

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH BERBERICH,

Appellant,

v.

BANK OF AMERICA, N.A.; and
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,

Respondents.

Supreme Court No. 76457

Electronically Filed
District Court No. 2018-1082018 11:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME I

DATE	DOCUMENT	VOLUME	PAGE NOS.
4/10/2018	Affidavit of Due Diligence (Connie Fernandez)	I	APP0028-0029
3/19/2018	Affidavit of Process (Bank of America)	I	APP0019
6/19/2018	Affidavit of Publication (Connie Fernandez)	I	APP0148
3/19/2018	Affidavit of Service (Mortgage Electronic Registration Systems, Inc.)	I	APP0020-0021
7/30/2018	Application for Default Judgment	I	APP0165-0092
7/17/2018	Case Appeal Statement	I	APP0159-0162
5/21/2018	Certificate of Mailing	I	APP0145
1/31/2018	Complaint	I	APP0001-0012
7/18/2018	Default	I	APP0163-64

DATE	DOCUMENT	VOLUME	PAGE NOS.
1/31/2018	Initial Appearance Fee Disclosure	I	APP0013
3/28/2018	Initial Appearance Fee Disclosure	I	APP0025-0027
9/11/2018	Judgment by Default	I	APP0196-0197
4/16/2018	Motion to Dismiss Complaint Under NRCP 12(B)(5)	I	APP0030-0058
3/26/2018	Notice of Appearance	I	APP0022-24
7/17/2018	Notice of Appeal	I	APP0157-0158
5/7/2018	Notice of Change of Address	I	APP0100-0101
9/12/2018	Notice of Entry of Judgment by Default	I	APP0198-0201
6/19/2018	Notice of Entry of Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment	I	APP0149-0154
2/5/2018	Notice of Lis Pendens	I	APP0017-0018
5/3/2018	Opposition to Defendants' Motion to Dismiss and Countermotion for Summary Judgment	I	APP0071-0098
5/10/2018	Order Granting Ex-Parte Application to Extend Time to Serve and for Service by Publication	I	APP0102-0103

DATE	DOCUMENT	VOLUME	PAGE NOS.
6/15/2018	Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment	I	APP0146-0147
4/18/2018	Plaintiff's Ex-Parte Application to Extend Time to Serve and for an Order for Service by Publication as to Defendant Connie Fernandez	I	APP0059-70
5/5/2018	Plaintiff's Initial Appearance Fee Disclosure	I	APP0099
5/16/2018	Plaintiff's Reply in Support of Countermotion for Summary Judgment	I	APP0134-0144
5/15/2018	Reply Supporting Motion to Dismiss Complaint Under Rule 12(B)(5) and Opposition to Countermotion for Summary Judgment and Alternatively, Request for Rule 56(F) Relief	I	APP0104-0133
7/30/2018	Request for Prove Up Hearing by Default	I	APP0193-0195
2/2/2018	Summons (Bank of America)	I	APP0014
2/2/2018	Summons (Connie Fernandez)	I	APP0015
2/2/2018	Summons (Mortgage Electronic Registration Systems, Inc.)	I	APP0016
7/12/2018	Three Day Notice of Intent to Enter Default Against Defendant Connie Fernandez	I	APP0155-0156

VOLUME I

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1/31/2018	Complaint	I	APP0001-0012
1/31/2018	Initial Appearance Fee Disclosure	I	APP0013
2/2/2018	Summons (Bank of America)	I	APP0014
2/2/2018	Summons (Connie Fernandez)	I	APP0015
2/2/2018	Summons (Mortgage Electronic Registration Systems, Inc.)	I	APP0016
2/5/2015	Notice of Lis Pendens	I	APP0017-0018
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3/28/2018	Initial Appearance Fee Disclosure	I	APP0025-0027
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5/16/2018	Plaintiff's Reply in Support of Countermotion for Summary Judgment	I	APP0134-0144
5/21/2018	Certificate of Mailing	I	APP0145
6/15/2018	Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment	I	APP0146-0147
6/19/2018	Affidavit of Publication	I	APP0148
6/19/2018	Notice of Entry of Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment	I	APP0149-0154
7/12/2018	Three Day Notice of Intent to Enter Default Against Defendant Connie Fernandez	I	APP0155-0156
7/17/2018	Notice of Appeal	I	APP0157-0158
7/17/2018	Case Appeal Statement	I	APP0159-0162
7/18/2018	Default	I	APP0163-64
7/30/2018	Application for Default Judgment	I	APP0165-0092

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7/30/2018	Request for Prove Up Hearing by Default	I	APP0193-0195
9/11/2018	Judgment by Default	I	APP0196-0197
9/12/2018	Notice of Entry of Judgment by Default	I	APP0198-0201

DATED this 10th day of December, 2018.

The Law Office of Mike Beede, PLLC

/s/Michael Beede

Michael Beede, Esq.

Nevada Bar No. 13068

2470 St. Rose Pkwy, Suite 307

Henderson, NV 89074

Attorney for Appellant,

Kenneth Berberich

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 December 10, 2018 I caused to be served a true and correct copy of the foregoing **APPELLANT'S APPENDIX VOLUME I**, by the method indicated:

☒ BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

☐ BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

/s/Michael Madden
An Employee of The Law Office of Mike Beede, PLLC

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

Department 26

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): KENNETH BERBERICH	Defendant(s) (name/address/phone): CONNIE FERNANDEZ; BANK OF AMERICA, N.A.;
	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;
	inclusive; ROE CORPORATIONS 1 through 10, inclusive
Attorney (name/address/phone): Michael Beede, Esq. 2470 St. Rose Pkwy., Ste. 201 Henderson, NV 89074 702-473-8406	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

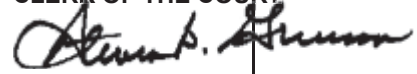
1/31/2018

Date

/s/ Michael Beede, Esq.

Signature of initiating party or representative

See other side for family-related case filings.



COMP

MICHAEL N. BEEDE, ESQ.
Nevada State Bar No. 13068

THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 201
Henderson, NV 89074
Telephone (702) 473-8406
Facsimile (702) 832-0248
eservice@legallv.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CASE NO. A-18-768728-C

DEPT NO. Department 26

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

**COMPLAINT: QUIET TITLE
EXEMPTION FROM ARBITRATION:
Title to real property**

COMES NOW, Kenneth Berberich, by and through its attorney, Michael N. Beede, Esq.,
and hereby complains and alleges against the above-named Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. This action relates to the ownership and title to certain residential real property located in Clark County, Nevada commonly known as 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178 and bearing Clark County Assessor's Parcel Number 176-29-511-068 (the "Property"). Accordingly, jurisdiction and venue are appropriate in Clark County, Nevada.
2. Plaintiff Kenneth Berberich ("Plaintiff") is an individual residing in Clark County, Nevada and is the record owner of the Property.
3. Upon information and belief, Defendant Connie Fernandez is a resident of Clark County, Nevada and was the owner of the Property prior to the issuance of a Trustee's Deed Upon Sale to Kenneth Berberich on August 22, 2011.

- 1 4. Upon information and belief, Defendant Bank of America, N.A. ("BANA") is a
2 national banking association doing business in Clark County, Nevada.
- 3 5. Upon information and belief, Defendant Mortgage Electronic Registration Systems,
4 Inc. ("MERS") is a foreign corporation doing business in Clark County, Nevada.
- 5 6. The true names and capacities, whether individual, corporate, associate or otherwise,
6 of Does 1 through 10, inclusive, and Roe Business entities 1 through 10, inclusive, are
7 unknown to the Plaintiff at this time. Plaintiff therefore sues said Does and Roes by
8 said names, as Plaintiff believes that said Does and/or Roes are in some way
9 responsible for some or all of Plaintiff's damages set forth herein. Plaintiff will request
10 leave of this Court to amend its Complaint when such names and identities become
11 known to it.
- 12 7. Jurisdiction and venue are proper in this Court because this action concerns real
13 property located in the County of Clark, State of Nevada, and the facts, acts, events
14 and circumstances herein mentioned, alleged and described occurred in the County of
15 Clark, State of Nevada.

16 **GENERAL ALLEGATIONS**

- 17 8. The Property is located at 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178,
18 bearing Clark County Assessor's Parcel Number 176-29-511-068, and the legal
19 description of: Lot 149 as shown on the Final Map of Via Valencia/Via Ventura Unit
20 1, on file in Book 121 of Plats, Page 70, in the office of the County Recorder of Clark
21 County, Nevada.
- 22 9. Plaintiff's predecessor in interest, Kenneth Berberich, obtained title to the Property by
23 way of Trustee's Deed Upon Sale issued pursuant to NRS 116 which was recorded on
24 August 24, 2011. (Exhibit #1)

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- 1 10. Pursuant to NRS 116.31166, and *Deutsche Bank Nat'l Trust Co. v. Roland*, 2014 Nev.
2 Unpub. LEXIS 507; 2014 WL 1319106, it is conclusively proved that each of the
3 Defendants was noticed by Allied Trustee Services of the underlying foreclosure sale
4 and that all relevant provisions of NRS 116 were complied with. A copy of the Notice
5 of Foreclosure Sale was recorded on 03/11/2011.
- 6 11. Plaintiff's title stems from a Trustee's Deed Upon Sale arising from a delinquency in
7 assessments due from the former owner, Connie Fernandez, to Via Valencia/Via
8 Ventura Homeowners Association pursuant to NRS Chapter 116.
- 9 12. Kenneth Berberich took title to the Property free and clear of all junior liens and
10 encumbrances affecting title to the Property, including any Deed of Trust, any
11 assessments or other fees claimed by Via Valencia/Via Ventura Homeowners
12 Association accruing prior to the date of the Deed, and any claim to title of the
13 Property that may be asserted to by Defendants.
- 14 13. Notwithstanding the recording of the Deed on August 24, 2011, Plaintiff is informed
15 and believes that BANA claims to continue to hold an interest in the Property superior
16 to that of Plaintiff's by virtue of its purported Deed of Trust.
- 17 14. Plaintiff is informed and believes Connie Fernandez granted a deed of trust in favor
18 of Bank of America, N.A., naming MERS as beneficiary, which was recorded with
19 the Clark County Recorder on June 9, 2009.
- 20 15. On November 15, 2011, an assignment of the aforementioned Deed of Trust was
21 recorded which purported to transfer the beneficial interest thereof from MERS to
22 Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka
23 Countrywide Home Loans Servicing, LP.
- 24 16. The claims to title of the Property asserted by each Defendant conflict with Plaintiff's
25 claim to title and constitute a cloud upon title.
- 26 17. The interest of each of the Defendants, if any, has been extinguished by reason of the
27 foreclosure sale, which was properly conducted with adequate notice given to all
28 persons and entities claiming a recorded interest in the subject property, and resulting

1 from a delinquency in assessments due from the former owner, to Via Valencia/Via
2 Ventura Homeowners Association, pursuant to NRS Chapter 116 and *SFR Invs. Pool*
3 *1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014).

4 18. Therefore, Plaintiff brings the instant action to quiet all claims against all known
5 persons and/or entities claiming legal or equitable interests in the Property.

6 **FIRST CLAIM FOR RELIEF ACTION**

7 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. Seq. and NRS 116, et. seq.)**

8 19. Plaintiff incorporates each and every of the preceding paragraphs as if fully set forth
9 herein.

10 20. Pursuant to NRS 30.030, et seq. and NRS 40.010, this Court has the power and
11 authority to declare Plaintiff's rights and interests in the Property and to resolve the
12 Defendants' adverse claims to the Property.

13 21. Plaintiff Kenneth Berberich acquired the Property by successfully bidding on the
14 Property at a public sale held on August 11, 2011 in accordance with NRS Chapter
15 116 and became the rightful owner of the Property by virtue of the Trustee's Deed
16 Upon Sale. (Exhibit #1)

17 22. Upon information and belief, the Defendants herein assert claims to the Property
18 adverse to that of Plaintiff.

19 23. Plaintiff is entitled to a declaratory judgment from this court finding that: (1) Plaintiff
20 owns the Property in fee simple free and clear of any interest in the Property claimed
21 by any and all Defendants; (2) the Deed is valid and enforceable; (3) the conveyance
22 of the Property to Kenneth Berberich through the Trustee's Deed Upon Sale
23 extinguished Defendants' security and/or ownership interests in the Property; (4) any
24 attempt to transfer of title to the Property through a non-judicial foreclosure sale
25 pursuant to any Deed of Trust would be invalid; and (5) Plaintiff's rights and interest
26 in the Property are superior to any adverse interests claimed by Defendants.

27 24. Plaintiff seeks an Order from the Court quieting title to the Property in favor of the
28 Plaintiff.

SECOND CLAIM FOR RELIEF

(Preliminary and Permanent Injunction against all Defendants)

25. Plaintiff incorporates each and every of the preceding paragraphs as if fully set forth herein.

26. Plaintiff Kenneth Berberich acquired the Property by successfully bidding on the Property at a public sale held on August 11, 2011 in accordance with NRS Chapter 116 and became the rightful owner of the Property by virtue of the Trustee's Deed Upon Sale. (Exhibit #1)

27. Notwithstanding the conveyance of the Property to Plaintiff, Defendants continue to claim adverse interests in the Property through the Deed of Trust.

28. Plaintiff is informed and believes that one or more Defendants may improperly attempt to complete a non-judicial foreclosure sale of the Property under the Deed of Trust pursuant to NRS Chapter 107.080, et seq. despite the fact that Plaintiff holds a superior interest in the Property.

29. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting all Defendants from initiating or attempting to complete any foreclosure proceeding under the Deed of Trust or otherwise attempting to transfer title to the Property thereunder.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For a determination and declaration that Plaintiff is the rightful owner of title to
4 the Property, free and clear of all claims of the Defendants;
5 2. For and award of special damages, including reasonable attorneys' fees;
6 3. For court costs incurred;
7 4. For a preliminary and permanent injunction prohibiting all Defendants from
8 initiating or continuing foreclosure proceedings or otherwise attempting to transfer
9 title to the Property;
10 5. For such other and further relief as the Court deems just and proper.

11
12 DATED this 31st day of January, 2018.

13
14 THE LAW OFFICE OF MIKE BEEDE, PLLC

15
16 BY: /s/Michael Beede

17 MICHAEL N. BEEDE, ESQ.
18 Nevada State Bar No. 13068
19 2470 St. Rose Pkwy, Suite 201
20 Henderson, NV 89074
21 Telephone (702) 473-8406
22 *Attorney for Plaintiff*
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27
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Exhibit 1

Exhibit 1

RECORDING REQUESTED BY:

AND WHEN RECORDED AND MAIL
TAX STATEMENTS TO:
KENNETH BERBERICH
4500 W LAKE MEAD BLVD. #101
LAS VEGAS, NV 89108

T.S. No.: **10-15540**
A.P.N. : **176-29-511-068**

Inst #: 201108240002845
Fees: \$16.00 N/C Fee: \$25.00
RPTT: \$22.95 Ex: #
08/24/2011 03:11:26 PM
Receipt #: 890741
Requestor:
KENNETH BERBERICH
Recorded By: GILKS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

SPACE ABOVE LINE FOR RECORDER'S USE

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was **\$2,754.55**
- 3) The amount paid by the grantee at the trustee sale was **\$4,101.00**
- 4) The documentary transfer tax is **\$**
- 5) City/Judicial District of LAS VEGAS

And **ALLIED TRUSTEE SERVICES**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to:

KENNETH BERBERICH

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

RECITALS:

This conveyance is made pursuant to the powers granted to **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** and conferred upon appointed trustee by the provisions of the Declaration of Covenants, Conditions, and Restrictions recorded **08-04-2005** as Instrument No. **0004194** Book **20050804** Page County of CLARK and pursuant to N.R.S. 117.070 et. Seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and that certain Notice of Delinquent Assessment dated **09-30-2010** and recorded **10-06-2010** in Book **20101006** Page as Instrument No. **0002672** of Official Records of CLARK County, Nevada.

The name of the owner(s) of the property (trustor) was **CONNIE FERNANDEZ**.

Continued on page 2

APP0009

T.S. No. : 10-15540
A.P.N. : 176-29-511-068

TRUSTEE'S DEED UPON SALE

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. After expiration of ninety (90) days from the recording or mailing of copies of the Notice of Default and Election to Sell, a Notice of Trustee's Sale was recorded in the Office of the Recorder of said County and the association claimant, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION**, demanded that such sale be made.

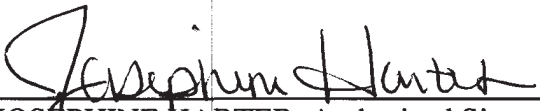
All requirements of law regarding the recording and the mailing of copies of the Notice of Delinquent Assessment, Notice of Default, and the recording, mailing, posting and publication of copies of the Notice of Trustee's Sale have been complied with.

Said property was sold by said Trustee at public auction on **08-11-2011** at the place named in the Notice of Trustee's Sale, in the County of CLARK, Nevada, in which the property is situated. Grantee, being the highest bidder at such sale became the purchaser of said property and paid therefore to said trustee the amount bid, being **\$4,101.00**, in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by said Notice of Delinquent Assessment.

Date: August 22, 2011

ALLIED TRUSTEE SERVICES, as Trustee
990 Reserve Drive, Suite 208
Roseville, CA 95678
Telephone No. (800) 220-5454

By:


JOSEPHINE HARTER, Authorized Signature

State of California
County of Placer

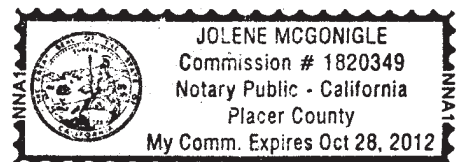
On August 22, 2011 before me, JOLENE MCGONIGLE, a Notary Public, personally appeared JOSEPHINE HARTER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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.

WITNESS my hand and official seal.

Signature



(Seal)



APP0010

EXHIBIT "A"

TS 10-15540

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF Nevada, COUNTY OF CLARK CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1):

LOT 149 AS SHOWN ON THE FINAL MAP OF VIA VALENCIA/VIA VENTURA UNIT 1, ON FILE IN BOOK 121 OF PLATS, PAGE 70, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT OF INGRESS AND EGRESS AND OF USE AND ENJOYMENT IN, TO AND OVER THE COMMON ELEMENTS, INCLUDING BUT NOT LIMITED TO, PRIVATE STREET, DISCLOSED BY SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENT FOR VIA VALENCIA/VIA VENTURA RECORDED AUGUST 4, 2005 IN BOOK 20050804 AS DOCUMENT NO. 04194, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ASSESSOR'S PARCEL NUMBER:

176-29-511-068

APP0011

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 176-29-511-068
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'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
Other _____

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: _____
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

Real Property Transfer Tax Due

\$ 4,101.00
(_____)
\$ _____
\$ 22.95

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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 _____ Capacity Grantee
Signature _____ Capacity _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Allied Trustee Services, Inc
Address: 990 Reserve Dr. Suite 200
City: Reno
State: CA Zip: 95678

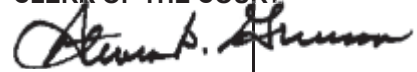
**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Kenneth Berberich
Address: 4500 V Lake Mead Blvd #101
City: Las Vegas
State: NV Zip: 89108

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

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)



1 **IAFD**

2 MICHAEL N. BEEDE, ESQ.
3 Nevada State Bar No. 13068

4 **THE LAW OFFICE OF MIKE BEEDE, PLLC**
5 2470 St. Rose Pkwy, Suite 201
6 Henderson, NV 89074
7 Telephone (702) 473-8406
8 Facsimile (702) 832-0248
9 *Attorney for Plaintiff*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

8 KENNETH BERBERICH,
9 Plaintiff,
10 v.

CASE NO. A-18-768728-C
DEPT NO. Department 26

11 CONNIE FERNANDEZ; BANK OF
12 AMERICA, N.A.; MORTGAGE
13 ELECTRONIC REGISTRATION
14 SYSTEMS, INC.; and DOES 1 through 10,
15 inclusive; ROE CORPORATIONS 1 through
16 10, inclusive,
17 Defendants.

15 **INITIAL APPEARANCE FEE DISCLOSURE**

16 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-
17 entitled action as indicated below:

18 Kenneth Berberich, (Plaintiff),

19 Plaintiff \$270.00

20 TOTAL REMITTED:

\$270.00

21 DATED this 31st day of January, 2018.

22 THE LAW OFFICE OF MIKE BEEDE, PLLC

23 BY: /s/Michael Beede

24 MICHAEL N. BEEDE, ESQ.
25 Nevada State Bar No. 13068
26 2470 St. Rose Pkwy, Suite 201
27 Henderson, NV 89074
28 Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorney for Plaintiff

SUMM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

Case No. A-18-768728-C

Dept. No. XXVI

SUMMONS

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through
10, inclusive; ROE CORPORATIONS 1
through 10, inclusive,

Defendants,

**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.

BANK OF AMERICA, N.A.

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:

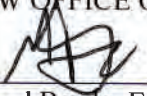
- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the
Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a
judgment 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 subdivisions, 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.

Issued at the direction of
THE LAW OFFICE OF MIKE BEEDE, PLLC

By:  2/2/18
Michael Beede, Esq. Date
2470 St. Rose Pkwy., Ste. 201
Henderson, NV 89074
702-473-8406
Attorney for Plaintiff


CLERK OF COURT
Josefina San Juan 2/2/2018
Deputy Clerk Date
County Court House
200 Lewis Avenue
Las Vegas, Nevada 89155

APP0014

SUMM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

Case No. A-18-768728-C

Dept. No. XXVI

SUMMONS

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through
10, inclusive; ROE CORPORATIONS 1
through 10, inclusive,

Defendants,

**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.

CONNIE FERNANDEZ

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 this Court may enter a
judgment 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 subdivisions, 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.

Issued at the direction of
THE LAW OFFICE OF MIKE BEEDE, PLLC

By:  2/2/18
Date

Michael Beede, Esq.
2470 St. Rose Pkwy., Ste. 201
Henderson, NV 89074
702-473-8406
Attorney for Plaintiff

CLERK OF COURT

 Josefina San Juan 2/2/2018
Deputy Clerk Date
County Court House
200 Lewis Avenue
Las Vegas, Nevada 89155

SUMM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

Case No. A-18-768728-C

Dept. No. XXVI

SUMMONS

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through
10, inclusive; ROE CORPORATIONS 1
through 10, inclusive,

Defendants,

**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.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

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:

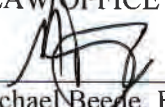
- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the
Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a
judgment 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 subdivisions, 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.

Issued at the direction of
THE LAW OFFICE OF MIKE BEEDE, PLLC

By: 
Michael Beede, Esq.
2470 St. Rose Pkwy., Ste. 201
Henderson, NV 89074
702-473-8406
Attorney for Plaintiff

2/2/18
Date

CLERK OF COURT

 Josefina San Juan 2/2/2018
Deputy Clerk
County Court House
200 Lewis Avenue
Las Vegas, Nevada 89155

APP0016

Inst #: 20180215-0001685
Fees: \$40.00
02/15/2018 02:20:56 PM
Receipt #: 3323828
Requestor:
LAW OFFICE OF MIKE BEEDE PL
Recorded By: SCHIABLE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: HENDERSON BRANCH

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 176-29-511-068

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT (DO NOT Abbreviate)

Notice of Lis Pendens

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

The Law Office of Mike Beede, PLLC

RETURN TO: Name The Law Office of Mike Beede, PLLC

Address 2470 St. Rose Pkwy., Ste. 201

City/State/Zip Henderson, NV 89074

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name The Law Office of Mike Beede, PLLC

Address 2470 St. Rose Pkwy., Ste. 201

City/State/Zip Henderson, NV 89074

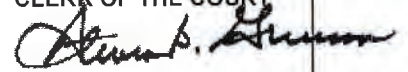
This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014



1 **NOLP**
2 MICHAEL N. BEEDE, ESQ.
3 Nevada Bar No. 13068
4 **THE LAW OFFICE OF MIKE BEEDE, PLLC**
5 2470 St. Rose Pkwy, Suite 201
6 Henderson, NV 89074
7 T: (702) 473-8406
8 F: (702) 832-0248
9 eservice@legallv.com
10 *Attorney for Plaintiff, Kenneth Berberich*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 KENNETH BERBERICH,

11 Plaintiff,

12 v.

13 CONNIE FERNANDEZ; BANK OF
14 AMERICA, N.A.; MORTGAGE
15 ELECTRONIC REGISTRATION
16 SYSTEMS, INC.; and DOES 1 through 10,
17 inclusive; ROE CORPORATIONS 1 through
18 10, inclusive,

19 Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

NOTICE OF LIS PENDENS

18 Please take notice pursuant to NRS 14.010, an action has been filed by the Plaintiff,
19 Kenneth Berberich (hereafter "Plaintiff") regarding title and possession to the real property
20 commonly known as 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178, and legally
21 described as VIA VALENCIA VIA VENTURA UNIT 1 PLAT BOOK 121 PAGE 70 LOT
22 149 CLARK COUNTY, NEVADA.

23 DATED this 5th day of February, 2018.

24 THE LAW OFFICE OF MIKE BEEDE, PLLC

25 BY: /s/Michael Beede

26 Michael N. Beede, Esq.
27 Nevada Bar No. 13068
28 2470 St Rose Parkway #201
Henderson, NV 89074

Attorney for Plaintiff, Kenneth Berberich

Steven D. Grierson

AFFIDAVIT OF PROCESS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**CASE NO.: A-18-768728-C
DEPT: XXVI**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERANDEZ, BANK OF AMERICA,
N.A. et al

Defendants.

**TO: Bank of America
100 N Tryon Street
Charlotte, NC 28255**

**State of North Carolina }
 } SS
County of Mecklenburg }**

I, Monty Clark, is a Private Process Server, who being duly sworn, deposes and says that at the time of service, he was over the age of twenty-one, am not a party to this action and am not related by blood or marriage to a party to this action or to the person upon service was made.

On the 27th day of February, 2018, at 2:40 , P.M.

At 100 N. Tryon Street (Bank) city of Charlotte State of North Carolina 28255, Mecklenburg County.

The undersigned served the Summon, Complaint: Quite Title, Exemption from Arbitration: (Title to Real Property), Prayer for Relief and Exhibit "A" on James Mosteller who is the Bank Manager of Bank of America, N.A. located at the above address by hand delivering the above to him personally.

The person receiving documents is described as follows:

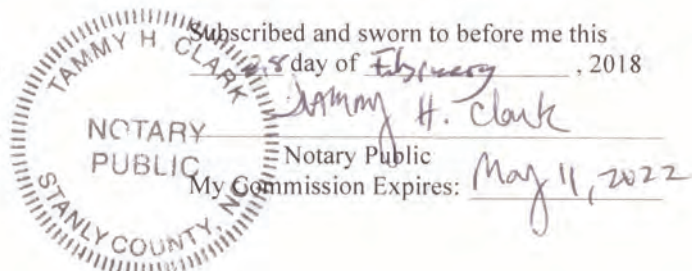
Sex: M Race: W Age: 30's Height: 6'0"
Weight: 175 Hair: brown hair Other: brown eyes

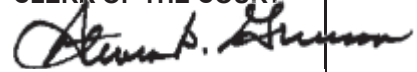
To the best of my knowledge and belief, said person was not engaged in the U.S. Military at the time of this service.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Signature of Server

Monty Clark





MICHAEL N. BEEDE, ESQ.
Nevada Bar No. 13068
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 201
Henderson, NV 89074
T: (702) 473-8406
F: (702) 832-0248
eservice@legallv.com
Attorney for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

**AFFIDAVIT OF SERVICE FOR MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.**

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-18-768728-C

Plaintiff:

KENNETH BERBERICH

vs.

Defendant:

**CONNIE FERNANDEZ; BANK OF AMERICA NA; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.; AND DOES 1
THROUGH 10, INCLUSIVE; ROE CORPORATIONS 1 THROUGH 10,
INCLUSIVE**

For:

ATTORNEY'S PROCESS

320 E. WARM SPRINGS ROAD, #4A-14

LAS VEGAS, NV 89119

Received by ATTORNEY'S PROCESS to be served on **MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS INC, 1818 LIBRARY STREET SUITE 300, RESTON, VA 20190.**

I, James O. Inglefield III, being duly sworn, depose and say that on the **27th day of February, 2018** at **10:40 am, I:**

served a **CORPORATION** by delivering a true copy of the **SUMMONS AND COMPLAINT AND EXHIBITS** with the date and hour of service endorsed thereon by me, to: **TIMOTHY RENNER** as **COUNSEL** for **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC**, at the address of: **1818 LIBRARY STREET SUITE 300, RESTON, VA 20190**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.

Subscribed and Sworn to before me on the 28
day of February 2018 by the affiant
who is personally known to me.

Mary Ann Adams
NOTARY PUBLIC



Mary Ann Adams
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7534888
My Commission Expires
March 31, 2021

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James O. Inglefield III
James O. Inglefield III
Process Server

ATTORNEY'S PROCESS
320 E. WARM SPRINGS ROAD, #4A-14
LAS VEGAS, NV 89119
(702) 547-9036

Our Job Serial Number: PVA-2018000387



NOTA
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: email@akerman.com
Email: rex.garner@akerman.com

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and DOES
I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

NOTICE OF APPEARANCE

TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:

PLEASE TAKE NOTICE that Natalie Winslow and Rex Garner of the law firm of Akerman
LLP, file this notice of appearance for defendants Bank Of America, N.A. and Mortgage Electronic
Registration Systems, Inc.

...

...

...

...

...

Copies of all future notices given or required to be given in this case, and all papers, pleadings and correspondence served or required to be served in this case, can be provided to and serve upon the undersigned

DATED March 26, 2018.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 26th day of March, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEARANCE**, in the following manner:

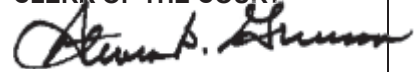
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Michael N. Beede, Esq.
THE LAW OFFICE OF MIKE BEEDE PLLC
2470 St. Rose Parkway, Suite 201
Henderson, Nevada 89074

Attorney for Plaintiff

/s/ Jill Sallade

An employee of AKERMAN LLP



NOTA
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: email @akerman.com
Email: rex.garner@akerman.com

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,; and DOES
I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

**INITIAL APPEARANCE FEE
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above-entitled action as indicated below:

Bank of America, N.A.

\$223.00

///

///

///

///

///

///

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 26th day of March, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **INITIAL APPEARANCE FEE DISCLOSURE**, in the following manner:

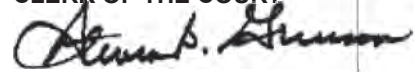
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Michael N. Beede, Esq.
THE LAW OFFICE OF MIKE BEEDE PLLC
2470 St. Rose Parkway, Suite 201
Henderson, Nevada 89074

Attorney for Plaintiff

/s/ Jill Sallade

An employee of AKERMAN LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff(s),

vs.

CONNIE FERNANDEZ,
et al.,

Defendant(s).

Case No.: A-18-768728-C
Dept No.: XXVI
Docket No.:

AFFIDAVIT OF DUE DILIGENCE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Karie Castle, being first duly sworn, deposes and says; that affiant is and was on the dates when service was attempted of the within: **SUMMONS AND COMPLAINT**, a citizen of the United States, over 18 years of age, and not a party to, nor interested in the within action; that affiant received the above named document(s) and attempted to personally serve/have them served upon: **CONNIE FERNANDEZ** subject(s), during the period of February 20, 2018 through April 3, 2018 at his/her last known address(es) of: 8735 Mount Mira Loma Avenue and 2600 Orchard Meadows Avenue in the City of Las Vegas, County of Clark, State of Nevada, without success in locating said subject(s). Affiant was not able to serve/have subject(s) served for the following reasons:

1 3-9-18 at 7:00 a.m. –Per Neighbor at 8735 Mount Mira Loma Avenue, subject does not live
2 here.

3 4-3-18 at 11:50 a.m. – Per adult male occupant at 2600 Orchard Meadow Avenue, subject no
4 longer lives here. Forwarding information is unknown.

5 Affiant performed Social / Name Trace and searched County Assessor, DMV, Voter
6 Registration, and Telephone Directory. The within stated addresses are the last known
7 and/or most current for subject. Additionally, Affiant was unable to locate a place of
8 employment for subject.

9 Affiant, on the basis of the previous information, was unable to locate / serve subject(s).

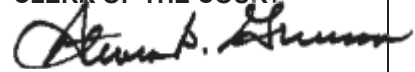
10
11 

12 **Karie Castle #R002343**
Attorney's Process NV #429
330 E. Warm Springs Rd. #A-7
Las Vegas, NV 89119
(702) 547-9036

13
14 SUBSCRIBED AND SWORN to before me
15 this 6th day of April, 2018.

16
17 NOTARY PUBLIC





MTD
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
Email: rex.garner@akerman.com

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and DOES
I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

**MOTION TO DISMISS COMPLAINT
UNDER NRCP 12(B)(5)**

Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (**MERS**) move
to dismiss plaintiff Kenneth Berberich's complaint under Nevada Rule of Civil Procedure 12(b)(5).

NOTICE OF MOTION

PLEASE TAKE NOTICE that Bank of America and MERS will bring the foregoing **MOTION TO DISMISS** for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the **22nd** day of **May**, 2018, at the hour of **9 : 30** o'clock **a**.m.

DATED April 16, 2018.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

I. INTRODUCTION.

Plaintiff Kenneth Berberich's complaint is too late. Berberich purchased the subject property at an HOA foreclosure sale on August 11, 2011. The last possible date that Berberich could file his quiet title complaint was August 11, 2016. He delayed more than a year past the statute of limitations, filing an untimely complaint on January 31, 2018. As a result, his claims are time barred. His complaint should be dismissed with prejudice under NRCP 12(b)(5).

II. FACTUAL BACKGROUND.

Borrower Connie Fernandez borrowed \$197,359.00 to purchase property located at 8735 Mount Mira Loma Avenue, Las Vegas, Nevada 89178 in June of 2009. **Ex. A.**¹ Her lender Bank of

¹ Bank of America and MERS request the court take judicial notice of Exhibits A-C because they are publicly recorded documents concerning the property's title history. *See, e.g., Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

1 America. secured the loan with a deed of trust recorded against the property. *Id.* Bank of America is
2 the current beneficiary under the deed of trust. **Ex B.**

3 Via Valencia / Via Ventura Homeowners Association (**HOA**) foreclosed on the property
4 pursuant to a delinquent assessment lien on August 11, 2011. **Ex. C.** Upon information and belief,
5 plaintiff Kenneth Berberich purchased the property at the foreclosure sale for \$4,101.00. *Id.*

6 Berberich delayed for more than six years before filing his complaint for quiet title and
7 declaratory relief and preliminary and permanent injunction against Bank of America and MERS.
8 Berberich filed his complaint on January 31, 2018.

9 **III. LEGAL STANDARD.**

10 A defendant is entitled to dismissal under Rule 12(b)(5) when a plaintiff fails to state a claim
11 upon which relief can be granted. NRCp 12(b)(5). Berberich can prove no set of facts which, if
12 accepted by the trier of fact as true, would entitle him to relief. *Buzz Stew, LLC v. City of N. Las*
13 *Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

14 **IV. BERBERICH'S CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.**

15 Nevada Revised Statute 11.080 provides:

16 No action for the recovery of real property . . . shall be maintained, unless it
17 appears that the plaintiff or the plaintiff's ancestor, predecessor, or grantor was
18 seized or possessed of the premises in question, within 5 years before the
commencement thereof.

19 *Id.* When interpreting a statute, the statute's language should be given its plain meaning. *Nevada*
20 *State Democratic Party v. Nevada Republican Party*, 256 P.3d 1, 4 (Nev. 2011). The statutory bar in
21 NRS 11.080 is expressly applicable to quiet title actions. *Kerr v. Church*, 74 Nev. 264, 272, 329
22 P.2d 277, 281 (1958).

23 The Nevada supreme court has confirmed that NRS 11.080 applies to HOA foreclosure sales.
24 *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.* 388 P.3d 226,
25 232 (Nev. 2017) ("Saticoy did not acquire its interest in the Property until it purchased Lots 21 and
26 at the HOA foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title
27 action under NRS 11.080 will not run until July 2018.").

1 Berberich had five years from the date of the HOA foreclosure sale—or until August 11,
2 2016—to file his complaint. NRS 11.080. He delayed past the statute of limitations, filing his
3 complaint on January 31, 2018. He cannot maintain his claims against Bank of America and MERS.

4 **V. MERS HAS NO INTEREST IN THE DEED OF TRUST.**

5 MERS assigned its interest in the property to Bank of America, and MERS has no current
6 interest in the property. Ex. B. Berberich cannot maintain any claim against MERS.

7 **VI. CONCLUSION.**

8 Berberich's complaint is barred by the applicable five-year statute of limitations. MERS also
9 claims no current interest in the property. As a result, Bank of America and MERS respectfully
10 request the court grant their motion to dismiss.

11 DATED April 16, 2018.

12 **AKERMAN LLP**

13 /s/ Natalie L. Winslow, Esq.
14 NATALIE L. WINSLOW, ESQ.
15 Nevada Bar No. 12125
16 REX D. GARNER, ESQ.
17 Nevada Bar No. 9401
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

18 *Attorneys for Bank Of America, N.A. and*
19 *Mortgage Electronic Registration Systems, Inc.*
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Exhibit A



20090609-0004584

Fee: \$28.00 RPTT: \$0.00
 N/C Fee: \$0.00
 06/09/2009 15:54:02
 T20090201710
 Requestor:
 CHICAGO TITLE LAS VEGAS
 Debbie Conway SUO
 Clark County Recorder Pgs: 15

Assessor's Parcel Number:
 176-29-511-068
 After Recording Return To:
 BANK OF AMERICA, N.A.

CA6-914-01-42 DOC PROCESSING
 P.O.Box 10423
 Van Nuys, CA 91410-0423
 Prepared By:
 MARISSA TIZON
 Recording Requested By:
 J. DAUGHERTY

BANK OF AMERICA, N.A.

7660 DEAN MARTIN DR SUITE
 201E
 LAS VEGAS
 NV 89139

[Space Above This Line For Recording Data]

NV3324914644703 CT60-CT09000059 00020967519206009
 [Case #] [Escrow/Closing #] [Doc ID #]

Lender affirms that this instrument does not contain Personal Information as that term is defined in Nevada Revised Statutes §603A.040.

State of Nevada

DEED OF TRUST

FHA Case No.
 NV3324914644703

MIN1000255-0000060032-8

THIS DEED OF TRUST ("Security Instrument") is made on JUNE 03, 2009 The
 Grantor is
 CONNIE FERNANDEZ, AN UNMARRIED WOMAN

("Borrower").

FHA Nevada Deed of Trust with MERS - 4/96
 MERS FHA Deed of Trust-NV
 1004N-NV (11/07)(d/f)

Page 1 of 10

Amended 2/98



* 2 3 9 9 1 *



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CASE #: NV3324914644703

DOC ID #: 00020967519206009

The trustee is
RECONTRUST COMPANY

225 WEST HILLCREST DRIVE
THOUSAND OAKS, CA 91360

("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.

BANK OF AMERICA, N.A.

("Lender") is organized and existing under the laws of THE UNITED STATES, and whose address is

101 South Tryon Street
Charlotte, NC 28255

Borrower owes Lender the principal sum of

ONE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED FIFTY NINE and
00/100

Dollars (U.S. \$ 197,359.00). 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 JULY 01, 2039. 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:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which has the address of

8735 MOUNT MIRA LOMA AVE, LAS VEGAS

[Street, City]

Nevada 89178-7526 ("Property Address");

[Zip Code]

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 those 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 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 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. 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 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. To the extent permitted by applicable law, 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.

18. Foreclosure Procedure. If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale, including the right to accelerate full payment of the Note, 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 to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

20. **Substitute Trustee.** Lender or its assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust or other conveyance it trust. A copy of a resolution of the board of directors of directors of Lender (if Lender is a corporation), certified by the secretary thereof, under its corporate seal, or an instrument executed and acknowledged by Lender (if Lender is a natural person), shall be conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such certified copy or trustees shall be vested with all the title, interest, powers, duties and trust in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the Lender, and all his acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

21. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00

CASE #: NV3324914644703

DOC ID #: 00020967519206009

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)].

- | | |
|--|---|
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Growing Equity Rider |
| <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other [specify] |
| <input type="checkbox"/> Graduated Payment Rider | |

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.



CONNIE FERNANDEZ (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

CASE #: NV3324914644703

DOC ID #: 00020967519206009

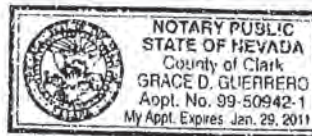
STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on June 4, 2009 by
Cornie Fernandez


GRACE D GUERRERO

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065



Grace D. Guerrero
99-50942-1
1-29-11

CASE #: NV3324914644703

DOC ID #: 00020967519206009

LEGAL DESCRIPTION EXHIBIT A

Legal Description Exhibit A
1C404-XX (08/08)(d/i)



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Page 1 of 1



* 2 0 9 6 7 5 1 9 2 0 0 0 0 1 C 4 0 4 *

Exhibit A

Parcel One (1):

Lot 149 as shown on the Final Map of Via Valencia/Via Ventura Unit 1, on file in Book 121 of Plats, Page 70, in the Office of the County Recorder of Clark County, Nevada.

Parcel Two (2):

A non-exclusive easement of ingress and egress and of use and enjoyment in, to and over the Common Elements, including but not limited to, Private Street, disclosed by Supplemental Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Via Valencia/Via Ventura recorded August 4, 2005 in Book 20050804 as Document No. 04194, Official Records, in the Office of the County Recorder of Clark County, Nevada.

Assessor's Parcel Number: 176-29-511-068

PLANNED UNIT DEVELOPMENT RIDER

NV3324914644703

[Case #]

CT60-CT09000059

[Escrow/Closing #]

00020967519206009

[Doc ID #]

FHA Case No.

NV3324914644703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 3rd day of JUNE, 2009, 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 BANK OF AMERICA, N.A.

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

8735 MOUNT MIRA LOMA AVE

LAS VEGAS, NV 89178-7526

[Property Address]

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

[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

FHA PUD Rider

1589U-XX (11/07)(d/i)

Page 1 of 3



CASE #: NV3324914644703

DOC ID #: 00020967519206009

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.

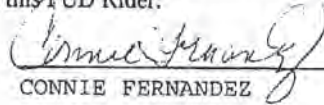
- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from

CASE #: NV3324914644703

DOC ID #: 00020967519206009

the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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


CONNIE FERNANDEZ

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

Exhibit B

Recording Requested By:
Bank of America
Prepared By: Cecilia Rodriguez
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036



DocID# 80220967519265972

Tax ID: 176-29-511-068

Property Address:

8735 Mount Mira Loma Ave

Las Vegas, NV 89178-7526

NV0-ADT 15445738 11/8/2011

Inst #: 201111150000288

Fees: \$18.00

N/C Fee: \$25.00

11/15/2011 08:01:38 AM

Receipt #: 977404

Requestor:

CORELOGIC

Recorded By: KXC Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1000255-0000060032-8 MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below 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 said Deed of Trust.

Original Lender: BANK OF AMERICA, N.A.

Made By: CONNIE FERNANDEZ, AN UNMARRIED WOMAN

Trustee: RECONTRUST COMPANY

Date of Deed of Trust: 6/3/2009 Original Loan Amount: \$197,359.00

Recorded in Clark County, NV on: 6/9/2009, book N/A, page N/A and instrument number 20090609-0004584

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

11.9.11

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

By: 

Cynthia Santos Assistant Secretary

State of California
County of Ventura

On NOV 09 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared
Cynthia Santos

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public: Barbara J. Gibbs
My Commission Expires: SEP 09 2013

(Seal)



DocID# 80220967519265972

Exhibit C

RECORDING REQUESTED BY:

AND WHEN RECORDED AND MAIL
TAX STATEMENTS TO:
KENNETH BERBERICH
4500 W LAKE MEAD BLVD. #101
LAS VEGAS, NV 89108

T.S. No.: 10-15540

A.P.N. : 176-29-511-068

Inet #: 201108240002845

Fee: \$16.00 N/C Fee: \$25.00

RPTT: \$22.95 Ex: #

08/24/2011 03:11:26 PM

Receipt #: 890741

Requestor:

KENNETH BERBERICH

Recorded By: GILKS Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was **\$2,754.55**
- 3) The amount paid by the grantee at the trustee sale was **\$4,101.00**
- 4) The documentary transfer tax is **\$**
- 5) City/Judicial District of LAS VEGAS

And **ALLIED TRUSTEE SERVICES**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to:

KENNETH BERBERICH

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

RECITALS:

This conveyance is made pursuant to the powers granted to **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** and conferred upon appointed trustee by the provisions of the Declaration of Covenants, Conditions, and Restrictions recorded **08-04-2005** as Instrument No. **0004194** Book **20050804** Page County of CLARK and pursuant to N.R.S. 117.070 et. Seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and that certain Notice of Delinquent Assessment dated **09-30-2010** and recorded **10-06-2010** in Book **20101006** Page as Instrument No. **0002672** of Official Records of CLARK County, Nevada.

The name of the owner(s) of the property (trustor) was **CONNIE FERNANDEZ**.

Continued on page 2

T.S. No.: 10-15540
A.P.N. : 176-29-511-068

TRUSTEE'S DEED UPON SALE

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. After expiration of ninety (90) days from the recording or mailing of copies of the Notice of Default and Election to Sell, a Notice of Trustee's Sale was recorded in the Office of the Recorder of said County and the association claimant, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION**, demanded that such sale be made.

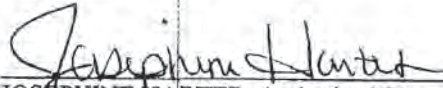
All requirements of law regarding the recording and the mailing of copies of the Notice of Delinquent Assessment, Notice of Default, and the recording, mailing, posting and publication of copies of the Notice of Trustee's Sale have been complied with.

Said property was sold by said Trustee at public auction on **08-11-2011** at the place named in the Notice of Trustee's Sale, in the County of CLARK, Nevada, in which the property is situated. Grantee, being the highest bidder at such sale became the purchaser of said property and paid therefore to said trustee the amount bid, being **\$4,101.00**, in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by said Notice of Delinquent Assessment.

Date: August 22, 2011

ALLIED TRUSTEE SERVICES, as Trustee
990 Reserve Drive, Suite 208
Roseville, CA 95678
Telephone No. (800) 220-5454

By:


JOSEPHINE HARTER, Authorized Signature

State of California
County of Placer

On August 22, 2011 before me, JOLENE MCGONIGLE, a Notary Public, personally appeared JOSEPHINE HARTER personally known to me (or 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.

WITNESS my hand and official seal.

Signature



(Seal)

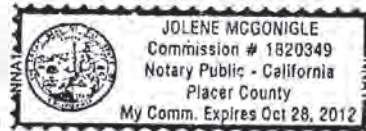


EXHIBIT "A"

TS 10-15540

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF Nevada, COUNTY OF CLARK CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1):

LOT 149 AS SHOWN ON THE FINAL MAP OF VIA VALENCIA/VIA VENTURA UNIT 1, ON FILE IN BOOK 121 OF PLATS, PAGE 70, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT OF INGRESS AND EGRESS AND OF USE AND ENJOYMENT IN, TO AND OVER THE COMMON ELEMENTS, INCLUDING BUT NOT LIMITED TO, PRIVATE STREET, DISCLOSED BY SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENT FOR VIA VALENCIA/VIA VENTURA RECORDED AUGUST 4, 2005 IN BOOK 20050804 AS DOCUMENT NO. 04184, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ASSESSOR'S PARCEL NUMBER:

178-29-511-066

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a) 176-29-S1-068
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'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
Other _____

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: _____
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property) _____
Transfer Tax Value: _____
Real Property Transfer Tax Due _____

\$ 4,101.00
(_____)
\$ _____
\$ 22.95

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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 _____ Capacity Grantee
Signature _____ Capacity _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Allied Trustee Services, Inc
Address: 990 Regatta Dr. Suite 200
City: Roseville
State: CA Zip: 95678

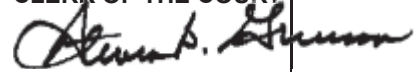
**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Kenneth Berberich
Address: 4500 W Lake Mead Blvd #101
City: Las Vegas
State: NV Zip: 89108

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

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)



EXAP
MICHAEL N. BEEDE, ESQ.
Nevada Bar No. 13068
JAMES W. FOX, ESQ.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy., Ste. 201
Henderson, NV 89074
Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CASE NO. A-18-768728-C

DEPT NO. XXVI

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

**PLAINTIFF'S EX-PARTE
APPLICATION TO EXTEND TIME
TO SERVE AND FOR AN ORDER
FOR SERVICE BY PUBLICATION AS
TO DEFENDANT CONNIE
FERNANDEZ**

COMES NOW Plaintiff, Kenneth Berberich (hereinafter "Plaintiff"), by and through his attorneys of record, Michael N. Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, and moves this Honorable Court Ex Parte to Extend Time to Serve and for an Order for Service by Publication as to Defendant Connie Fernandez (hereinafter "Defendant").

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This Ex Parte Motion is based upon the pleadings and papers on file in this action, Memorandum of Points and Authorities, and the declaration and exhibits attached hereto and incorporated herein by reference.

Dated this 18th day of April, 2018.

THE LAW OFFICE OF MIKE BEEDE, PLLC

BY: /s/Michael Beede
Michael N. Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
2470 St. Rose Pkwy., Ste. 201
Henderson, NV 89074
Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorneys for Plaintiff, Kenneth Berberich

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This is a real property action seeking quiet title on the property located at 8735 Mount
4 Mira Loma Avenue, Las Vegas, NV 89178, which was purchased at a Homeowners Association
5 foreclosure sale on August 11, 2011. On January 31, 2018, the Complaint in this matter was filed
6 by Plaintiff; thus, the last day to serve process on Defendants is May 31, 2018.

7 On April 10, 2018, Plaintiff filed an Affidavit of Due Diligence for Defendant Connie
8 Fernandez. Plaintiff has attempted to serve the Defendant at 8735 Mount Mira Loma Ave., Las
9 Vegas, NV 89178 and 2600 Orchard Meadows Ave., Henderson, NV 89074, her last known
10 addresses, with no success. (See Affidavit of Due Diligence, attached hereto as **Exhibit 1**). As the
11 last day in which to serve process is fast approaching, Plaintiff seeks an Order of this Court to
12 Enlarge Time for Service of Process and to Serve Process by Publication.

13 **II. LEGAL ARGUMENT**

14 **a) NRCP 4(i) expressly authorizes the Court to enlarge time for service of process.**

15 NRCP 4(i) provides authority for the Court to enlarge time for service of process. It
16 provides,

17 If a service of the summons and complaint is not made upon a
18 defendant within 120 days after the filing of the complaint, the
19 action shall be dismissed as to that defendant without prejudice
20 upon the court's own initiative with notice to such party or upon
21 motion, unless the party on whose behalf such service was required
22 files a motion to enlarge the time for service and shows good cause
23 why such service was not made within that period. If the party on
24 whose behalf such service was required fails to file a motion to
25 enlarge the time for service before the 120-day service period
26 expires, the court shall take that failure into consideration in
27 determining good cause for an extension of time. Upon a showing
28 of good cause, the court shall extend the time for service and set a
reasonable date by which service should be made.

26 Despite diligent efforts, Plaintiff has been unable to locate Defendant in order to
27 effectuate service of process. Accordingly, Plaintiff seeks an extension of time in the amount of
28 90 days in which to serve process by publication.

1 In addition to attempting personal service of process on Defendant, Plaintiff has mailed a
2 copy of the Summons and Complaint via United States Mail addressed to Defendant.

3 Inasmuch as Defendant cannot be found within the State of Nevada, Rule 4 permits this
4 Court to Order Service of Publication. It provides as follows:

5 (i) General. When the person on whom service is to be made
6 resides out of the state, or has departed from the state, or cannot,
7 after due diligence, be found with in the state, or conceals himself
8 to avoid the service of summons, and the fact shall appear, by
9 affidavit, to the satisfaction of the court or judge thereof, and it
10 shall appear, either by affidavit or by a verified complaint on file,
11 that a cause of action exist against the defendant in respect to
12 whom the service is to be made, and that he is a necessary or
13 proper party to the action, such court or judge may grant an order
14 that the service be made by the publication of summons.

15 Provided, when said affidavit is based on the fact that the party on
16 whom service is to be made resides out of the state, and the present
17 address of the party is unknown, it shall be a sufficient showing of
18 such fact if the affiant shall state generally in such affidavit that at
19 a previous time such person resided out of this state in a certain
20 place (naming the place and stating the latest date known to
21 Affiant when such party so resided there); that such place is the
22 last place in which such party resided to the knowledge of Affiant;
23 that such party no longer resides at such place; that Affiant does
24 not know the present place of residence of such party or where
25 such party can be found; and that Affiant does not know and has
26 never been informed and has no reason to believe that such party
27 now resides in this state; and, in such case, it shall be presumed
28 that such party still resides and remains out of the state, and such
affidavit shall be deemed to be a sufficient showing of due
diligence to find the defendant. This rule shall apply to all manner
of civil actions, including those for divorce.

(iii) **Publication.** The order shall direct the publication to be
made in a newspaper, published in the State of Nevada, to be
designated by the court or judge thereof, for a period of 4 weeks,
and at least once a week during said time. In addition to in-state
publication, where the present residence of the defendant is
unknown the order may also direct that publication be made in a
newspaper published outside the State of Nevada whenever the
court is of the opinion that such publication is necessary to give
notice that is reasonably calculated to give a defendant actual
notice of the proceedings. In case of publication, where the
residence of a nonresident or absent defendant is known, the court

1 or judge shall also direct a copy of the summons and complaint to
2 be deposited in the post office, directed to the person to be served
3 at the person's place of residence. The service of summons shall be
4 deemed complete in cases of publication at the expiration of 4
5 weeks from the first publication, and in cases when a deposit of a
6 copy of the summons and complaint in the post office is also
7 required, at the expiration of 4 weeks from such deposit.

8 In the matter of *Foster v. Lewis*, 78 Nev. 330; 372 P.2d 679 (1962), although the Court
9 upheld the lower court's finding that no personal service of summons was made on either of the
10 respondents, although service by publication had been granted, when referring to NRCP
11 4(e)(1)(i), the Court found that:

12 "The proviso of this rule can be utilized only when the affidavit
13 states that the party on whom service is to be made resides out of
14 the state (which the affidavit here does) and that the present
15 address of the party is unknown (the affidavit is silent on this
16 point). Since the affidavit does not contain the requirements of the
17 proviso, it is necessary to ascertain if compliance has been made
18 with the requirements of the first paragraph of the section. This
19 states, in part: "When the person on whom service is to be made
20 resides out of the state*** and the fact shall appear, by affidavit, to
21 the satisfaction of the court or judge thereof***."

22 In the present case, the Affidavit of Due Diligence complies with the requirements of
23 NRCP 4. Furthermore, Plaintiff has properly exercised due diligence in accordance with NRCP
24 4(e)(1)(i) in an attempt to locate the Defendant.

25 **b) Plaintiff has satisfied the due diligence standard found in *Gasset***

26 Plaintiff's efforts also satisfy the standard of due diligence as articulated by the Supreme
27 Court of Nevada in *Gasset v. Snappy Car Rental*. 111 Nev. 1416 (1995). In *Gasset*, the Court
28 determined that compliance with NRCP 4(e)(1)(i) that is merely technical, will not suffice where
other reasonable methods for locating the defendant are available to the plaintiff. *Id.* at 1420.
Under those circumstances, a plaintiff must exercise those methods in order to demonstrate due
diligence. *Id.*

Here, Plaintiff has exercised all reasonable methods for locating the whereabouts of
Defendant. Specifically, Plaintiff has made an attempt at the last known physical addresses, plus

1 performing Social/Name Trace and search of the County Assessor, DMV, Voter Registration
2 and Telephone directory, with confirmation of last known address. (See **Exhibit 1**). Accordingly,
3 Plaintiff's efforts to serve Defendant in this case satisfy the standard of due diligence discussed
4 in *Gasset*, and therefore comply with NRCP 4(e)(1)(i).

5 **c) An extension of time for service is warranted under *Scrimmer*.**

6 Plaintiff has endeavored to effect personal service on the Defendant in this action
7 because the primary concern since the onset of this case has been the effort to identify those with
8 possible claims to and quiet title to real property in the State of Nevada. Plaintiff's diligence in
9 attempting service warrants an enlargement of the time permitted to serve the remaining
10 Defendant. The Nevada Supreme Court in *Scrimmer v. Eighth Jud. Dist.*, 116 Nev. 507, 998 P.2d
11 1190 (2000), set out the requirement that extensions in time for service be granted based upon a
12 showing of "good cause." The court laid out several factors for determining if good cause exists:

13 We conclude that a number of considerations may govern a district court's
14 analysis of good cause under NRCP 4(i), and we emphasize that no single
15 consideration is controlling. Appropriate considerations include: (1) difficulties in
16 locating the defendant, (2) the defendant's efforts at evading service or
17 concealment of improper service until after the 120-day period has lapsed, (3) the
18 plaintiff's diligence in attempting to serve the defendant, (4) difficulties
19 encountered by counsel in attempting service, (5) the running of the applicable
20 statute of limitations, (6) the parties' good faith attempts to settle the litigation
21 during the 120-day period, (7) the lapse of time between the end of the 120-day
22 period and the actual service of process on the defendant, (8) the prejudice to the
23 defendant caused by the plaintiff's delay in serving process, (9) the defendant's
24 knowledge of the existence of the lawsuit, and (10) any extensions of time for
25 service granted by the district court.

26 In applying the *Scrimmer* factors, good cause for an extension exists here, as Plaintiff has
27 had substantial difficulties in locating the remaining Defendant, Plaintiff believes that Defendant
28 is aware, or should be aware of this lawsuit but is intentionally attempting to evade service.
Plaintiff has exercised diligence in attempting to effect service by taking the following steps: an
attempt at the last known physical addresses, plus performing Social/Name Trace and search of
the County Assessor, DMV, Voter Registration and Telephone directory, with confirmation of
last known address. Plaintiff's attorney has encountered significant difficulty in serving the
Defendant, as personal service has been attempted at the Defendant's last known addresses. The

1 Defendant will suffer no prejudice, as Plaintiff could simply reassert their claims at issue if the
2 Complaint were dismissed without prejudice. Inasmuch as the last day to serve process is May
3 31, 2018, this Court should enter an order to enlarge time to allow service by publication and an
4 order for service by publication.

5 **III.**

6 **CONCLUSION**

7 Plaintiff has satisfied the requirements of NRCP 4(e)(1), and an Order Extending Time to
8 Serve and an Order for Service by Publication should be entered forthwith against Defendant,
9 Connie Fernandez.

10 Dated this 18th day of April, 2018.

11 THE LAW OFFICE OF MIKE BEEDE, PLLC

12
13 /s/ Michael Beede

14 Michael N. Beede, Esq.

15 Nevada Bar No. 13068

16 James W. Fox, Esq.

17 Nevada Bar No. 13122

18 2470 St. Rose Pkwy., Ste. 201

19 Henderson, NV 89074

20 Telephone (702) 473-8406

21 Facsimile (702) 832-0248

22 *Attorneys for Plaintiff, Kenneth Berberich*
23
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of
3 Mike Beede, PLLC, and that on the 18th day of April, 2018, I did cause a true and correct copy
4 of the foregoing **PLAINTIFF'S EX-PARTE APPLICATION TO EXTEND TIME TO**
5 **SERVE AND FOR AN ORDER FOR SERVICE BY PUBLICATION AS TO**
6 **DEFENDANT CONNIE FERNANDEZ** to be served upon each of the parties listed below via
7 electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System,
8 and/or by depositing a true and correct copy in the United States Mail, addressed as follows:

9 Michael Beede, Esq.

eservice@legallv.com

10 Rex Garner

rex.garner@akerman.com

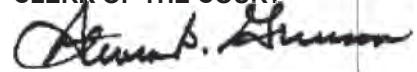
11 Natalie Winslow

natalie.winslow@akerman.com

12
13 /s/Allison Zeason

14 An Employee of The Law Office of Mike Beede, PLLC
15
16
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28

Exhibit 1
Affidavit of Due Diligence



DISTRICT COURT
CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff(s),

vs.

CONNIE FERNANDEZ,
et al.,

Defendant(s).

Case No.: A-18-768728-C
Dept No.: XXVI
Docket No.:

AFFIDAVIT OF DUE DILIGENCE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Karie Castle, being first duly sworn, deposes and says; that affiant is and was on the dates when service was attempted of the within: **SUMMONS AND COMPLAINT**, a citizen of the United States, over 18 years of age, and not a party to, nor interested in the within action; that affiant received the above named document(s) and attempted to personally serve/have them served upon: **CONNIE FERNANDEZ** subject(s), during the period of February 20, 2018 through April 3, 2018 at his/her last known address(es) of: 8735 Mount Mira Loma Avenue and 2600 Orchard Meadows Avenue in the City of Las Vegas, County of Clark, State of Nevada, without success in locating said subject(s). Affiant was not able to serve/have subject(s) served for the following reasons:

1 3-9-18 at 7:00 a.m. –Per Neighbor at 8735 Mount Mira Loma Avenue, subject does not live
2 here.

3 4-3-18 at 11:50 a.m. – Per adult male occupant at 2600 Orchard Meadow Avenue, subject no
4 longer lives here. Forwarding information is unknown.

5 Affiant performed Social / Name Trace and searched County Assessor, DMV, Voter
6 Registration, and Telephone Directory. The within stated addresses are the last known
7 and/or most current for subject. Additionally, Affiant was unable to locate a place of
8 employment for subject.

9 Affiant, on the basis of the previous information, was unable to locate / serve subject(s).

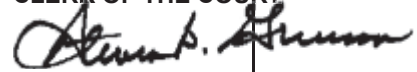
10
11 

Karie Castle #R002343
Attorney's Process NV #429
330 E. Warm Springs Rd. #A-7
Las Vegas, NV 89119
(702) 547-9036

14 SUBSCRIBED AND SWORN to before me
15 this 6th day of April, 2018.

16
17 NOTARY PUBLIC





OPPM

MICHAEL BEEDE, ESQ.
Nevada Bar No. 13068
JAMES W. FOX, ESQ.
Nevada Bar No. 13122
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Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CASE NO. A-18-768728-C
DEPT NO. XXVI

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; and DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

**OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

and

**COUNTERMOTION FOR SUMMARY
JUDGMENT**

Comes now, Plaintiff, Kenneth Berberich (hereinafter the "Plaintiff"), by and through his attorneys of record, Michael N. Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, and hereby files its opposition to Defendants, Bank of America, N.A. ("BANA") and Mortgage Electronic Registration Systems, Inc.'s ("MERS") (collectively, "Defendants") Motion to Dismiss Complaint Under NRCP 12(b)(5) and his Countermotion for Summary Judgment.

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1 This opposition is made and based upon the attached Memorandum of Points and
2 Authorities, all papers and pleadings on file herein, and any oral argument allowed at the time of
3 hearing.

4 Dated this 3rd day of May, 2018.

5 THE LAW OFFICE OF MIKE BEEDE, PLLC

6
7 By: /s/James W. Fox
8 MICHAEL BEEDE, ESQ.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendants' Motion to Dismiss rests solely on the five-year statute of limitations
4 argument, NRCP 12(b)(5). In their motion they correctly argue that the five statute of limitations
5 applies to actions to reclaim real property, then grossly misapply the statute contrary to its specific
6 terms. Based on a correct application of the relevant statute of limitations Plaintiff files his
7 Countermotion for Summary Judgment herein.

8 II. LEGAL ARGUMENT

9 Opposition to Motion to Dismiss

10 In applying the five-year statute of limitations under NRS 11.080 the triggering event is
11 the loss of seizin or possession of the property. Here, Plaintiff Berberich started his possession
12 of the property on August 11, 2011 as set forth in the complaint and admitted by Defendants in
13 their Motion. *Motion to Dismiss* at 3:3-4. He remains in possession of the Property, and as such
14 the statute of limitations for him to assert his claims to the Property has not begun to run.

15 Nevada Revised Statute 11.080 provides in relevant part:

16 No action for the recovery of real property . . . shall be maintained, unless it
17 appears that **the plaintiff or the plaintiff's ancestor, predecessor, or grantor**
18 **was seized or possessed of the premises in question**, within 5 years before the
19 commencement thereof.

20 *Id.* When interpreting a statute, the statute's language should be given its plain meaning. *Nevada*
21 *State Democratic Party v. Nevada Republican Party*, 256 P.3d 1, 4 (Nev. 2011). The statutory
22 bar in NRS 11.080 is expressly applicable to quiet title actions. *Kerr v. Church*, 74 Nev. 264, 272,
23 329 P.2d 277, 281 (1958). The Nevada supreme court has confirmed that NRS 11.080 applies to
24 HOA foreclosure sales. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase*
25 *Bank, N.A.* 388 P.3d 226, 232 (Nev. 2017).

26 In assessing the application of a statute of limitations the critical question which must be
27 addressed by the court is when the "triggering event" occurred. *See, Stalk v. Mushkin*, 125 Nev.
28 21, 27 (2009) (applying the three-year statute of limitations for intentional interference with a
prospective business advantage based upon the "triggering event" of contract termination). Under
NRS 11.080 the triggering event is loss of seizin or dispossession of the Property as it relates to

1 the Plaintiff or the Plaintiff's grantor. In this case, Plaintiff Kenneth Berberich has remained in
2 possession of the property. *Motion to Dismiss* at Exhibit C. Because of his continued possession,
3 the triggering event has not occurred, and his claims remain timely and Defendant's motion to
4 dismiss must be denied.

5 **COUNTERMOTION FOR SUMMARY JUDGMENT**

6 Plaintiff is the owner of the real property commonly known as 8735 Mount Mira Loma
7 Avenue, Las Vegas, Nevada 89178 (the "Property"). Plaintiff came into possession of the
8 Property following an HOA Foreclosure Sale which occurred on August 11, 2011. Connie
9 Fernandez was Defendants' Grantor under their now-extinguished Deed of Trust. *Motion to*
10 *Dismiss* at Exhibit A. At the time Plaintiff came into possession, Ms. Fernandez was dispossessed
11 of the property *Id* at Exhibit C. Because Defendants and their grantor have been dispossessed of
12 the property for more than 5 years, NRS 11.080 bars any action by Defendants to recover the
13 property, NRS 11.070 bars defenses to Plaintiff's claims and Plaintiff is entitled to clear title.

14 **I. STATEMENT OF UNDISPUTED FACTS**

- 15 1. Plaintiff purchased the Property at a public foreclosure auction on August 11, 2011,
16 conducted by Allied Trustee Services. *Motion to Dismiss* at Exhibit C.
- 17 2. A Foreclosure Deed was granted in favor of Plaintiff on August 22, 2011. *Id*.
- 18 3. This Deed dispossessed Connie Fernandez (the "Previous Owner") of the Property.
19 *Id*.
- 20 4. This deed was recorded on August 24, 2011. *Id*.
- 21 5. This deed contained the following recitals:

22 This conveyance is made pursuant to the powers granted to VIA VALENCIA /
23 VIA VENTURA HOMEOWNERS ASSOCIATION and conferred upon
24 appointed trustee by the provisions of the Declaration of Covenants, Conditions
25 and Restrictions recorded 08-04-2005 as Instrument No. 0004194 Book 20050804
26 Page County of CLARK and pursuant to N.R.S. 117.070 et. Seq. or N.R.S.
27 116.3115 et. Seq. and N.R.S. 116.3116 through N.R.S. 116.31168 et. Seq. and
that certain Notice of Delinquent Assessment dated 09-30-2010 and recorded 10-
06-2010 in Book 20101006 Page as Instrument No. 0002672 of Official Records
of CLARK County, Nevada.

28 The Name of the owner(s) of the property (trustor) was CONNIE FERNANDEZ.

1 Default occurred as set forth in a Notice of Default and Election to Sell which was
2 recorded in the office of the Reorder of said County. After expiration of ninety
3 (90) days from the recording or mailing of copies of the Notice of Default and
4 Election to Sell, a Notice of Trustee's Sale was recorded in the Office of the
5 Recorder of Said County and the association claimant, VIA VALENCIA / VIA
6 VENTURA HOMEOWNERS ASSOCIATION, demanded that such sale be
7 made.

8 All requirements of law regarding the recording and the mailing of copies of the
9 Notice of Delinquent Assessment, Notice of Default, and the recording, mailing,
10 posting and publication of copies of the Notice of Trustee's Sale have been
11 complied with.

12 Said property was sold by said Trustee at public auction on 08-11-2011 at the
13 place named in the Notice of Trustee's Sale, in the County of CLARK, Nevada,
14 in which the property is situated. Grantee, being the highest bidder at such sale
15 became the purchaser of said property and paid therefore to said trustee the
16 amount bid, being \$4,101.00, in lawful money of the United States, or by
17 satisfaction, pro tanto of the obligations then secured by said Notice of Delinquent
18 Assessment. *Id* (Emphasis in Original).

- 19 6. The Previous Owner granted a deed of trust in favor of Bank of America, naming
20 MERS as beneficiary, which was recorded as an encumbrance to the Property on June
21 9, 2009, as instrument and book number 20090609-0004584. *Id* at Exhibit A.
- 22 7. On November 15, 2011, an assignment of the aforementioned Deed of Trust was
23 recorded which purported to transfer the beneficial interest thereof to Bank of
24 America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA
25 Countrywide Home Loans Servicing, LP. *Id* at Exhibit B.
- 26 8. A Notice of Delinquent Assessment Lien claimed by the HOA, VIA VALENCIA /
27 VIA VENTURA HOMEOWNERS ASSOCIATION, which complies with NRS
28 116.31162, was recorded on October 6, 2010. (Exhibit 1, hereto)
9. The Notice of Default and Election to Sell was recorded on November 9, 2010 and
was mailed pursuant to NRS Chapter 116 to all parties entitled to receive notice.
(Exhibit 2, hereto)
10. A Notice of Trustee Sale was recorded on March 21, 2011 and was mailed to all
required parties. (Exhibit 3, hereto)

11. Defendants claim an interest in the property by virtue of a Deed of Trust granted by Connie Fernandez on June 4, 2009. *Motion to Dismiss* at Exhibit A.

12. More than five years have passed since Connie Fernandez was dispossessed from the property. *Id* at Exhibit C.

II. SUMMARY JUDGMENT STANDARD

Summary judgment “is appropriate where there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party.” *Alberter v. McDonald’s Corp.*, 70 F. Supp. 2d 1138, 1141 (D. Nev. 1999); *Maes v. Henderson*, 33 F. Supp. 2d 1281, 1285–86 (D. Nev. 1999). NRCP 56(c) establishes two basic substantive requirements for the entry of summary judgment: (1) There must be no genuine issue as to any material fact; and (2) The moving party must be entitled to judgment as a matter of law. *Cromer v. Wilson*, 126 Nev. 106, 109-10, 225 P.3d 788, 790 (2010); *Delgado v. Am. Family Ins. Group*, 125 Nev. 564, 571, 217 P.3d 563, 568 (2009); *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 137, 206 P.3d 572, 575 (2009); *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 644, 173 P.3d 734, 738 (2007).

When reviewing a motion for summary judgment, the evidence, and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party. See *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 137, 206 P.3d 572, 575 (2009); *Waldman v. Maini*, 124 Nev. 1121, 1136, 195 P.3d 850, 860 (2008); *Sustainable Growth Initiative Comm. v. Jumpers, LLC*, 122 Nev. 53, 61, 128 P.3d 452, 458 (2006); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *Kahn v. Morse & Mowbray*, 121 Nev. 464, 473–74, 117 P.3d 227, 234 (2005); *Weiner v. Beatty*, 121 Nev. 243, 246, 116 P.3d 829, 830 (2005) However, the mere existence of some issue of fact does not necessarily preclude summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005); *Oh v. Wilson*, 112 Nev. 38, 39, 910 P.2d 276, 277 (1996). The 1986 United States Supreme Court summary judgment trilogy emphasized that to prevent summary judgment a factual issue must be “genuine.” See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S. Ct. 2505, 2509-10 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S. Ct. 1348, 1355-56 (1986), *cert. denied*, 481 U.S. 1029 (1987); *Sustainable Growth Initiative Committee v. Jumpers, LLC*, 122

1 Nev. 53, 61, 128 P.3d 452, 458 (2006); *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026,
2 1030 (2005). Moreover, the court is required to view the facts in the light most favorable to the
3 non-moving party only if there is a “genuine” dispute with respect to those facts. See *Ricci v.*
4 *DeStefano*, 557 U.S. 557, 585, 129 S. Ct. 2658, 2677 (2009). A trial court is not obligated to draw
5 all possible inferences in the nonmoving party’s favor—only all reasonable inferences. *Villiarimo*
6 *v. Aloha Island Air, Inc.*, 281 F.3d 1054 (9th Cir. 2002). When the opposing party offers no direct
7 evidence of a genuine issue of material fact, inferences may be drawn only if they are reasonable
8 in light of the other undisputed background or contextual facts and if they are permissible under
9 the governing substantive law. *Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406 (D. Nev.
10 1995).

11 **III. AUTHENTICATION OF DOCUMENTS**

12 **A. Request for Judicial Notice**

13 Pursuant to NRS 52.085(2), a document is presumed to be authentic whenever a document
14 has been authorized by law to be recorded or filed in a public office. Here, Plaintiff’s Motion For
15 Summary Judgment relies on a number of documents related to the subject Property that are
16 recorded with the Clark County Recorder’s Office and were attached to Defendant’s Motion to
17 Dismiss. Therefore, since these documents have been filed with a public office, Plaintiff
18 respectfully requests that this Court take judicial notice of the following official records, copies
19 of which were attached to Defendant’s Motion to Dismiss filed on April 16, 2018 or to this
20 Opposition and Countermotion. Further, in Defendant’s Motion they request that this Court take
21 Judicial Notice of the documents attached to their Motion, therefore this request may be
22 interpreted as a limited joinder to Defendants’ request.

- 23 1. Deed of Trust, *Motion to Dismiss* at Exhibit A.
- 24 2. Assignment of Deed of Trust, *Motion to Dismiss* at Exhibit B.
- 25 3. Trustee’s Deed Upon Sale, *Motion to Dismiss* at Exhibit C.
- 26 4. Notice of Delinquent Assessment Lien. Exhibit 1, hereto.
- 27 5. Notice of Default and Election to Sell. Exhibit 2, hereto.
- 28 6. A Notice of Trustee Sale. Exhibit 3, hereto.

1 As these documents all bear the stamp of the Clark County Recorder's Office, they are
2 considered to be public records. Therefore, under NRS 52.085, this Court may take judicial notice
3 thereof.

4 IV. LEGAL ARGUMENT

5 In their Motion to Dismiss, Defendants admit that Plaintiff purchased the property at
6 foreclosure sale on August 11, 2011¹. *Motion to Dismiss* at 3:3-5. They further correctly argue
7 that NRS 11.080 provides a five-year statute of limitations related to claims to recover property.
8 As set forth in the Opposition portion of this filing, Defendants misapply this statute, because it
9 requires that an action for recovery of real property must be instituted within five years of the
10 Plaintiff, or its Grantor being seized or possessed of the property. NRS 11.080. Because, Plaintiff
11 has produced documents which create a prima facie case of good title in himself, and Defendants
12 are barred from maintaining defenses by the applicable statute of limitations, Plaintiff is entitled
13 to Summary Judgment as set forth herein.

14 A. NRS 116.3116 Granted to the HOA a Super Priority Lien That Takes Priority 15 Over the Deed of Trust.

16 NRS 116.3116 provides in part:

17 **Liens against units for assessments.**

18 1. **The association has a lien on a unit for** any construction penalty that is imposed
19 **against the unit's owner pursuant to NRS 116.310305, any assessment levied**
20 **against that unit or any fines imposed against the unit's owner from the time**
21 **the construction penalty, assessment or fine becomes due.** Unless the declaration
22 otherwise provides, any penalties, fees, charges, late charges, fines and interest
23 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
24 116.3102 are enforceable as assessments under this section. If an assessment is
25 payable in installments, the full amount of the assessment is a lien from the time
26 the first installment thereof becomes due.

24 2. A lien under this section is prior to all other liens and encumbrances on a unit
25 except:

25 (a) Liens and encumbrances recorded before the recordation of the declaration and,
26 in a cooperative, liens and encumbrances which the association creates, assumes or
27 takes subject to;

28 ¹"Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial
admissions conclusively binding on the party who made them." *Am. Title Ins. Co. v. Lacelaw*
Corp., 861 F.2d 224, 226 (9th Cir. 1988).

1 (b) A first security interest on the unit recorded before the date on which the
2 assessment sought to be enforced became delinquent or, in a cooperative, the first
3 security interest encumbering only the unit's owner's interest and perfected before
4 the date on which the assessment sought to be enforced became delinquent; and
(c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

**The lien is also prior to all security interests described in paragraph (b)
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.**

8 Nev. Rev. Stat. § 116.3116 (emphasis added).

9 By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for assessments
10 which have come due in the 9 months prior to the initiation of an action to enforce the lien are
11 “prior to all security interests described in paragraph (b).” The deed of trust held by Defendant
12 falls squarely within the language of paragraph (b). The statutory language does not limit the
13 nature of this “priority” in any way. In *SFR*, the Nevada Supreme Court held that the foreclosure
14 of the HOA lien extinguishes first trust deeds.

15 NRS 116.3116 gives a homeowners’ association (HOA) a superpriority lien on an
16 individual homeowner’s property for up to nine months of unpaid HOA dues. With
17 limited exceptions, this lien is “prior to all other liens and encumbrances” on the
18 homeowner’s property, even a first deed of trust recorded before the dues became
19 delinquent. NRS 2116.3116(2). We must decide whether this is a true priority lien
20 such that its foreclosure extinguishes a first deed of trust on the property and, if so,
whether it can be foreclosed nonjudicially. We answer both questions in the
affirmative and therefore reverse.

21 The court went on to hold:

22 NRS 116.3116(2) gives an HOA true superpriority lien, proper foreclosure of which
23 will extinguish a first deed of trust. Because Chapter 116 permits non-judicial
24 foreclosure of HOA liens, and because *SFR*’s complaint alleges that proper notices
25 were sent and received, we reverse the district court’s order of dismissal. In view
of this holding, we vacate the order denying preliminary injunctive relief and
remand for further proceedings consistent with this opinion.

26 *SFR*, 334 P.3d at 411-12.

27 Thus, a nine-month HOA “super-priority” lien has precedence over the mortgage lien, and
28 that foreclosure of the HOA lien extinguishes a first trust deed.

1 **B. The Instant Foreclosure Sale Complies with NRS Chapter 116.**

2 Here, the underlying foreclosure was conducted properly and in accordance with all
3 relevant provisions of NRS 116. Furthermore, Plaintiff has demonstrated, with support from the
4 documents recorded in the official records of Clark County, Nevada, full compliance with the
5 statutory provisions of NRS Chapter 116.

6 **1. The documents recorded in relation to the Property demonstrate**
7 **compliance with all relevant portions of NRS 116.**

8 Pursuant to NRS 116.31162, a Notice of Delinquent Assessment Lien (NODAL) must be
9 mailed to the unit/property's owner or his/her successor in interest. This notice must also contain
10 a description of the unit/property against which the lien is imposed and the name of the record
11 owner of the unit/property. *See* Exhibit 1 attached hereto for a copy of the NODAL which
12 complies with NRS 116.31162, recorded on October 6, 2010.

13 Pursuant to NRS 116.31163, after recording the Notice of Default and Election to Sell,
14 the HOA is required to mail a copy of the Notice of Default and Election to Sell to any person
15 which falls into any of the three categories described therein. *See* Exhibit 2 attached hereto for
16 the Notice of Default recorded on November 9, 2010.

17 After the 90-day period has expired, but before selling the unit/property, the HOA must
18 also give notice of the time and place of the sale. Once the NRS 116.31163 requirements are met,
19 if the lien has not been paid off within 90 days, the HOA may continue with the foreclosure
20 process. *See* Nev. Rev. Stat. § 116.31162(1)(c). As a prerequisite to sale, the HOA must mail a
21 Notice of Sale to all parties with a recorded interest. Additionally, the association must mail the
22 notice of the sale to: each person entitled to receive a copy of the notice of default and election to
23 sell under NRS 116.31163, any holder of a recorded security interest or the purchaser of the
24 unit/property, and the Ombudsman. *See* Exhibit 3 attached hereto for the Notice of Sale recorded
25 March 21, 2011.

26 As the Foreclosure Deed (*Motion to Dismiss* at Exhibit C) shows, Plaintiff purchased the
27 Property at a public foreclosure auction on August 11, 2011, conducted by Allied Trustee
28 Services. A Foreclosure Deed was granted in favor of Plaintiff on August 22, 2011. *Id.*

1 NRS 116.3116 grants HOA liens priority over a first deed of trust for at least the
2 “assessments for common expenses based on the periodic budget adopted by the association
3 pursuant to NRS 116.3116 which would have become due in the absence of acceleration during
4 the 9 months immediately preceding institution of an action to enforce the lien.”

5 **2. The Nevada Supreme Court Has Confirmed That Quiet Title Actions**
6 **Regarding HOA Foreclosure Sales May Be Summarily Adjudicated**
7 **Based On The Pre-Sale Notices**

8 On May 25, 2017, Nevada Supreme Court Justices Hardesty, Parraguirre, and Stiglich
9 unanimously confirmed that actions to quiet title to a property which has been the subject of an
10 HOA foreclosure sale may be summarily adjudicated in favor of a purchaser. “Having considered
11 the parties' arguments and the record, we conclude that the district court properly granted
12 summary judgment in favor of respondent.” *PNC Bank, N.A. v. Saticoy Bay LLC Series 9320 Mt.*
13 *Cash Ave. UT 103*, No. 69595, 2017 Nev. Unpub. LEXIS 395, at *1 (May 25, 2017) The Court
14 likewise confirmed that presentation of the presale notices and foreclosure deed are sufficient to
15 establish a prima facie case that an HOA lien foreclosure sale will extinguish a first deed of trust
16 in the absence of contrary evidence. “[W]e conclude that the language in the pre-sale notices
17 constituted prima facie evidence that the HOA was foreclosing on a lien comprised of monthly
18 assessments. *See [Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602, 172 P.3d 131,*
19 *134 (2007)]*; cf. *SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334*
20 *P.3d 408, 418 (2014)* (observing that an HOA's lien will generally be comprised of monthly
21 assessments). Thus, even without the recitals in respondent's deed, respondent produced evidence
22 sufficient to entitle it to summary judgment in the absence of contrary evidence.” *PNC Bank, N.A.*
23 *v. Saticoy Bay LLC Series 9320 Mt. Cash Ave. UT 103*, No. 69595, 2017 Nev. Unpub. LEXIS
395, at *3-4 (May 25, 2017)

24 Here, Plaintiff has produced all of the presale notices. The only evidence presented by the
25 Defendant are the same recorded documents which the Nevada Supreme Court has confirmed
26 establish a prima facie case that the HOA's foreclosure sale extinguished the Defendant's deed
27 of trust. Further as discussed below, NRS 11.070 prohibits Defendant from maintaining a defense
28 against Plaintiff's claim for Quiet Title.

1 “The party moving for summary judgment bears the initial burden of production to show
2 the absence of a genuine issue of material fact. If such a showing is made, then the party opposing
3 summary judgment assumes a burden of production to show the existence of a genuine issue of
4 material fact.” *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007)
5 As discussed above, Plaintiff’s presentation of the pre-sale notices and deed are sufficient to
6 establish a prima facie case. Meanwhile Defendant has not established a genuine issue of fact as
7 to inquiry in this case. An issue/dispute is not “genuine” if the evidence presented in the opposing
8 affidavits is of insufficient caliber or quantity to allow a rational fact finder, applying the
9 applicable quantum of proof, to find for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*,
10 477 U.S. 242, 249–50 (1986); *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1435–36 (9th
11 Cir. 1995). Because the Defendant is barred from presenting any contrary evidence to either
12 support its arguments or to refute Plaintiff’s arguments, this Court can and should grant summary
13 judgment in favor of Plaintiff, because Defendant has not established any material issue of fact.
14 “The supreme court has often stated that the nonmoving party may not defeat a motion for
15 summary judgment by relying on the gossamer threads of whimsy, speculation and conjecture.
16 As the Nevada Supreme Court has made abundantly clear, when a motion for summary judgment
17 is made and supported as required by Nev. R. Civ. P. 56, the non-moving party may not rest upon
18 general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts
19 demonstrating the existence of a genuine factual issue.” *Wood v. Safeway, Inc.*, 121 Nev. 724,
20 727, 121 P.3d 1026, 1028 (2005).

21 **3. The recitals in the Foreclosure Deed are further “conclusive proof” that**
22 **the HOA complied with the notice requirements of NRS Chapter 116.**

23 This Court may also look to the deed recitals in this case for further evidence that all
24 parties received the required notice under NRS 116. Such recitals are afforded a conclusive
25 presumption demonstrating compliance with relevant notice requirements, unless affirmative
26 evidence is provided which specifically demonstrates a defect in the notice. The recitals in the
27 Foreclosure Deed in this case corroborate both the default by the Previous Owners, and the HOA’s
28 compliance with each of the notice requirements of NRS 116.31162 through 116.31168 for the

1 public auction held on August 11, 2011. In particular, the Foreclosure Deed includes the following
2 recitals:

3 This conveyance is made pursuant to the powers granted to VIA VALENCIA /
4 VIA VENTURA HOMEOWNERS ASSOCIATION and conferred upon
5 appointed trustee by the provisions of the Declaration of Covenants, Conditions
6 and Restrictions recorded 08-04-2005 as Instrument No. 0004194 Book 20050804
7 Page County of CLARK and pursuant to N.R.S. 117.070 et. Seq. or N.R.S.
8 116.3115 et. Seq. and N.R.S. 116.3116 through N.R.S. 116.31168 et. Seq. and
9 that certain Notice of Delinquent Assessment dated 09-30-2010 and recorded 10-
10 06-2010 in Book 20101006 Page as Instrument No. 0002672 of Official Records
11 of CLARK County, Nevada.

12 The Name of the owner(s) of the property (trustor) was CONNIE FERNANDEZ.
13 Default occurred as set forth in a Notice of Default and Election to Sell which was
14 recorded in the office of the Reorder of said County. After expiration of ninety
15 (90) days from the recording or mailing of copies of the Notice of Default and
16 Election to Sell, a Notice of Trustee's Sale was recorded in the Office of the
17 Recorder of Said County and the association claimant, VIA VALENCIA / VIA
18 VENTURA HOMEOWNERS ASSOCIATION, demanded that such sale be
19 made.

20 All requirements of law regarding the recording and the mailing of copies of the
21 Notice of Delinquent Assessment, Notice of Default, and the recording, mailing,
22 posting and publication of copies of the Notice of Trustee's Sale have been
23 complied with.

24 Said property was sold by said Trustee at public auction on 08-11-2011 at the
25 place named in the Notice of Trustee's Sale, in the County of CLARK, Nevada,
26 in which the property is situated. Grantee, being the highest bidder at such sale
27 became the purchaser of said property and paid therefore to said trustee the
28 amount bid, being \$4,101.00, in lawful money of the United States, or by
satisfaction, pro tanto of the obligations then secured by said Notice of Delinquent
Assessment. *Motion to Dismiss* at Exhibit C (Emphasis in Original).

Because NRS 116.31168(1) expressly incorporates the notice requirements of NRS 107.090
requiring that copies of the notice of default and election to sell (NRS 107.090(3)) and the notice
of sale (NRS 107.090(4)) be mailed to each "person with an interest or claimed interest" that is
"subordinate" to the HOA's super priority lien, the HOA was required to mail copies of both the
Notice of Default and Election to Sell, and the Notice(s) of Sale to Defendant in this matter.
Defendant has failed to produce any evidence that copies of these notices were not mailed by the
HOA to them.

1 The recitals in the Foreclosure Deed set forth above are sufficient and conclusive proof
2 that copies of the required notices were mailed by the HOA to all interested parties, including
3 Defendant. This is because NRS 116.31166 expressly provides:

4 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible**
5 **for proper application of purchase money; title vested in purchaser**
6 **without equity or right of redemption.**

7 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:

8 (a) Default, the mailing of the notice of delinquent assessment, and the
9 recording of the notice of default and election to sell;

10 (b) The elapsing of the 90 days; and

11 (c) The giving of notice of sale,

12 are **conclusive proof of the matters recited.**

13 2. **Such a deed containing those recitals is conclusive against** the unit's
14 former owner, his or her heirs and assigns, **and all other persons.** The receipt
15 for the purchase money contained in such a deed is sufficient to discharge the
16 purchaser from obligation to see to the proper application of the purchase
17 money.

18 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164
19 vests in the purchaser the title of the unit's owner without equity or right of
20 redemption.

21 Nev. Rev. Stat. § 116.31166 (emphasis added). NRS 47.240(6) also provides that conclusive
22 presumptions include "[a]ny other presumption which, by statute, is expressly made conclusive."

23 Nev. Rev. Stat. § 47.240(6). Because NRS 116.31166 contains such an expressly conclusive
24 presumption, the recitals in the Foreclosure Deed are "conclusive proof" that the HOA complied
25 with all notice and mailing requirements for the underlying foreclosure sale.

26 The conclusive presumption contained in NRS 116.31166 is also consistent with the
27 common law presumption that "[a] nonjudicial foreclosure sale is presumed to have been
28 conducted regularly and fairly; one attacking the sale must overcome this common law
presumption 'by pleading and proving an improper procedure and the resulting prejudice.'"

Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 272, 129 Cal. Rptr. 3d 467 (2011).

Furthermore, "[t]he conclusive presumption precludes an attack by the trustor on a trustee's sale
to a bona fide purchaser even though there may have been a failure to comply with some required
procedure which deprived the trustor of his right of reinstatement or redemption." *Moeller v. Lien*,
25 Cal. App. 4th 822, 831, 30 Cal. Rptr. 777 (1994). The detailed and comprehensive statutory

requirements for a foreclosure sale are indicative of a public policy which favors a final and conclusive foreclosure sale as to the purchaser. *See* Miller & Starr, California Real Property 3d §10:210.

In *SFR Investments Pool 1, LLC v. U.S. Bank*, the Nevada Supreme Court directly acknowledged this “conclusive” effect of an HOA foreclosure deed when it stated:

NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and specifies the distribution order for the proceeds of sale. **A trustee’s deed reciting compliance with the notice provisions of NRS 116.31162 through NRS 116.31168 “is conclusive” as to the recitals** “against the unit’s former owner, his or her heirs and assigns, and all other persons.” NRS 116.31166(2). And, “[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption. NRS 116.31166(3).

334 P.3d at 411-12 (emphasis added). The Nevada Supreme Court has repeated this position in subsequent cases as well. In *Shadow Wood*, the Nevada Supreme Court explicitly stated that “[t]he ‘conclusive’ recitals concern default, notice, and publication of the NOS, **all statutory prerequisites to a valid HOA lien foreclosure sale** as stated in NRS 116.31162 through NRS 116.31164, the sections that immediately precede and give context to NRS 116.31166.” *Shadow Wood*, 366 P.3d at 1110 (emphasis added). However, the Court also recognized that certain equitable challenges to a foreclosure sale would not be conclusively resolved by deed recitals. *Id.*

Therefore, the deed recitals in this case are “conclusive” proof as to compliance with the statutory prerequisites of a valid HOA foreclosure. Due to the applicable statute of limitations Defendant cannot make an equitable challenge to the sale, therefore the deed recitals are conclusive proof that the sale was conducted in compliance with all relevant law.

C. The Nevada Supreme Court Has Confirmed in More Than a Dozen Published and Unpublished Opinions that Summary Judgment is Appropriate in Quiet Title Actions Following HOA Foreclosure Sales

For more than seven years, Nevada’s District Courts have been inundated with quiet title actions related to real property which was the subject of an HOA foreclosure action. The Nevada Supreme Court through its issuance of several dozen opinions has clarified that where now-extinguished lenders have failed to present evidence which would create a material issue of fact,

1 District Courts can and should promote the efficient administration of justice render summary
2 judgment in favor of the rightful holders of title.

3 Through its affirmance of Judge Ellsworth's grant of summary judgment in favor of
4 Saticoy Bay in Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 405
5 P.3d 641, 643 (Nev. 2017), it made clear that those matters in which there is no dispute of fact
6 regarding controlling issues, there is no just reason to withhold judgment:

7 We review de novo a district court's decision to grant summary judgment. *Wood v.*
8 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary
9 judgment is appropriate . . . when the pleadings and other evidence on file
10 demonstrate that no genuine issue as to any material fact remains and that the
11 moving party is entitled to a judgment as a matter of law. The substantive law
controls which factual disputes are material and will preclude summary judgment;
other factual disputes are irrelevant."

12 Because we agree with the district court that Nationstar's proffered evidence does
13 not show fraud, unfairness, or oppression affected the sale, we affirm the district
14 court's summary judgment.

15 Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 405 P.3d 641, 643
(Nev. 2017) (quotation and alteration omitted)

16 Over the month that followed the issuance of its holding in Shadow Canyon, the Nevada
17 Supreme Court affirmed more than a dozen orders granting summary judgment in favor of HOA
18 investors, and dispelled lenders misguided understanding of what constitutes "fraud, oppression,
19 or unfairness" sufficient to set aside a properly held sale. These decisions include (but are not
20 limited to:

21 Wilmington Tr., N.A. v. Holm Int'l Props., Ltd. Liab. Co., No. 71737, 2017 Nev. Unpub.
22 LEXIS 1175, at *2 (Dec. 22, 2017)²

25 ² The Court rejected the arguments that the following conduct constituted fraud oppression or
26 unfairness: "(1) the HOA attempted to procure a potential purchaser before the foreclosure sale;
27 (2) the HOA's **trustee** did not announce at the auction that the HOA had decided to waive a
28 portion of the amount due to it, thereby lowering the starting bid; (3) the foreclosure notices did
not identify the superpriority lien amount; and (4) there was only one bid submitted at the
auction after the HOA's opening bid."

1 HSBC Bank, USA, N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co., No. 71211, 2017 Nev.
2 Unpub. LEXIS 1115, at *4 (Dec. 14, 2017)³

3 Nationstar Mortg., Ltd. Liab. Co. v. SFR Invs. Pool 1, Ltd. Liab. Co., No. 70777, 2017
4 Nev. LEXIS 147, at *1 (Dec. 14, 2017)

5 Bank of N.Y. Mellon v. Holm Int'l Props., Ltd. Liab. Co., No. 70689, 2017 Nev. Unpub.
6 LEXIS 1125, at *1 (Dec. 14, 2017)

7 Bank of N.Y. Mellon v. NV Eagles, Ltd. Liab. Co., No. 70707, 2017 Nev. LEXIS 146, at
8 *2 (Dec. 14, 2017)

9 Wells Fargo Bank, N.A. v. SFR Invs. Pool 1, LLC, No. 69476, 2017 Nev. Unpub. LEXIS
10 1106, at *2 (Dec. 14, 2017)

11 Fannie Mae v. SFR Invs. Pool 1, Ltd. Liab. Co., No. 68495, 2017 Nev. Unpub. LEXIS
12 1131, at *3 (Dec. 14, 2017)

13 Bank of Am., Nat'l Ass'n v. 583SC Ltd. Liab. Co., No. 69255, 2017 Nev. Unpub. LEXIS
14 1132, at *2 (Dec. 14, 2017)

15 Bank of Am., Nat'l Ass'n v. SFR Inv. Pool 1, Ltd. Liab. Co., No. 69418, 2017 Nev.
16 Unpub. LEXIS 1122, at *1 (Dec. 14, 2017)

17 Bank of Am., Nat'l Ass'n v. SFR Inv. Pool 1, Ltd. Liab. Co., No. 69418, 2017 Nev.
18 Unpub. LEXIS 1122, at *1 (Dec. 14, 2017)

19 Thus, this court can rest assured that a decision to grant summary judgment in favor of
20 Plaintiff in the absence of a material issue of fact will not be overturned by the Nevada Supreme
21 Court.

22 **D. Defendants are barred from asserting any defenses to Plaintiff's claim of title.**

23 As set forth in the undisputed facts, Defendants' Grantor, Connie Fernandez, was
24 dispossessed of the property by the Foreclosure Deed through which Plaintiff came into
25 possession. As such pursuant to the express terms of NRS 11.080, Defendants are barred from
26 maintaining a claim to recover possession of the property.

27 NRS 11.070 further restricts Defendants from validly asserting any defenses to Plaintiff's
28 right to clear title, providing in relevant part:

³ The Court rejected the arguments that the following conduct constituted fraud oppression or
unfairness: "(1) [the lender's] loan servicing records do not include the required notices and (2)
respondent was the only bidder at the foreclosure sale.

1 No cause of action or defense to an action, founded upon the title to real property,
2 or to rents or to services out of the same, shall be effectual, unless it appears that
3 the person prosecuting the action **or making the defense**, or under whose title the
4 action is prosecuted or the defense is made, or the ancestor, predecessor, **or grantor**
5 of such person, **was seized or possessed of the premises in question within 5**
6 **years before** the committing of the act in respect to which said action is prosecuted
7 or defense made.

8 The Nevada Supreme Court interpreting the identical predecessor to NRS 11.070 stated
9 that the statute, “imposes a general inability to sue or defend upon any right claimed in real estate,
10 unless the party suing or defending shall have been in possession of the real estate within five
11 years last past.” *Chollar-Potosi Mining Co. v. Kennedy & Keating*, 3 Nev. 365, 369 (1867). Here,
12 Defendant’s property interest was never possessory, the Deed of Trust only created a non-
13 possessory security interest in the Property. *See*, NRS 107.020. Defendants’ grantor however
14 enjoyed the possessory rights to the property until the foreclosure sale through which Plaintiff
15 became owner of record. This foreclosure sale undisputedly occurred on August 11, 2011.
16 Plaintiff has remained in continuous possession since the sale. As such Defendants could validly
17 bring an action to recover the Property or defend against Plaintiff’s interest until August 11, 2016
18 at the latest. Defendants are barred by the applicable statute of limitations from maintaining any
19 defense to Plaintiff’s claims and as such Plaintiff is entitled to summary judgment in his favor.

20 In other words, under the summary judgment standard, this Court need only consider a
21 very narrow set of facts and legal issues. The only legal issues for this Court to reach are whether
22 NRS 11.070 describes the applicable statute of limitations, and whether that statute of limitations
23 bars the Defendants from defending against Plaintiff’s claims. The clear controlling case law
24 referenced herein makes clear that both questions should be answered in the affirmative. The
25 only factual issue that the Court need consider is whether the grantor of the Defendant’s deed of
26 trust has been in possession of the property in the last five years. The undisputed facts
27 demonstrate that he has not. As such, there are no material issues of fact and Plaintiff is entitled
28 to judgment as a matter of law.

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Dated this 3rd day of May, 2018.

Attorneys for Plaintiff, Kenneth Berberich

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of Mike Beede, PLLC, and that on the 3rd day of May, 2018, I did cause a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND COUNTERMOTION FOR SUMMARY JUDGMENT** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Michael Beede, Esq.
Rex Garner
Natalie Winslow

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com

/s/Allison Zeason
An Employee of The Law Office of Mike Beede, PLLC

Exhibit “1”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)
AND WHEN RECORDED MAIL TO
ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

T.S. No. - 10-15540
Title No. - 4580032
APN - 176-29-511-068

Inst #: 201010060002672
Fees: \$14.00
N/C Fee: \$0.00
10/06/2010 02:23:46 PM
Receipt #: 530702
Requestor:
CLARK RECORDING SERVICE
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DELINQUENT

Assessment

This NOTICE OF DELINQUENT ASSESSMENT (NODA) is being given pursuant to N.R.S. 116.3115 et. seq. and N.R.S. 116.3116 through 116.31168 et. seq. and/or the provisions of the Declaration of Covenants, Conditions and Restrictions of the **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** that recorded **08-04-2005** as Instrument **0004194**, Book **20050804**, Page - -, County of CLARK, State of NV and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is:
LOT 149 OF THE FINAL MAP OF VIA VALENCIA/VIA VENTURA UNIT 1, IN BOOK 121 OF PLATS AT PAGE 70.

Reputed Owner: **CONNIE FERNANDEZ**

Common 8735 MOUNT MIRA LOMA
Address: AVENUE
LAS VEGAS, NV 89178

Mailing 8735 MOUNT MIRA LOMA
Address: AVENUE
LAS VEGAS, NV 89178

Total Amount due as of 09-30-2010	\$675.18
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After the expiration of 30 days following the mailing of this NODA, the NODA may be enforced in accordance with NRS 116.31162. Additional monies shall accrue under this claim at the rate of the claimant's periodic or special assessments, plus permissible late charges, fines, costs of collection and interest, if any, subsequent to the date of this notice. Should the association named herein act to have the lien created by this notice enforced by non-judicial foreclosure and sale, the trustee authorized to enforce the lien shall be **ALLIED TRUSTEE SERVICES, 990 RESERVE DRIVE, SUITE 208, ROSEVILLE, CA 95678 - (800) 220-5454**

Dated: September 30,
2010

VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION

STATE OF CALIFORNIA
COUNTY OF PLACER

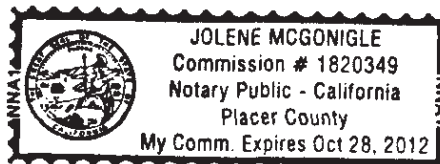

JOSEPHINE HARTER, Authorized Representative

ALLIED TRUSTEE SERVICES MAY BE ACTING AS A DEBT COLLECTOR TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

On September 30, 2010 before me, the undersigned, a Notary Public in and for said county, personally appeared JOSEPHINE HARTER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she 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.

WITNESS my hand and official seal.


JOLENE MCGONIGLE, Notary Public



APP0092

Exhibit “2”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)
AND WHEN RECORDED MAIL TO
ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

Trustee Sale No. - **10-15540**
Title Order No. - 4580032
APN - 176-29-511-068

Inst #: 201011090003304
Fees: \$15.00
N/C Fee: \$25.00
11/09/2010 02:55:58 PM
Receipt #: 572376
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use

**NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER NOTICE OF DELINQUENT ASSESSMENT
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. No sale date may be set until ninety (90) days from the date this notice of default may be recorded or mailed.

The amount is **\$1,391.17** as of **November 05, 2010** and will increase until your account becomes current. Upon your written request, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** (Association) will give you a written itemization of the entire amount you must pay. You and the Association may mutually agree in writing prior to the time the notice of sale is posted to, among other things, (1) provide additional time in which to cure the default by 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 previously referred to, unless a separate written agreement between you and the Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by the Association.

NOTICE IS HEREBY GIVEN THAT: **ALLIED TRUSTEE SERVICES** is the duly appointed Trustee/Agent authorized by the Association to record Notice of Delinquent Assessment obligations in favor of said Association, pursuant to the terms contained in that certain Declaration of Covenants, Conditions and Restrictions, recorded on **08-04-2005** as Instrument **0004194** Book **20050804** Page - - of Official Records in the Office of the Recorder of **CLARK** County, NV, and any and all amendments or annexations of record thereto, describing the land therein, that the beneficial interest under said Notice of Delinquent Assessment is presently held by the Association.

THIS NOTICE is given pursuant to N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq., and/or pursuant to that certain Notice of Delinquent Assessment, recorded on **10-06-2010** as Instrument **0002672** Book **20101006** Page - - of Official Records in the office of the Recorder of **CLARK** County, State of NV and more completely described in said Notice of Delinquent Assessment.

Owner: **CONNIE FERNANDEZ**

PROPERTY **8735 MOUNT MIRA LOMA AVENUE**
ADDRESS: **LAS VEGAS, NV 89178**

APP0094

Trustee Sale No. - **10-15540**
APN -176-29-511-068

**NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER NOTICE OF DELINQUENT ASSESSMENT**

If you have any questions, you should contact a lawyer. 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.

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU
COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! REMEMBER,
YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION**

That a breach of, and default in, the obligation for which said Covenants, Conditions and Restrictions as security has occurred in that the payment(s) have not been made of periodic assessments, less credits and offsets, plus any late charges, interest, fees, charges, collection costs, trustees fees, and attorney fees. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, contact the following trustee who has been authorized by the Association to enforce its lien by sale: **ALLIED TRUSTEE SERVICES, 990 RESERVE DRIVE, SUITE 208, ROSEVILLE, CA 95678, (800) 220-5454.**

That by reason thereof, the present Association under such Covenants, Conditions and Restrictions, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Covenants, Conditions and Restrictions and all documents evidencing the 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 herein described property, lien by said Association, to be sold to satisfy the obligations secured thereby.

DATE: November 05, 2010

ALLIED TRUSTEE SERVICES, Trustee

ALLIED TRUSTEE SERVICES MAY BE ACTING
AS A DEBT COLLECTOR TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED
FOR THAT PURPOSE.

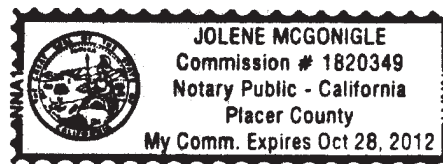

KATHLEEN SUGGS, Authorized Signature

STATE OF CALIFORNIA
COUNTY OF PLACER

On **November 05, 2010** before me, the undersigned, a Notary Public in and for said county, personally appeared **KATHLEEN SUGGS** personally known to me (or 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.

WITNESS my hand and official seal.


JOLENE MCGONIGLE, Notary Public



APP0095

Exhibit “3”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)

AND WHEN RECORDED MAIL TO

ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

T.S. No. - **10-15540**
Title No. - 4580032
A.P.N. - 176-29-511-068

105

Inst #: 201103210002447

Fees: \$15.00

N/C Fee: \$0.00

03/21/2011 02:14:30 PM

Receipt #: 712172

Requestor:

PASION TITLE SERVICES

Recorded By: SUO Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

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 ALLIED TRUSTEE SERVICES (877) 282-4991. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT DATED **09-30-2010**. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On **04-21-2011** at **10:00 AM**, ALLIED TRUSTEE SERVICES (Trustee) under and pursuant to Notice of Delinquent Assessment, recorded on **10-06-2010** as Instrument **0002672** Book **20101006** Page - - of Official Records in the Office of the Recorder of CLARK County, NV, property owned by **CONNIE FERNANDEZ**

WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT (payable at time of sale in lawful money of the United States) at: **THE FRONT ENTRANCE TO THE NEVADA LEGAL NEWS LOCATED AT 930 SO. FOURTH ST., LAS VEGAS, NV 89101** all right, title and interest under said Notice of Delinquent Assessment in the property situated in said County, describing the land therein: **A.P.N.: 176-29-511-068**

The street address and other common designation, if any, of the real property described above is purported to be:

**8735 MOUNT MIRA LOMA AVENUE
LAS VEGAS, NV 89178**

The Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum due under said Notice of Delinquent Assessment, with interest thereon, as provided in said notice, advances, if any, estimated fees, charges, and expenses of the Trustee. The estimated total amount of the unpaid balance at the time of the initial publication of the Notice of Sale is **\$2,453.68**.

APP0097

T.S. No. - 10-15540
A.P.N. - 176-29-511-068

NOTICE OF TRUSTEE'S SALE

The claimant, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** under said Notice of Delinquent Assessment heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located and more than ninety (90) days have elapsed since such recordation, or mailing of such Notice.

FOR SALES INFORMATION, CALL (714) 573-1965

DATE: March 10, 2011

ALLIED TRUSTEE SERVICES MAY BE ACTING AS A DEBT COLLECTOR TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

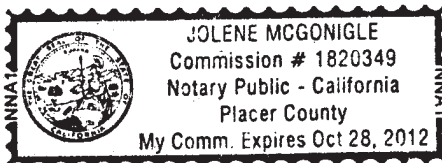
ALLIED TRUSTEE SERVICES, Trustee


NICOLE THORNSBERRY, Authorized Signature

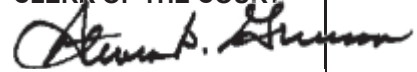
On March 10, 2011 before me, the undersigned, a Notary Public in and for said county, personally appeared NICOLE THORNSBERRY personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she 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.

WITNESS my hand and official seal.


Jolene McGonigle, Notary Public



APP0098



1 **IAFD**
2 MICHAEL BEEDE, ESQ.
3 Nevada Bar No. 13068
4 **THE LAW OFFICE OF MIKE BEEDE, PLLC**
5 2470 St. Rose Pkwy, Suite 307
6 Henderson, NV 89074
7 T: 702-473-8406
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9 eservice@LegalLV.com
10 *Attorney for Plaintiff, Kenneth Berberich*

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 KENNETH BERBERICH,

15 Plaintiff,

16 v.

17 CONNIE FERNANDEZ; BANK OF
18 AMERICA, N.A.; MORTGAGE
19 ELECTRONIC REGISTRATION
20 SYSTEMS, INC.; and DOES 1 through 10,
21 inclusive; ROE CORPORATIONS 1 through
22 10, inclusive,
23 Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

**PLAINTIFF'S INITIAL
APPEARANCE FEE
DISCLOSURE**

24 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the
25 above-entitled action as indicated below:

Kenneth Berberich,	Plaintiff	\$200.00
Counter-motion for Summary Judgment		

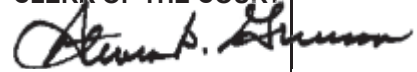
TOTAL REMITTED:	\$200.00
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26 Dated this 5th day of May, 2018.

THE LAW OFFICE OF MIKE BEEDE, PLLC

27 BY: /s/Michael Beede

28 MICHAEL BEEDE, ESQ.
Nevada Bar No. 13068
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
T: 702-473-8406
Attorney for Plaintiff



NCOA
MICHAEL N. BEEDE, ESQ.
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Facsimile (702) 832-0248
Attorney for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

**NOTICE OF CHANGE OF
ADDRESS**

NOTICE IS HEREBY GIVEN that as of April 30, 2018, The Law Office of Mike Beede, PLLC has moved. Please note that only our office suite number has changed, and that all other information remains the same. Going forward, please direct all pleadings and correspondence to the following address:

The Law Office of Mike Beede, PLLC
Michael N. Beede, Esq.
2470 St. Rose Parkway, **Suite 307**
Henderson, Nevada 89074

1 Dated this 7th day of May, 2018.

2 THE LAW OFFICE OF MIKE BEEDE, PLLC

3 By: /s/ Michael Beede, Esq.
4 MICHAEL BEEDE, ESQ.
5 Nevada Bar No. 13068
6 2470 St. Rose Pkwy, Suite 307
7 Henderson, NV 89074
8 *Attorney for Plaintiff, Kenneth Berberich*

9
10
11
12
13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5(b), I certify that I am an employee of The Law Office of Mike
15 Beede, PLLC, and that on this 7th day of May, 2018, I did cause a true and correct copy of the
16 foregoing **NOTICE OF CHANGE OF ADDRESS** to be served upon each of the parties listed
17 below via electronic service through the Eighth Judicial District Court's Odyssey E-File and
18 Serve System:

19 Michael Beede, Esq.
20 Rex Garner
21 Natalie Winslow

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com

22
23 /s/ Allison Zeason
24 An Employee of The Law Office of Mike Beede, PLLC



ORDR

MICHAEL N. BEEDE, ESQ.
Nevada Bar No. 13068
JAMES W. FOX, ESQ.
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Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

CASE NO. A-18-768728-C

DEPT NO. XXVI

**ORDER GRANTING EX-PARTE
APPLICATION TO EXTEND TIME
TO SERVE AND FOR SERVICE BY
PUBLICATION**

IT IS ORDERED that the Plaintiff shall be granted an additional 90 days to serve the
Defendant, Connie Fernandez (hereafter, "Defendant"); and

///

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IT IS FURTHER ORDERED, that the Defendant may be served by Publication of the Summons and Complaint at least once a week for four (4) consecutive weeks in a newspaper of general circulation, Nevada Legal News, published in Clark County, Nevada, and in addition thereto, a copy of the Summons and Complaint, and copies of the Application and Order, shall be forthwith mailed to the Defendant at their last known address(es), 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178, and 2600 Orchard Meadows Avenue, Henderson, NV 89074, first class certified mail, postage prepaid.

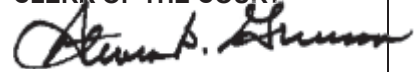
Dated this 26th day of April, 2018.


DISTRICT COURT JUDGE

Submitted by:

THE LAW OFFICE OF MIKE BEEDE, PLLC

Michael N. Beede, Esq.
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*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,; and DOES
I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

**REPLY SUPPORTING MOTION TO
DISMISS COMPLAINT UNDER RULE
12(B)(5)**

AND

**OPPOSITION TO COUNTERMOTION
FOR SUMMARY JUDGMENT**

AND

**ALTERNATIVELY, REQUEST FOR
RULE 56(F) RELIEF**

Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (**MERS**) reply supporting their motion to dismiss and oppose Kenneth Berberich's counter motion for summary judgment. Alternatively, Bank of America and MERS request Rule 56(f) relief.

1 **I. INTRODUCTION.**

2 Bank of America moved to dismiss plaintiff Kenneth Berberich's quiet title complaint
3 because he filed too late—more than a year past the statute of limitations. NRS 11.080; *see also*
4 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232
5 (Nev. 2017). Berberich ignores *Gray Eagle*, which is directly on point, and instead argues NRS
6 11.080 somehow does not apply. Berberich cannot escape *Gray Eagle*.

7 Furthermore, MERS moved to dismiss the complaint because MERS no longer has an
8 interest in the deed of trust, which is currently held by Bank of America via an assignment from
9 MERS recorded with the Clark County Recorder on November 15, 2011 as instrument no.
10 201111150000268. Berberich did not address this argument in the Opposition.

11 Berberich countermoves for summary judgment based on NRS 11.080. But NRS 11.080
12 does not prevent Bank of America's foreclosure, and does not apply to any potential claims by Bank
13 of America in this action. In any event, Bank of America satisfied the superpriority lien prior to the
14 HOA's foreclosure, meaning Berberich's interest, if any, is subject to Bank of America's lien.

15 Finally, to the extent the court entertains Berberich's counter-motion, Bank of America and
16 MERS request the court allow the opportunity to conduct discovery to defend Berberich's claims.

17 **II. STATEMENT OF UNDISPUTED FACTS.**

18 BANA incorporates the factual background contained in their motion to dismiss.
19 Responding to Berberich's counter-motion, BANA submits as follows:

20 On December 9, 2010, after the HOA recorded its notice of default, Bank of America hired
21 Miles Bauer Bergstrom & Winters to tender to the HOA the superpriority portion of the HOA's lien,
22 if any. **Ex. A.** The HOA refused to provide a superpriority calculation, and instead provided a
23 statement of account showing a total amount due of \$1,556.90. *Id.* The statement of account
24 showed the HOA charged quarterly assessments in the amount of \$75.00. *Id.* As of the date of the
25 statement, Connie Fernandez was delinquent four assessments, for a total of \$300.00. *Id.*

26 Miles Bauer tendered \$300.00 to the HOA through its foreclosure agent Allied Trustee
27 Services—the amount of outstanding unpaid assessments the HOA alleged Fernandez owed at that
28

1 time—despite that the superpriority portion of the HOA's lien was only \$225.00. *See id.* Allied
2 rejected Miles Bauer's tender of the superpriority lien. *Id.*

3 **III. THE STATUTE OF LIMITATIONS ON BERBERICH'S CLAIMS EXPIRED.**

4 The five-year quiet title statute of limitations, NRS 11.080, governs quiet title actions
5 brought by purchasers at HOA foreclosure sales under NRS 116. *See Saticoy Bay LLC Series 2021*
6 *Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232 (Nev. 2017). Berberich urges
7 the court to ignore NRS 11.080 and *Gray Eagle* because Berberich was never seized or possessed of
8 the premises—a requirement under NRS 11.080 Berberich alleges was not satisfied. Opp'n at 3.

9 *Gray Eagle* is a Nevada HOA foreclosure case. 388 P.3d at 226. Saticoy Bay allegedly
10 obtained title through an HOA foreclosure sale in August 2013. *Id.* at 228. Saticoy Bay filed a
11 complaint seeking an order the sale extinguished the deed of trust. *Id.* After Saticoy Bay failed to
12 prosecute its claims, the district court dismissed the action and concluded Saticoy Bay could not
13 refile a subsequent action because the statute of limitations had run on the claims. *Id.* at 232.

14 The Nevada supreme court held NRS 11.080 applied to Saticoy Bay's claims, which began to
15 run at the time Saticoy Bay purchased the property in 2013. *Id.* The court held the statute of
16 limitations for Saticoy Bay's quiet title action would not run until 2018. *Id.*

17 Berberich's claims are the same as Saticoy Bay's in *Gray Eagle*. His claims are subject to a
18 five-year statute of limitations, which began to run as of the date of the HOA foreclosure sale on
19 August 11, 2011. Mot. at Ex. C. The statute of limitations on Berberich's claims ran on August 11,
20 2017. Berberich filed his complaint too late, on January 31, 2018.

21 **IV. NRS 11.080 IS INAPPLICABLE TO BANK OF AMERICA'S FORECLOSURE OR CLAIMS.**

22 Berberich argues NRS 11.080 bars any action by Bank of America to "recover" the property.
23 Opp'n at 4. But Bank of America does not seek to recover anything. Rather, Bank of America's
24 deed of trust remains a valid encumbrance because Berberich did not timely seek to quiet title.

25 **First**, Bank of America's anticipated nonjudicial foreclosure is proper. Even assuming a
26 five-year statute of limitations that began running as of the HOA foreclosure sale, the statute of
27 limitations does not prevent a deed of trust beneficiary's nonjudicial foreclosure. "For over 150
28 years, this court's jurisprudence has provided that lenders are not barred from foreclosing on

1 mortgaged property merely because the statute of limitations for contractual remedies on the note
2 has passed." *Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortgage Loan Tr.*, 401 P.3d
3 1068, 1070 (Nev. 2017). "A lender may recover on a deed of trust even after the statute of
4 limitations for contractual remedies on the note has passed." *Id.* at 1071. "Nonjudicial foreclosure is
5 neither a civil nor a criminal proceeding," and statutes of limitations "only . . . bar judicial actions;
6 thus, they are inapplicable to nonjudicial foreclosures." *Id.*

7 **Second**, Bank of America has not yet brought *any* claims in this action, and any ruling that
8 Bank of America cannot do so is premature and an impermissible advisory opinion. *Applebaum v.*
9 *Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110 (1981) ("This court will not render advisory opinions on
10 . . . abstract questions. Decisions may be rendered only where actual controversies exist.").

11 **Third**, even assuming Bank of America brought claims in this action for declaratory relief
12 that its deed of trust survived the sale, the statute of limitations is the one controlling the underlying
13 substantive claim—here, the enforceability of the deed of trust. NRS 106.240 preserves a deed of
14 trust for ten years after the loan is wholly due, and there is no statute of limitations for nonjudicial
15 foreclosures. If, and only if, enforcement of the deed of trust would be time barred, then a
16 declaratory judgment claim seeking confirmation of the enforceability of the deed of trust would also
17 be time barred.¹ Enforcement of the deed of trust is not time barred in this case.

18 **V. THE TENDER EXTINGUISHED ANY SUPERPRIORITY PORTION OF THE HOA'S LIEN.**

19 A deed of trust beneficiary may preserve its interest by determining "the precise superpriority
20 amount" and tendering it "in advance of [a homeowners' association] sale." *SFR Invs. Pool 1, LLC*,
21 334 P.3d 408, 418 (Nev. 2014). UCIOA § 3-116's commentary acknowledges the superpriority
22 concept is "a significant departure from existing practice," but "strikes an equitable balance between
23

24 ¹ Cases across the country confirm this governing premise for time limits on declaratory judgment claims.
25 *See, e.g., Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993) ("courts must necessarily
26 focus on the substance of an asserted claim as opposed to its form"); *Algrant v. Evergreen Nurseries, Ltd.*,
27 126 F.3d 173, 181 (3rd Cir. 1997) (action for declaratory relief barred only if the limitation applicable to the
28 substantive claim would be barred); *Clary v. Stack and Supply Co.*, 611 P.2d 80, 83 (Alaska 1980)
(declaratory judgment claim regarding rights under contract barred when action to enforce the contract is
barred); *118 East 60th Owners, Inc. v. Bonner Props., Inc.*, 677 F.2d 200, 202 (2d Cir. 1982) ("[W]hen the
declaratory judgment sought by a plaintiff would declare his entitlement to some affirmative relief, his suit is
time-barred if the applicable limitations period has run on a direct claim to obtain such relief.").

1 the need to enforce collection of unpaid assessments and the obvious necessity of protecting the
2 priority of the security interest of lenders." *Id.* at 9. "[A]s a practical matter, secured lenders will
3 most likely pay the 6 months' assessments demanded by the association rather than having the
4 association foreclose on the unit." *Id.* **"Payment of [the superpriority charges] relieves their [sic]**
5 **superpriority status."** *Id.* at 11 (emphasis added).

6 The HOA's superpriority lien was limited to nine months of common assessments and any
7 nuisance-abatement charges and not a penny more. The Nevada supreme court settled this issue in
8 *Ikon Holdings*, explaining that prior to the statutory amendments effective October 1, 2015, "[a]
9 superpriority lien pursuant to NRS 116.3116(2) does not include an additional amount for the
10 collection fees and foreclosure costs that an HOA incurs proceeding a sale; rather, it is limited to an
11 amount equity to nine months of common expense assessments." *Horizon at Seven Hills*
12 *Homeowners Ass'n v. Ikon Holdings, LLC*, 373 P.3d 66, 72 (Nev. 2016).

13 The common law definition of tender is "an offer of payment that is coupled either with no
14 conditions or only with conditions upon which the tendering party has a right to insist." *Fresk v.*
15 *Kraemer*, 99 P.3d 282, 286-287 (Or. 2004); *see also* 74 AM. JUR. 2D Tender § 22 (2014). Two
16 important points come from this general rule: (1) **an offer of payment is sufficient—actual**
17 **payment is not even required**; and (2) **conditions are allowed**, if the tendering party has the right
18 to insist to such conditions. As the Tenth Circuit explained in *Guthrie v. Curnutt*, "[t]he failure of the
19 agent to count out the cash or to present a cashier's check in the actual amount does not destroy the
20 tender. We have held that when a party, able and willing to do so, offers to pay another a sum of
21 money and is told that it will not be accepted, the offer is a tender without the money being
22 produced." 417 F.2d 764, 765-66 (10th Cir. 1969). Nevada law is in accord. Tender is effective,
23 despite lack of payment, where a party is "at all times ready, willing, and able to pay" the amounts
24 owed to satisfy obligations. *Ebert v. W. States Refining Co.*, 337 P.2d 1075, 1077 (Nev. 1959).

25 In *Ebert*, the Nevada supreme court held that the offeree validly exercised an option to
26 purchase certain property by tendering the required amount, despite the failure to actually deliver the
27 check, where the seller indicated it would not accept and the purchaser was at all times ready,
28 willing, and able to physically delivery the check. *Id.*

1 Refusal to accept results in discharge:

2 If tender of payment of an obligation to pay an instrument is made to a person
3 entitled to enforce the instrument and the tender is refused, there is discharge, to
4 the extent of the amount of the tender, of the obligation of an endorser or
accommodation party having a right of recourse with respect to the obligation to
which the tender relates.

5 NRS 104.3603. Miles Bauer's offer to pay the HOA discharged Bank of America's tender obligation
6 and rendered the HOA unable to extinguish Bank of America's deed of trust through its foreclosure.
7 Bank of America did even more than to offer to pay—it physically delivered a check to the HOA for
8 more than the superpriority portion of the HOA's lien. It is of no consequence the HOA rejected
9 Bank of America's tender—the refusal still precluded the HOA from moving forward in a way that
10 would extinguish the deed of trust. Bank of America's deed of trust survived the sale.

11 **VI. FORECLOSURE DEED RECITALS ARE NOT CONCLUSIVE OR RELEVANT.**

12 The "conclusive" deed recitals found in HOA foreclosure deeds do not bar mortgagees or
13 homeowners from challenging the validity of an HOA foreclosure sale. *Shadow Wood Homeowners*
14 *Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1111 (Nev. 2016). The deed recitals
15 outlined in NRS 116.3116 only concern "default, notice, and publication of the" notice of sale, and
16 do not provide any presumption regarding other aspects of the foreclosure, such as tender or the
17 unfairness of the sale. *Id.* The recitals are not conclusive to even the matters recited, such as whether
18 the homeowner was in default. *Id.* "[W]hile it is possible to read a conclusive recital statute like
19 NRS 116.31166 as conclusively establishing a default justifying a foreclosure when, in fact, no
20 default occurred, such a reading would be breathtakingly broad and is probably legislatively
21 unintended."). Conclusive recitals alone cannot defeat an action to set aside the foreclosure sale. *Id.*

22 In its countermotion Berberich makes the same argument the *Shadow Wood* court rejected.
23 The conclusive recitals are irrelevant to Berberich's arguments.

24 **VII. BERBERICH DOES NOT DISPUTE MERS HAS NO INTEREST IN THE DEED OF TRUST.**

25 As set forth in the motion to dismiss, MERS has no current interest in the property, and
26 Berberich cannot maintain any claim against MERS. Mot. at Ex. B. Berberich does not dispute this.
27 *See generally* Opp'n. The court can and should construe Berberich's failure to oppose as his consent
28 for this court to dismiss MERS from this action. Eighth Judicial District Court Rule 2.20(e)

1 ("Failure of the opposing party to serve and file written opposition may be construed as an admission
2 that the motion and/or joinder is meritorious and a consent to granting the same."). Furthermore, the
3 exhibits attached to the motion to dismiss conclusively prove that MERS assigned the deed of trust
4 to Bank of America prior to the foreclosure proceedings and had no involvement in those
5 proceedings. Therefore, MERS should be dismissed with prejudice and the summary judgment
6 motion against MERS should be denied.

7 **VIII. ALTERNATIVELY, 56(F) RELIEF IS APPROPRIATE.**

8 Bank of Americas request the court grant the motion to dismiss because the statute of
9 limitations on Berberich's claims has expired. Alternatively, if the court is not fully persuaded by
10 Bank of America's opposition to Berberich's countermotion, Bank of America requests Rule 56(f)
11 relief. Bank of America appeared in this action less than a month ago on April 16, 2018, and
12 discovery has not yet commenced. Bank of America requests the opportunity to determine, at a
13 minimum, facts concerning the circumstances of the HOA foreclosure sale itself, including what
14 notice was provided and any unfairness that may have surrounded the sale. In support of this
15 request, Bank of America attaches a declaration from their counsel detailing the need for further
16 discovery. **Ex. B.**

17 **IX. CONCLUSION.**

18 Berberich's complaint is barred by the applicable five-year statute of limitations. Berberich
19 ignores he filed his complaint too late, and instead argues he is entitled to summary judgment against
20 Bank of America and MERS because their anticipated claims against him are time barred. NRS
21 11.080 does not bar Bank of America's foreclosure, and in any event, a ten-year statute of limitations
22 applies to Bank of America's enforcement of its deed of trust. Prior to the foreclosure sale, Bank of
23 America satisfied any superpriority portion of the HOA's lien, and Berberich's interest in the
24 property, if any, is subject to Bank of America's deed of trust. Also, plaintiff's summary judgment
25 motion against MERS should be denied and MERS' motion to dismiss should be granted because
26 MERS asserts no interest in the property. MERS assigned the deed of trust at issue to Bank of
27
28

America prior to the foreclosure proceedings and has no involvement in that process.

DATED this 15th day of May, 2018.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 15th day of May, 2018 I caused to be served a true and correct copy of foregoing **REPLY SUPPORTING MOTION TO DISMISS COMPLAINT UNDER RULE 12(B)(5) AND OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT AND ALTERNATIVELY, REQUEST FOR RULE 56(F) RELIEF**, in the following manner:

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

Michael Beede, Esq.
LAW OFFICES OF MICHAEL N. BEEDE
 2470 St. Rose Pkwy.
 Henderson, NV 89074

/s/Jill Sallade
An employee of AKERMAN LLP

Exhibit A

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 }ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP formerly known as Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

4. The information in this affidavit is taken from Miles Bauer's business records, including records maintained in ProLaw. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to homeowners associations (HOA) to satisfy super-priority liens in connection with the following loan:

Loan Number: 209675192

Borrower(s): Connie Fernandez

Property Address: 8735 Mount Mira Loma Avenue, Las Vegas, Nevada 89178

6. Attached hereto as **Exhibit 1** is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

8. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of the Microsoft Word version of a letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Via Valencia/Via Ventura Homeowners Association, care of Allied Trustee Services, LLC. Although the attached letter is incorrectly dated May 8, 2018 due to the "Automatic Date Change" function in Microsoft Word and date of reprinting of that letter, Miles Bauer's case management system includes a specific note evidencing the letter was sent on or about December 14, 2010. A copy of a screenshot of the relevant case management note[s] confirming the letter was sent is attached as **Exhibit 1**.

9. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a Statement of Account from Allied Trustee Services dated December 30, 2010 received by Miles Bauer in response to the letter identified above.

10. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of an January 21, 2011 letter from Mr. Jung to Allied Trustee Services enclosing a check for \$300.00.

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11. Based on Miles Bauer's business records, Silver State Trustee Services returned the \$300.00 check to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was rejected is attached as **Exhibit 1**.

FURTHER DECLARANT SAYETH NOT.

Date: 5/15/18



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 15th day of MAY, 2018,

by DOUGLAS E. MILES, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Carol M. Grissom (Seal)
(Signature of Notary Public)

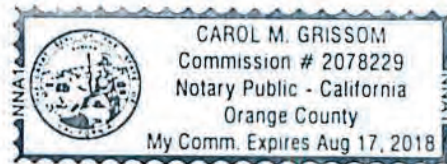


Exhibit 1

Matter ID: 10-H2381		Desc.: Fernandez, Connie BAC v. Fernandez HOA	
Client Sort: BANK OF AMERICA, N.A. (CWF)			
General	Notes	Billing	Contacts
Matters	Events	Inquiry	Settlement
Bankruptcy	Civil	Contract Info	Custom
Deed Info	EP	N	
<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Date: (all)			
1/1/2004		8/23/2004	
<input type="checkbox"/> 12/9/2010: EMF AWB re: New Referral		Document Preview Tr	
<input checked="" type="checkbox"/> 12/9/2010: RCVD REFERRAL; OPENED 12/09/10		Date:	
<input checked="" type="checkbox"/> 12/14/2010: 12/14 EMT CLIENT WITH INITIAL LETTERS ATTACHED;		12/9/2010	
<input type="checkbox"/> 12/14/2010: Initial letters re 10-H2381 Fernandez.msg		Notes:	
<input type="checkbox"/> 12/30/2010: Status Update re 10-H2381 Fernandez.msg		EMF AWB re: New Referral	
<input type="checkbox"/> 1/4/2011: EMF RKJ re: initial letters status update w/po			
<input checked="" type="checkbox"/> 1/4/2011: 1/4 EMT CLIENT HOA UPDATE WITH PO ATTACHED; FU			
<input type="checkbox"/> 1/21/2011: EMF RKJ re: Payoff Funds, 10-H2381, 8735 Mount Mira Loma Ave.			
<input checked="" type="checkbox"/> 1/21/2011: 1/21 CHECK SENT TO HOA; FU 2/7 SEE IF CHECK WAS			
<input type="checkbox"/> 2/7/2011: EMF RKJ re: Status of Payoff funds (Rejected), 10-H2381, 8735 Mount Mi			
<input checked="" type="checkbox"/> 2/7/2011: 2/7 CHECK RETURNED; FU 9/1 MONITOR EX PARTE APP.			
<input type="checkbox"/> 2/24/2011: EMT Clnt re: per client request, sent invoice			
<input type="checkbox"/> 3/30/2011: Duplicate Referral re 10-H2381 Fernandez.msg			
<input checked="" type="checkbox"/> 8/15/2011: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; F/U 8/16			
<input type="checkbox"/> 8/16/2011: EMF RKJ re: closing file			
<input type="checkbox"/> 8/19/2011: EMT CLNT re: sent invoice			
<input type="checkbox"/> 8/24/2011: EMF Clnt re: invoice submitted for payment			
<input type="checkbox"/> 12/8/2011: 10-H2381 Fernandez Connie New Case Referral.msg			
<input type="checkbox"/> 3/12/2012: EMF RKJ re: file already closed, property sold			

Exhibit 2

DOUGLAS E. MILES *
Also Admitted in California and
Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
GINA M. CORENA
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
KRISTA J. NIELSON
HADI R. SEYED-ALI *
ROSEMARY NGUYEN *
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
KRISTIN S. WEBB *
BRIAN H. TRAN *
ANNA A. GHAJAR *
CORI B. JONES *
MARY L. SEEBACH *



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

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Fax: (702) 369-4955

* **CALIFORNIA OFFICE**
1231 E. DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

May 8, 2018

Via Valencia / Via Ventura Homeowners Association
ALLIED TRUSTEE SERVICES
990 Reserve Drive, Suite 208
Roseville, CA 95678

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178*
MBBW File No. 10-H2381

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for BAC Home Loans Servicing, LP aka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to these issues. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated November 5, 2010. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BAC.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

Exhibit 3



Allied Trustee Services
WORKING TOGETHER TO IMPROVE YOUR COMMUNITY

December 30, 2010

CONNIE FERNANDEZ

8735 MOUNT MIRA LOMA AVENUE
LAS VEGAS, NV 89178

Fax Number: 877.294.0601

T.S. No: 10-15540

Association: VIA VALENCIA / VIA VENTURA HOA

Account No: 11670

Owner(s): CONNIE FERNANDEZ

Property Address: 8735 MOUNT MIRA LOMA AVENUE
LAS VEGAS, NV 89178

The amount to reinstate the above referenced account good through 01/13/2011 is as follows:

ASSOCIATION ASSESSMENTS, LATE CHARGES, INTEREST AND COSTS OF COLLECTION

	DESCRIPTION	AMOUNT	FROM	THRU	RATE	TOTAL
4	Delinquent Assessments @	\$75.00	04/01/2010	01/13/2011	5.28%	\$300.00
3	Late Charges @	\$25.00	04/01/2010	01/13/2011		\$75.00

Interest on Assessments from 05/01/2010 to 01/13/2011 \$6.90

COSTS OF COLLECTION AND ADVANCES

	DESCRIPTION	AMOUNT	FROM	THRU	RATE	TOTAL
1	COLLECTION COST	\$25.00	09/27/2010	09/27/2010	0.00%	\$25.00
1	COLLECTION COST	\$50.00	08/25/2010	08/25/2010	0.00%	\$50.00
1	INTEREST ADJUSTMENT	\$0.18	08/31/2010	08/31/2010	0.00%	\$0.18

Interest on Advances thru 01/13/2011 \$0.00

Total due Association as of 01/13/2011:

\$457.08

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**Allied Trustee Services**
WORKING TOGETHER TO IMPROVE YOUR COMMUNITY**TRUSTEE'S FEES, COSTS, AND EXPENSES**

DESCRIPTION	TOTAL
NODA FEE	\$325.00
RECORDING - NOTICE OF DELINQUENT ASSESSMENT	\$14.00
VESTING VERIFICATION	\$35.00
CERTIFIED RETURN RECEIPT - NODA	\$8.98
TRUSTEE FEE	\$300.00
TRUSTEE SALE GUARANTEE	\$290.00
RECORDING - NOTICE OF DEFAULT	\$40.00
RECORDING - NOTICE OF RESCISSION	\$15.00
TEN DAY MAILING RETURN RECEIPT	\$71.84

Total due Trustee for Fees and Costs: \$1,099.82

Total required to reinstate as of 01/13/2011: \$1,556.90

This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by the Fair Debt Collections Practices Act and does not imply that we are attempting to collect money from anyone who has discharged by the debt under the Bankruptcy laws of the United States.

If funds are not submitted by 4:30 pm on 01/13/2011, you must contact our office to request updated figures.

Should the property be in escrow, this letter does not serve as an escrow demand. Additional Association administrative costs may apply to an escrow.

Payment should be made payable and forwarded to:

(800) 220-5454
ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE SUITE 208
ROSEVILLE, CA 95678

Sincerely,

JESSICA MELVIN, CUSTOMER SERVICE

Page 8/9

Exhibit 4

DOUGLAS E. MILES *
Also Admitted in California and
Illinois

RICHARD J. BAUER, JR. *
JEREMY T. BERGSTROM

Also Admitted in Arizona
FRED TIMOTHY WINTERS *
KEENAN E. McCLENNAN *
MARK T. DOMEYER *

Also Admitted in District of
Columbia & Virginia

TAMI S. CROSBY *
L. BRYANT JAQUEZ *

DANIEL L. CARTER *
GINA M. CORENA

WAYNE A. RASH *
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JORY C. GARABEDIAN
THOMAS M. MORLAN

Admitted in California
KRISTIN S. WEBB *

BRIAN H. TRAN *

ANNA A. GHAFAR *

CORI B. JONES *

STEVEN E. STERN
Admitted in Arizona & Illinois

ANDREW H. PASTWICK
Also Admitted in Arizona and
California



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

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Fax: (702) 369-4955

* CALIFORNIA OFFICE
1231 E. DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

January 21, 2011

ALLIED TRUSTEE SERVICES
3721 Douglas Blvd., Suite 345
Roseville, CA 95661

Re: *Property Address:* 8735 Mount Mira Loma Avenue
Account No: 11670
LOAN #: 209675192
MBBW File No. 10-H2381

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$1,556.90. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

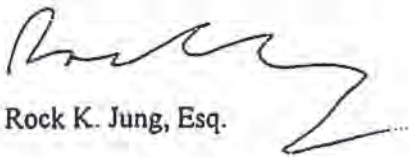
Our client has authorized us to make payment to you in the amount of \$300.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Allied Trustee Services in the sum of \$300.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 8735 Mount Mira Loma Avenue have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.



Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: ALLIED TRUSTEE SERVICES
 Check #: 7150
 Date: 1/18/2011
 Amount: 300.00
 Initials: TLC

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
1/18/2011	11670	To Cure HOA Deficiency	300.00			

Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone: (714) 481-9100

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-66/1220
 1020
 10-H2381
 Loan # 209675192

7150

Date: 1/18/2011
 Amount \$**** 300.00

Check Void After 90 Days

Pay \$*****Three Hundred & No/100 Dollars
 to the order of
 ALLIED TRUSTEE SERVICES

Security features. Details on back.

007150 0122400724 501006876973

Exhibit B

DECLARATION OF NATALIE L. WINSLOW, ESQ. IN SUPPORT OF RULE 56(F)**RELIEF**

I, Natalie L. Winslow, declare under penalty of perjury as follows:

1. I make this declaration based on my personal knowledge.

2. I am a partner with the law firm of Akerman LLP and attorney for Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (**MERS**) in the above-captioned matter.

3. Bank of America believes the court should grant its motion to dismiss because plaintiff Kenneth Berberich's claims against them are time barred.

4. MERS believes the court should grant its motion to dismiss because MERS does not have any current interest in the deed of trust.

5. Alternatively, Berberich is not entitled to summary judgment at this juncture.

6. Bank of America should be permitted to conduct discovery, at a minimum, on the following issues:

First, additional facts concerning the unfairness and oppression of the HOA sale, including exactly what transpired leading up to and at the sale, including 1) the number of bidders at the sale; 2) what was said at the sale; 3) who set the minimum bid; 4) whether the HOA provided bidders with information that Bank of America satisfied the superpriority lien prior to the foreclosure sale; and 5) the intent of the HOA and its foreclosure agent in the type of sale it conducted.

Second, the facts surrounding any potential notice issues prior to the HOA foreclosure sale, including 1) how the amounts were calculated; 2) where the notices were sent; and 3) why they were sent to those entities/people.

Third, whether, and how much, the borrower was delinquent in her HOA assessments at the time of the HOA foreclosure sale and if any attempts to pay the delinquencies were made.

7. Discovery is not yet open in this matter. The parties have not yet exchanged initial documents and witnesses pursuant to Nevada Rule of Civil Procedure 16.1

8. As of the date of this declaration, Bank of America has not had the opportunity to serve written discovery on Berberich, or to subpoena applicable documents from the HOA or its

1 foreclosure agent. This discovery will likely touch upon the information outlined in paragraph 5
2 above.

3 9. On information and belief, the HOA, its foreclosure agent, and Berberich have
4 evidence and information not otherwise available to Bank of America including: each notice sent
5 regarding the HOA's foreclosure sale, and to whom; what amounts were included in the claimed lien;
6 whether a superpriority lien was foreclosed and an accounting of such lien; what the amounts of any
7 claimed superpriority lien were and whether any credits or offsets were received; what
8 communications the HOA had with the homeowner and/or any of the bidders, investors, and
9 Berberich about the HOA sale; and the policies and procedures in place at or around the time of sale
10 as to handling any superpriority lien and payoffs of same.

11 10. Rule 30(b)(6) depositions of the HOA, its foreclosure agent, and Berberich are
12 necessary to clarify the facts and circumstances leading up to the foreclosure sale, the sale itself, and
13 the content of the material documents (such as ledgers and notices) in this case.

14 11. These depositions will address at a minimum: the sufficiency of notices, statutory
15 compliance for a nonjudicial foreclosure sale, the amount of the lien, the calculation of the lien
16 amounts, analysis of the HOA ledgers and any borrower payments.

17 12. It is also within Berberich or the HOA's knowledge as to whether publicly recorded
18 documents were reviewed and whether Berberich contacted a title company regarding the insurability
19 of title before and after the HOA's sale.

20 13. The HOA has knowledge as to what communications it had with Berberich and any
21 of the other bidders or investors about the sale and the policy and procedures regarding handling of a
22 superpriority lien.

23 14. The HOA has knowledge of the validity of the lien amount and the distribution of the
24 proceeds of the sale.

25 15. Similarly, discovery is needed as to the HOA and its policies and procedures for
26 handling superpriority liens and payments; and the time, manner and place of the HOA sale including
27 what was published and posted, and how many bidders were at the HOA sale.
28

1 16. Additionally, the disposition of the funds allegedly paid for the property, and the facts
2 determinative of an oppressive or unfair sale also warrant investigation.

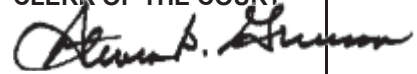
3 17. This declaration is being filed in good faith and will not result in undue prejudice to
4 any party. This discovery is needed because the information to be discovered is within the total
5 control of the HOA, its foreclosure agent, and Berberich. *Shadow Wood* requires litigants to fully
6 develop their factual record at the trial court level, which this additional discovery will allow the
7 parties to do. *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d
8 1105, 1111 (Nev. 2016).

9 18. I declare under penalty of perjury under the laws of the State of Nevada that the
10 foregoing is true and correct to the best of my knowledge and belief.

11 DATED this 15 day of May, 2018.



Natalie L. Winslow, Esq.



RIS
MICHAEL BEEDE, ESQ.
Nevada Bar No. 13068
JAMES W. FOX, ESQ.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
eservice@legallv.com
T: 702-473-8406
F: 702-832-0248
Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CASE NO. A-18-768728-C
DEPT NO. XXVI

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

**PLAINTIFF'S REPLY IN
SUPPORT OF
COUNTERMOTION FOR
SUMMARY JUDGMENT**

COMES NOW Plaintiff, Kenneth Berberich (hereafter, "Plaintiff"), by and through his attorneys of record, Michael Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, and hereby files his Reply in Support of his Countermotion for Summary Judgment.

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This Reply is made and based upon the attached Memorandum of Points and Authorities, all papers and pleadings on file herein, and any oral argument allowed at the time of the hearing.

Dated this 16th day of May, 2018.

THE LAW OFFICE OF MIKE BEEDE, PLLC

By: /s/ James W. Fox
MICHAEL BEEDE, ESQ.
Nevada Bar No. 13068
JAMES W. FOX, ESQ.
Nevada Bar No. 13122
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
T: 702-473-8406
F: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Bank of America, NA (“BANA”) and Mortgage Electronic Registration Systems
4 (“MERS”) oppose Plaintiff’s Motion for Summary Judgment through continued faulty
5 interpretation of NRS 11.080 and NRS 11.070. It is surprising that counsel could so misconstrue
6 the statutes and Plaintiff’s arguments; it would be reasonable to assume they are intentionally
7 attempting to mislead this court. NRS 11.080 does provide one of two statutes of limitations
8 potentially applicable to Quiet Title litigation, but as set forth in Plaintiff’s Opposition and
9 Countermotion the statute does not run against a party who remains in possession of the property.
10 Plaintiff is in possession of the property and the statute of limitations has not yet begin to run
11 against him.

12 In stark contrast to Plaintiff’s continued possession, BANA and MERS have never had a
13 possessory interest in the Property. As set forth in Plaintiff’s Opposition and Countermotion the
14 statutes of limitations at NRS 11.080 and NRS 11.070 began to run against BANA and MERS
15 when their grantor, the previous property owner, was dispossessed of the property by the HOA
16 Foreclosure sale. BANA and MERS argue that NRS 11.080 and NRS 11.070 do not affect their
17 rights to foreclose on the property, but the extinguishment of their deed of trust through the HOA
18 foreclosure does bar any attempt at non-judicial foreclosure and NRS 11.070 bars their defense
19 to Plaintiff’s claims to clear title in the property.

20 **II. RESPONSE TO STATEMENT OF UNDISPUTED FACTS**

21 BANA set forth the following statement of undisputed facts in its Opposition to Plaintiff’s
22 Countermotion for Summary Judgment:

23
24 On December 9, 2010, after the HOA recorded its notice of default, Bank of
25 America hired Miles Bauer Bergstrom & Winters to tender to the HOA the
26 superpriority portion of the HOA’s lien, if any. The HOA refused to provide a
27 superpriority calculation, and instead provided a statement of account showing a
28 total amount due of \$1,556.90. The statement of account showed the HOA charged
quarterly assessments in the amount of \$75.00. As of the date of the statement,
Connie Fernandez was delinquent four assessments, for a total of \$300.00.

1 Miles Bauer tendered \$300.00 to the HOA through its foreclosure agent Allied
2 Trustee Services—the amount of outstanding unpaid assessments the HOA alleged
3 Fernandez owed at that time—despite that the superpriority portion of the HOA's
lien was only \$225.00. Allied rejected Miles Bauer's tender of the superpriority
lien. (internal citations omitted).

4 Plaintiff disputes the alleged involvement of Miles, Bauer, Bergstron & Winters, that there
5 was any attempt to tender, and that the tender had any legal effect due to the conditions contained
6 within the letter accompanying the alleged tender. *BANA Opposition* at Exhibit A. Nevertheless,
7 these disputed facts are immaterial to the issues before the Court at this time, as these facts support
8 BANA's defense to Plaintiff's claims, which as argued in Plaintiff's Counter Motion for Summary
9 Judgment is barred by the proper application of NRS 11.070.

10 II. LEGAL ARGUMENT

11 Summary Judgment in favor of Plaintiff is appropriate based upon the undisputed facts as
12 set forth in Plaintiff's Countermotion for Summary Judgment. On August 11, 2011, Plaintiff
13 purchased the Property at an HOA foreclosure sale. *Motion to Dismiss* at Exhibit C. This
14 foreclosure presumptively extinguished the First Deed of Trust held by BANA and MERS.
15 *PNC Bank, N.A. v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.*, 398 P.3d 290 (Nev.
16 Unpub. 2017)¹. The foreclosure also dispossessed BANA and MERS's grantor, Connie
17 Fernandez. *Motion to Dismiss* at Exhibit C. Under the plain language of NRS 11.080 and NRS
18 11.070, BANA and MERS are barred from now asserting claims to any interest in the property or
19 mounting any defense to Plaintiff's claims. Further, relief under NRCP 56(f) is inappropriate as
20 each item of discovery purportedly sought by BANA and MERS relates to defenses which are
21 time barred under NRS 11.070.

22 ///

23 ///

24 ¹ Where the Nevada Supreme Court observed, "... although appellant argued in district court that "there are no
25 statutory presumptions in favor of the existence of the conditions for super-priority liens," we conclude that the
26 language in the notices constituted prima facie evidence that the HOA was foreclosing on a lien comprised of
27 monthly assessments. *See id.*; *cf. SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev., Adv. Op. 75, 334 P.3d
28 408, 418 (2014) (observing that an HOA's lien will generally be comprised of monthly assessments). Thus, even
without the recitals in respondent's deed, respondent produced evidence sufficient to entitle it to summary judgment
in the absence of contrary evidence. *Cuzze*, 123 Nev. at 602, 172 P.3d at 134; *Wood*, 121 Nev. at 729, 121 P.3d at
1029 (recognizing that summary judgment is proper when no genuine issues of material fact exist)."

1 **A. *Gray Eagle* does not bind this court’s interpretation of NRS 11.080, and did not**
2 **address the potential application of NRS 11.070.**

3 In *Gray Eagle* the Nevada Supreme Court wrote the following in dicta²:

4 The district court erred in concluding that Saticoy could not refile a subsequent
5 action following dismissal. Such action would be a complaint for quiet title to have
6 its rights determined on the merits and would be governed by NRS 11.080. NRS
7 11.080 provides for a five-year statute of limitations for a quiet title action
8 beginning from the time the "plaintiff or the plaintiff's ancestor, predecessor or
9 grantor was seized or possessed of the premises in question." Saticoy did not
10 acquire its interest in the Property until it purchased Lots 21 and 26 at the HOA
11 foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title
12 action under NRS 11.080 will not run until July 2018.

13 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232
14 (Nev. 2017). The proper application of NRS 11.080’s statute of limitations was not in issue in
15 *Gray Eagle*, to the contrary at issue was whether a three-year statute of limitations found in NRS
16 116.3116(6) (which applies to extinguish an HOA’s claims for past due assessments) governed
17 quiet title following an HOA foreclosure. *Id* at 231-232. The Supreme Court simply held that a
18 purchaser’s claims were governed by NRS 11.080, and that those claims had not yet expired. *Id* at
19 232. In concluding that the claims had not yet expired, the Supreme Court wrote some dicta which
20 suggests that the statute ran from the time Saticoy Bay acquired its interest in the property. *Id*. This
21 is contrary to the plain language of NRS 11.080, which states:

22 No action for the recovery of real property . . . shall be maintained, unless it
23 appears that **the plaintiff or the plaintiff's ancestor, predecessor, or grantor**
24 **was seized or possessed of the premises in question**, within 5 years before the
25 commencement thereof.

26 *Gray Eagle* read this statute backwards. Proper application of a statute of limitations is dispositive
27 when the court concludes it has expired, therefore in concluding that the statute had not yet expired

28

² *Argentina Consol. Mining Co. v. Jolley Uрга Wirth Woodbury & Standish*, 125 Nev. 527, 536, 216 P.3d 779, 785
(2009) (“Dicta is not controlling. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 282, 21 P.3d 16, 22 (2001). A
statement in a case is dictum when it is "unnecessary to a determination of the questions involved." *See St. James*
Village, Inc. v. Cunningham, 125 Nev. , , 210 P.3d 190, 193 (2009) (quoting *Stanley v. Levy & Zentner Co.*, 60
Nev. 432, 448, 112 P.2d 1047, 1054 (1941))”).

1 proper application was not critical to the decision therein. The *Gray Eagle* concluded the statute
2 had not yet expired, and thereby created the erroneous dicta upon which Defendants rely.

3 As set forth in Plaintiff's Opposition and Counter-Motion the critical question for
4 application of any statute of limitations is when the triggering event occurred or will occur. *Stalk*
5 *v. Mushkin*, 125 Nev. 21, 27 (2009). Under NRS 11.080 that triggering event is the dispossession
6 of the Plaintiff or Plaintiff's grantor. Here, Plaintiff remains in possession, and the statute has not
7 begun running against him. In contrast, BANA and MERS have never been in possession, and as
8 such NRS 11.080's statute of limitations began running against any affirmative claims by BANA
9 or MERS in this litigation when their grantor, Connie Fernandez, was dispossessed on August 11,
10 2011 by the HOA's foreclosure sale. Further, as addressed more fully below, NRS 11.070 applies
11 and bars Defendant's purported defenses.

12 **B. The plain language of NRS 11.070, bars BANA and MERS's defense to Plaintiff's**
13 **Claims.**

14 As set forth in Plaintiff's Counter-Motion for summary judgment, The Nevada Supreme
15 Court interpreting the identical predecessor to NRS 11.070 stated that the statute, "imposes a
16 general inability to sue or defend upon any right claimed in real estate, unless the party suing or
17 defending shall have been in possession of the real estate within five years last past." *Chollar-*
18 *Potosi Mining Co. v. Kennedy & Keating*, 3 Nev. 365, 369 (1867). This early decision by
19 Nevada's Supreme Court emphasizes the necessity that a party claiming an interest in real
20 property must have been in possession of the property within the five years before it asserts its
21 claims or defenses. *Id.* **BANA and MERS never possessed the Property.** Their interest has
22 always been non-possessory, and thankfully the plain language of NRS 11.070 provides a ready
23 interpretation that when the claim or defense is asserted by a holder of a non-possessory right
24 their grantor, must have been in possession of the property within the five years preceding the
25 claim or defense.

26 Plaintiff has presented a prima facie case of good title in himself. Following such a
27 showing it becomes the burden of Defendants BANA and MERS to defend against Plaintiff's
28

1 claims. NRS 11.070 as interpreted in the *Chollar-Potosi Mining Co.* decision bars any defense by
2 Defendants.

3 Defendants cite *Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortgage Loan*
4 *Tr.*, for the proposition that the expiration of contractual remedies does not bar a lender's recovery
5 on a Deed of Trust, and that statutes of limitations do not apply to bar non-judicial foreclosure.
6 401 P.3d 1068, 1070 (Nev. 2017). In *Facklam* the bank sought to recover on a deed of trust against
7 the original grantor who remained in possession of the property. *Id* at 1069. This is clearly
8 distinguishable from the instant case, where the Bank's Deed of trust was presumptively
9 extinguished by non-judicial foreclosure by the HOA and foreclosure on the Deed of Trust now
10 would dispossess Plaintiff, who was not the original grantor.

11 Defendants then argue that they have not brought any claims yet, and application of the
12 statute of limitations which bars their claims and defenses would be an impermissible advisory
13 opinion under *Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110 (1981). Here an actual
14 controversy exists regarding whether Defendants' Deed of Trust survived the HOA's foreclosure
15 sale. Plaintiff has brought a claim for Declaratory Relief and set out a prima facie case of good
16 title in himself. *See, Complaint* (Jan. 31, 2018) and *Opposition and Counter-Motion*. NRS 11.070
17 specifically prohibits the assertion of defenses to a quiet-title suit after the statute of limitation
18 runs. Application of the relevant statute of limitations to bar Defendants defenses is not advisory.
19 Rather, it is the central question raised in an actual dispute.

20 In their final unavailing argument, Defendants argue that NRS 106.240's provisions
21 related to a Deed of Trust surviving past satisfaction of the related note makes their Deed of Trust
22 valid and enforceable. NRS 106.240 states, "The lien heretofore or hereafter created of any
23 mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied
24 and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage
25 or deed of trust according to the terms thereof or any recorded written extension thereof become
26 wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly
27 satisfied and the lien discharged." This provision does not affect the presumption that the HOA
28 foreclosed on a lien partially composed of assessments entitled to superpriority under NRS

1 116.3116, thereby extinguishing BANA and MERS interest in the Deed of Trust. *PNC Bank, N.A.*
2 *v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.*, 398 P.3d 290 (Nev. Unpub. 2017).

3 To preserve or recover their purported interest in the property BANA and MERS were
4 required to take affirmative action within the five years after their grantor was dispossessed. See:
5 NRS 11.070 and NRS 11.080. Due to their unequivocal failure to act within the statute of
6 limitations, they are now barred from asserting their interest or mounting a defense to Plaintiff's
7 claims.

8 **C. Tender, as an affirmative defense, is time barred.**

9 Defendants pour out much ink claiming that they tendered and thereby extinguished the
10 super-priority portion of the HOA's lien prior to sale. There are only few instances where an
11 affirmative defense is exempt from a statute of limitations, and this case is not one of them. *City*
12 *of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1035-36 (9th Cir. 2003) (barring City's defense
13 under statute of limitations because defenses were "mirror images of time-barred claims"). In
14 *Evans*, the 9th Circuit, noted that a party cannot "engage in a subterfuge to characterize a claim
15 as a defense in order to avoid a temporal bar." *Evans*, citing *Mobil Oil Corp. v. Dep't of Energy*,
16 728 F.2d 1477, 1488 (1983) (holding that laches barred a pre-enforcement declaratory judgment
17 action alleging that a price regulation was invalid). *See also Gilbert v. City of Cambridge*, 932
18 F.2d 51, 58 (1st Cir. 1991) (holding that temporal bar cannot be sidestepped by asserting a
19 defensive declaratory judgment claim); *Clark v. Slack Steel & Supply Co.*, 611 P.2d 80, 83
20 (Alaska 1980) (dismissing, as barred by statute of limitations, plaintiff's affirmative claim that a
21 contract be declared void because it was formed under duress).

22 As the *Evans* Court noted, "statutes of limitations 'are aimed at lawsuits, not at the
23 consideration of particular issues in lawsuits....'" 344 F.3d at 1035 (citing *Beach v. Ocwen Fed.*
24 *Bank*, 523 U.S. 410, 416 118 S.Ct. 1408 (1998)). Here, BANA and MERS' defenses and potential
25 affirmative claims are all essentially a declaratory relief/wrongful foreclosure claim in which they
26 ask this Court to declare that the Deed of Trust survived the Association foreclosure. It does not
27 matter what BANA and MERS title their claims or that the claims are mirrored by affirmative
28 defenses. At the end of the day, the statute of limitations applies to each of the defenses and

1 claims. As the *Evans* Court put it, “[n]o matter what gloss [BANA and MERS] puts on its
2 defenses, they are simply time-barred claims masquerading as defenses and are likewise subject
3 to the statute of limitations bar.” *Evans*, at 1036.

4 BANA and MERS would bear the burden of proof regarding their purported tender,
5 therefore, their assertions that the super-priority portion of the HOA’s lien was extinguished by
6 their tender is properly characterized as an affirmative defense. This affirmative defense is time
7 barred by NRS 11.070 and NRS 11.080 as set forth herein. Therefore, this court must reject
8 Defendant’s arguments regarding tender and the associated evidence.

9 **D. MERS has disclaimed its interest, therefore judgement against it is appropriate**
10 **not dismissal.**

11 Defendant is correct that Berberich does not dispute that MERS has no valid interest in the
12 Deed of Trust, in fact the central contention of this Quiet Title action is that the Deed of Trust does
13 not validly encumber the Property regardless of who holds an interest therein. Through its
14 pleadings before this court, MERS has disclaimed any interest in the Property. *See, Motion to*
15 *Dismiss, see also, Reply in Support and Opposition.* MERS is wrong about the effect of its
16 disclaimer however, instead of requiring dismissal of Plaintiff’s claims against MERS, the effect
17 of MERS’s disclaimer through pleadings is that Plaintiff is entitled to Judgment against MERS
18 concluding that MERS holds no interest in the Property.

19 **E. NRCP 56(f) relief is inappropriate.**

20 BANA seeks relief under NRCP 56(f) to obtain evidence which could be used to
21 substantiate its affirmative defenses to Plaintiff’s Quiet Title claim. Because these defenses are
22 time barred, any relief under 56(f) is inappropriate. “A motion for a continuance under NRCP
23 56(f) is appropriate only when the movant expresses how further discovery will lead to the
24 creation of a genuine issue of material fact.” *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657,
25 669, 262 P.3d 705, 714 (2011). Here, Plaintiff’s Motion for Summary Judgment is premised on
26 his demonstration that a prima facie case of good title in himself exists, and that Defendant’s
27 defenses are barred by the applicable statute of limitations. Defendant requests discovery as to
28 three areas: 1. Unfairness and oppression of the HOA Sale, 2. Facts surrounding any notice issues,

1 and 3. How much the borrower was delinquent in assessments at the time of the HOA sale. *Reply*
2 *and Opposition* at Exhibit B. All areas of proposed inquiry are immaterial to Plaintiff's position
3 in his Counter-Motion for Summary Judgment, and therefore could not create a genuine issue of
4 material fact.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that this Court grant its
7 Countermotion for Summary Judgment.

8 Dated this 16th day of May, 2018.

9 THE LAW OFFICE OF MIKE BEEDE, PLLC

10
11 By: /s/ James W. Fox
12 Michael Beede, Esq.
13 Nevada Bar No. 13068
14 James W. Fox, Esq.
15 Nevada Bar No. 13122
16 2470 St. Rose Pkwy, Suite 307
17 Henderson, NV 89074
18 *Attorneys for Plaintiff, Kenneth Berberich*
19
20
21
22
23
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27
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1 **CERTIFICATE OF SERVICE**

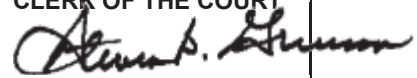
2 Pursuant to NRCP 5(b), I certify that I am an employee of The Law Office of Mike Beede,
3 PLLC and that on the 16th day of May, 2018, I did cause a true and correct copy of the foregoing
4 **PLAINTIFF'S REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY**
5 **JUDGMENT**, to be served upon each of the parties listed below via electronic service through
6 the Eighth Judicial District Court's Odyssey E-File and Serve System:

7
8 Michael Beede, Esq.
9 Rex Garner
Natalie Winslow

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com

10
11
12 /s/ Allison Zeason

13 An Employee of The Law Office of Mike Beede, PLLC
14
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Michael N. Beede, Esq.
Nevada Bar No. 13068
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy., Ste. 307
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Telephone (702) 473-8406
Facsimile (702) 832-0248

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; ROE CORPORATIONS 1 through
10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Summons, Complaint, Plaintiff's Ex-Parte Application to Extend Time to Serve and for an Order for Service by Publication as to Connie Fernandez, and Order Granting Ex-Parte Application to Extend Time to Serve and for Service by Publication was made this 21st day of May, 2018, by mailing a copy of the same via first class certified mail, postage prepaid, and addressed to:

Connie Fernandez
8735 Mount Mira Loma Avenue
Las Vegas, NV 89178

Connie Fernandez
2600 Orchard Meadows Avenue
Henderson, NV 89074

DATED this 21st day of May, 2018.

/s/ Katrina Fadda

An employee of The Law Office of Mike Beede, PLLC

Certified mail No.: 7017 3040 0000 8285 9242 (Mount Mira) 7017 3040 0000 8285 9259 (Orchard Meadows)



1 NATALIE L. WINSLOW, ESQ.
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6 Email: rex.garner@akerman.com

7 *Attorneys for Bank Of America, N.A. and*
8 *Mortgage Electronic Registration Systems, Inc.*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 v.

14 CONNIE FERNANDEZ; BANK OF
15 AMERICA, N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,; and DOES
16 I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

17 Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

**ORDER GRANTING MOTION TO
DISMISS COMPLAINT**

AND

**DENYING COUNTERMOTION FOR
SUMMARY JUDGMENT**

18
19 Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (MERS) filed a
20 motion to dismiss complaint under NRCp 12(b)(5) on April 16, 2018. Plaintiff Kenneth Berberich
21 opposed the motion to dismiss and filed a counter motion for summary judgment. Bank of America
22 and MERS opposed the counter motion. The motion to dismiss and counter motion came on for
23 hearing on May 22, 2018. Rex Garner attended for Bank of America and MERS. James Fox
24 attended for plaintiff. The court, having heard the arguments of counsel, rules as follows:
25
26
27
28

The Nevada supreme court has confirmed that NRS 11.080 applies to HOA foreclosure sales. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.* 388 P.3d 226, 232 (Nev. 2017) ("Saticoy did not acquire its interest in the Property until it purchased Lots 21 and 26 at the HOA foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title action under NRS 11.080 will not run until July 2018.").

Berberich had five years from the date of the HOA foreclosure sale—or until August 11, 2016—to file his complaint. NRS 11.080. He filed his complaint on January 31, 2018. As a result, he cannot maintain his claims against Bank of America and MERS.

Accordingly, Bank of America and MERS's motion to dismiss is GRANTED.

Plaintiff's countermotion for summary judgment is DENIED.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

June 14, 2018
DATED 

Respectfully Submitted by:

AKERMAN LLP


NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Cir., Suite 200

Las Vegas, NV 89134

Attorneys for Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.

Approved as to form and content by:

THE LAW OFFICE OF MIKE BEEDE, PLLC


MICHAEL BEEDE, ESQ.

Nevada Bar No. 13068

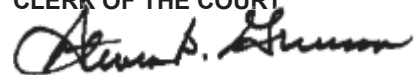
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2470 St. Rose Parkway, Suite 307

Las Vegas, NV 89074

Attorneys for Plaintiff Kenneth Berberich



Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK }

SS

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

May 22, 2018
May 29, 2018
Jun 05, 2018
Jun 12, 2018
Jun 19, 2018

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Jun 19, 2018

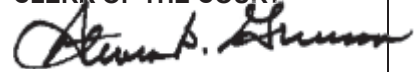


Rosalie Qualls

DISTRICT COURT
CLARK COUNTY, NEVADA
Case No. A-18-768728-C Dept. No. XXVI
KENNETH BERBERICH, Plaintiff,
vs. CONNIE FERNANDEZ; BANK OF AMERICA, N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive, Defendants,
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): CONNIE
FERNANDEZ A civil Complaint has been filed by the Plaintiff(s) against you for the
relief set forth in the Complaint. Object of Action: This is a Complaint for Title to real
property, Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. Seq. and NRS
116, et. seq. and Preliminary and Permanent Injunction. 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 this
Court may enter a judgement 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 subdivisions, 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. CLERK OF COURT, s/ Josefina San Juan, Deputy Clerk, Date 2/2/2018,
County Court House, 200 Lewis Avenue, Las Vegas, Nevada 89155, Issued at the
direction of THE LAW OFFICE OF MIKE BEEDE, PLLC, By: Michael Beede, Esq.,
Date 2/2/18, 2470 St. Rose Pkwy., Ste. 201, Henderson, NV 89074, 702-473-8406,
Attorney for Plaintiff
Published in Nevada Legal News
May 22, 29, June 5, 12, 19, 2018

04108792 00447010 702-832-0248

LAW OFFICE OF MICHAEL BEEDE
2470 ST. ROSE PKWY., SUITE 201
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NOTA
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*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
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REGISTRATION SYSTEMS, INC.; and DOES
I through 10, inclusive; ROE CORPORATIONS
1 through 10, inclusive

Defendants.

Case No.: A-18-768728-C

Dept. : XXVI

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO DISMISS
COMPLAINT AND DENYING
COUNTERMOTION FOR SUMMARY
JUDGMENT**

TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:

PLEASE TAKE NOTICE that an Order Granting Motion to Dismiss Complaint and Denying
Counter-motion for Summary Judgment was entered on the 15th day of June, 2018, in the above-

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entitled court, a copy of which is attached hereto as Exhibit A.

DATED June 19, 2018.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

REX D. GARNER, ESQ.

Nevada Bar No. 9401

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Bank Of America, N.A. and
Mortgage Electronic Registration Systems, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 26th day of March, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS COMPLAINT AND DENYING COUNTERMOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

Michael N. Beede, Esq.
THE LAW OFFICE OF MIKE BEEDE PLLC
2470 St. Rose Parkway, Suite 201
Henderson, Nevada 89074

Attorney for Plaintiff

/s/ Jill Sallade

An employee of AKERMAN LLP

Exhibit A



1 NATALIE L. WINSLOW, ESQ.
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6 Email: rex.garner@akerman.com

7 *Attorneys for Bank Of America, N.A. and*
8 *Mortgage Electronic Registration Systems, Inc.*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

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14 CONNIE FERNANDEZ; BANK OF
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Case No.: A-18-768728-C

Dept. : XXVI

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3 232 (Nev. 2017) ("Saticoy did not acquire its interest in the Property until it purchased Lots 21 and
4 26 at the HOA foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title
5 action under NRS 11.080 will not run until July 2018.").

6 Berberich had five years from the date of the HOA foreclosure sale—or until August 11,
7 2016—to file his complaint. NRS 11.080. He filed his complaint on January 31, 2018. As a result,
8 he cannot maintain his claims against Bank of America and MERS.

9 Accordingly, Bank of America and MERS's motion to dismiss is GRANTED.

10 Plaintiff's countermotion for summary judgment is DENIED.

11 **IT IS SO ORDERED.**

12 
13 DISTRICT COURT JUDGE
14 *June 14, 2018*
15 DATED *JB*

16 Respectfully Submitted by:

17 **AKERMAN LLP**

18 
19 NATALIE L. WINSLOW, ESQ.

20 Nevada Bar No. 12125

21 1635 Village Center Cir., Suite 200

22 Las Vegas, NV 89134

23 *Attorneys for Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.*

24 Approved as to form and content by:

25 **THE LAW OFFICE OF MIKE BEEDE, PLLC**

26 
27 MICHAEL BEEDE, ESQ.

28 Nevada Bar No. 13068

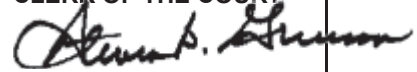
JAMES W. FOX, ESQ.

Nevada Bar No. 13122

2470 St. Rose Parkway, Suite 307

Las Vegas, NV 89074

Attorneys for Plaintiff Kenneth Berberich



1 **TDN**
2 MICHAEL N. BEEDE, ESQ.
3 Nevada Bar No. 13068
4 JAMES W. Fox
5 Nevada Bar No. 13122
6 **THE LAW OFFICE OF MIKE BEEDE, PLLC**
7 2470 St. Rose Pkwy, Suite 307
8 Henderson, NV 89074
9 Telephone (702) 473-8406
10 Facsimile (702) 832-0248
11 eservice@legallv.com
12 *Attorneys for Plaintiff, Kenneth Berberich*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 v.

14 CONNIE FERNANDEZ; BANK OF
15 AMERICA, N.A.; MORTGAGE
16 ELECTRONIC SYSTEMS, INC.; and DOES
17 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive,

18 Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

**THREE DAY NOTICE OF INTENT
TO ENTER DEFAULT AGAINST
DEFENDANT CONNIE FERNANDEZ**

19 TO: CONNIE FERNANDEZ, Defendant:

20 **PLEASE TAKE NOTICE** that Plaintiff, Kenneth Berberich, will enter a default against
21 you unless an answer or other responsive pleading is filed within three (3) days of the date of this
22 notice.

23 DATED this 12th day of July, 2018.

24 THE LAW OFFICE OF MIKE BEEDE, PLLC

25 /s/Michael Beede

26 MICHAEL N. BEEDE, ESQ.

27 Nevada Bar No. 13068

28 2470 St. Rose Pkwy., Ste. 307

Henderson, NV 89074

Attorney for Plaintiff, LV Real Estate

Strategic Investment Group, LLC

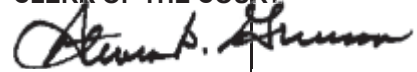
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of THE LAW OFFICE OF MIKE
3 BEEDE, PLLC and that on this 12th day of July, 2018, I served a true and correct copy of the
4 foregoing **THREE DAY NOTICE OF INTENT TO ENTER DEFAULT AGAINST**
5 **DEFENDANT CONNIE FERNANDEZ.** upon all parties listed below via electronic service
6 through the Eighth Judicial District Court's Odyssey E-File and Serve System, and/or by
7 depositing a true and correct copy in the United States Mail, addressed as follows:

8
9 Michael Beede, Esq. eservice@legallv.com
10 Rex Garner rex.garner@akerman.com
11 Akerman LLP AkermanLAS@akerman.com
12 Natalie Winslow natalie.winslow@akerman.com

13 Connie Fernandez Connie Fernandez
14 8735 Mount Mira Loma Avenue 2600 Orchard Meadows Avenue
15 Las Vegas, NV 89178 Henderson, NV 89074
16 *Defendant* *Defendant*

17 /s/ Katrina Fadda
18 An employee of The Law Office of Mike Beede, PLLC
19
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NOAS

Michael Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 307
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Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

NOTICE OF APPEAL

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

///

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///

///

///

1 Plaintiff, Kenneth Berberich ("Plaintiff"), by and through his attorneys of record, Michael
2 Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, hereby appeals
3 to the Supreme Court of Nevada the June 15, 2018 Order Granting Defendants Bank of America,
4 N.A. and Mortgage Electronic Registration Systems, Inc.'s Motion to Dismiss Complaint and
5 Denying Plaintiff's Countermotion for Summary Judgment, and all interlocutory orders
6 incorporated therein.

7 DATED this 17th day of July, 2018.

8 THE LAW OFFICE OF MIKE BEEDE, PLLC

9 By: /s/ Michael Beede, Esq.
10 MICHAEL BEEDE, ESQ.
11 Nevada Bar No. 13068
12 JAMES W. FOX, ESQ.
13 Nevada Bar No. 13122
14 2470 St. Rose Pkwy, Suite 307
15 Henderson, NV 89074
16 T: 702-473-8406
17 *Attorneys for Plaintiff, Kenneth Berberich*

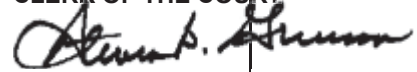
18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of Mike
20 Beede, PLLC, and that on this 17th day of July, 2018, I did cause a true and correct copy of the
21 foregoing **NOTICE OF APPEAL** to be served upon each of the parties listed below via electronic
22 service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

23 Michael Beede, Esq.
24 Rex Garner
25 Natalie Winslow
26 Akerman LLP

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com
AkermanLAS@akerman.com

27 /s/ Amanda Abril
28 An Employee of the Law Office of Mike Beede, PLLC



ASTA
Michael Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

CASE APPEAL STATEMENT

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiff, Kenneth Berberich ("Plaintiff"), by and through his attorneys of record, Michael Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, hereby submits his Case Appeal Statement pursuant to NRAP3(f)(3).

1) The appellant filing this Case Appeal statement is KENNETH BERBERICH.

2) The order(s) appealed are:

a) The Order Granting Defendants Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.'s Motion to Dismiss Complaint and Denying Plaintiff's Countermotion for Summary Judgment, signed by the honorable Judge Gloria

1 Sturman on June 14, 2018, and filed in the above-entitled Court on June 15, 2018.

2 A Notice of Entry of Order was filed on June 19, 2018.

3 3) Counsel for Appellant is as follows:

4 **THE LAW OFFICE OF MICHAEL BEEDE, PLLC**

5 Michael N. Beede, Esq.

6 Nevada Bar No. 13068

7 2470 St. Rose Pkwy, Suite 307

8 Henderson, NV 89074

9 T: 702-473-8406

10 F: 702-832-0248

11 4) Counsel for Respondent is as follows:

12 **AKERMAN LLP**

13 Natalie L. Winslow, Esq.

14 Nevada Bar No. 12125

15 1635 Village Center Cir., Suite 200

16 Las Vegas, NV 89134

17 T: (702) 634-5000

18 F: (702) 380-8572

19 5) All counsel listed above are licensed to practice law in Nevada.

20 6) Appellant is represented by retained counsel in the District Court.

21 7) Appellant is represented by retained counsel on appeal.

22 8) Appellant was not granted leave to proceed in forma pauperis by the District Court.

23 9) The date proceedings commenced in District Court was January 31, 2018.

24 10) In this action, Plaintiff/Appellant Berberich argues that he own the property located
25 at 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178 and bearing Clark County
26 Assessor's Parcel Number 176-29-511-068 (the "Property") free and clear of all liens
27 as a result of an HOA superpriority lien foreclosure sale. Defendants, Bank of
28 America, N.A. ("BANA") and Mortgage Electronic Registration Systems, Inc.
(("MERS")) filed a Motion to Dismiss Plaintiff's Complaint, contending that NRS
11.080 time-bars Plaintiff's Claims. Plaintiff/Appellant Berberich brought a counter-
motion for summary judgment, contending that NRS 11.080 bars an action to quiet
title five years from the date the Plaintiff has been dispossessed of the property in

1 question, and because Berberich remains in possession of the Property, the Statute of
2 Limitations has not begun to run. The Court ruled in favor of BANA and MERS,
3 granting their Motion to Dismiss Plaintiff's Complaint.

4 11) Plaintiff filed his Complaint for Quiet Title in the District Court on January 31, 2018.

5 12) This matter did not reach trial.

6 13) The Order Granting Defendants Bank of America, N.A. and Mortgage Electronic
7 Registration Systems, Inc.'s Motion to Dismiss Complaint and Denying Plaintiff's
8 Countermotion for Summary Judgment was filed on June 15, 2018. Notice of Entry
9 of that Order was filed on June 19, 2018.

10 14) This case has not previously been the subject of an appeal to or original writ
11 proceeding in the Supreme Court.

12 15) This appeal does not involve child custody or visitation.

13 16) This appeal does not involve the possibility of settlement.

14 DATED this 17th day of July, 2018.

15 THE LAW OFFICE OF MIKE BEEDE, PLLC

16
17 /s/ Michael Beede, Esq.

18 MICHAEL BEEDE, ESQ.

19 Nevada Bar No. 13068

20 JAMES W. FOX, ESQ.

21 Nevada Bar No. 13122

22 2470 St. Rose Pkwy, Suite 307

23 Henderson, NV 89074

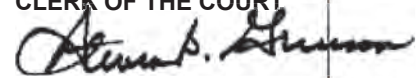
24 T: 702-473-8406

25 *Attorneys for Plaintiff, Kenneth Berberich*
26
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Michael Beede, Esq
Rex Garner
Natalie Winslow
Akerman LLP

/s/ Amanda Abril
An Employee of The Law Office of Mike Beede, PLLC



1 DFT
2 Michael Beede, Esq.
3 Nevada Bar No. 13068
4 The Law Office of Mike Beede, PLLC
5 2470 St. Rose Pkwy., Ste.307
6 Phone: 702-473-8406
7 Fax: 702-832-0248
8 eservice@legallv.com
9 Attorney for Plaintiff, Kenneth Berberich

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 KENNETH BERBERICH,
11 Plaintiffs,

CASE NO. A-18-768728-C
DEPT NO. XXVI

12 vs.

13 CONNIE FERNANDEZ; BANK OF
14 AMERICA, N.A.; MORTGAGE
15 ELECTRONIC REGISTRATION
16 SYSTEMS, INC.; and DOES 1 through 10,
17 inclusive; and ROE CORPORATIONS 1
18 through 10, inclusive,

DEFAULT

Defendants.

19 It appears from the files and records from the above entitled action, CONNIE FERNANDEZ,
20 duly being served a copy of the Summons and Complaint via publication on May 22, 29 and June 5,
21 12, 19, 2018; that more than 20 days exclusive of the day of service, having expired since service
22 upon the Defendant; that no answer or other appearance having been filed and no further time being
23 granted, the Default of the above mentioned Defendant for failing to answer or otherwise plead to

24 ///

25 ///

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27 ///

28 ///

1 the Plaintiff's Complaint shall be hereby entered.

2
3 BY, DEPUTY CLERK


7/18/2018

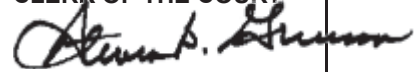
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Ivonne Hernandez

Date

A-18-768728-C

Submitted by:


MICHAEL BEEDE, ESQ.
The Law Office of Michael Beede, PLLC
2470 St. Rose Pkwy., Ste. 307
Henderson, NV 89074
Phone: 702-473-8406
Fax: 702-832-0248
Attorney for Plaintiff



1 **APPL**
2 Michael Beede, Esq.
3 Nevada Bar No. 13068
4 James W. Fox, Esq.
5 Nevada Bar No. 13122
6 THE LAW OFFICE OF MIKE BEEDE, PLLC
7 2470 St. Rose Pkwy., Ste. 307
8 Henderson, NV 89074
9 Phone: 702-473-8406
10 Fax: 702-832-0248
11 eservice@legallv.com
12 *Attorneys for Plaintiff, Kenneth Berberich*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 vs.

14 CONNIE FERNANDEZ; BANK OF
15 AMERICA, N.A.; MORTGAGE
16 ELECTRONIC REGISTRATION
17 SYSTEMS, INC.; and DOES 1 through 10,
18 inclusive; and ROE CORPORATIONS 1
19 through 10, inclusive,

20 Defendants.

CASE NO. A-18-768728-C

DEPT. NO. XXVI

**APPLICATION FOR DEFAULT
JUDGMENT**

21 In this action the Defendant, CONNIE FERNANDEZ, having been served with
22 Summons and Complaint pursuant to NRCP 4(e)(1), having failed to appear and answer the
23 Plaintiff's Complaint filed herein, the legal time for answering having expired, and no answer or
24 demurrer having been filed, the default of said Defendant, CONNIE FERNANDEZ in the
25 premises, having been duly entered according to law; upon application of Plaintiff, Judgment is
26 hereby requested to be entered against said Defendant.

27 Plaintiff Kenneth Berberich (hereinafter "Plaintiff") is the owner of the real property
28 commonly known as 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178, and bearing
Assessor's Parcel Number 176-29-511-068 (the "Property"). Plaintiff obtained title to the
Property by way of a Trustee's Deed Upon Sale, recorded on August 24, 2011, pursuant to a

1 non-judicial foreclosure sale of the Property, which occurred on August 11, 2011, conducted by
2 Allied Trustee Services (“Exhibit 2”). Plaintiff’s title stems from a foreclosure deed arising from
3 a delinquency in assessments due from the former owner, Connie Fernandez, to the Via
4 Valencia/Via Ventura Homeowners Association (the “HOA”), pursuant to NRS Chapter 116.
5 (*Id*)

6 The interest of the Defendant has been extinguished by reason of the foreclosure sale,
7 which was properly conducted with adequate notice given to all persons and entities claiming an
8 interest in the subject property and resulting from a delinquency in assessments due from the
9 former owner, to the HOA, pursuant to NRS Chapter 116.

10 Plaintiff has performed its due diligence in attempting to serve CONNIE FERNANDEZ
11 with the Summons and Complaint. (*See* Affidavit of Due Diligence attached hereto as “Exhibit
12 3”). After performing a thorough records search to locate another address to serve the Defendant,
13 CONNIE FERNANDEZ, Plaintiff filed an Ex-Parte Motion to Enlarge Time to Serve and for an
14 Order for Service by Publication against CONNIE FERNANDEZ on April 18, 2018. That Order
15 was granted, and on June 19, 2018, Plaintiff filed an Affidavit of Publication of Summons,
16 indicating that CONNIE FERNANDEZ was served via publication (*See* Affidavit of Publication
17 attached hereto as “Exhibit 4”). On July 12, 2018, Plaintiff filed and mailed to Defendant,
18 CONNIE FERNANDEZ’s last known address(es), a Three-Day Notice of Intent to Default.
19 When CONNIE FERNANDEZ failed to answer or otherwise respond to Plaintiff’s Complaint,
20 this Court entered default against CONNIE FERNANDEZ on July 18, 2018. (*See* Default of
21 Connie Fernandez attached hereto as “Exhibit 5”).

22 Based on the foregoing and on all the pleadings on file herein, it is hereby requested
23 THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT, CONNIE FERNANDEZ
24 for:

- 25 1. A determination and declaration that Plaintiff is the rightful holder of title to property,
26 free and clear of all liens, encumbrances, and claims of Connie Fernandez;
- 27 2. For determination and declaration that the defendant has no estate, right, title, interest, or
28 claims in the property; and

- 1 3. For a judgment forever enjoining the defendant, Connie Fernandez from asserting any
2 estate, right, title, interest or claim in the property.
- 3 4. Plaintiff is not seeking any monetary costs and/or fees from defendant, CONNIE
4 FERNANDEZ, only quiet title rights with concern to the subject property.
- 5 5. This Judgment shall not affect the rights of parties against whom Default has not been
6 entered.

7

8 DATED this 30th day of July, 2018.

9

10 Submitted by:

11 The Law Office of Mike Beede, PLLC

12 By: /s/ James W. Fox, Esq.

13 MICHAEL BEEDE, ESQ.

14 Nevada Bar No. 13068

15 JAMES W. FOX, ESQ.

16 Nevada Bar No. 13122

17 2470 St. Rose Pkwy., Ste. 307

18 Henderson, NV 89074

19 Phone: 702-473-8406

20 Fax: 702-832-0248

21 *Attorneys for Plaintiff, Kenneth Berberich*

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Rex Garner, Esq. rex.garner@akerman.com
Natalie Winslow natalie.winslow@akerman.com
Akerman LLP akermanLAS@akerman.com
Michael Beede, Esq. eservice@legallv.com

Connie Fernandez
2600 Orchard Meadows Ave.
Henderson, NV 89074
Defendant

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Exhibit 1

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AFFIDAVIT OF PLAINTIFF

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

I, Kenneth Berberich, being first duly sworn, deposes and says:

1. I am over the age of eighteen and am competent to testify as to the matters set forth herein if necessary, and that I am the Plaintiff in the above-entitled matter.
2. That upon information and belief, defendant is over the age of eighteen and is a competent person, pursuant to NRCP 55(b)(2).
3. That I obtained title to 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178 by way of a Trustee's Deed Upon Sale, recorded on August 24, 2011. (*See Exhibit 2, Trustee's Deed Upon Sale*)
4. I paid \$4,101.00 for the Property at an HOA Foreclosure Sale that occurred on August 11, 2011, conducted by Allied Trustee Services. (*See Exhibit 2*)
5. Through Counsel, I caused Defendant CONNIE FERNANDEZ to be served with the Summons and Complaint via publication (*See Affidavit of Publication of Summons, filed June 19, 2018, and attached hereto as Exhibit 4*) yet, no answer, demurrer, or responsive pleading has been served upon me, my attorney, or filed with the court.
6. My title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Via Valencia/Via Ventura Homeowners Association (the "HOA"), pursuant to NRS Chapter 116. (*See Exhibit 2*)
7. Connie Fernandez was the former owner of The Property. (*See Exhibit 2*)
8. Connie Fernandez became delinquent in the assessments due to the Via Valencia/Via Ventura Homeowners Association. (*See Exhibit 2*)
9. On or about October 6, 2010, Via Valencia/Via Ventura Homeowners Association recorded a Notice of Delinquent Assessment against the Property and served Connie Fernandez with same. (*Exhibit 6*)
10. On or about November 9, 2010, Via Valencia/Via Ventura Homeowners Association recorded a Notice of Default and Election to Sell Under Notice of Delinquent

1 Assessment against the Property and served Connie Fernandez with same. (Exhibit
2 7)

3 11. On or about March 21, 2011, Via Valencia/Via Ventura Homeowners Association
4 recorded a Notice of Trustee's Sale against the Property and served Connie
5 Fernandez with same. (Exhibit 8)

6 12. Connie Fernandez failed to satisfy the HOA lien and the property was sold to me on
7 August 11, 2011. (See Exhibit 2)

8 13. CONNIE FERNANDEZ's interest in the Property has been extinguished though the
9 foreclosure sale, which was properly conducted with adequate notice given to all
10 persons and entities claiming an interest in the subject property and resulting from a
11 delinquency in assessments due from the former owner to the Via Valencia/Via
12 Ventura Homeowners Association pursuant to NRS Chapter 116.

13 14. As a result of CONNIE FERNANDEZ's failure to enter an answer, demurrer, or
14 responsive pleadings, Default against Connie Fernandez was entered. (Exhibit 5)

15 15. Therefore, default judgment should be entered on my behalf against Connie
16 Fernandez.

17 Further Affiant sayeth naught.

18
19 DATED this 27 day of July, 2018.

20
21 
22 KENNETH BERBERICH

23 SUBSCRIBED and SWORN to before me
24 this 27 day of July, 2018.

25 
26 NOTARY PUBLIC in and for said
27 County and State

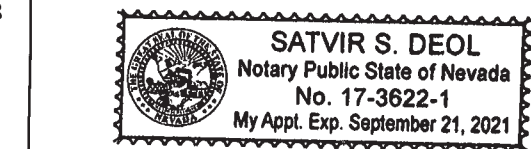


Exhibit 2

RECORDING REQUESTED BY:

AND WHEN RECORDED AND MAIL
TAX STATEMENTS TO:
KENNETH BERBERICH
4500 W LAKE MEAD BLVD. #101
LAS VEGAS, NV 89108

T.S. No.: **10-15540**
A.P.N. : **176-29-511-068**

Inst #: 201108240002845
Fees: \$16.00 N/C Fee: \$25.00
RPTT: \$22.95 Ex: #
08/24/2011 03:11:26 PM
Receipt #: 890741
Requestor:
KENNETH BERBERICH
Recorded By: GILKS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

SPACE ABOVE LINE FOR RECORDER'S USE

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was **\$2,754.55**
- 3) The amount paid by the grantee at the trustee sale was **\$4,101.00**
- 4) The documentary transfer tax is **\$**
- 5) City/Judicial District of LAS VEGAS

And **ALLIED TRUSTEE SERVICES**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to:

KENNETH BERBERICH

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

RECITALS:

This conveyance is made pursuant to the powers granted to **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** and conferred upon appointed trustee by the provisions of the Declaration of Covenants, Conditions, and Restrictions recorded **08-04-2005** as Instrument No. **0004194** Book **20050804** Page County of CLARK and pursuant to N.R.S. 117.070 et. Seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and that certain Notice of Delinquent Assessment dated **09-30-2010** and recorded **10-06-2010** in Book **20101006** Page as Instrument No. **0002672** of Official Records of CLARK County, Nevada.

The name of the owner(s) of the property (trustor) was **CONNIE FERNANDEZ**.

Continued on page 2

APP0173

T.S. No. : 10-15540
A.P.N. : 176-29-511-068

TRUSTEE'S DEED UPON SALE

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. After expiration of ninety (90) days from the recording or mailing of copies of the Notice of Default and Election to Sell, a Notice of Trustee's Sale was recorded in the Office of the Recorder of said County and the association claimant, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION**, demanded that such sale be made.

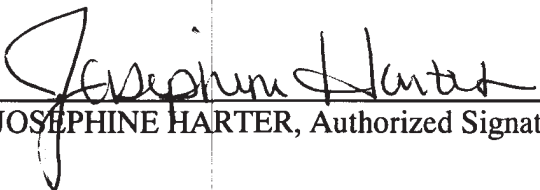
All requirements of law regarding the recording and the mailing of copies of the Notice of Delinquent Assessment, Notice of Default, and the recording, mailing, posting and publication of copies of the Notice of Trustee's Sale have been complied with.

Said property was sold by said Trustee at public auction on **08-11-2011** at the place named in the Notice of Trustee's Sale, in the County of CLARK, Nevada, in which the property is situated. Grantee, being the highest bidder at such sale became the purchaser of said property and paid therefore to said trustee the amount bid, being **\$4,101.00**, in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by said Notice of Delinquent Assessment.

Date: August 22, 2011

ALLIED TRUSTEE SERVICES, as Trustee
990 Reserve Drive, Suite 208
Roseville, CA 95678
Telephone No. (800) 220-5454

By:


JOSEPHINE HARTER, Authorized Signature

State of California
County of Placer

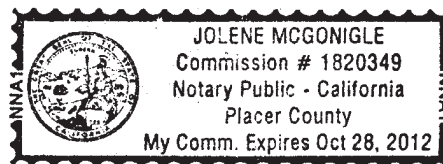
On August 22, 2011 before me, JOLENE MCGONIGLE, a Notary Public, personally appeared JOSEPHINE HARTER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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.

WITNESS my hand and official seal.

Signature



(Seal)



APP0174

EXHIBIT "A"

TS 10-15540

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF Nevada, COUNTY OF CLARK CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1):

LOT 149 AS SHOWN ON THE FINAL MAP OF VIA VALENCIA/VIA VENTURA UNIT 1, ON FILE IN BOOK 121 OF PLATS, PAGE 70, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT OF INGRESS AND EGRESS AND OF USE AND ENJOYMENT IN, TO AND OVER THE COMMON ELEMENTS, INCLUDING BUT NOT LIMITED TO, PRIVATE STREET, DISCLOSED BY SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENT FOR VIA VALENCIA/VIA VENTURA RECORDED AUGUST 4, 2005 IN BOOK 20050804 AS DOCUMENT NO. 04194, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ASSESSOR'S PARCEL NUMBER:

176-29-511-068

APP0175

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a) 176-29-511-068
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'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
Other _____

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: _____
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

Real Property Transfer Tax Due

\$ 4,101.00
(_____)
\$ _____
\$ 22.95

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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 _____ Capacity Grantee
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Allied Trustee Services, Inc
Address: 990 Reserve Dr. Suite 200
City: Reno
State: CA Zip: 95678

BUYER (GRANTEE) INFORMATION
(REQUIRED)

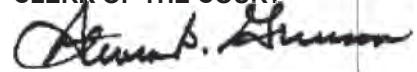
Print Name: Kenneth Berberich
Address: 4500 V Lake Mead Blvd #101
City: Las Vegas
State: NV Zip: 89108

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

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Exhibit 3



DISTRICT COURT
CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff(s),

vs.

CONNIE FERNANDEZ,
et al.,

Defendant(s).

Case No.: A-18-768728-C
Dept No.: XXVI
Docket No.:

AFFIDAVIT OF DUE DILIGENCE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Karie Castle, being first duly sworn, deposes and says; that affiant is and was on the dates when service was attempted of the within: **SUMMONS AND COMPLAINT**, a citizen of the United States, over 18 years of age, and not a party to, nor interested in the within action; that affiant received the above named document(s) and attempted to personally serve/have them served upon: **CONNIE FERNANDEZ** subject(s), during the period of February 20, 2018 through April 3, 2018 at his/her last known address(es) of: 8735 Mount Mira Loma Avenue and 2600 Orchard Meadows Avenue in the City of Las Vegas, County of Clark, State of Nevada, without success in locating said subject(s). Affiant was not able to serve/have subject(s) served for the following reasons:

1 3-9-18 at 7:00 a.m. –Per Neighbor at 8735 Mount Mira Loma Avenue, subject does not live
2 here.

3 4-3-18 at 11:50 a.m. – Per adult male occupant at 2600 Orchard Meadow Avenue, subject no
4 longer lives here. Forwarding information is unknown.

5 Affiant performed Social / Name Trace and searched County Assessor, DMV, Voter
6 Registration, and Telephone Directory. The within stated addresses are the last known
7 and/or most current for subject. Additionally, Affiant was unable to locate a place of
8 employment for subject.

9 Affiant, on the basis of the previous information, was unable to locate / serve subject(s).

10
11 

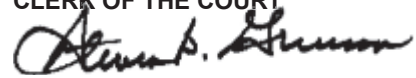
12 **Karie Castle #R002343**
Attorney's Process NV #429
330 E. Warm Springs Rd. #A-7
Las Vegas, NV 89119
(702) 547-9036

13
14 SUBSCRIBED AND SWORN to before me
15 this 6th day of April, 2018.

16
17 NOTARY PUBLIC



Exhibit 4



Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK }

SS

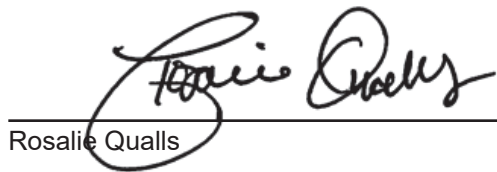
I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

May 22, 2018
May 29, 2018
Jun 05, 2018
Jun 12, 2018
Jun 19, 2018

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Jun 19, 2018



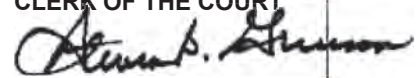
Rosalie Qualls

DISTRICT COURT
CLARK COUNTY, NEVADA
Case No. A-18-768728-C Dept. No. XXVI
KENNETH BERBERICH, Plaintiff,
vs. CONNIE FERNANDEZ; BANK OF AMERICA, N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive, Defendants,
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): CONNIE
FERNANDEZ A civil Complaint has been filed by the Plaintiff(s) against you for the
relief set forth in the Complaint. Object of Action: This is a Complaint for Title to real
property, Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. Seq. and NRS
116, et. seq. and Preliminary and Permanent Injunction. 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 this
Court may enter a judgement 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 subdivisions, 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. CLERK OF COURT, s/ Josefina San Juan, Deputy Clerk, Date 2/2/2018,
County Court House, 200 Lewis Avenue, Las Vegas, Nevada 89155, Issued at the
direction of THE LAW OFFICE OF MIKE BEEDE, PLLC, By: Michael Beede, Esq.,
Date 2/2/18, 2470 St. Rose Pkwy., Ste. 201, Henderson, NV 89074, 702-473-8406,
Attorney for Plaintiff
Published in Nevada Legal News
May 22, 29, June 5, 12, 19, 2018

04108792 00447010 702-832-0248

LAW OFFICE OF MICHAEL BEEDE
2470 ST. ROSE PKWY., SUITE 201
HENDERSON, NV 89074

Exhibit 5



DFT
Michael Beede, Esq.
Nevada Bar No. 13068
The Law Office of Mike Beede, PLLC
2470 St. Rose Pkwy., Ste.307
Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorney for Plaintiff, Kenneth Berberich

DISTRICT COURT
CLARK COUNTY, NEVADA

KENNETH BERBERICH,
Plaintiffs,

vs.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,
Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

DEFAULT

It appears from the files and records from the above entitled action, CONNIE FERNANDEZ, duly being served a copy of the Summons and Complaint via publication on May 22, 29 and June 5, 12, 19, 2018; that more than 20 days exclusive of the day of service, having expired since service upon the Defendant; that no answer or other appearance having been filed and no further time being granted, the Default of the above mentioned Defendant for failing to answer or otherwise plead to

///

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///

1 the Plaintiff's Complaint shall be hereby entered.

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3 BY, DEPUTY CLERK

7/18/2018

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Ivonne Hernandez

Date

A-18-768728-C

Submitted by:

MICHAEL BEEDE, ESQ.

The Law Office of Michael Beede, PLLC

2470 St. Rose Pkwy., Ste. 307

Henderson, NV 89074

Phone: 702-473-8406

Fax: 702-832-0248

Attorney for Plaintiff

Exhibit 6

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)
AND WHEN RECORDED MAIL TO
ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

T.S. No. - 10-15540
Title No. - 4580032
APN - 176-29-511-068

Inst #: 201010060002672
Fees: \$14.00
N/C Fee: \$0.00
10/06/2010 02:23:46 PM
Receipt #: 530702
Requestor:
CLARK RECORDING SERVICE
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DELINQUENT

Assessment

This NOTICE OF DELINQUENT ASSESSMENT (NODA) is being given pursuant to N.R.S. 116.3115 et. seq. and N.R.S. 116.3116 through 116.31168 et. seq. and/or the provisions of the Declaration of Covenants, Conditions and Restrictions of the **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** that recorded **08-04-2005** as Instrument **0004194**, Book **20050804**, Page - -, County of CLARK, State of NV and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is: **LOT 149 OF THE FINAL MAP OF VIA VALENCIA/VIA VENTURA UNIT 1, IN BOOK 121 OF PLATS AT PAGE 70.**

Reputed Owner: **CONNIE FERNANDEZ**

Common 8735 MOUNT MIRA LOMA
Address: AVENUE
LAS VEGAS, NV 89178

Mailing 8735 MOUNT MIRA LOMA
Address: AVENUE
LAS VEGAS, NV 89178

Total Amount due as of 09-30-2010	\$675.18
--	-----------------

After the expiration of 30 days following the mailing of this NODA, the NODA may be enforced in accordance with NRS 116.31162. Additional monies shall accrue under this claim at the rate of the claimant's periodic or special assessments, plus permissible late charges, fines, costs of collection and interest, if any, subsequent to the date of this notice. Should the association named herein act to have the lien created by this notice enforced by non-judicial foreclosure and sale, the trustee authorized to enforce the lien shall be **ALLIED TRUSTEE SERVICES, 990 RESERVE DRIVE, SUITE 208, ROSEVILLE, CA 95678 - (800) 220-5454**

Dated: September 30,
2010

VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION

STATE OF CALIFORNIA
COUNTY OF PLACER

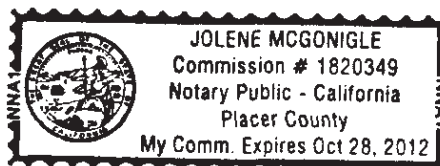

JOSEPHINE HARTER, Authorized Representative

ALLIED TRUSTEE SERVICES MAY BE ACTING AS A DEBT COLLECTOR TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

On September 30, 2010 before me, the undersigned, a Notary Public in and for said county, personally appeared JOSEPHINE HARTER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she 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.

WITNESS my hand and official seal.


JOLENE MCGONIGLE, Notary Public



APP0186

Exhibit 7

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)
AND WHEN RECORDED MAIL TO
ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

Trustee Sale No. - **10-15540**
Title Order No. - 4580032
APN - 176-29-511-068

Inst #: 201011090003304
Fees: \$15.00
N/C Fee: \$25.00
11/09/2010 02:55:58 PM
Receipt #: 572376
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use

**NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER NOTICE OF DELINQUENT ASSESSMENT
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. No sale date may be set until ninety (90) days from the date this notice of default may be recorded or mailed.

The amount is **\$1,391.17** as of **November 05, 2010** and will increase until your account becomes current. Upon your written request, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** (Association) will give you a written itemization of the entire amount you must pay. You and the Association may mutually agree in writing prior to the time the notice of sale is posted to, among other things, (1) provide additional time in which to cure the default by 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 previously referred to, unless a separate written agreement between you and the Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by the Association.

NOTICE IS HEREBY GIVEN THAT: **ALLIED TRUSTEE SERVICES** is the duly appointed Trustee/Agent authorized by the Association to record Notice of Delinquent Assessment obligations in favor of said Association, pursuant to the terms contained in that certain Declaration of Covenants, Conditions and Restrictions, recorded on **08-04-2005** as Instrument **0004194** Book **20050804** Page - - of Official Records in the Office of the Recorder of **CLARK** County, NV, and any and all amendments or annexations of record thereto, describing the land therein, that the beneficial interest under said Notice of Delinquent Assessment is presently held by the Association.

THIS NOTICE is given pursuant to N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq., and/or pursuant to that certain Notice of Delinquent Assessment, recorded on **10-06-2010** as Instrument **0002672** Book **20101006** Page - - of Official Records in the office of the Recorder of **CLARK** County, State of NV and more completely described in said Notice of Delinquent Assessment.

Owner: **CONNIE FERNANDEZ**
PROPERTY **8735 MOUNT MIRA LOMA AVENUE**
ADDRESS: **LAS VEGAS, NV 89178**

APP0188

Trustee Sale No. - **10-15540**
APN - 176-29-511-068

**NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER NOTICE OF DELINQUENT ASSESSMENT**

If you have any questions, you should contact a lawyer. 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.

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU
COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! REMEMBER,
YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION**

That a breach of, and default in, the obligation for which said Covenants, Conditions and Restrictions as security has occurred in that the payment(s) have not been made of periodic assessments, less credits and offsets, plus any late charges, interest, fees, charges, collection costs, trustees fees, and attorney fees. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, contact the following trustee who has been authorized by the Association to enforce its lien by sale: **ALLIED TRUSTEE SERVICES, 990 RESERVE DRIVE, SUITE 208, ROSEVILLE, CA 95678, (800) 220-5454.**

That by reason thereof, the present Association under such Covenants, Conditions and Restrictions, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Covenants, Conditions and Restrictions and all documents evidencing the 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 herein described property, lien by said Association, to be sold to satisfy the obligations secured thereby.

DATE: November 05, 2010

ALLIED TRUSTEE SERVICES, Trustee

ALLIED TRUSTEE SERVICES MAY BE ACTING
AS A DEBT COLLECTOR TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED
FOR THAT PURPOSE.

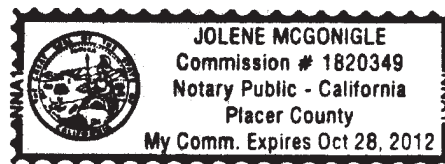

KATHLEEN SUGGS, Authorized Signature

STATE OF CALIFORNIA
COUNTY OF PLACER

On **November 05, 2010** before me, the undersigned, a Notary Public in and for said county, personally appeared **KATHLEEN SUGGS** personally known to me (or 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.

WITNESS my hand and official seal.


JOLENE MCGONIGLE, Notary Public



APP0189

Exhibit 8

RECORDING REQUESTED BY
FIRST AMERICAN TITLE (CONCORD)

AND WHEN RECORDED MAIL TO

ALLIED TRUSTEE SERVICES
990 RESERVE DRIVE, SUITE 208
ROSEVILLE, CA 95678
(800) 220-5454

T.S. No. - **10-15540**

Title No. - 4580032

A.P.N. - 176-29-511-068

105

Inst #: 201103210002447

Fees: \$15.00

N/C Fee: \$0.00

03/21/2011 02:14:30 PM

Receipt #: 712172

Requestor:

PASION TITLE SERVICES

Recorded By: SUO Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

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 ALLIED TRUSTEE SERVICES (877) 282-4991. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT DATED **09-30-2010**. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On **04-21-2011** at **10:00 AM**, ALLIED TRUSTEE SERVICES (Trustee) under and pursuant to Notice of Delinquent Assessment, recorded on **10-06-2010** as Instrument **0002672** Book **20101006** Page - - of Official Records in the Office of the Recorder of CLARK County, NV, property owned by **CONNIE FERNANDEZ**

WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT (payable at time of sale in lawful money of the United States) at: **THE FRONT ENTRANCE TO THE NEVADA LEGAL NEWS LOCATED AT 930 SO. FOURTH ST., LAS VEGAS, NV 89101** all right, title and interest under said Notice of Delinquent Assessment in the property situated in said County, describing the land therein: **A.P.N.: 176-29-511-068**

The street address and other common designation, if any, of the real property described above is purported to be:

**8735 MOUNT MIRA LOMA AVENUE
LAS VEGAS, NV 89178**

The Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum due under said Notice of Delinquent Assessment, with interest thereon, as provided in said notice, advances, if any, estimated fees, charges, and expenses of the Trustee. The estimated total amount of the unpaid balance at the time of the initial publication of the Notice of Sale is **\$2,453.68**.

APP0191

T.S. No. - 10-15540
A.P.N. - 176-29-511-068

NOTICE OF TRUSTEE'S SALE

The claimant, **VIA VALENCIA / VIA VENTURA HOMEOWNERS ASSOCIATION** under said Notice of Delinquent Assessment heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located and more than ninety (90) days have elapsed since such recordation, or mailing of such Notice.

FOR SALES INFORMATION, CALL (714) 573-1965

DATE: March 10, 2011

ALLIED TRUSTEE SERVICES MAY BE ACTING AS A DEBT COLLECTOR TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

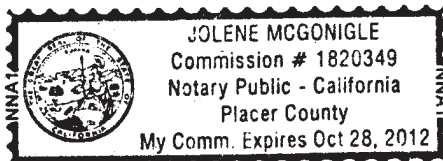
ALLIED TRUSTEE SERVICES, Trustee


NICOLE THORNSBERRY, Authorized Signature

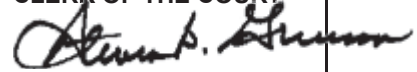
On March 10, 2011 before me, the undersigned, a Notary Public in and for said county, personally appeared NICOLE THORNSBERRY personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she 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.

WITNESS my hand and official seal.


Jolene McGonigle, Notary Public



APP0192



REQ

Michael Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,

Defendants.

CASE NO. A-18-768728-C

DEPT. NO. XXVI

**REQUEST FOR PROVE UP
HEARING BY DEFAULT**

COMES NOW Plaintiff, Kenneth Berberich (hereinafter "Plaintiff"), by and through his attorneys of record, Michael Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, and hereby requests this Honorable Court to set a hearing date in the above-captioned matter

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1 to prove up a default by Defendant, CONNIE FERNANDEZ, pursuant to a Court's decision.

2
3 DATED this 30th day of July, 2018.

4 Submitted by:

5 The Law Office of Mike Beede, PLLC

6
7 By: /s/ James W. Fox, Esq.
8 JAMES W. FOX, ESQ.
9 Nevada Bar No. 13122
2470 St. Rose Pkwy., Ste. 307
10 Henderson, NV 89074
Attorneys for Plaintiff, Kenneth Berberich

11
12 **NOTICE OF HEARING DATE FOR PROVE UP**

13 **TO: All parties:**

14 **Please take notice** that the undersigned counsel will bring on for hearing in Department
15 No. 26 of the above-entitled Court a prove up of default of defendant, CONNIE FERNANDEZ,
16 on the **11** day of **SEPT.**, 2018, at the hour of **9:00** a.m./p.m.

17
18 DATED this 30th day of July, 2018.

19 Submitted by:

20 The Law Office of Mike Beede, PLLC

21 By: /s/ James W. Fox, Esq.
22 JAMES W. FOX, ESQ.
23 Nevada Bar No. 13122
24 2470 St. Rose Pkwy., Ste. 307
Henderson, NV 89074
25 Phone: 702-473-8406
26 Fax: 702-832-0248
Attorneys for Plaintiff, Kenneth Berberich

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of Mike
3 Beede, PLLC, and that on this 30th day of July, 2018, I did cause a true and correct copy of the
4 foregoing **REQUEST FOR PROVE UP HEARING BY DEFAULT** to be served upon each of
5 the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey
6 E-File and Serve System, and/or by depositing a true and correct copy in the United States Mail,
7 addressed as follows:

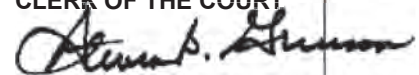
8 Rex Garner, Esq.
9 Natalie Winslow
10 Akerman LLP
Michael Beede, Esq.

rex.garner@akerman.com
natalie.winslow@akerman.com
akermanLAS@akerman.com
eservice@legallv.com

11
12 Connie Fernandez
13 8735 Mount Mira Loma Ave.
14 Las Vegas, NV 89178
Defendant

Connie Fernandez
2600 Orchard Meadows Ave.
Henderson, NV 89074
Defendant

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17 /s/Allison Zeason
An employee of The Law Office of Mike Beede, PLLC
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Michael Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
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Henderson, NV 89074
Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,

Defendants.

CASE NO. A-18-768728-C

DEPT. NO. XXVI

JUDGMENT BY DEFAULT

In this action, the Judgment by Default concerns the real property commonly known as 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178, APN: 176-29-511-068 and more fully described as follows: VIA VALENCIA VIA VENTURA UNIT 1 PLAT BOOK 121 PAGE 70 LOT 149 CLARK COUNTY, NEVADA.

The Defendant, CONNIE FERNANDEZ, having been served with Summons and Complaint and having failed to appear and answer Plaintiff's Complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the Default of said Defendant, CONNIE FERNANDEZ having been duly entered according to law; upon application of Plaintiff, a hearing was held on September 11, 2018, to establish that the statutory requirements necessary to enter Default Judgment had been met. Despite satisfactory notice of

1 the hearing having been provided to the Defendant CONNIE FERNANDEZ, the Defendant made
2 no appearance. Thus, default judgment is hereby entered against said Defendant, CONNIE
3 FERNANDEZ as follows:

4 **IT IS SO ORDERED** THAT PLAINTIFF HAVE JUDGMENT AGAINST
5 DEFENDANT, CONNIE FERNANDEZ:

6 1. For a determination and declaration that Plaintiff is the rightful holder of title to
7 the property, free and clear of all liens, encumbrances, and claims of the defendant Connie
8 Fernandez;

9 2. For determination and declaration that the defendant, Connie Fernandez, has no
10 estate, right, title, interest or claim to the property; and

11 3. Enjoining the defendant, CONNIE FERNANDEZ from asserting any estate,
12 right, title, interest or claim in the property.

13 4. This Judgment shall not affect the rights of parties against whom Default has
14 not been entered.

15 DATED this 11th day of September, 2018.

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19 DISTRICT COURT JUDGE

20 Submitted by:

21 THE LAW OFFICE OF MIKE BEEDE, PLLC

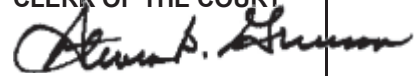
22 
23 Michael Beede, Esq.

24 Nevada Bar No. 13068

25 2470 St. Rose Pkwy, Suite 307

26 Henderson, NV 89074

27 Attorney for Plaintiff, Kenneth Berberich
28



1 **NEJD**

2 Michael Beede, Esq.
3 Nevada Bar No. 13068
4 James W. Fox, Esq.
5 Nevada Bar No. 13122
6 The Law Office of Mike Beede, PLLC
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9 T: 702-473-8406
10 F: 702-832-0248
11 eservice@legallv.com
12 Attorneys for Plaintiff, Kenneth Berberich

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 vs.

14 CONNIE FERNANDEZ; BANK OF
15 AMERICA, N.A.; MORTGAGE
16 ELECTRONIC REGISTRATION
17 SYSTEMS, INC.; and DOES 1 through 10,
18 inclusive; and ROE CORPORATIONS 1
19 through 10, inclusive,

20 Defendants.

CASE NO. A-18-768728-C

DEPT. NO. XXVI

**NOTICE OF ENTRY OF
JUDGMENT BY DEFAULT**

21 TO: ALL PARTIES

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the **Judgment by**
23 **Default** was entered in the above entitled matter on the 11th day of September, 2018, a copy of
24 which is attached hereto.

25 Dated this 12th day of September, 2018.

26 THE LAW OFFICE OF MIKE BEEDE, PLLC

27 /s/ Michael Beede, Esq.

28 MICHAEL BEEDE, ESQ.

Nevada Bar No.13068

2470 St. Rose Pkwy, Suite 307

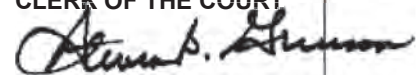
Henderson, NV 89074

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Michael Beede, Esq. eservice@legallv.com
Rex Garner rex.garner@akerman.com
Akerman LLP AkermanLAS@akerman.com
Natalie Winslow natalie.winslow@akerman.com

Connie Fernandez
2600 Orchard Meadows Ave.
Henderson, NV 89074
Defendant

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James W. Fox, Esq.
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Fax: 702-832-0248
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Attorneys for Plaintiff, Kenneth Berberich

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNETH BERBERICH,

Plaintiff,

vs.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
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15 DATED this 11th day of September, 2018.

16
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19 DISTRICT COURT JUDGE

20 Submitted by:

21 THE LAW OFFICE OF MIKE BEEDE, PLLC

22 
23 Michael Beede, Esq.

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25 2470 St. Rose Pkwy, Suite 307

26 Henderson, NV 89074

27 Attorney for Plaintiff, Kenneth Berberich
28