do not require an answer. Additionally, and in the alternative,
12 Plaintiff/Counter-Defendant does not have sufficient knowledge or information upon which to
13 base a belief as to the truth of the allegation contained in paragraphs 5, 6, 7, 9, and 10 and
14 therefore Defendant DENIES each and every allegation contained therein.
15

16 **AFFIRMATIVE DEFENSES**

17 3. Abelard denies any and all liability in this matter and alleges the following as
18 an Affirmative Defense:
19

20 **FIRST AVOIDANCE/AFFIRMATIVE DEFENSE**

21 4. In acquiring the subject property, Abelard signed a Promissory Note and Deed of
22 Trust on November 20, 2007. Wells Fargo Bank NA (hereafter "Wells Fargo") is the current
23 holder of the Promissory Note and beneficiary of the Deed of Trust, which transaction is insured
24 by the Federal Housing Authority ("FHA"). The involvement of a federal entity in this case
25 implicates the Property and Supremacy Clauses of the Constitution of the United States and
26 prevents Defendant's foreclosure seller Fort Apache Square Homeowners Association and
27
28

1 Defendants Haddad and 9352 Cransebill Trust from purportedly extinguishing under state law
2 the interests of Wells Fargo and the FHA. The Defendant's Counterclaim for quiet title must
3 fail for this reason. Further, as Defendant's Counterclaim for quiet title necessarily involves the
4 interests of the holder of the Promissory Note and beneficiary of the Deed of Trust, Wells Fargo
5 is a person needed for a just adjudication in need of being joined herein pursuant to NRCP 19.
6

7 **WHEREFORE**, this Answering Defendant prays that this Honorable Court will:

- 8 a. For actual damages in excess of Ten Thousand Dollars (\$10,000.00);
- 9 b. Consequential damages in an amount to be proven at trial;
- 10 c. Statutory damages in the amount of \$1000.00 under 15 U.S.C. §
11 1692k(a)(2)(A);
- 12 d. Attorney's fees pursuant to NRS 18.010(2)(a) in the event Ms. Abelard
13 recovers less than \$20,000.00;
- 14 e. That it be declared and adjudged that Plaintiff is the owner of the said
15 property, and that Defendant Cranesbill Trust has no estate or interests
16 whatsoever in or to said subject property and also that said Cranesbill
17 Trust be forever barred from asserting any claim whatsoever in or to said
18 subject property adverse to Ms. Abelard or her successors in interest;
- 19 f. For a declaration and determination that Ms. Abelard is the rightful
20 holder of title to the subject property and that Defendant Cransebill Trust
21 be declared to have no estate, right or interest in said property;
- 22 g. For judgment forever enjoining Defendant Cranesbill Trust from
23 claiming any estate, right, title or interest in the subject property;
- 24 h. For Plaintiff's attorney's fees;

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1 i. For such other and further relief as the Court may deem just and
2 equitable.

3 DATED this 20th day of November, 2014.

4 **LEGAL AID CENTER OF**
5 **SOUTHERN NEVADA, INC.**

6 /s/Debra Bookout

7 Debra A. Bookout, Esq.
8 Nevada Bar No. 11765C
9 Dan L. Wulz, Esq.
10 Nevada Bar No. 5557

11 **LEGAL AID CENTER OF**
12 **SOUTHERN NEVADA, INC.**

13 725 E. Charleston Blvd.
14 Las Vegas, NV 89101
15 Telephone: (702) 386-1070 x 1452
16 Facsimile: (702) 388-1452
17 dbookout@lacsni.org

18 *Attorneys for Plaintiff Venise Abelard*

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that I served the following **ANSWER TO DEFENDANT HADDAD AND**

21 **9352 CRANESBILL TRUSTS' COUNTERCLAIM** via the Court's electronic system (EFS E-

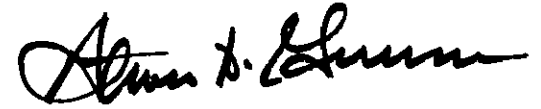
22 File & Serve) on November 20, 2014, to the following:

23 Michael F. Bohn, Esq.
24 Law Offices of Michael R. Bohn, Esq.
25 376 E. Warm Springs Road, Ste. 125
26 Las Vegas, NV 89119
27 mbohn@bohnlawfirm.com
28 office@bohnlawfirm.com

Bradley Bace
Alessi and Koenig
9500 W. Flamingo Road, #208
Las Vegas, NV 89147
eserve@alessikoenig.com

/s/ Amy Berlin

An employee of Legal Aid Center
of Southern Nevada Inc.



CLERK OF THE COURT

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

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

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

PRAYER

WHEREFORE, Intervenor Wells Fargo prays for judgment as follows:

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

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.
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asorenson@swlaw.com
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*Attorneys for Intervenor/Counterclaimant
Wells Fargo Bank, N.A.*

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

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

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

///

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 ///

(Declaratory Relief Under Amendments V and XIV to the United States Constitution -- Due Process Clauses, Quiet Title -- Against Counter Defendant, Cross-Defendants and Third-Party Defendant)

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

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

51. Any purported notice provided was inadequate, insufficient, and in violation of Wells Fargo's rights to due process under the Fifth and Fourteenth Amendment to the United States Constitution.

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

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

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

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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

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.

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.

///

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;

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

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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:

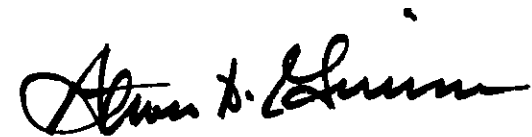
- _____ U. S. Mail
- _____ U.S. Certified Mail
- _____ Facsimile Transmission
- _____ Federal Express
- X Electronic Service through Wiznet
- _____ E-mail

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.



CLERK OF THE COURT

1 **XCAN**

2 Chantel M. Schimming, Esq.

3 Nevada Bar No. 8886

4 ALESSI & KOENIG, LLC

5 9500 W. Flamingo, Suite 205

6 Las Vegas, Nevada 89147

7 Phone: (702) 222-4033

8 Fax: (702) 254-9044

9 Email: chantel@alessikoenig.com

10 *Attorney for Defendants/Cross-Defendants*

11 *Fort Apache Square Homeowners Association*

12 *and Alessi & Koenig, LLC*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 VENISE ABELARD,

16 Plaintiff,

17 vs.

18 9352 CRANESBILL TRUST; FORT
19 APACHE SQUARE HOEMOWNERS
20 ASSOCIATION; MESA MANAGEMENT,
21 LLC; BENCHMARK ASSOCIATION
22 SERVICES; IYAD HADDAD, an individual;
23 ALESSI & KOENIG, LLC; NEVADA
24 ASSOCIATION SERVICES and DOES I
25 through X and ROE COMPANIES I through
26 X, inclusive,

27 Defendants.

28 9352 CRANESBILL TRUST,

Counterclaimant,

vs.

VENISE ABELARD,

Counter-Defendant.

Case No. A-12-671509-C

Dept. No. VII

FORT APACHE SQUARE
HOMEOWNERS ASSOCIATION
AND ALESSI & KOENIG, LLC'S
ANSWER TO WELLS FARGO
BANK, N.A.'S CROSS-CLAIM

WELLS FARGO BANK, N.A.,
Intervenor/Counterclaimant,
vs.
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.

**FORT APACHE SQUARE HOMEOWNERS ASSOCIATION AND ALESSI &
KOENIG, LLC’S ANSWER TO WELLS FARGO BANK, N.A.’S CROSS-CLAIM**

COME NOW, Defendants/Cross-Defendants, FORT APACHE SQUARE
HOMEOWNERS ASSOCIATION and ALESSI & KOENIG, LLC (“Cross-Defendants”), by
and through their attorney of record, Chantel M. Schimming, Esq., of ALESSI & KOENIG,
LLC, and hereby files their Answer to Intervenor/Counter-Claimant/Cross-Claimant/Third-

1 Party Plaintiff, WELLS FARGO BANK, N.A.'s Cross-claim ("Cross-Claim") as follows:

2 **PARTIES, JURISDICTION, AND VENUE**

3 1. The document referenced in paragraph 1 of the Cross-Claim speaks for itself,
4 and Cross-Defendants deny any allegations inconsistent with said document. However, to the
5 extent that paragraph 1 alleges the subject deed of trust is currently a valid instrument, for
6 which there may be a current beneficiary, Cross-Defendants deny said allegation.
7

8 2. Answering paragraph 2 of the Cross-Claim, Cross-Defendants are without
9 sufficient information or knowledge to form a belief as to the truth of the allegations contained
10 therein and therefore deny the same.
11

12 3. Answering paragraph 3 of the Cross-Claim, Cross-Defendants admit the
13 allegations contained therein.

14 4. Answering paragraph 4 of the Cross-Claim, Cross-Defendants admit the
15 allegations contained therein.

16 5. Answering paragraph 5 of the Cross-Claim, Cross-Defendants are without
17 sufficient information or knowledge to form a belief as to the truth of the allegations contained
18 therein and therefore deny the same.
19

20 6. Answering paragraph 6 of the Cross-Claim, Cross-Defendants neither admit nor
21 deny the allegations contained therein as said allegations are not directed toward Cross-
22 Defendants. To the extent a response is required, Cross-Defendants deny the allegations
23 contained therein.
24

25 7. The allegations in paragraph 7 of the Cross-Claim state legal conclusions to
26 which no response is required. Notwithstanding, to the extent paragraph 7 does require a
27 response, Cross-Defendants admit that this action relates to the ownership and title of certain
28

1 real property located in Clark County, Nevada.

2 **GENERAL ALLEGATIONS**

3 8. Answering paragraph 8 of the Cross-Claim, Cross-Defendants deny the
4 allegations contained therein.

5 9. The statutes referenced in paragraph 9 of the Cross-Claim speak for themselves
6 and Cross-Defendants deny any allegations inconsistent with said statutes. Further, the
7 allegations in paragraph 9 state legal conclusions to which no response is required.
8 Notwithstanding, to the extent paragraph 9 does require a response, Cross-Defendants deny the
9 factual allegations contained therein.
10

11 10. The statutes referenced in paragraph 10 of the Cross-Claim speak for
12 themselves and Cross-Defendants deny any allegations inconsistent with said statutes. Further,
13 the allegations in paragraph 10 state legal conclusions to which no response is required.
14 Notwithstanding, to the extent paragraph 10 does require a response, Cross-Defendants deny
15 the factual allegations contained therein.
16

17 11. The documents referenced in paragraph 11 of the Cross-Claim speak for
18 themselves and Cross-Defendants deny any allegations inconsistent with said documents.
19 Cross-Defendants are without sufficient information or knowledge to form a belief as to the
20 truth of the remaining allegations contained therein and therefore deny the same.
21

22 12. Answering paragraph 12 of the Cross-Claim, Cross-Defendants are without
23 sufficient information or knowledge to form a belief as to the truth of the allegations contained
24 therein and therefore deny the same.
25

26 13. The documents referenced in paragraph 13 of the Cross-Claim speak for
27 themselves and Cross-Defendants deny any allegations inconsistent with said documents.
28

1 14. The documents referenced in paragraph 14 of the Cross-Claim speak for
2 themselves and Cross-Defendants deny any allegations inconsistent with said documents.

3 15. The documents referenced in paragraph 15 of the Cross-Claim speak for
4 themselves and Cross-Defendants deny any allegations inconsistent with said documents.

5 16. The documents referenced in paragraph 16 of the Cross-Claim speak for
6 themselves and Cross-Defendants deny any allegations inconsistent with said documents.

7 17. The documents referenced in paragraph 17 of the Cross-Claim speak for
8 themselves and Cross-Defendants deny any allegations inconsistent with said documents.
9 Cross-Defendants are without sufficient information or knowledge to form a belief as to the
10 truth of the remaining allegations contained therein and therefore deny the same.
11

12 18. The document referenced in paragraph 18 of the Cross-Claim speaks for itself,
13 and Cross-Defendants deny any allegations inconsistent with said document. However, to the
14 extent that paragraph 18 alleges the subject deed of trust is currently a valid instrument, for
15 which there may be a current beneficiary, Cross-Defendants deny said allegation.
16

17 19. The document referenced in paragraph 19 of the Cross-Claim speaks for itself,
18 and Cross-Defendants deny any allegations inconsistent with said document. However, to the
19 extent that paragraph 19 alleges the subject deed of trust is currently a valid instrument, for
20 which there may be a current beneficiary, Cross-Defendants deny said allegation.
21

22 20. The allegations contained in paragraph 20 of the Cross-Claim state legal
23 conclusions for which no response is required. However, to the extent that paragraph 20
24 alleges the subject deed of trust is currently a valid instrument, for which there may be a
25 current beneficiary, Cross-Defendants deny said allegation. To the extent paragraph 20
26 requires additional response, Cross-Defendants deny the factual allegations contained therein
27
28

1 21. Answering paragraph 21 of the Cross-Claim, Cross-Defendants deny the
2 allegations contained therein.

3 22. Answering paragraph 22 of the Cross-Claim, Cross-Defendants deny the
4 allegations contained therein.

5 23. Answering paragraph 23 of the Cross-Claim, Cross-Defendants deny the
6 allegations contained therein.

7 24. Answering paragraph 24 of the Cross-Claim, Cross-Defendants deny the
8 allegations contained therein.

9 25. Answering paragraph 25 of the Cross-Claim, Cross-Defendants deny the
10 allegations contained therein.

11 26. Answering paragraph 26 of the Cross-Claim, Cross-Defendants deny the
12 allegations contained therein.

13 27. The allegations contained in paragraph 27 of the Cross-Claim state legal
14 conclusions for which no response is required. Notwithstanding, to the extent paragraph 27
15 does require a response, Cross-Defendants deny the factual allegations contained therein.

16 28. The allegations contained in paragraph 28 of the Cross-Claim state legal
17 conclusions for which no response is required. Notwithstanding, to the extent paragraph 28
18 does require a response, Cross-Defendants deny the factual allegations contained therein.

19 29. Answering paragraph 29 of the Cross-Claim, Cross-Defendants deny the
20 allegations contained therein.

21 30. Answering paragraph 30 of the Cross-Claim, Cross-Defendants deny the
22 allegations contained therein.

23 31. Answering paragraph 31 of the Cross-Claim, Cross-Defendants deny the
24 allegations contained therein.

1 allegations contained therein.

2 32. Answering paragraph 32 of the Cross-Claim, Cross-Defendants deny the
3 allegations contained therein.

4 33. Answering paragraph 33 of the Cross-Claim, Cross-Defendants deny the
5 allegations contained therein.

6 34. Answering paragraph 34 of the Cross-Claim, Cross-Defendants admit the
7 allegations contained therein.

8 35. Answering paragraph 35 of the Cross-Claim, Cross-Defendants are without
9 sufficient information or knowledge to form a belief as to the truth of the allegations contained
10 therein and therefore deny the same.

11 36. Answering paragraph 36 of the Cross-Claim, Cross-Defendants deny the
12 allegations contained therein.

13 37. Answering paragraph 37 of the Cross-Claim, Cross-Defendants are without
14 sufficient information or knowledge to form a belief as to the truth of the allegations contained
15 therein and therefore deny the same.

16
17
18
19 **FIRST CAUSE OF ACTION**

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

23 38. Answering paragraph 38 of the Cross-Claim, Cross-Defendants repeat and
24 reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

25 39. The statute referenced in paragraph 39 of the Cross-Claim speaks for itself and
26 Cross-Defendants deny any allegations inconsistent with said statute.

27 40. The allegations contained in paragraph 40 of the Cross-Claim state legal
28

1 conclusions for which no response is required. Notwithstanding, to the extent paragraph 40
2 does require a response, Cross-Defendants deny the factual allegations contained therein.

3 41. The allegations contained in paragraph 41 of the Cross-Claim state legal
4 conclusions for which no response is required. Notwithstanding, to the extent paragraph 41
5 does require a response, Cross-Defendants deny the factual allegations contained therein.
6

7 42. Answering paragraph 42 of the Cross-Claim, Cross-Defendants deny the
8 allegations contained therein.

9 43. Answering paragraph 43 of the Cross-Claim, Cross-Defendants deny the
10 allegations contained therein.

11 44. Answering paragraph 44 of the Cross-Claim, Cross-Defendants are without
12 sufficient information or knowledge to form a belief as to the truth of the allegations contained
13 therein and therefore deny the same.
14

15 45. Answering paragraph 45 of the Cross-Claim, Cross-Defendants are without
16 sufficient information or knowledge to form a belief as to the truth of the allegations contained
17 therein and therefore deny the same.
18

19 46. Answering paragraph 46 of the Cross-Claim, Cross-Defendants deny the
20 allegations contained therein.

21 47. Answering paragraph 47 of the Cross-Claim, Cross-Defendants deny the
22 allegations contained therein.
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SECOND CAUSE OF ACTION

**(Declaratory Relief Under Amendments V and XIV to the United States Constitution –
Due Process Clauses, Quiet Title – Against Counter Defendant, Cross-Defendants and
Third Party Defendant)**

48. Answering Paragraph 48 of the Cross-Claim, Cross-Defendants repeat and reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

49. The statute referenced in paragraph 49 of the Cross-Claim speaks for itself and Cross-Defendants deny any allegations inconsistent with said statute.

50. The allegations contained in paragraph 50 of the Cross-Claim state legal conclusions for which no response is required. Notwithstanding, to the extent paragraph 50 does require a response, Cross-Defendants deny the factual allegations contained therein.

51. Answering paragraph 51 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

52. Answering paragraph 52 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

53. Answering paragraph 53 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

54. Answering paragraph 54 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

55. Answering paragraph 55 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

56. Answering paragraph 56 of the Cross-Claim, Cross-Defendants deny the

allegations contained therein.

THIRD CAUSE OF ACTION

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

57. Answering Paragraph 57 of the Cross-Claim, Cross-Defendants repeat and reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

58. The statute referenced in paragraph 58 of the Cross-Claim speaks for itself and Cross-Defendants deny any allegations inconsistent with said statute.

59. The statute referenced in paragraph 59 of the Cross-Claim speaks for itself and Cross-Defendants deny any allegations inconsistent with said statute.

60. Answering paragraph 60 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

61. Answering paragraph 61 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

62. The allegations contained in paragraph 62 of the Cross-Claim state legal conclusions for which no response is required. Notwithstanding, to the extent paragraph 62 does require a response, Cross-Defendants deny the factual allegations contained therein.

63. Answering paragraph 63 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

64. Answering paragraph 64 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

1 65. Answering paragraph 65 of the Cross-Claim, Cross-Defendants are without
2 sufficient information or knowledge to form a belief as to the truth of the allegations contained
3 therein and therefore deny the same.

4 66. Answering paragraph 66 of the Cross-Claim, Cross-Defendants are without
5 sufficient information or knowledge to form a belief as to the truth of the allegations contained
6 therein and therefore deny the same.

7
8 67. Answering paragraph 67 of the Cross-Claim, Cross-Defendants deny the
9 allegations contained therein.

10 68. Answering paragraph 68 of the Cross-Claim, Cross-Defendants deny the
11 allegations contained therein.

12
13 **FOURTH CAUSE OF ACTION**

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

15 69. Answering Paragraph 69 of the Cross-Claim, Cross-Defendants repeat and
16 reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

17
18 70. The allegations contained in paragraph 70 of the Cross-Claim state legal
19 conclusions for which no response is required. Notwithstanding, to the extent paragraph 70
20 does require a response, Cross-Defendants deny the factual allegations contained therein.

21 71. Answering paragraph 71(a) through 71(c) of the Cross-Claim, Cross-Defendants
22 deny the allegations contained therein.

23
24 72. The allegations contained in paragraph 72 of the Cross-Claim state legal
25 conclusions for which no response is required. Notwithstanding, to the extent paragraph 72
26 does require a response, Cross-Defendants deny the factual allegations contained therein.

1 73. Answering paragraph 73 of the Cross-Claim, Cross-Defendants deny the
2 allegations contained therein.

3 74. Answering paragraph 74 of the Cross-Claim, Cross-Defendants deny the
4 allegations contained therein.

5 75. Answering paragraph 75 of the Cross-Claim, Cross-Defendants deny the
6 allegations contained therein.

7 76. Answering paragraph 76 of the Cross-Claim, Cross-Defendants deny the
8 allegations contained therein.

9 77. Answering paragraph 77 of the Cross-Claim, Cross-Defendants deny the
10 allegations contained therein.

11 78. Answering paragraph 78 of the Cross-Claim, Cross-Defendants deny the
12 allegations contained therein.

13 79. Answering paragraph 79 of the Cross-Claim, Cross-Defendants deny the
14 allegations contained therein.

15 **FIFTH CAUSE OF ACTION**

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

17 80. Answering Paragraph 80 of the Cross-Claim, Cross-Defendants repeat and
18 reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

19 81. Answering paragraph 81 of the Cross-Claim, Cross-Defendants deny the
20 allegations contained therein.

21 82. Answering paragraph 82 of the Cross-Claim, Cross-Defendants deny the
22 allegations contained therein.

23 / / /

SIXTH CAUSE OF ACTION

**(Intentional Interference with Contract Against
Counter Defendant, Cross-Defendants, and Third-Party Defendant)**

83. Answering Paragraph 83 of the Cross-Claim, Cross-Defendants repeat and reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

84. Answering paragraph 84 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

85. Answering paragraph 85 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

86. Answering paragraph 86 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

87. Answering paragraph 87 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

88. Answering paragraph 88 of the Cross-Claim, Cross-Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and therefore deny the same.

89. Answering paragraph 89(a) through 89(c) of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

90. Answering paragraph 90 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

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SEVENTH CAUSE OF ACTION

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

91. Answering Paragraph 91 of the Cross-Claim, Cross-Defendants repeat and reaffirm the answers contained in the preceding paragraphs as if fully set forth at length herein.

92. Answering paragraph 92 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

93. Answering paragraph 93 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

94. Answering paragraph 94 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

95. Answering paragraph 95 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

96. Answering paragraph 96 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

97. Answering paragraph 97 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

98. Answering paragraph 98 of the Cross-Claim, Cross-Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

Cross-Defendants affirmatively allege that Cross-Defendants have not yet had a reasonable opportunity to complete discovery, and facts hereinafter may be discovered which may substantiate other affirmative defenses not listed below. By this Answer to the Complaint,

1 Cross-Defendants waive no affirmative defenses and reserves their right to amend the Answer
2 to insert any subsequently discovered affirmative defenses.

3 **FIRST AFFIRMATIVE DEFENSE**
4 **(Statute of Limitations)**

5 Cross-Defendants allege that Cross-Claimant's claims are barred, in whole or in part,
6 because the statute of limitations on said claims expired before the initiation of Cross-
7 Claimant's action against Cross-Defendants.

8 **SECOND AFFIRMATIVE DEFENSE**
9 **(Failure to State a Claim)**

10 Cross-Defendants allege that Cross-Claimant has failed to state facts sufficient to
11 constitute any cause of action against Cross-Defendants.

12 **THIRD AFFIRMATIVE DEFENSE**
13 **(Failure to Mitigate Damages)**

14 Cross-Defendants alleges that Cross-Claimant's claims are barred, in whole or in part,
15 because of Cross-Claimant's failure to take reasonable steps to mitigate the damages alleged in
16 the Complaint, if any, even though Cross-Claimant had the opportunity and means of doing so.
17 In asserting this affirmative defense, Cross-Defendants does not admit liability for damages
18 due to Cross-Claimant's injury alleged in the Complaint, nor does Cross-Defendants admit that
19 such damages exist.
20
21

22 **FOURTH AFFIRMATIVE DEFENSE**
23 **(Equitable Defense, Laches, Unclean Hands, Failure to Do Equity)**

24 Cross-Defendants allege that Cross-Claimant's claims are barred by the equitable
25 doctrines of laches, unclean hands, and failure to do equity.

26 / / /

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FIFTH AFFIRMATIVE DEFENSE
(Breach of Contract)

Cross-Defendants allege that Cross-Claimant substantially and materially breached the obligations/contract complained of prior to commencement of this action, which conduct extinguishes the right to maintain this action.

SIXTH AFFIRMATIVE DEFENSE
(Bad Faith)

Cross-Defendants alleges that the Cross-Claim is filed in bad faith and has no merit.

SEVENTH AFFIRMATIVE DEFENSE
(Cross-Defendants Acted in Good Faith)

Cross-Defendants are excused from any and all liability under the facts alleged in Cross-Claimant's claims for relief because at all material times, Cross-Defendants acted in good faith and conducted all material transactions in good faith.

EIGHTH AFFIRMATIVE DEFENSE
(Counter-Claimant Not Entitled to Relief)

Cross-Defendants deny that Cross-Claimant is entitled to any relief for which it prays.

NINTH AFFIRMATIVE DEFENSE
(Privilege)

Cross-Defendants allege that Cross-Claimant's claims are barred, in whole or in part, on the ground that Cross-Defendants' conduct as alleged in the Cross-Claim was privileged.

TENTH AFFIRMATIVE DEFENSE
(Counter-Claimant's Own Negligence)

Cross-Claimant is barred from recovery, or said recovery, if any, must be proportionately reduced, as any injury or damage allegedly suffered by Cross-Claimant occurred as a proximate result of the negligence on its own part, in that Cross-Claimant failed to exercise ordinary care on its own behalf at the time and place alleged.

ELEVENTH AFFIRMATIVE DEFENSE
(Comparative Fault)

Cross-Defendants allege that Cross-Claimant was careless and negligent with respect to all matters alleged by it in its Cross-Claim and thus was comparatively at fault and proximately caused its own damages. Accordingly, any damages otherwise recoverable by Cross-Claimant, if any, should be reduced in proportion to its own negligence or omission.

TWELFTH AFFIRMATIVE DEFENSE
(Assumption of Risk)

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

THIRTEENTH AFFIRMATIVE DEFENSE
(No Proximate Cause)

The acts or omissions of Cross-Defendants alleged in Cross-Claimant's claims for relief were not a proximate cause of the loss or damage for which Cross-Claimant seeks recovery.

FOURTEENTH AFFIRMATIVE DEFENSE
(Suffered No Damages)

Cross-Defendants allege that Cross-Claimant's claims are barred because Cross-Claimant suffered no damages as a result of the allegations in the Cross-Claim.

FIFTEENTH AFFIRMATIVE DEFENSE
(Counter-Claimant's Omissions)

Cross-Defendants allege that, by reason of Cross-Claimant's own acts and omissions, Cross-Claimant has waived its right to assert the claims it has asserted against Cross-Defendants.

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WHEREFORE, Cross-Defendants, FORT APACHE SQUARE HOMEOWNERS ASSOCIATION and ALESSI & KOENIG, LLC, pray for judgment as follows:

- DATED this 28th day of September, 2015.

/s/ Chantel Schimming
Chantel M. Schimming, Esq.
Nevada Bar No. 8886
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147-5721
E-Mail: chantel@AlessiKoenig.com
*Attorney for Cross-Defendants,
Fort Apache Square Homeowners Association
and Alessi & Koenig, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2015, I caused service of a true and correct copy of the foregoing FORT APACHE SQUARE HOMEOWNERS ASSOCIATION AND ALESSI & KOENIG, LLC'S ANSWER TO WELLS FARGO BANK, N.A.'S CROSS-CLAIM to be made electronically via the Wiznet Electronic Filing System (EFS), pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure (NRCP), Rule 9 of the Nevada Electronic Filing and Conversion Rules (NEFCR), Rule 8.05 of the Eighth Judicial District Court Rules (EDCR), and Administrative Order No. 14-2 of the Eighth Judicial District Court, upon all parties listed below if registered with said electronic filing system, and/or via mail by depositing the same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Amy F. Sorenson, Esq.
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/ / /

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/s/ J. VanTilburg
An employee of
ALESSI & KOENIG, LLC


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

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, alleges and states as follows:

I. INTRODUCTION

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

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

II. STATEMENT OF COMPLETED MEDIATION

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

If the parties participate in mediation and an agreement is not obtained, any party may commence a civil action in the proper court concerning the claim that was submitted to 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
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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
10 The association has a lien on a unit for any construction penalty that is
11 imposed against the unit's owner pursuant to NRS116.310305, **any**
12 **assessment levied against that unit** or any fines imposed against the
13 unit's owner from the time the construction penalty, assessment or fine
14 becomes due. Unless the declaration otherwise provides, **any penalties,**
15 **fees, charges, late charges, fines and interest charged pursuant to**
16 **paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are**
17 **enforceable as assessments under this section.** If an assessment is
18 payable in installments, the full amount of the assessment is a lien from
19 the time the first installment thereof becomes due. (emphasis added)

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

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

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

28 58. As a result of the Defendant HOA, Mesa, LVAM, and A&K's failure to properly
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
28

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

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

10 96. Assuming Plaintiff prevails on her Seventh Claim for Relief, but if the foreclosure
11 sale of Ms. Abelard's home is upheld herein, then Plaintiff has been damaged through the loss of
12 her home in an amount to be determined in excess of Ten Thousand Dollars (\$10, 000.00).
13

14 97. Assuming Plaintiff prevails on her Seventh Claim for Relief, but if the foreclosure
15 sale of Ms. Abelard's home is not upheld herein, then Plaintiff has been damaged in having to
16 assert her rights and has incurred attorney's fees and costs.
17

18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests the following relief against Defendant:

- 20 1. For actual damages in excess of Ten Thousand Dollars (\$10, 000.00;
21 2. Consequential damages in an amount to be proven at trial;
22 3. Statutory damages in the amount of \$1,000.00 under 15 U.S.C. §
23 1692k(a)(2)(A);
24 4. Attorney's fees pursuant to NRS 18.010(2)(a) in the event Ms. Abelard recovers
25 less than \$20,000.00.
26
27
28

- 1 5. That it be declared and adjudged that Plaintiff is the owner of the said subject
2 property, and that Defendant Cranesbill has no estate or interests whatsoever in
3 or to said subject property and also that said Defendant Cranesbill be forever
4 barred from asserting any claim whatsoever in or to said subject property adverse
5 to Ms. Abelard or her successors in interest;
6
7 6. For a declaration and determination that Ms. Abelard is the rightful holder of title
8 to the subject property and that Defendant Cranesbill Trust be declared to have no
9 estate, right, title or interest in said property;
10
11 7. For judgment forever enjoining said Defendant Cranesbill Trust from claiming
12 any estate, right, title or interest in the subject property;
13
14 8. For Plaintiff's attorney fees;
15
16 9. For such other and further relief as the Court may deem just and equitable.

17 DATED this 12th day of January, 2016.

18 **LEGAL AID CENTER OF**
19 **SOUTHERN NEVADA, INC.**

20 /s/Debra Bookout
21 Debra A. Bookout, Esq.
22 Nevada Bar No. 11765C
23 Dan L. Wulz, Esq.
24 Nevada Bar No. 5557
25 **LEGAL AID CENTER OF**
26 **SOUTHERN NEVADA, INC.**
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 Attorneys for Plaintiff Venise Abelard

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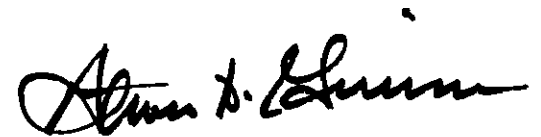
DATED this 12th day of January, 2016.

/s/Debra Bookout
Debra A. Bookout, Esq.
Nevada Bar No. 11765C
Dan L. Wulz, Esq.
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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



CLERK OF THE COURT

1 **ANAC**
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9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for defendants
11 9352 Cranesbill Ct. Trust,
12 Teal Petal St. Trust, and Iyad Haddad

13
14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 VENISE ABELARD

18 Plaintiff,

19 vs.

20 IYAD HADDAD, Individually and as Trustee
21 for CRANESBILL CT. TRUST; 9352
22 CRANESBILL COURT TRUST; TEAL
23 PETALS ST. TRUST; FORT APACHE
24 SQUARE HOMEOWNERS ASSOCIATION;
25 MESA MANAGEMENT, LLC; LAS VEGAS
26 ASSOCIATION MANAGEMENT, LLC;
27 ALESSI & KOENIG, LLC; DOES I through X,
28 and ROE COMPANIES I through X, inclusive.

Defendants

9352 CRANESBILL TRUST

Counterclaimant,

vs.

VENISE ABELARD,

Counter defendant.

ET AL.

CASE NO.: A671509
Dept. No. : XIV

ANSWER TO SECOND AMENDED COMPLAINT

1 COMES NOW Defendants Iyad Haddad, 9352 Cranesbill Ct. T rust, and Teal Petals St. Trust,
2 by and through their attorney, Michael F. Bohn, Esq., and answer the plaintiff's Second Amended
3 Complaint as follows:

4 1. Answering defendant denies the allegations contained in paragraphs 1, 2, 12, 14, 15, 16 and
5 35 of the complaint.

6 2. Answering defendants are without sufficient information upon which to admit or deny the
7 allegations contained in paragraphs 3, 10, 11, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31 and 32
8 of the complaint and, upon that basis, denies the same.

9 3. Answering defendants admit the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 17, 29,
10 30, 33, and 34 of the complaint.

11 **FIRST CLAIM FOR RELIEF**

12 4. Answering defendants repeat their responses to the allegations set forth in paragraphs 1
13 through 37 of the complaint as though fully set forth at length herein.

14 5. Answering defendants submit that no response is required in response to paragraph 36
15 of the complaint.

16 6. Answering defendants admit the allegations contained in paragraphs 38, 43 and 44 of
17 the complaint.

18 7. Answering defendant deny the allegations contained in paragraphs 39, 40, 41, ,42, 45 and
19 46 of the complaint.

20 **SECOND CLAIM FOR RELIEF**

21 8. Answering defendants repeat their responses to the allegations set forth in paragraphs 1
22 through 46 of the complaint as though fully set forth at length herein.

23 9. Answering defendants admit the allegations contained in paragraphs 48 and 49 of the
24 complaint.

25 10. Answering defendants deny the allegations contained in paragraphs 50, 51 and 52
26 of the complaint.

27 **THIRD CLAIM FOR RELIEF**

28 11. Answering defendants repeat their responses to the allegations to paragraphs 1 through 52

1 of the complaint as though fully set forth at length herein.

2 12. Answering defendants admit the allegations contained in paragraph 54 of the complaint.

3 13. Answering defendants deny the allegations contained in paragraph 55, 57 of the
4 complaint.

5 14. Answering defendants are without sufficient information upon which to admit or deny
6 the allegations contained in paragraphs 56, 58, 59 and 60 of the complaint, and, upon that basis,
7 denies the same.

8 **FOURTH CLAIM FOR RELIEF**

9 15. Answering defendants repeat their responses to the allegations to paragraphs 1 through
10 60 of the complaint as though fully set forth at length herein.

11 16. Answering defendants are without sufficient information upon which to admit or deny
12 the allegations contained in paragraphs 62, 63, 64, 65, 66 67 and 68 of the complaint, and, upon that
13 basis, denies the same.

14 **FIFTH CLAIM FOR RELIEF**

15 17. Answering defendants repeat their responses to the allegations to paragraphs 1 through 68
16 of the complaint as though fully set forth at length herein.

17 18. Answering defendants are without sufficient information upon which to admit or deny
18 the allegations contained in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80 of the complaint
19 and, upon that basis, denies the same.

20 **SIXTH CLAIM FOR RELIEF**

21 19. Answering defendants repeat their responses to the allegations to paragraphs 1 through 80
22 of the complaint as though fully set forth at length herein.

23 20. Answering defendants are without sufficient information upon which to admit or deny
24 the allegations contained in paragraphs 81, 82, 83, 84, 85, 86, 87, 88 and 89 of the complaint and,
25 upon that basis, denies the same.

26 **SEVENTH CLAIM FOR RELIEF**

27 21. Answering defendants repeat their responses to the allegations to paragraphs 1 through
28 89 of the complaint as though fully set forth at length herein.

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

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff's Complaint fails to state a claim against this answering defendant upon which relief
7 may be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's damages, if any were caused by her own acts or omissions

10 **THIRD AFFIRMATIVE DEFENSE**

11 Plaintiff breached obligations due to the HOA, and that breach is the cause of the plaintiff's
12 damages, if any.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiff's damages, if any, were caused by third persons over whom these answering
15 defendants have no control.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 Plaintiff is guilty of laches and unclean hands.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 Plaintiff is barred from recovery by virtue of the doctrine of equitable estoppel.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 The plaintiff has failed to mitigate her damages.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Defendant(s) purchased the property for valuable consideration with no actual or constructive
24 knowledge of any alleged defect in the HOA sale.

25 **NINTH AFFIRMATIVE DEFENSE**

26 Defendant(s) is a bona fide purchaser for value without notice of any claims of any party or
27 defects in title.

28 **TENTH AFFIRMATIVE DEFENSE**

1 Defendant(s) has good title pursuant to NRS 116.31164

2 ELEVENTH AFFIRMATIVE DEFENSE

3 The foreclosure sale was conducted pursuant to statute which is commercially reasonable as a
4 matter of law.

5 TWELFTH AFFIRMATIVE DEFENSE

6 Plaintiff claims against these answering defendants are barred by the doctrine of waiver.

7 THIRTEENTH AFFIRMATIVE DEFENSE

8 Pursuant to NRCP 11, these answering defendants reserve the right to add additional
9 affirmative defenses or to amend this Answer as new information not currently known to defendants
10 becomes known and/or available during the discovery process.

11 WHEREFORE, defendants pray as follows:

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

15

16 DATED this 16th day of February, 2016

17 LAW OFFICES OF
18 MICHAEL F. BOHN, ESQ., LTD.

19 By: /s/ Michael F. Bohn, Esq./
20 MICHAEL F. BOHN, ESQ.
21 376 East Warm Springs Road, Ste. 140
22 Las Vegas, Nevada 89119
23 Attorney for defendants
24 9352 Cranesbill Ct. Trust,
25 Teal Petal St. Trust, and Iyad Haddad
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 16th day of February, 2016, an electronic copy of **ANSWER TO SECOND AMENDED COMPLAINT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Debra A. Bookout, Esq.
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725 E. Charleston Blvd.
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Attorney for Plaintiff Abelard

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Las Vegas, NV 89147
*Attorney for Fort Apache Square HOA
Mesa Management & Alessi & Koenig, LLC*

Daniel S. Ivie, Esq.
SNELL & WILMER, L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Intervenor Wells Fargo Bank, N.A.

/s/ /Marc Sameroff/
An Employee of the LAW OFFICES OF
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5 Attorney for appellant
6

Electronically Filed
Jan 28 2019 11:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10 9352 CRANESBILL TRUST; TEAL
11 PETALS ST. TRUST; AND IYAD
HADDAD,

CASE NO.: 76017

12 Appellants,

13 vs.

14 WELLS FARGO BANK, N.A.,
15 Respondents.
16

17 **JOINT APPENDIX 1**
18

19
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22 Attorney for Appellants
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24 Attorney for Respondent
25
26
27
28

INDEX TO APPENDIX 1

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14	Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment	3	APP000608
15	Notice of Entry of Order	3	APP000731
16	Opposition to Wells Fargo Bank, N.A. s Motion for Summary Judgment	3	APP000490
17	Opposition to Plaintiff s Motion for Reconsideration of Summary Judgment Against Venise Abelard or, in the Alternative, for Amendment of Judgment	3	APP000716
18	Order Denying Motion for Reconsideration	3	APP000723
19	Order Granting motion for NRCP 54(b) Certification	3	APP000729
20	Plaintiff's Opposition to Defendants Iyad Haddad's Motion for Summary Judgment and Joinder to Wells Fargo Bank, N.A.'s Opposition to Motion for Summary Judgment	3	APP000507
21	Plaintiff's Motion for Reconsideration of Summary Judgment Against Venise Abelard or, in the Alternative, for Amendment of Judgment	3	APP000632
22	Recorder's Transcript of Motions for Summary Judgment Heard on March 6,2018	3	APP000621
23	Reply in Support of Motion for Summary Judgment	3	APP000564
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1	Reply to Counterclaim	1	APP000055
2	Second Amended Complaint for Declaratory Relief, Damages, Violations of the FDCPA, Fraud and Demand for Jury Trial	1	APP000140
3	Summons - Las Vegas Association Management LLC	1	APP000024
4	Summons - Mesa Management	1	APP000022
5	Summons - Iyad Haddad	1	APP000020
6	Summons - Fort Apache Square Homeowners Association	1	APP000018
7	Summons - Alessi & Koenig LLC	1	APP000016
8	Summons - Nevada Association Services	1	APP000026
9	Wells Fargo Bank, N.A.'s Motion for Summary Judgment	1	APP000216
10	Wells Fargo Bank, N.A.'s Opposition to Motion for Summary Judgment	3	APP000467
11	Wells Fargo Bank, N.A.'s Reply In Support of Motion for Summary Judgment	3	APP000549
12	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	1	APP000099
13			
14	Wells Fargo Bank, N.A.'s Supplemental Request for Judicial Notice	1	APP000164
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CIVIL COVER SHEET

A-12-671509-C

County, Nevada

XIV

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) (name/address/phone): Venise Abelard

Defendant(s) (name/address/phone): 9352 Cranesbill Trust

Attorney (name/address/phone):

Michael Joe, Esq.

800 South 8th Street

Las Vegas, NV 89101

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input checked="" type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

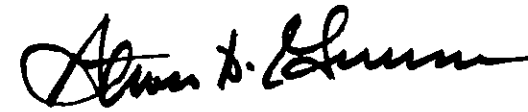
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|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

11/6/12

/s/ Michael Joe, Esq.

Date

Signature of initiating party or representative



CLERK OF THE COURT

COMJD

MICHAEL JOE, ESQ.

Nevada Bar No. 10626

**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**

800 SOUTH EIGHTH STREET

LAS VEGAS, NEVADA 89101

TELEPHONE: (702) 386-1070 x 141

FACSIMILE: (702) 388-1642

MJOE@lacsns.org

Attorney for PLAINTIFF

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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.

Case No.: A - 1 2 - 6 7 1 5 0 9 - C
Dept No.:

X I V

**COMPLAINT FOR DECLARATORY
RELIEF, DAMAGES, WRONGFUL
FORECLOSURE, VIOLATIONS OF
THE FD CPA, NEGLIGENCE, FRAUD
AND DEMAND FOR JURY TRIAL**

EXEMPT FROM ARBITRATION

Plaintiff, VENISE ABELARD, (hereinafter referred to as "Plaintiff") by and through her
attorney, Michael Joe, Esq., of LEGAL AID CENTER OF SOUTHERN NEVADA, INC., for
her Complaint against Defendants, 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, alleges and states as follows:

I. INTRODUCTION

1. This Complaint arises from the wrongful foreclosure of real property commonly known as 9352 Cranesbill Court, Las Vegas, NV 89149. The Homeowners Association acting on its own and through its agents, Mesa Management and Alessi & Koenig, LLC wrongfully sold Plaintiff's property. This Complaint is brought for declaratory relief and quiet title.

II. PARTIES

2. Plaintiff, VENISE ABELARD (hereinafter "Plaintiff") is and at all relevant times herein has been a resident of the State of Nevada, Clark County.

3. Defendant 9352 CRANESBILL TRUST (hereinafter "Cranesbill") claims to be the owner of the subject property and is believed to be a trust formed for the sole purpose of holding this property.

4. Defendant FORT APACHE SQUARE HOMEOWNERS ASSOCIATION (hereinafter "Association") is and at all relevant times herein has been the homeowner's association for 9352 Cranesbill Court, Las Vegas, NV 89149.

5. Defendant MESA MANAGEMENT (hereinafter "Mesa") was one of the management companies that the association used to manage the association property.

6. Defendant LAS VEGAS ASSOCIATION MANAGEMENT, LLC, was one of the management companies that the association used to management the association property.

7. Defendant BENCHMARK ASSOCIATION SERVICES was one of the management companies that the association used to manage the association property.

1 8. Defendant IYAD HADDAD, an individual, is and at all relevant times herein has
2 been a resident of the State of Nevada, Clark County.

3 9. Defendant NEVADA ASSOCIATION SERVICES (hereinafter "ALESSI AND
4 KOENIG") is and at all times relevant herein is a collection company acting as the collection
5 agent for the association.

6 10. Defendant ALESSI & KOENIG, LLC (hereinafter "Alessi"), is and at all times
7 relevant herein is a law firm acting as the collection agent for the association.

8 11. 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

20 **III. FACTUAL ALLEGATIONS**

21 12. Plaintiff, VENISE ABELARD purchased the subject property, which is a single
22 family home on November 27, 2007.

23 13. Plaintiff was current on the mortgage when the house was sold.

24 14. Plaintiff has made every payment to the association.

25 15. Plaintiff was late from time to time but paid late charges.

26 16. The association has had four different management companies.

27 17. Mesa was the management company at the time of the foreclosure.
28

1 18. When Mesa Management took over the management duties for the association
2 they failed to send an accounting for the subject property.

3 19. The "Notice of Sale" was posted on the subject property on May 25, 2012.

4 20. The first time Venise was aware that there was a problem with the property was
5 when the "Notice of Sale" was posted on her front door.

6 21. Plaintiff, Venise called Alessi and Koenig, the party listed on the notice.

7 22. Alessi and Koenig asked for proof that Venise had made every payment.

8 23. Plaintiff, Venise went to Alessi and Koenig's office and met with Katherine
9 Kettle.

10 24. Plaintiff, Venise showed proof of every payment.

11 25. Ms. Kettle took the proof and said she would forward it to the person in charge of
12 the account, Gina who worked at Alessi and Koenig.

13 26. Also, Katherine Kettle said she would put a hold on the account.

14 27. After several calls to Alessi and Koenig said they would send an accounting.

15 28. On June 4, 2012 Alessi and Koenig sent an accounting.

16 29. The accounting showed an initial balance of \$1204.58. There was no explanation
17 of that amount.

18 30. Plaintiff, Venise asked for an explanation.

19 31. Alessi & Koenig said they had sent all the documents to the management
20 company.

21 32. They said it would take 30 days for an answer.

22 33. Plaintiff, Venise called every week but got no response from Alessi & Koenig.

23 34. Plaintiff, Venise went down there but no one would talk to her.

24 35. Plaintiff, Venise had provided proof of every payment.

25 36. On July 12, 2012 Venise found another notice on her door. This was a Notice to
26 Vacate.

37. Plaintiff, Venise called Alessi & Koenig and spoke to Katherine Kettle. Ms. Kettle told her that they were still waiting for an answer from the management company.

38. Venise told her that her house was sold that morning. Ms. Kettle said she would find out and get back to Venise.

39. That afternoon Mary Endolica, who said she was the administrative secretary, called from Alessi & Koenig. Venise provided the same documentation that proved that she had made every payment.

40. Alessi & Koenig never called.

41. After repeated attempts to get an answer from Alessi & Koenig, Venise and her brother went down to the office on August 5, 2012 and met with Mary Endolica.

42. Plaintiff, Venise showed the proof of every payment.

43. Mary Endollica agreed that every payment had been made.

44. Mary Endolice also said that Gina was responsible for this account and Gina no longer worked there because she was not doing what she was supposed to do.

45. Mary Endolica said that Gina did not turn the documents into the management company.

46. The property was sold and a deed was recorded on July 18, 2012.

47. Venise has never received any notice that she owed more than her association dues which she has paid.

48. Plaintiff Venise has filed this action to quiet title for the purpose of restoring the subject property to her name.

IV. LEGAL THEORIES

COUNT ONE

Declaratory Relief

49. The allegations contained in paragraphs 1 through 48 are restated and realleged as though here fully set forth.

1 50. That there is a justifiable controversy between Plaintiff and Defendants.

2 51. Plaintiff is, at all times relevant herein mentioned, the owner and entitled to
3 possession of the subject property.

4 52. Plaintiff is informed and believes, thereupon alleges that Defendant Cranesbill
5 claim an interest in the property adverse to Plaintiff Venise herein.

6 53. The claim of said Defendant Cranesbill is without any right whatsoever, and said
7 Defendant Cranesbill has no legal or equitable right, claim or interest in said subject property.

8 54. Due to Defendants' actions, conduct, and omissions stated herein, there now
9 exists a controversy as to the status of title to the subject property.
10

11 55. That Plaintiff Venise has a legally protectable interest in the subject property and
12 therefore desires a judicial determination of his rights and interests, and a declaration that
13 Defendant Cranesbill is without any right whatsoever, and said Defendant Cranesbill does not
14 have a legal or equitable right, claim or interest in the said subject property.
15

16 **COUNT TWO**
17 **Quiet Title**

18 56. The allegations contained in paragraphs 1 through 55 are restated and realleged as
19 though here fully set forth.

20 57. The Plaintiff Venise acquired title to the property.

21 58. Defendant Cranesbill may claim an interest in the subject property.

22 59. That any claim of Defendant Cranesbill to the subject property is without any
23 right whatsoever, and said Defendant Cranesbill does not have any estate, mortgage, title, or
24 interest in the said subject property or any part thereof.
25

26 **COUNT THREE**
27 **Negligence against Management companies, Mesa Management, Benchmark**
28 **Association Services, Las Vegas Association Management**

60. The allegations contained in paragraphs 1 through 59 are restated and realleged as though here fully set forth.

61. Defendants Mesa Management, Benchmark Association Services, Las Vegas Association Management, breached their respective duties to Plaintiff, causing damages to Plaintiff.

62. NRS 116A.630, Standards of Practice for Community Managers was passed to ensure homeowners living within associations are treated fairly.

Plaintiff is a member of the class of persons these statutes were intended to protect and the injuries Plaintiff suffered were of the type these statutes were intended to prevent.

63. As a result of Defendants' negligence per se, Plaintiff has been damaged in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

64. As a result of Defendants' negligence per se, Plaintiff has been forced to retain legal counsel to prosecute this case and is therefore entitled to attorney's fees and costs.

COUNT FOUR
Conspiracy to Commit Fraud against all Defendants

65. The allegations contained in paragraphs 1 through 64 are restated and realleged as though here fully set forth.

66. Defendants conspired to deprive Plaintiff of her home.

67. Defendants conspired to sell her home by improperly charging fines and penalties to her account.

68. Defendants conspired to deprive Venise of her home so that defendants could purchase the property at an unfair price.

69. Defendants improperly noticed Plaintiff in an attempt to fraudulently convey her property to Cranesbill.

70. Alessi and Koenig failed to follow NRS 116, the process for an HOA to foreclose on members of the association.

1 71. Alessi and Koenig failed to send notices as required under NRS 116, specifically
2 she never received a Notice of Delinquent Lien Assessment and a Notice of Default.

3 72. Defendants failure to properly notice the sale according to NRS 116 process and
4 therefore only Defendants Crainbill and Haddad knew of the sale and bid on the property.

5 73. The Notice of Default fails to follow NRS 116, in that it is not signed by the
6 President of the Association.

7 Defendants improperly foreclosed based on fines and penalties, in violation of NRS 116.

8 74. As a result of Defendants' fraud, Plaintiff has been damaged in an amount in
9 excess of TEN THOUSAND DOLLARS (\$10,000.00).

10 75. Defendants' conduct has been willful and malicious and done with a conscious
11 disregard of Plaintiff's rights.

12 76. Therefore, Plaintiff is entitled to punitive damages in an amount in excess of TEN
13 THOUSAND DOLLARS (\$10,000.00) for such willful and malicious acts on the part of the
14 Defendants.

15 77. As a result of Defendants' fraud, Plaintiff has been forced to retain legal counsel
16 to prosecute this case and is therefore entitled to attorney's fees and costs.

17 78. The allegations contained in paragraphs 1 through 64 are restated and realleged as
18 though here fully set forth.

19 79. Defendants conspired to deprive Plaintiff of her home.

20 80. Defendants conspired to sell her home by improperly charging fines and penalties
21 to her account.

22 81. Defendants conspired to deprive Venise of her home so that defendants could
23 purchase the property at an unfair price.

24 82. Defendants improperly noticed Plaintiff in an attempt to fraudulently convey her
25 property to Cranesbill.

83. Alessi and Koenig failed to follow NRS 116, the process for an HOA to foreclose on members of the association.

84. Alessi and Koenig failed to send notices as required under NRS 116, specifically she never received a Notice of Delinquent Lien Assessment and a Notice of Default.

85. The Notice of Default fails to follow NRS 116, in that it is not signed by the President of the Association.

Defendants improperly foreclosed based on fines and penalties, in violation of NRS 116.

86. As a result of Defendants' fraud, Plaintiff has been damaged in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

87. Defendants' conduct has been willful and malicious and done with a conscious disregard of Plaintiff's rights.

88. Therefore, Plaintiff is entitled to punitive damages in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00) for such willful and malicious acts on the part of the Defendants.

89. As a result of Defendants' fraud, Plaintiff has been forced to retain legal counsel to prosecute this case and is therefore entitled to attorney's fees and costs.

COUNT 5

Negligent hiring/supervision and retention

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

91. Defendant Alessi & Koenig, hired Gina as an employee.

92. Alessi & Koenig's employee, Gina as an employee was their agent, and as such Defendant Alessi & Koenig is liable for any and all harm, damage and injury resulting from Gina's negligent conduct.

1 93. As Defendants were under a general duty to conduct a reasonable background
2 check or other reasonable investigation into Gina's fitness as an employee, especially as a notary.

3 94. Defendant Alessi & Koenig was required to anticipate negligent or tortuous
4 behavior by Gina. Alessi & Koenig are required to act with reasonable care and should have
5 maintained adequate supervision over Gina while she was an employee. Gina was not qualified
6 to work for Defendant.

7
8 95. Defendant Alessi & Koenig is responsible for Gina's actions as she was an
9 employee and/or agent for Alessi & Koenig. Therefore, Defendants are responsible for Gina's
10 negligent conduct.

11 96. Defendant Alessi & Koenig's negligent hiring, supervision and/or retention of
12 Gina permitted the subject property to be wrongfully foreclosed entitling Venise to declaratory
13 relief of title to the property.

14
15 97. As a result of Defendants' fraud, Plaintiff has been forced to retain legal counsel
16 to prosecute this case and is therefore entitled to attorney's fees and costs.

17
18
19 **COUNT SIX**
20 **Negligence against all the association, the management companies and the collection**
21 **companies.**

22 99. The allegations contained in paragraphs 1 through 97 are repeated and realleged
23 as if here fully set forth.

24 100. Defendants owed a duty of care to Plaintiff, to ensure that her account was fairly
25 and properly kept.

26 101. Defendants' breached their duties by failing to provide statements or notifications
27 of the status of the account.

102. Defendants' breached their duties by failing to verify the amounts that were due.

103. Defendants' breached their duties by failing to properly account for payments to her account.

104. Defendants' negligence has directly and proximately caused Plaintiff Venise to LOSE title to the said property, entitling Venise to declaratory relief of title to the subject property.

105. As a result of Defendants' fraud, Plaintiff has been forced to retain legal counsel to prosecute this case and is therefore entitled to attorney's fees and costs.

106. As a result of Defendants' fraud, Plaintiff has been forced to retain legal counsel to prosecute this case and is therefore entitled to attorney's fees and costs.

COUNT SEVEN

FDCPA violation against all the management companies and the collection companies.

107. The allegations contained in paragraphs 1 through 106 are repeated and realleged as if here fully set forth.

108. The Defendants violated the Fair Debt Collection Practices Act (FDCPA) by not sending validation of debt following the initial communication with Venise.

109. Additionally, the Defendants violated the FDCPA by threatening to foreclose when they do not have the right to foreclose.

110. Additionally, the Defendants violated the FDCPA by attempting to collect amounts that were not expressly authorized by the agreement creating the debt or permitted by law.

111. Venise has been damaged as a result of the actions of Defendants, their agents, servants, and/or employees, as a result of the false, deceptive and misleading representations, practices and violations outlined herein, and have otherwise suffered damages.

112. As a result of Defendants, their agents, servants, and/or employees, violations of the FDCPA as set forth herein, Defendants, their agents, servants, and/or employees, are liable to Venise pursuant to 15 U.S.C. § 1692k (a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief against Defendant:

1. For actual damages;
2. Consequential damages in an amount to be proven at trial;
3. Statutory damages in the amount of \$1,000.00 for each violation under 15 U.S.C. § 1692k(a)(2)(A);
4. That it be declared and adjudged that Plaintiff Venise is the owner of the said subject property, and that Defendant Cranesbill has no estate or interests whatsoever in or to said subject property and also that said Defendant Cranesbill be forever barred from asserting any claim whatsoever in or to said subject property adverse to Venise or his successors in interest;
5. For a declaration and determination that Venise is the rightful holder of title to the subject property and that Defendant Cranesbill be declared to have no estate, right, title or interest in said property;
6. For judgment forever enjoining said Defendant Cranesbill from claiming any estate, right, title or interest in the subject property;
7. Punitive damages in an amount sufficient to punish Defendant and discourage others from like conduct;
8. For Plaintiff's attorney fees, including litigation expenses, and costs; and

1 9. Plaintiff demands a jury trial.

2 10. For such other and further relief as the Court may deem just and equitable.

3
4 DATED this 6th day of November, 2012.

5 **LEGAL AID CENTER OF**
6 **SOUTHERN NEVADA, INC.**

7 /s/ Michael Joe
8 MICHAEL JOE, ESQ.
9 Nevada Bar No. 10626
10 **LEGAL AID CENTER OF**
11 **SOUTHERN NEVADA, INC.**
12 800 SOUTH EIGHTH STREET
13 LAS VEGAS, NEVADA 89101
14 TELEPHONE: (702) 386-1070 x 141
15 FACSIMILE: (702) 388-1642
16 MJOE@lacsns.org
17 Attorney for PLAINTIFF

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby requests a trial by jury.

20 DATED this 6th day of November, 2012.

21 **LEGAL AID CENTER OF**
22 **SOUTHERN NEVADA, INC.**

23 /s/ Michael Joe
24 MICHAEL JOE, ESQ.
25 Nevada Bar No. 10626
26 **LEGAL AID CENTER OF**
27 **SOUTHERN NEVADA, INC.**
28 800 SOUTH EIGHTH STREET
 LAS VEGAS, NEVADA 89101
 TELEPHONE: (702) 386-1070 x 141
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 MJOE@lacsns.org
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SOLA
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mjoe@lacsns.org
Attorney for Plaintiff

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 1 through X, and ROE
1 through X, inclusive.

Defendants.

Case No.

Dept. No.

**STATEMENT OF LEGAL AID
REPRESENTATION (PURSUANT
TO NRS 12.015)**

Party Filing Statement:

☒ Plaintiff/Petitioner

☐ Defendant/Respondent

STATEMENT

VENISE ABELARD, have qualified and been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, INC., a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: November 6th, 2012

Michael Joe, ESQ.

/s/ Michael Joe

Printed Name of Legal Aid Center of Southern Nevada
Preparer

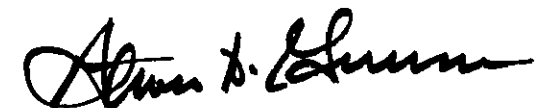
Nevada Bar No.: 10626

Signature of Legal Aid Center of Southern Nevada
Preparer

Submitted by:
LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.
800 S. Eighth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-1070
Facsimile: (702) 388-1642

ORIGINAL
District Court
Clark County, Nevada

Electronically Filed
11/30/2012 03:55:16 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

-VS-

Case No. A-12-671509-C

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE,
SQUARE HOMEOWNERS ASSOCIATION, MESA
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,
BENCHMARK ASSOCIATION SERVICES, IYAD
HADDAD, an individual, ALESSI & KOENING, LLC
NEVADA ASSOCIATION SERVICES and DOES I
Through X, and ROE COMPANIES I THROUGH X,
Inclusive,

Defendant(s).

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.


3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivision, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:

STEVEN D. GRIERSON

Clerk of the Court


MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

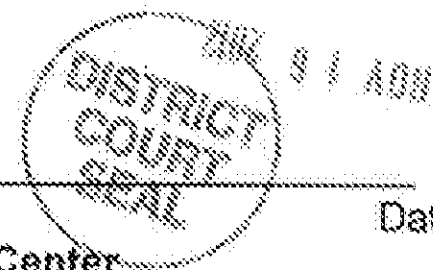
By:

PAMELA PULLAN

DEPUTY CLERK

Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Monday November 19 2012; 1 copy(ies) of the:

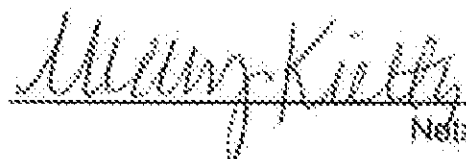
SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FDCPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Tuesday November 20 2012 at 11:02AM by:

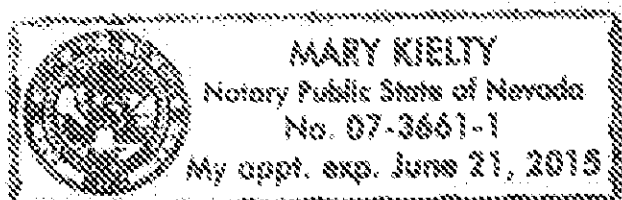
Serving Defendant ALESSI & KOENIG, LLC, BY SERVING ROBERT A. KOENIG, REGISTERED AGENT

Substituted Service, by leaving the copies with or in the presence of: MELANY FLORES, LEGAL ASSISTANT ON BEHALF OF ROBERT A. KOENIG, REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE Authorized Agent. at the Defendant's Business located at 9500 W FLAMINGO RD #205, Las Vegas, NV 89147.

SUBSCRIBED AND SWORN to before me on this
Wednesday November 21 2012 By the Affiant.


Notary Public

1389



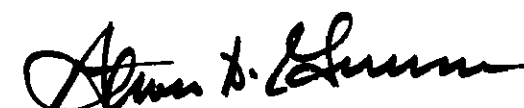

Affiant: MARIE A SCHEIB #R-002901
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

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ORIGINAL

District Court
Clark County, Nevada

Electronically Filed
11/30/2012 03:57:33 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

Case No. A-12-671509-C

-VS-

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE,
SQUARE HOMEOWNERS ASSOCIATION, MESA
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,
BENCHMARK ASSOCIATION SERVICES, IYAD
HADDAD, an individual, ALESSI & KOENING, LLC
NEVADA ASSOCIATION SERVICES and DOES I
Through X, and ROE COMPANIES I THROUGH X,
Inclusive,

Defendant(s).

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the plaintiff(s) against you for the relief set forth in the Complaint.

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(b) Serve a copy of your response upon the attorney whose name and address is shown below.

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4. The State of Nevada, its political subdivision, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:

STEVEN D. GRIERSON

Clerk of the Court


MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

By:


PAMELA PULLAN

DEPUTY CLERK

Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Monday November 19 2012; 1 copy(ies) of the:

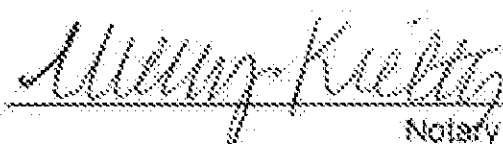
SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FD CPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Wednesday November 21 2012 at 11:27AM by:

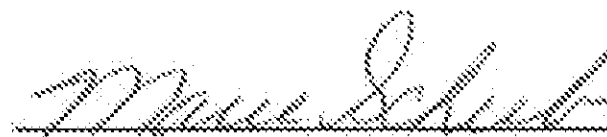
**Serving Defendant FORT APACHE SQUARE HOMEOWNERS ASSOCIATION, BY
SERVING MESA MANAGEMENT, REGISTERED AGENT**

Substituted Service, by leaving the copies with or in the presence of: APRIL BLOOD, RECEPTIONIST ON BEHALF OF MESA MANAGEMENT, REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE Authorized Agent. at the Defendant's Business located at 9512 W FLAMINGO RD #102, Las Vegas, NV 89147.

SUBSCRIBED AND SWORN to before me on this
Monday November 26 2012 By the Affiant.

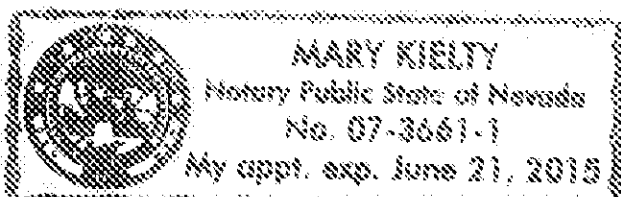


Notary Public



Affiant: MARIE A SCHEIB #R-002901
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

1389

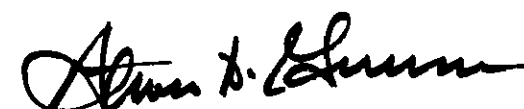


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APP000019

ORIGINAL
District Court
Clark County, Nevada

Electronically Filed
11/30/2012 03:59:11 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

-VS-

Case No. A-12-671509-C

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE,
SQUARE HOMEOWNERS ASSOCIATION, MESA
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,
BENCHMARK ASSOCIATION SERVICES, IYAD
HADDAD, an individual, ALESSI & KOENING, LLC
NEVADA ASSOCIATION SERVICES and DOES I
Through X, and ROE COMPANIES I THROUGH X,
Inclusive,

Defendant(s).

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

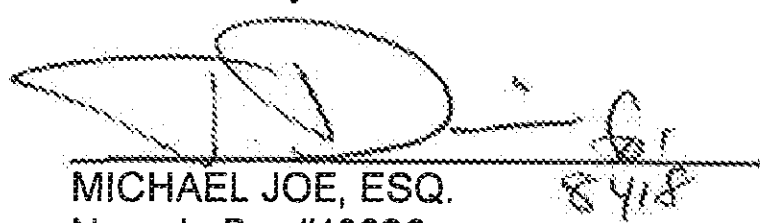
(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivision, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:



MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

STEVEN D. GRIERSON

Clerk of the Court

By:

PAMELA PULLAN

DEPUTY CLERK

Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date



AFFIDAVIT OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK }

KEVIN R. SMITH, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Monday November 19 2012; 1 copy(ies) of the:

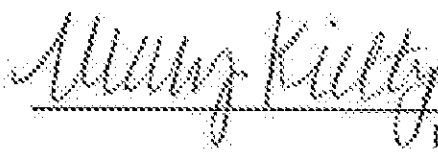
SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FDCPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Tuesday November 20 2012 at 05:44PM by:

Serving Defendant IYAD HADDAD, AN INDIVIDUAL

Substituted Service, by leaving the copies with or in the presence of: NADIA HADDAD, WIFE person of suitable age and discretion residing therein. at the Defendant's Home located at 221 DESERT VIEW ST, Las Vegas, NV 89107.

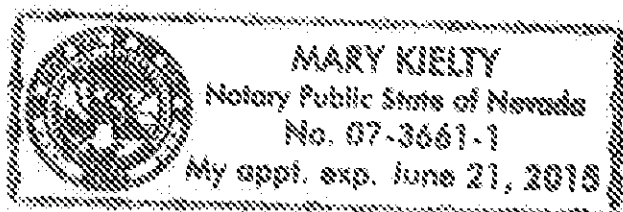
SUBSCRIBED AND SWORN to before me on this
Wednesday November 21 2012 By the Affiant.


Notary Public


Affiant: KEVIN R. SMITH #R-038414
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

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1389



APP000021

ORIGINAL
District Court
Clark County, Nevada

Electronically Filed
11/30/2012 04:00:46 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

-vs-

Case No. A-12-671509-C

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE.,
SQUARE HOMEOWNERS ASSOCIATION, MESA)
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,)
BENCHMARK ASSOCIATION SERVICES, IYAD)
HADDAD, an individual, ALESSI & KOENING, LLC)
NEVADA ASSOCIATION SERVICES and DOES I)
Through X, and ROE COMPANIES I THROUGH X,)
Inclusive,)

Defendant(s).

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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Submitted by:

STEVEN D. GRIERSON

Clerk of the Court


MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

By:

PAMELA PULLAN

DEPUTY CLERK

Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Monday November 19 2012; 1 copy(ies) of the:

SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FDCPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Wednesday November 21 2012 at 11:27AM by:

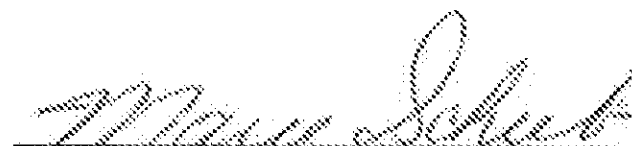
Serving Defendant MESA MANAGEMENT, BY SERVING MESA MANAGEMENT, REGISTERED AGENT

Substituted Service, by leaving the copies with or in the presence of: APRIL BLOOD, RECEPTIONIST ON BEHALF OF MESA MANAGEMENT, REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE Authorized Agent. at the Defendant's Business located at 9512 W FLAMINGO RD #102, Las Vegas, NV 89147.

SUBSCRIBED AND SWORN to before me on this
Monday November 26 2012 By the Affiant.

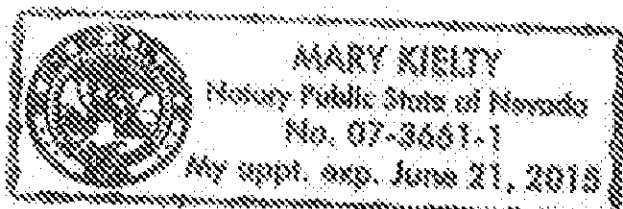


Notary Public



Affiant: MARIE A SCHEIB #R-002901
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

1389

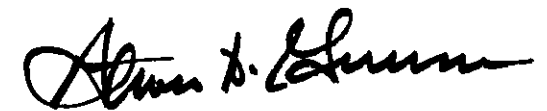


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APP000023

ORIGINAL
District Court
Clark County, Nevada

Electronically Filed
11/30/2012 04:02:35 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

-VS-

Case No. A-12-671509-C

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE.,
SQUARE HOMEOWNERS ASSOCIATION, MESA)
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,)
BENCHMARK ASSOCIATION SERVICES, IYAD)
HADDAD, an individual, ALESSI & KOENING, LLC)
NEVADA ASSOCIATION SERVICES and DOES I)
Through X, and ROE COMPANIES I THROUGH X,)
Inclusive,)

Defendant(s).

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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Submitted by:

STEVEN D. GRIERSON

Clerk of the Court


MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

By:

PAMELA PULLAN
DEPUTY CLERK
Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Monday November 19 2012; 1 copy(ies) of the:

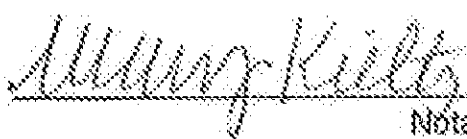
SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FDCPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Tuesday November 20 2012 at 11:10AM by:

Serving Defendant LAS VEGAS ASSOCIATION MANAGEMENT, LLC, BY SERVING YVONNE CULLIVER, REGISTERED AGENT

Substituted Service, by leaving the copies with or in the presence of: TRISHA RICHARD, RECEPTIONIST ON BEHALF OF YVONNE CULLIVER, REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE Authorized Agent. at the Defendant's Business located at 8871 W FLAMINGO RD STE. 202, Las Vegas, NV 89147.

SUBSCRIBED AND SWORN to before me on this
Wednesday November 21 2012 By the Affiant.

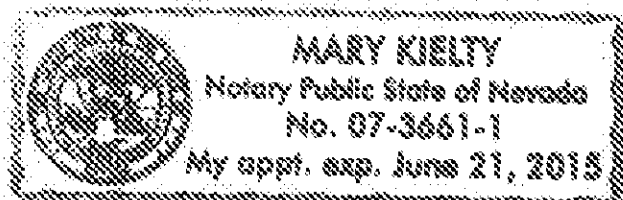


Notary Public



Affiant: MARIE A SCHEIB #R-002901
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

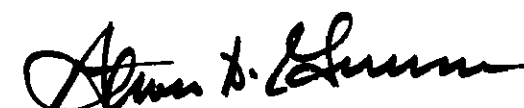
1389



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ORIGINAL
District Court
Clark County, Nevada

Electronically Filed
11/30/2012 04:04:42 PM



CLERK OF THE COURT

VENISE ABELARD,

Plaintiff,

-vs-

Case No. A-12-671509-C

Dept. No. XIV

9352 CRANESBILL TRUST, FORT APACHE.,
SQUARE HOMEOWNERS ASSOCIATION, MESA)
LAS VEGAS ASSOCIATION MANAGEMENT, LLC,)
BENCHMARK ASSOCIATION SERVICES, IYAD)
HADDAD, an individual, ALESSI & KOENING, LLC)
NEVADA ASSOCIATION SERVICES and DOES I)
Through X, and ROE COMPANIES I THROUGH X,)
Inclusive,)

Defendant(s).

SUMMONS

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Submitted by:

STEVEN D. GRIERSON

Clerk of the Court


MICHAEL JOE, ESQ.
Nevada Bar #10626
Legal Aid Center of Southern Nevada, Inc.
800 S. Eighth Street
Las Vegas, NV 89101
(702) 386-1070 Ext. 141
Attorney for Plaintiff

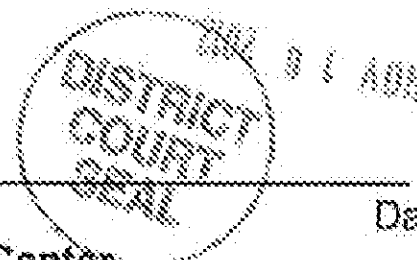
By:

PAMELA PULLAN

DEPUTY CLERK

Regional Justice Center
200 South Third Street
Las Vegas, Nevada 89155

Date



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Tuesday November 20 2012; 1 copy(ies) of the:

SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, DAMAGES, WRONGFUL FORECLOSURE, VIOLATIONS OF THE FDCPA, NEGLIGENCE, FRAUD AND DEMAND FOR JURY TRIAL

I served the same on Tuesday November 20 2012 at 10:27AM by:

Serving Defendant NEVADA ASSOCIATION SERVICES, BY SERVING DAVID STONE, REGISTERED AGENT

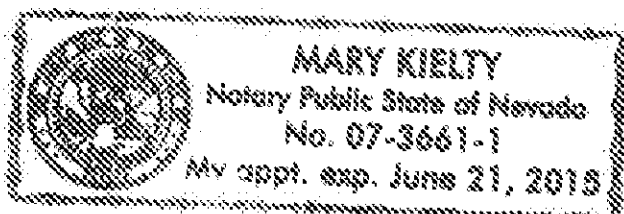
Substituted Service, by leaving the copies with or in the presence of: KIA JACOWAY, RECEPTIONIST ON BEHALF OF DAVID STONE, REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE Authorized Agent. at the Defendant's Business located at 6224 W DESERT INN RD STE. A, Las Vegas, NV 89146.

SUBSCRIBED AND SWORN to before me on this
Wednesday November 21 2012 By the Affiant.

Mary Kielty

Notary Public

1389

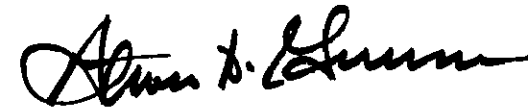


Marie A Scheib

Affiant: MARIE A SCHEIB #R-002901
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Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

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CLERK OF THE COURT

1 ANS

2 Huong Lam, Esq.

3 Nevada Bar No. 10916

4 ALESSI & KOENIG, LLC

5 9500 W. Flamingo, Suite 205

6 Las Vegas, Nevada 89147

7 Phone: (702) 222-4033

8 Fax: (702) 254-9044

9 Email: huong@alessikoenig.com

10 *Attorney for Defendants*

11 *Fort Apache Square Homeowners Association,*

12 *Mesa Management,*

13 *Alessi & Koenig, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 VENISE ABELARD,

17 Plaintiff,

18 - vs -

19 9352 CRANESBILL TRUST, FORT APACHE

20 SQUARE HOMEOWNERS ASSOCIATION,

21 MESA MANGEMENT, LAS VEGAS

22 ASSOCIATION MANAGEMENT, LLC,

23 BENCHMARK ASSOCIATION SERVICES,

24 IYAD HADDAD, an individual, ALESSI &

25 KOENIG, LLC, NEVADA ASSOCIATION

26 SERVICES and DOES I through X, and ROE

27 COMPANIES I through X, inclusive,

28 Defendants.

Case No.: A-12-671509-C

Dept. No.: XIV

29 **ANSWER TO COMPLAINT**

30 COMES NOW, Defendants FORT APACHE SQUARE HOMEOWNERS

31 ASSOCIATION, MESA MANAGEMENT, and ALESSI & KOENIG, LLC (collectively

1 “Defendants”), by and through its attorneys, Alessi & Koenig, LLC, and files their Answer to
2 Plaintiff VENISE ABELARD’s (“Plaintiff”) Complaint as follows:

- 3 1. Defendants deny the allegations in Paragraph 1 of the Complaint in that Plaintiff was
4 delinquent in her assessment payments and the foreclosure sale was legal and
5 properly noticed pursuant to applicable NRS 116 provisions.
6
- 7 2. No charging allegations are contained in Paragraph 2 of the Complaint which the
8 answering Defendants need reply. To the extent said Paragraph contains any
9 allegations they are denied.
10
- 11 3. No charging allegations are contained in Paragraph 3 of the Complaint which the
12 answering Defendants need reply. To the extent said Paragraph contains any
13 allegations they are denied.
14
- 15 4. No charging allegations are contained in Paragraph 4 of the Complaint which the
16 answering Defendants need reply. To the extent said Paragraph contains any
17 allegations they are denied.
18
- 19 5. No charging allegations are contained in Paragraph 5 of the Complaint which the
20 answering Defendants need reply. To the extent said Paragraph contains any
21 allegations they are denied.
22
- 23 6. No charging allegations are contained in Paragraph 6 of the Complaint which the
24 answering Defendants need reply. To the extent said Paragraph contains any
25 allegations they are denied.
26
- 27 7. No charging allegations are contained in Paragraph 7 of the Complaint which the
28 answering Defendants need reply. To the extent said Paragraph contains any
allegations they are denied.

- 1 8. No charging allegations are contained in Paragraph 8 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.
- 4 9. No charging allegations are contained in Paragraph 9 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.
- 7 10. No charging allegations are contained in Paragraph 10 of the Complaint which the
8 answering Defendants need reply. To the extent said Paragraph contains any
9 allegations they are denied.
- 10 11. No charging allegations are contained in Paragraph 11 of the Complaint which the
11 answering Defendants need reply. To the extent said Paragraph contains any
12 allegations they are denied.
- 13 12. No charging allegations are contained in Paragraph 12 of the Complaint which the
14 answering Defendants need reply. To the extent said Paragraph contains any
15 allegations they are denied.
- 16 13. No charging allegations are contained in Paragraph 13 of the Complaint which the
17 answering Defendants need reply. To the extent said Paragraph contains any
18 allegations they are denied.
- 19 14. Defendants deny the allegations in Paragraph 14 of the Complaint in that Plaintiff was
20 delinquent in her assessment payments to Fort Apache Square Homeowners
21 Association ("Fort Apache HOA").
- 22 15. Defendants deny the allegations in Paragraph 15 of the Complaint.
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1 16. No charging allegations are contained in Paragraph 16 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 17. No charging allegations are contained in Paragraph 17 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.
7

8 18. Defendants deny the allegations in Paragraph 18 of the Complaint.

9 19. No charging allegations are contained in Paragraph 19 of the Complaint which the
10 answering Defendants need reply. To the extent said Paragraph contains any
11 allegations they are denied.
12

13 20. No charging allegations are contained in Paragraph 20 of the Complaint which the
14 answering Defendants need reply. To the extent said Paragraph contains any
15 allegations they are denied.

16 21. No charging allegations are contained in Paragraph 21 of the Complaint which the
17 answering Defendants need reply. To the extent said Paragraph contains any
18 allegations they are denied.
19

20 22. No charging allegations are contained in Paragraph 22 of the Complaint which the
21 answering Defendants need reply. To the extent said Paragraph contains any
22 allegations they are denied.
23

24 23. No charging allegations are contained in Paragraph 23 of the Complaint which the
25 answering Defendants need reply. To the extent said Paragraph contains any
26 allegations they are denied.
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1 24. No charging allegations are contained in Paragraph 24 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 25. No charging allegations are contained in Paragraph 25 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.

7 26. No charging allegations are contained in Paragraph 26 of the Complaint which the
8 answering Defendants need reply. To the extent said Paragraph contains any
9 allegations they are denied.

10 27. No charging allegations are contained in Paragraph 27 of the Complaint which the
11 answering Defendants need reply. To the extent said Paragraph contains any
12 allegations they are denied.

13 28. No charging allegations are contained in Paragraph 28 of the Complaint which the
14 answering Defendants need reply. To the extent said Paragraph contains any
15 allegations they are denied.

16 29. No charging allegations are contained in Paragraph 29 of the Complaint which the
17 answering Defendants need reply. To the extent said Paragraph contains any
18 allegations they are denied.

19 30. No charging allegations are contained in Paragraph 30 of the Complaint which the
20 answering Defendants need reply. To the extent said Paragraph contains any
21 allegations they are denied.

1 31. No charging allegations are contained in Paragraph 31 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 32. No charging allegations are contained in Paragraph 32 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.
7

8 33. Defendants deny the allegations in Paragraph 33 of the Complaint.

9 34. Defendants deny the allegations in Paragraph 34 of the Complaint.

10 35. Defendants deny the allegations in Paragraph 35 of the Complaint.

11 36. Defendants lack sufficient information and belief as to the allegations in Paragraph 36,
12 and on that basis, denies those allegations.
13

14 37. Defendants deny the allegations in Paragraph 37 of the Complaint.

15 38. Defendants deny the allegations in Paragraph 38 of the Complaint.

16 39. Defendants deny the allegations in Paragraph 39 of the Complaint.

17 40. Defendants deny the allegations in Paragraph 40 of the Complaint.

18 41. Defendants deny the allegations in Paragraph 41 of the Complaint.

19 42. Defendants deny the allegations in Paragraph 42 of the Complaint.

20 43. Defendants deny the allegations in Paragraph 43 of the Complaint.

21 44. Defendants deny the allegations in Paragraph 44 of the Complaint.

22 45. Defendants deny the allegations in Paragraph 45 of the Complaint.

23 46. No charging allegations are contained in Paragraph 46 of the Complaint which the
24 answering Defendants need reply. To the extent said Paragraph contains any
25 allegations they are denied.
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1 47. Defendants deny the allegations contained in Paragraph 47 because a breach of condition
2 and failure to perform existed on Plaintiff's part which authorized the foreclosure.

3 48. Defendants deny the allegations in Paragraph 48 of the Complaint.

4 49. No charging allegations are contained in Paragraph 49 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.
7

8 50. No charging allegations are contained in Paragraph 50 of the Complaint which the
9 answering Defendants need reply. To the extent said Paragraph contains any
10 allegations they are denied.
11

12 51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

13 52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

14 53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

15 54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

16 55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

17 56. No charging allegations are contained in Paragraph 56 of the Complaint which the
18 answering Defendants need reply. To the extent said Paragraph contains any
19 allegations they are denied.
20

21 57. No charging allegations are contained in Paragraph 57 of the Complaint which the
22 answering Defendants need reply. To the extent said Paragraph contains any
23 allegations they are denied.
24

25 58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

26 59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.
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1 60. No charging allegations are contained in Paragraph 60 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

5 62. No charging allegations are contained in Paragraph 62 of the Complaint which the
6 answering Defendants need reply. To the extent said Paragraph contains any
7 allegations they are denied.
8

9 63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

10 64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

11 65. No charging allegations are contained in Paragraph 65 of the Complaint which the
12 answering Defendants need reply. To the extent said Paragraph contains any
13 allegations they are denied.
14

15 66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

16 67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

17 68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

18 69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

19 70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

20 71. Defendants deny the allegations contained in Paragraph 71 of the Complaint.

21 72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

22 73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

23 74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

24 75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

25 76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.
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1 77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

2 78. No charging allegations are contained in Paragraph 78 of the Complaint which the
3 answering Defendants need reply. To the extent said Paragraph contains any
4 allegations they are denied.

5 79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

6 80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

7 81. Defendants deny the allegations contained in Paragraph 81 of the Complaint.

8 82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

9 83. Defendants deny the allegations contained in Paragraph 83 of the Complaint.

10 84. Defendants deny the allegations contained in Paragraph 84 of the Complaint.

11 85. Defendants deny the allegations contained in Paragraph 85 of the Complaint.

12 86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

13 87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

14 88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

15 89. Defendants deny the allegations contained in Paragraph 89 of the Complaint.

16 90. No charging allegations are contained in Paragraph 90 of the Complaint which the
17 answering Defendants need reply. To the extent said Paragraph contains any
18 allegations they are denied.

19 91. No charging allegations are contained in Paragraph 91 of the Complaint which the
20 answering Defendants need reply. To the extent said Paragraph contains any
21 allegations they are denied.

1 92. No charging allegations are contained in Paragraph 92 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 93. No charging allegations are contained in Paragraph 93 of the Complaint which the
5 answering Defendants need reply. To the extent said Paragraph contains any
6 allegations they are denied.
7

8 94. Defendants deny the allegations contained in Paragraph 94 of the Complaint.

9 95. Defendants deny the allegations contained in Paragraph 95 of the Complaint.

10 96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

11 97. Defendants deny the allegations contained in Paragraph 97 of the Complaint.

12 98. Defendants deny the allegations contained in Paragraph 98 of the Complaint.

13 99. No charging allegations are contained in Paragraph 99 of the Complaint which the
14 answering Defendants need reply. To the extent said Paragraph contains any allegations they
15 are denied.
16

17 100. Defendants deny the allegations contained in Paragraph 100.

18 101. Defendants deny the allegations contained in Paragraph 101.

19 102. Defendants deny the allegations contained in Paragraph 102.

20 103. Defendants deny the allegations contained in Paragraph 103.

21 104. Defendants deny the allegations contained in Paragraph 104.

22 105. Defendants deny the allegations contained in Paragraph 105.

23 106. Defendants deny the allegations contained in Paragraph 106.
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1 107. No charging allegations are contained in Paragraph 107 of the Complaint which the
2 answering Defendants need reply. To the extent said Paragraph contains any
3 allegations they are denied.

4 108. Defendants deny the allegations contained in Paragraph 108.

5 109. Defendants deny the allegations contained in Paragraph 109.

6 110. Defendants deny the allegations contained in Paragraph 110.

7 111. Defendants deny the allegations contained in Paragraph 111.

8 112. Defendants deny the allegations contained in Paragraph 112.

9
10 **AFFIRMATIVE DEFENSES**

11 Defendants affirmatively allege that Defendants have not yet had a reasonable
12 opportunity to complete discovery, and facts hereinafter may be discovered which may
13 substantiate other affirmative defenses not listed below. By this Answer to Plaintiff's
14 Complaint, Defendants waive no affirmative defenses and reserves their right to amend the
15 Answer to insert any subsequently discovered affirmative defenses.
16

17
18 **FIRST AFFIRMATIVE DEFENSE**
19 **(Failure to State a Claim)**

20 The Defendants allege that Plaintiff has failed to state facts sufficient to constitute any
21 cause of action against Defendants.

22 **SECOND AFFIRMATIVE DEFENSE**
23 **(Failure to Mitigate Damages)**

24 The Defendants allege that Plaintiff's claims are barred in whole or in part because of
25 Plaintiff's failure to take reasonable steps to mitigate damages, if any.

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27 //

1 **THIRD AFFIRMATIVE DEFENSE**
2 **(Equitable Defense, Laches, Unclean Hands, Failure to do Equity)**

3 The Defendants allege that Plaintiff's claims are barred by the equitable doctrine of
4 laches, unclean hands, and failure to do equity.

5 **FOURTH AFFIRMATIVE DEFENSE**
6 **(Breach of Contract)**

7 The Defendants allege that Plaintiff's substantially and materially breached the
8 obligation/contract complaint of prior to commencement of this action which conduct
9 extinguishes the right to maintain this action.

10 **FIFTH AFFIRMATIVE DEFENSE**
11 **(Bad Faith)**

12 The Defendants allege that Plaintiff's Complaint is filed in bad faith and has no merit.

13 **SIXTH AFFIRMATIVE DEFENSE**
14 **(Defendants Acted in Good Faith)**

15 Defendants are excused from any and all liability under the facts alleged in Plaintiff's
16 claims for relief because at all material times, Defendants acted in good faith and conducted all
17 material transactions in good faith.

18 **SEVENTH AFFIRMATIVE DEFENSE**
19 **(Plaintiff Not Entitled to Relief)**

20 Defendants deny that Plaintiff is entitled to any relief for which they pray.

21 **EIGHTH AFFIRMATIVE DEFENSE**
22 **(Privilege)**

23 The Defendants allege that Plaintiff claims are barred, in whole or in part, on the ground
24 that Defendants' conduct as alleged in Plaintiff's Complaint was privileged.
25

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1 **NINTH AFFIRMATIVE DEFENSE**
2 **(Plaintiff's Own Negligence)**

3 Plaintiff is barred from recovery, or said recovery, if any, must be proportionately
4 reduced, as any injury or damage allegedly suffered by Plaintiff occurred as a proximate result of
5 the negligence on their own part, in that Plaintiff failed to exercise ordinary care on their own
6 behalf at the time and place alleged.

7 **TENTH AFFIRMATIVE DEFENSE**
8 **(Comparative Fault)**

9 The Defendants allege that Plaintiff was careless and negligent with respect to all matters
10 alleged by them in the Complaint and thus was comparatively at fault and proximately caused
11 their own damages. Accordingly, any damages otherwise recoverable by Plaintiff, if any, should
12 be reduced in proportion to their own negligence or omission.
13

14 **ELEVENTH AFFIRMATIVE DEFENSE**
15 **(Assumption of Risk)**

16 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
17 situations, actions, omissions and transactions upon which they now base their various claims for
18 relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is
19 consequently barred from all recovery by such assumption of risk.
20

21 **TWELFTH AFFIRMATIVE DEFENSE**
22 **(No Proximate Cause)**

23 The acts or omissions of Defendants alleged in Plaintiff's claims for relief were not a
24 proximate cause of the loss or damage for which Plaintiff seeks recovery.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**
26 **(Suffered No Damages)**

27 The Defendants allege that Plaintiff's claims are barred because Plaintiff suffered no
28 damages as a result of the allegations in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE
(Plaintiff's Acts/Omissions)

Defendants allege that, by reason of their own acts and omissions, Plaintiff has waived their right to assert the claims they have asserted against Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE
(Offset)

Defendants allege that the Court should offset against any award which may be made to Plaintiff the amount owing by Plaintiff to Defendants, including without limitation, the amount of unpaid assessments and related collections costs.

SIXTEENTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)

Defendants allege that Plaintiff is unjustly enriched by the amount of unpaid assessments which continue to accrue interest and collection costs.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Pursuant to NRCP Rule 11, Defendants reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

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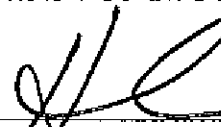
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1 WHEREFORE, Defendants pray for judgment as follows:

- 2 1) That Plaintiff recover nothing on account of the claims made in the Complaint;
- 3 2) For reasonable attorney's fees and costs of suit incurred herein;
- 4 3) For such other and further relief as the court may deem just and proper.

5 DATED this 13 day of December, 2012.

7 ALESSI & KOENIG, LLC

8 
9 Huong X. Lam, Esq. (10916)

10 9500 W. Flamingo, Suite 205

11 Las Vegas, Nevada 89147

12 Phone: (702) 222-4033

13 Fax: (702) 254-9044

14 Email: huong@allessikoenig.com

15 *Attorney for Defendants*

16 *Fort Apache Square Homeowners Association,*

17 *Mesa Management,*

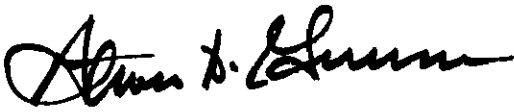
18 *Alessi & Koenig, LLC*

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the 13 day of December, 2012, I mailed a true and correct copy of the foregoing ANSWER TO COMPLAINT by depositing the same in the U.S. Mail, in Las Vegas, Nevada, in a seal envelope with first-class postage fully prepaid to the following parties:

Michael, Joe, Esq.
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
800 South Eighth Street
Las Vegas, NV 89101
Attorney for Plaintiff


An employee of ALESSI & KOENIG, LLC


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

4 **COUNTERCLAIM AND CROSS CLAIM**

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

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

21 **SECOND CLAIM FOR RELIEF**

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

28 ///

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**

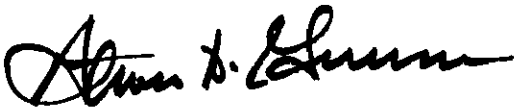
19 I HEREBY CERTIFY that on the 24th day of April, 2013, I served a photocopy of the
20 foregoing **ANSWER AND COUNTERCLAIM** by placing the same in a sealed envelope with first-
21 class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

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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CLERK OF THE COURT

AACC
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for defendants 9352 Cranesbill Trust and Iyad Haddad

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

4 **COUNTERCLAIM AND CROSS CLAIM**

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

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

21 **SECOND CLAIM FOR RELIEF**

- 22 8. Counterclaimant repeats the allegations contained in paragraphs 1 through 7.
23 9. Counterclaimant seeks a declaration from this court, pursuant to NRS 40.010, that title in
24 the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants
25 herein have no estate, right, title or interest in the property, and that defendants are forever enjoined
26 from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.
27 10. Counterclaimant is entitled to an award of attorneys fees and costs.

28 ///

1 WHEREFORE, Counterclaimant prays for Judgment as follows:

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

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

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

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

9 DATED this 30th day of April, 2013

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

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

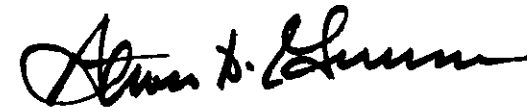
15 **CERTIFICATE OF MAILING**

16 I HEREBY CERTIFY that on the 30th day of April, 2013, I served a photocopy of the
17 foregoing **ANSWER AND COUNTERCLAIM** by placing the same in a sealed envelope with first-
18 class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

19 Ryan M. Kerbow, Esq.
20 Alessi & Koenig, LLC.
9500 W. Flamingo Rd., #205
21 Las Vegas, NV 89147

22 Michael Joe, Esq.
23 Legal Aid Center
800 S. Eighth St.
24 Las Vegas, NV 89101

25
26 /s/ /Esther Maciel-Thompson/
27 An employee of the LAW OFFICES
OF MICHAEL F. BOHN, ESQ., LTD.



CLERK OF THE COURT

RCCM

MICHAEL JOE, ESQ.

Nevada Bar No. 10626

JILL C. DAVIS, ESQ.

Nevada Bar No. 8418

LEGAL AID CENTER OF

SOUTHERN NEVADA, INC.

725 E. CHARLESTON AVENUE

LAS VEGAS, NEVADA 89101

TELEPHONE: (702) 386-1070 x 1432

FACSIMILE: (702) 388-1642

MJOE@lacsnsn.org

Attorneys for PLAINTIFF

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

VENISE ABELARD,

Plaintiff,

vs.

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

Defendants.

Case No.: A671509

Dept No.: XIV

REPLY TO COUNTERCLAIM

EXEMPT FROM ARBITRATION

9352 CCRANESBILL TRUST

Counterclaimant,

vs.

VENISE ABELARD,

Counterdefendant.

Plaintiff, VENISE ABELARD, (hereinafter referred to as "Plaintiff") by and through her attorney, Michael Joe, Esq., of LEGAL AID CENTER OF SOUTHERN NEVADA, INC., hereby replies the counterclaim by 9352 CRANESBILL TRUST, alleges and states as follows:

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2. Plaintiff has argued that she was current on her assessments and the foreclosure was wrongful. Therefore title should be vested in Plaintiff's name.

3. Plaintiff denies the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Counterclaim.

WHEREFORE, Plaintiff requests the following relief against Defendant:

1. For actual damages;
2. Consequential damages in an amount to be proven at trial;
3. Statutory damages in the amount of \$1,000.00 for each violation under 15 U.S.C. § 1692k(a)(2)(A);
4. That it be declared and adjudged that Plaintiff Venise is the owner of the said subject property, and that Defendant Cranesbill has no estate or interests whatsoever in or to said subject property and also that said Defendant Cranesbill be forever barred from asserting any claim whatsoever in or to said subject property adverse to Venise or his successors in interest;
5. For a declaration and determination that Venise is the rightful holder of title to the subject property and that Defendant Cranesbill be declared to have no estate, right, title or interest in said property;

6. For judgment forever enjoining said Defendant Cranesbill from claiming any estate, right, title or interest in the subject property;
7. Punitive damages in an amount sufficient to punish Defendant and discourage others from like conduct;
8. For Plaintiff's attorney fees, including litigation expenses, and costs; and
9. Plaintiff demands a jury trial.
10. For such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

DATED this 24th day of May, 2013.

**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**

/s/ Michael Joe

MICHAEL JOE, ESQ.

Nevada Bar No. 10626

JILL C. DAVIS, ESQ.

Nevada Bar No. 8418

**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**

725 E. CHARLESTON AVENUE

LAS VEGAS, NEVADA 89101

TELEPHONE: (702) 386-1070 x 1432

FACSIMILE: (702) 388-1642

MJOE@lacs.org

Attorneys for PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2013, I served a true and correct copy of the foregoing **REPLY TO COUNTERCLAIM**, pursuant to NRCP 5(b), by depositing for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Las Vegas, Nevada, addressed to the following:

Michael Bohn, Esq.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119

Ryan M. Kerbow, Esq.
9500 W. Flamingo Rd., #205
Las Vegas, NV 89101

/s/ Amy Berlin
Employee of the Legal Aid Center
of Southern Nevada