

1 essentially, even if there were any irregularities with the Association sale, as long as these
2 irregularities were not known to SFR, they cannot be imputed to SFR, as SFR is a BFP.

3 A BFP purchases real property: (i) for value; and (ii) without notice of a competing or
4 superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247
5 (1979). A “purchaser for value” is one who has given “valuable consideration” as opposed to
6 receiving the property as a gift. Id. at 187, 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677,
7 680 (1971) (“A specific finding of what the consideration was may be implied from the
8 record.”). Even if a purchaser may purchase a property for lower than the property’s value on
9 the open market, the fact that SFR paid “valuable consideration” is undisputed. Shadow Wood,
10 366 P.3d at 1115 (citing Fair v. Howard, 6 Nev. 304, 308 (1871) (“the question is not whether
11 the consideration is adequate, but whether it is valuable”); see also Poole v. Watts, 139 Wash,
12 App. 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale
13 purchaser purchased the property for a “low price” did not in itself put the purchaser on notice
14 that anything was amiss with the sale).) Further, notice by a potential purchaser that an
15 association is conducting a sale pursuant to NRS 116, and that the potential exists for challenges
16 to the sale “post hoc[,]” do not preclude that purchaser from BFP status. Shadow Wood, 366
17 P.3d at 1116. As has been established, finality in foreclosure sales to bona fide purchasers is a
18 must to avoid chilled bidding. Moeller, 25 Cal.App.4th at 833, 30 Cal.Rptr.2d at 784. These
19 continued attacks by the lenders on the association sales causes the very issues with price that
20 the lenders then complain of in their attacks on commercial reasonableness. See Sec. B, supra.

21 In analyzing this issue, Nevada law includes another relevant presumption: “[t]hat a
22 person intends the ordinary consequences of that person’s voluntary act.” NRS 47.250(2).

23 In the present case, SFR paid valuable consideration for the Property at the foreclosure
24 sale. At the time of the sale, SFR had no notice of a competing or superior interest in the
25 Property where the public records showed only that (1) a deed of trust was recorded after the
26 Association perfected its lien by recording its declaration of CC&Rs, (2) there was a
27 delinquency by the homeowner, which resulted in the Association instituting foreclosure
28 proceedings and after complying with NRS Chapter 116, sold the Property at a public auction.

1 Between the date the Notice of Default was recorded and the date of the foreclosure sale, the
2 Bank never recorded a lis pendens or other document alleging any problems with the foreclosure
3 process or the foreclosure sale.⁵⁷ Additionally, SFR has no relationship with the Association or
4 the Association's Agent, except as a purchaser of Property.⁵⁸ Therefore, nothing known to the
5 Association or its Agent about any purported irregularities in the foreclosure process could have
6 been known by SFR. To that extent, the Bank has not alleged any facts or introduced
7 admissible evidence that SFR had any knowledge precluding it from BFP status, other than an
8 impotent deed of trust.

9 Thus, if this court is inclined to weigh equities, which it should not, it "must consider the
10 entirety of the circumstances that bear upon the equities." Shadow Wood, 366 P.3d at 1114.
11 These would include not only any irregularities in the sale process by the Association or
12 Association's agents, but the actions or (in)actions by the Bank and SFR's BFP status. Id. As
13 the Shadow Wood court noted, "[c]onsideration of harm to potentially innocent third parties is
14 especially pertinent here where [the Bank] did not use the legal remedies available to it to
15 prevent the property from being sold to a third party. . . ." Id. at 1115, n.7. Here, the Bank failed
16 to bring any evidence that the Association foreclosure notices were not sent to it as required by
17 statute. Further, the Bank did not (1) pay or attempt to pay the lien,⁵⁹ (2) contact the
18 Association or the Association's agent prior to the sale,⁶⁰ (3) record a lis pendens,⁶¹ or (4) attend
19 the sale.⁶² The Bank knew that without taking action to stop the sale, the Association's
20 foreclosure would extinguish all junior interests in the Property. By allowing the sale to go
21 forward, the Bank must have intended this consequence. NRS 47.250(2). On the other hand,
22 SFR merely attended a publically noticed, publically held foreclosure sale, and placed the

23 ///

24 ⁵⁷ See Exhibit B, at ¶¶ 18, 19.

25 ⁵⁸ Id., at ¶¶ 16, 17.

26 ⁵⁹ See Exhibit A-11, at No. 11; see also Exhibit A-12, at [40:10-14] .

27 ⁶⁰ See Exhibit A-11, at No. 13; see also Exhibit A-12, at [40:3-9].

28 ⁶¹ See Exhibit B, at ¶ 19.

⁶² See Exhibit A-11, at No. 3; see also Exhibit A-12, at [33:1-3].

1 winning bid at the auction. The Bank is seeking yet another bail out for its poor business
2 decisions.

3 While the Court should not get this far because of the absence of evidence of fraud,
4 oppression or unfairness, or irregularity with the sales process, if it were to weigh equities, the
5 equities lie in favor of SFR. Title should be quieted in SFR's name and the Bank enjoined from
6 taking any further action to enforce its extinguished lien against the Property or further clouding
7 SFR's title.

8 **G. SFR is Entitled to Summary Judgment on the Bank's Claims of Quiet Title**
9 **and Injunctive Relief Because the Foreclosure Sale Was Commercially**
10 **Reasonable.**

11 In seeking relief from the Court, the Bank's claims of Injunctive Relief and Quiet Title
12 fail because the bid price at the Association's foreclosure sale was commercially reasonable
13 (although not required) and the Bank is unable to present any evidence of fraud, oppression or
14 unfairness relating to a purportedly "grossly inadequate" sales price that would allow the Court
15 to overturn the foreclosure sale. Even if some irregularity of the sale existed, the Bank has not
16 presented any evidence that would defeat SFR's BFP status.

17 As such, for the reasons set forth above, the Bank's claims for Quiet Title and Injunctive
18 Relief must be defeated.

19 **H. SFR is Entitled to Summary Judgment Because the Bank's Unjust**
20 **Enrichment Claim is Without Merit.**

21 Here, the Bank asserts that SFR "has been unjustly enriched, in that Chase (as servicer)
22 has continued to expend funds and resources to maintain and preserve the Property, including but
23 not limited to funds for taxes and insurance to the detriment of Chase." See Bank's Amended
24 Complaint, filed on March 9, 2016, ¶ 58. However, unfortunately for the Bank, they are barred
25 from the making an unjust enrichment claim as it is barred by the voluntary payment doctrine.

26 "The voluntary payment doctrine is a long-standing doctrine of law, which clearly
27 provides that one who makes a payment voluntarily cannot recover it on the ground that he was
28 under no legal obligation to make the payment." Best Buy Stores v. Benderson-Wainberg

1 Assocs., 668 F.3d 1019, 1030 (8th Cir. 2012). Recently, the Nevada Supreme Court weighed in
2 on this issue on whether the voluntary payment doctrine applies in Nevada to bar a property
3 owner from recovering fees that it paid to a community association and, if so, whether the
4 property owners demonstrated an exception to this doctrine by showing that the payments were
5 made under business compulsion or in defense of property. Nevada Association Services, Inc. v.
6 The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250 (2014). In NAS, the Nevada
7 Supreme Court ruled that the voluntary payment doctrine is a valid affirmative defense in
8 Nevada. Id. at 1254. Because the voluntary payment doctrine is an affirmative defense, the
9 defendant bears the burden of proving its applicability. Schwartz v. Schwartz, 95 Nev. 202, 206,
10 591 P.2d 1137, 1140 n. 2 (1979). Once a defendant shows that a voluntary payment was made,
11 the burden shifts to the plaintiff to demonstrate that an exception to the voluntary payment
12 doctrine applies. Randazo v. Harris Palatine, N.A., 262 F.3d 663, 666 (7th Cir. 2001). There are
13 two exceptions to the voluntary payment doctrine. These exceptions are (1) coercion or duress
14 caused by a business necessity and (2) payment in the defense of property.

15 As such, the burden shifts to the Bank to prove that one of the exceptions applies. Here,
16 the Bank was under no compulsion or obligation to pay any expenses on the Property. Just like
17 any other homeowner, it was SFR's duty and obligation to pay obligations such as the taxes,
18 insurance and assessments, not the Bank's. Had the Bank simply paid the assessments prior to
19 the sale, we would not be here today. Why it would pay post-sale is inexplicable.

20 Additionally, the Bank's payments were not in defense of the property. That is because
21 the Bank cannot show that SFR failed or refused to pay and assessment, taxes or other expense
22 of the property. Here, SFR has been paying the homeowner's association assessments since it
23 acquired the Property.⁶³ Furthermore, to the extent the Bank voluntarily made payments for
24 insurance, SFR has not benefitted from this unless the Bank made SFR an additional insured.
25 Additionally, it is presumed that the Bank voluntarily paid the property taxes, which was
26 unnecessary. Furthermore, the Bank has provided no evidence that SFR would not have paid the
27 tax bill if given the opportunity.

28 ⁶³ See Exhibit B, at ¶ 20.

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Lastly, under Nevada law, in order to prevail on an unjust enrichment claim, the Bank must show that SFR retained the money or property of the Bank against fundamental principles of justice or equity and good conscience. Asphalt Products v. All Star Ready Mix, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995). Here, the subject Property was never property belonging to the Bank. Instead, the Property merely represented collateral that secured the first deed of trust until that security interest was extinguished by the Association foreclosure sale. As such, SFR has not retained property belonging to the Bank. Even if this Court were to consider a collateral interest as ownership interest in the Property, for all the reasons stated above, the Association foreclosure sale extinguished the deed of trust, and therefore there is no inequity or injustice as SFR has maintained possession of property it rightfully purchased at the Association sale.

Therefore, SFR is entitled to summary judgment on the Bank's claim for unjust enrichment.

IV. CONCLUSION

Based on the above, the Court should enter summary judgment in favor of SFR, stating that (1) SFR is the title holder of the Property, (2) the Bank's deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts, thus making the Bank's purported interest in the first deed of trust invalid, and (3) the Bank, and any agents acting on its behalf, are permanently enjoined from any sale or transfer that would affect SFR's title to the Property.

DATED this 7th day of July, 2016.

KIM GILBERT EBRON

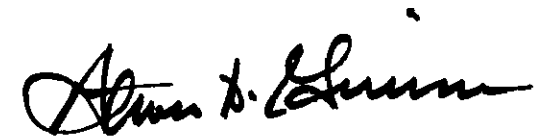
/s/ Jacqueline A. Gilbert
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, to the following parties:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; DOES 1 through 10,
ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC a Nevada
limited liability company,

Counter-Claimant,

vs.

JP MORGAN CHASE BANK National
Association, a national association; ROBERT M.
HAWKINS, an individual; CHRISTINE V.
HAWKINS, an individual; DOES 1-10 and ROE
BUSINESS ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

JPMorgan Chase Bank, N.A. ("Chase") hereby moves for summary judgment and an order quieting title to the subject property in favor of Chase. This Motion for Summary Judgment ("Motion") is based on Rule 56 of the Nevada Rules of Civil Procedure ("N.R.C.P."), the following memorandum of points and authorities, the pleadings and papers on file, and any oral

1 argument heard by the Court.

2 DATED: July 26, 2016.

3 By:_____/s/ Holly Priest_____
4 Abran E. Vigil
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13 *Attorneys for Plaintiff and Counter-*
14 *Defendant JPMorgan Chase Bank, N.A.*

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NOTICE OF MOTION

Please take notice that the undersigned will bring the foregoing Motion for Summary Judgment on for hearing before the above-entitled Court on the 01 day of SEPTEMBER, 2016, at the hour of 9:00 o'clock A.m. on said date, in Department 24, or as soon afterwards as counsel can be heard.

DATED this 26th day of July, 2016.

By: /s/ Holly Priest
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this action for quiet title and declaratory relief, SFR Investments Pool 1, LLC (“SFR”) 4 contends that it purchased the subject property at a homeowners’ association foreclosure sale 5 free and clear of a first deed of trust encumbering the property. JPMorgan Chase Bank, N.A. 6 (“Chase”) is the beneficiary of record of that deed of trust and the contractually authorized 7 servicer for Federal Home Loan Mortgage Corporation (“Freddie Mac”), the owner of the deed 8 of trust.

9 SFR’s claim for an interest in the property free and clear of the deed of trust is precluded 10 by federal statute. In July 2008, Congress passed the Housing and Economic Recovery Act of 11 2008 (“HERA”), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, 12 which established the Federal Housing Finance Agency (“FHFA” or the “Conservator”) to 13 regulate Freddie Mac, Federal National Mortgage Association (“Fannie Mae”), and the Federal 14 Home Loan Banks. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, 15 “the Enterprises”) into conservatorships “for the purpose of reorganizing, rehabilitating, or 16 winding up [their] affairs.” 12 U.S.C. § 4617(a)(2). In HERA, Congress granted FHFA an array 17 of powers, privileges, and exemptions from otherwise applicable laws to enable FHFA to carry 18 out its statutory functions when acting as Conservator of the Enterprises. Among these is a 19 broad statutory “exemption” captioned “Property protection” that provides that when the 20 Enterprises are under the conservatorship of FHFA, none of their property “shall be subject to 21 . . . foreclosure . . . without the consent of [FHFA].” 12 U.S.C. § 4617(j)(3) (“Federal 22 Foreclosure Bar”).

23 SFR relies on a state statute that grants homeowners associations a superpriority lien for 24 uncollected dues owed to the homeowners association under certain circumstances. *See* NRS 25 § 116.3116(2) (“State Foreclosure Statute”). The State Foreclosure Statute grants homeowners 26 association liens superpriority for a limited amount above all other interests in a property and 27 enables HOA superpriority lien holders to conduct a foreclosure sale, thereby extinguishing all 28 junior interests.

1 The State Foreclosure Statute conflicts directly with the Federal Foreclosure Bar, which
2 expressly precludes the involuntary extinguishment of Freddie Mac's property interest. Here, the
3 Conservator did not consent to any HOA sale that extinguished Freddie Mac's interest in the
4 Property. Under the Supremacy Clause, the State Foreclosure Statute must yield, and the HOA
5 Sale did not extinguish Freddie Mac's interest.

6 In eleven cases presenting the same legal issue, courts in the U.S. District Court of Nevada
7 have recently resolved dispositive motions in favor of FHFA, Freddie Mac, and Fannie Mae.¹ One
8 of these cases granted summary judgment against SFR, the same defendant that appears in this
9 case. *FHFA v. SFR*, 2016 WL 2350121. Moreover, Nevada state courts have granted Fannie Mae,
10 Freddie Mac, and their servicers summary judgment in six cases concerning related issues.² These
11 cases held that the Federal Foreclosure Bar preempts any Nevada law, including the State
12 Foreclosure Statute, that would otherwise permit the HOA's foreclosure of its superpriority lien to
13 extinguish the Enterprises' interests in the Property while the Enterprises are under FHFA's
14 conservatorship.

15 The Deed of Trust was not extinguished for several other reasons. As an initial matter,
16 *SFR Investments Pool 1, LLC v. U.S. Bank* does not apply retroactively. In addition, the Court
17

18 ¹ See *Skylights v. Byron*, 112 F. Supp. 3d 1145 (D. Nev. 2015); *Elmer v. Freddie Mac*, No. 2:14-cv-
19 01999-GMN-NJK, 2015 WL 4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie*
20 *Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp.,*
21 *LLC v. JP Morgan Chase Bank, N.A.*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July
22 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev.
23 July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220
24 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV0-2046-JAD-PAL, 2015 WL
5723647 (D. Nev. Sept. 28, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-
CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-
01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015); Order, *Opportunity Homes, LLC v.*
Freddie Mac, No. 2:15-cv-008993-APG-GWF (D. Nev. Mar. 11, 2016), ECF No. 39; *FHFA v. SFR Invs.*
Pool 1, LLC, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016). The latter ten
cases adopted the court's reasoning in *Skylights*.

25 ² See *Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct.
26 Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev.
27 Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist.
28 Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev.
Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev.
Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016).
Plaintiff does not cite these cases as precedential authority and is mindful of Nevada Sup. Ct. R.
123. However, these cases are offered as persuasive authority to demonstrate the manner in which the
Nevada courts may rule in future, published cases.

1 should void the sale due to the gross inadequacy of price paid by SFR, as well as other
2 irregularities in the sale. Moreover, the homeowner association conveyed only its lien interest to
3 SFR. Finally, the pre-October 2015 version of the State Foreclosure Statute is unconstitutional.
4 Accordingly, for these reasons as well, summary judgment must be granted in favor of Chase.

5 **II. BACKGROUND**

6 **A. The Secondary Mortgage Market**

7 In 1970, Congress chartered Freddie Mac to facilitate the nationwide secondary mortgage
8 market, and thereby to enhance the equitable distribution of mortgage credit throughout the
9 nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Freddie Mac's
10 federal statutory charter authorizes it to purchase and deal only in secured "mortgages," not
11 unsecured loans. *See* 12 U.S.C. §§ 1451(d) (defining mortgages as *secured* liens), 1453
12 (authorizing purchase of residential mortgages and setting forth minimum requirements for such
13 mortgages). In the course of carrying out its congressionally mandated mission, Freddie Mac has
14 purchased millions of mortgages nationwide, including hundreds of thousands of mortgages in
15 Nevada.

16 While Freddie Mac fills this role in the market, it is not in the business of managing the
17 mortgages themselves, such as handling day-to-day borrower communications. Therefore,
18 Freddie Mac, like other investors in loans, contracts with servicers that often serve as the
19 recorded beneficiary of deeds of trust to facilitate the servicers' efficient management of those
20 loans. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011)
21 (describing how loan owners contract with servicers and the servicers' role); Restatement (Third)
22 of Prop.: Mortgages § 5.4 cmt. c ("Restatement") (discussing the common practice where
23 investors in the secondary mortgage market designate their servicer to be assignee of the
24 mortgage);³ Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide") at 1101.2(a)
25 (discussing Freddie Mac's relationship with servicers to manage the loans Freddie Mac

26 ³ *Cf.* 12 C.F.R. § 226.39(a)(1) (2015) (excluding servicers from federal regulations requiring loan
27 owners to disclose transfers of mortgages to affected consumers and confirming that "a servicer of
28 a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or
title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the
obligation").

1 purchases). The Nevada Supreme Court has recognized the importance of these relationships by
2 adopting the Restatement approach. *See In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015).
3 *Montierth* holds that when a loan owner has an agent or contractual relationship with an entity
4 who acts as the beneficiary of record of a deed of trust, the loan owner (though not the recorded
5 beneficiary) maintains a secured property interest. *Id.*

6 **B. Undisputed Facts Specific to this Case**

7 **1. *The Subject Property, Note, and Deed of Trust***

8 A Deed of Trust listing Robert M. Hawkins and Christine V. Hawkins as the borrowers
9 (“Borrower”); GreenPoint Mortgage Funding, Inc. as the lender (“Lender”); Marin
10 Conveyancing Corp. as the trustee (“Trustee”); and Mortgage Electronic Registration Systems,
11 Inc. (“MERS”), as beneficiary solely as nominee for Lender and Lender’s successors and assigns
12 was recorded on June 12, 2006. *See* Ex. 5, Deed of Trust.⁴ The Deed of Trust granted Lender a
13 security interest in real property known as 3263 Morning Springs Drive, Henderson, Nevada,
14 89074, (the “Property”) to secure the repayment of a loan in the original amount of \$240,000 to
15 Borrower (the “Loan”). *See* Ex. 6, Note.

16 Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed of
17 Trust on or about September 27, 2006. *See* Ex. 7, Freddie Mac Decl. ¶ 5d. Freddie Mac has
18 never sold or transferred the Loan to any other entity. *Id.* On September 6, 2008, pursuant to
19 HERA, FHFA’s Director placed Freddie Mac into conservatorship. On October 26, 2009,
20 MERS assigned the Deed of Trust to Chase. *See* Ex. 8, Assignment of Deed of Trust. The
21 assignment of the Deed of Trust was recorded on October 27, 2009. *Id.* At the time of the HOA
22 Sale on March 1, 2013, Plaintiff was the servicer of the Loan for Freddie Mac. *See* Ex. 4, Chase
23 Declaration ¶ 5d.

24
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⁴ Chase requests, pursuant to NRS 47.130, that the Court take judicial notice of all recorded documents
27 provided as evidence in this motion, as they are capable of accurate and ready verification based on the
28 records of the Clark County Recorder, a source whose accuracy cannot reasonably be questioned. *See*
also NRS 52.015. In addition, Chase has provided certified copies of the recorded documents which are
presumed to be true and correct pursuant to NRS 52.125.

1 **2. *Freddie Mac’s Contract with Its Servicers Establishes that Freddie Mac Retains an***
2 ***Ownership Interest in the Deed of Trust While the Servicer Is the Beneficiary of***
3 ***Record***

4 The relationship between Plaintiff, as the servicer of the Loan, and Freddie Mac, as
5 owner of the Loan, is governed by the Guide, a central governing document for Freddie Mac’s
6 relationship with servicers nationwide. *See* Ex. 10 at ¶ 2; Guide at 1101.2(a), Ex. 9.⁵

7 The Guide provides that:

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

14 Guide at 1301.10, Ex.9.

15 The Guide also provides that:

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

21 Guide at 6301.6 (emphasis added), Ex. 9.

22 The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of Freddie
23 Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1, Ex. 9. Accordingly, the Guide also
24 provides for a temporary transfer of possession of the note when necessary for servicing,
25 including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11. Ex. 9. However, when in
26 “physical or constructive possession of a Note,” the Servicer must “follow prudent business
27 practices” to ensure that the note is “identif[ied] as a Freddie Mac asset.” *Id.* at 8107.1(b).

28

⁵ The Guide is publicly available on Freddie Mac’s website. An interactive version is available at
www.freddiemac.com/singlefamily/guide, and archived prior versions of the Guide are available at
www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html. While the cited sections of the Guide
have been amended over the course of Freddie Mac’s ownership of the Loan, none of these amendments
have changed these sections in a way material to this case. A static, PDF copy of the most recent version
of the Guide is available at
<http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency>. The Court may take
judicial notice of the Guide. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass.
2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829 PSG MRWX, 2014 WL 9894432, at *7 (C.D. Cal.
Oct. 1, 2014).

1 Furthermore, when transferring documents in a mortgage file, including a note, the servicer must
2 ensure the receiver acknowledges that the note is “Freddie Mac’s property.” Guide at 3302.5,
3 Ex. 9.

4 The Guide further provides that:

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

8 Guide at 1201.9, Ex. 9.

9 The Guide provides that a transferee servicer undertakes all responsibilities under the
10 Guide. See Guide at 7101.15(c), Ex. 9.

11 Finally, the Guide provides that:

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

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

17 Guide at 7101.6, Ex. 9.

18 ***3. Borrowers File for Bankruptcy and Obtain a Discharge Order.***

19 On March 3, 2012, Borrowers filed a Chapter 7 bankruptcy action, listing the HOA as an
20 unsecured creditor. See Ex. 10, Chapter 7 Petition. In that action, the Bankruptcy Court
21 discharged Borrowers’ debts pursuant to a discharge order dated June 26, 2012. See Ex. 11,
22 Chapter 7 Discharge Order. Borrowers’ bankruptcy attorneys notified the HOA’s debt collection
23 firm, Nevada Association Services, Inc. (“NAS”) of the discharge order by letter dated July 23,
24 2012. See Ex. 12. NAS acknowledged receipt of the July 23 letter but still insisted that
25 Borrowers pay the pre-bankruptcy petition HOA assessments. See Ex. 13.

26 ***4. The HOA Foreclosure Sale and SFR’s Purported Acquisition of the Property***

27
28 On August 3, 2012, NAS recorded a Notice of Delinquent Assessment Lien (the “HOA
Lien”) for \$1,333.00 against the Property on behalf of Pebble Canyon Homeowners Association

1 (the “HOA”) in the Official Records, as Book and Instrument No. 20120803-0002972. *See* Ex.
2 14, Notice of Delinquent Assessment Lien. According to the HOA Lien, the HOA had a lien on
3 the Property in accordance with its “[D]eclaration of Covenants Conditions and Restrictions
4 (CC&Rs), recorded on November 8, 1991...” *Id.* The Declaration of Covenants, Conditions and
5 Restrictions and Grant of Easements for Pebble Canyon Homeowners Association (“CC&Rs”)
6 were recorded in November 1991, and include a “Priority of Assessment Lien” provision that
7 states an HOA lien is subordinate to a first mortgage.⁶ *See* Ex. 15, CC&Rs at § 5.07.
8 “Mortgage” is defined as “a deed of trust as well as a mortgage, and the terms may be used
9 interchangeably herein.” *Id.* at § 1.13.

10 On September 20, 2012, NAS recorded a Notice of Default and Election to Sell Under
11 Homeowners Association Lien (the “HOA Notice of Default”) for \$2,126.00 against the Property
12 on behalf of the HOA in the Official Records, as Book and Instrument No. 20120920-0001446.
13 *See* Ex. 16, Notice of Default and Election to Sell Under Homeowners Association Lien. On
14 February 7, 2013, NAS recorded a Notice of Foreclosure Sale against the Property on behalf of
15 the HOA in the Official Records, as Book and Instrument No. 20130207-0000892. *See* Ex. 17,
16 Notice of Foreclosure Sale. The Notice of Foreclosure Sale listed the amount owed as \$3,142.43.

17 On March 1, 2013, NAS conducted a foreclosure sale of the Property (the “HOA
18 Foreclosure Sale”). *See* Ex. 18, HOA Foreclosure Deed. SFR, one of two bidders, purchased the
19 interest sold at the HOA Foreclosure Sale for \$3,700. *See id.*; Ex. 19, Dep. Tr. of NAS at 44:5-6.
20 At the time of the sale, NAS calculated a total lien amount of \$3,387.83, which included pre-
21 discharge assessments. *See* Ex. 20, NAS Delinquency; Ex. 21, HOA Ledger. On March 6, 2013,
22 a foreclosure deed was recorded against the Property. *See* Ex. 18. The foreclosure deed states
23 that the Property was sold in an HOA foreclosure sale on March 1, 2013, to SFR with a purchase
24 price of \$3,700. *See id.* The Foreclosure Deed states that the HOA is transferring its interest
25 only, not the owners. *See id.*

26 ⁶ The CC&R’s state in pertinent part “The lien of the assessments, including interest, late fees and
27 costs (including attorneys’ fees), provided for herein shall be subordinate to the lien of any first
28 Mortgage upon any Lot. “

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

Further, at the time of the HOA Foreclosure Sale, the Property had a fair market value of \$123,000. *See* Ex. 23, Expert Report of Craig Morley.⁷ After the HOA Foreclosure Sale, Chase expended \$3,772.78 to maintain the Property by paying property taxes and insurance. *See* Ex. 24, Escrow Activity. SFR did not pay property taxes or insurance until after the initiation of this lawsuit. *See id.*

III. DISCUSSION

A. Summary Judgment Standard.

Summary judgment is "an integral part" of Nevada's procedural rules, "which are designed to secure the just, speedy, and inexpensive determination of every action." *Wood v. Safeway*, 121 Nev. 724, 730, 121 P.3d 1026, 1031 (2005). A court should grant summary judgment when the moving party demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. N.R.C.P. 56(c).

A fact is material if it "might affect the outcome of the suit under the governing law," and a dispute as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). On a summary judgment motion, "[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise supported motion for summary judgment." *Anderson*, 477 U.S. at 256. Once the moving party has carried its burden of showing that no material fact is in dispute, "the party opposing the motion 'may not rest upon the mere allegations or denials in his pleadings, but . . . must set forth specific facts showing there is a

⁷ The fair market value of the Property is undisputed. While SFR retained a "rebuttal" expert, the expert does not give his opinion as to the fair market value of the Property at the time of the HOA Foreclosure Sale. Instead, he opines as to the value of the bundle of rights that was being purchased at the HOA Foreclosure Sale. Accordingly, the testimony and report is beyond the scope of a permissible rebuttal expert and is irrelevant to determine whether the price paid at the HOA Foreclosure Sale is grossly inadequate.

genuine issue for trial.’” *Liberty Lobby, Inc.*, 477 U.S. at 248. A party opposing summary judgment “‘must do more than simply show that there is some metaphysical doubt as to the material facts,’ . . . and [it] ‘may not rely on conclusory allegations or unsubstantiated speculation.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Here, no genuine issue of material fact exists to preclude summary judgment in Chase’s favor.

B. The Federal Foreclosure Bar Defeats SFR’s Claim to an Interest in the Property Free and Clear of the Deed of Trust.

1. The Federal Foreclosure Bar Preempts Contrary State Law

A federal statute expressly preempts contrary law when it “explicitly manifests Congress’s intent to displace state law.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that “[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale.” 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Freddie Mac while in conservatorship. All of these “adverse actions . . . could otherwise be imposed on FHFA’s property under state law. Accordingly, Congress’s creation of these protections clearly manifests its intent to displace state law.” *Skylights*, 112 F. Supp. 3d at 1153; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4; *My Glob. Vill.*, 2015 WL 4523501, at *4 (The “Supremacy Clause . . . prevent[s] NRS 116.3116 from extinguishing Fannie’s [Deed of Trust] in the Property without consent.”). Therefore, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that the state statute otherwise would permit any such nonconsensual limitation or extinguishment.

The Federal Foreclosure Bar preempts the State Foreclosure Statute because “state law is naturally preempted to the extent of any conflict with a federal statute.” *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). “[U]nder the Supremacy Clause . . . any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). Therefore,

1 conflict preemption occurs “where it is impossible for a private party to comply with both state
2 and federal law” or “where the challenged state law stands as an obstacle to the accomplishment
3 and execution of the full purposes and objectives of Congress.” *Valle del Sol*, 732 F.3d at 1023
4 (internal quotations and citations omitted). In short, “state law that conflicts with federal law is
5 without effect.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

6 In applying this governing rule, a federal court evaluating another provision of HERA
7 held that it preempted certain state laws because “[e]xposure to state law claims would
8 undermine the FHFA’s ability to establish uniform and consistent standards for the regulated
9 entities. . . . If [p]laintiffs’ state claims were not preempted, liability based on these claims
10 would create obstacles to the accomplishment of the policy goals set forth in [HERA].”
11 *California ex rel. Harris v. FHFA*, No. 10-cv-03084, 2011 WL 3794942, at *16 (N.D. Cal. Aug.
12 26, 2011). In addition, courts applying the companion statute governing Federal Deposit
13 Insurance Corporation (“FDIC”) receiverships have similarly held that it supersedes otherwise-
14 applicable state law. *See, e.g., FDIC v. Lowery*, 12 F.3d 995 (10th Cir. 1993) (concluding that
15 local taxing authorities could not sell property owned by FDIC to satisfy tax liens without
16 FDIC’s consent and noting that “[t]he text of section 1825(b)(2) is unequivocal and suggests no
17 implied exception”); *GWN Petroleum Corp. v. Ok-Tex. Oil & Gas, Inc.*, 998 F.2d 853 (10th Cir.
18 1993) (concluding that a private judgment holder’s attempt to garnish proceeds from the sale of
19 oil and gas paid to the FDIC was barred by Section 1825(b)(2)).⁸

20 Similarly, Congress’s clear and manifest purpose in enacting Section 4617(j)(3) was to
21 protect the nationwide operations of the Enterprises while in conservatorship from actions, such
22 as the HOA Sale, that otherwise would deprive them of their interests in property. In so doing,
23 Congress ensured that the Enterprises would not be subject to an array of conflicting state laws,
24

25 ⁸ When analyzing HERA’s provisions, courts have frequently turned to precedent interpreting the
26 analogous receivership authority of the FDIC. *See, e.g., Cty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th
27 Cir. 2013) (referring to the FDIC’s statutory authority in a related area as “analogous to 12 U.S.C.
28 § 4617(f)”; *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va.
2009) (“[T]he Court is persuaded by decisions that have reached the same conclusion when interpreting
[FIRREA], whose provisions regarding the powers of federal bank receivers and conservators are
substantially identical to those of HERA.”), *aff’d sub nom. La. Mun. Police Ret. Sys. v. FHFA*,
434 F. App’x 188 (4th Cir. 2011).

1 such as those relied upon by SFR, which could undermine the Conservator's efforts to restore
2 and assure the safety and soundness of the Enterprises' business operations. Accordingly, the
3 Federal Foreclosure Bar preempts any state law that would authorize the HOA Sale to effect the
4 nonconsensual extinguishment of Freddie Mac's interest in the Property and thereby permit SFR
5 to claim an interest free and clear of the Deed of Trust.

6 ***2. The Federal Foreclosure Bar Protected Freddie Mac's Property Interest***

7 To successfully invoke the Federal Foreclosure Bar's preemptive protection, Chase needs
8 to establish two things: First, that Freddie Mac owned the Loan at the time of the HOA Sale, and
9 second, that ownership of the Loan was a property interest covered by the Federal Foreclosure
10 Bar's protection. Chase satisfies both here. Furthermore, while it is not Chase's burden to
11 establish this fact, it is undisputed that FHFA has not consented to the extinguishment of Freddie
12 Mac's property interest in this case.

13 a. Freddie Mac Had a Protected Property Interest at the Time of the HOA Sale

14 On or about September 27, 2006, Freddie Mac purchased the Loan, and thereby acquired
15 ownership of both the promissory note and the Deed of Trust. Freddie Mac never sold the Loan
16 to another entity. *See* Ex. 7 ¶ 5d. At the time of the HOA Sale, Chase acted as Freddie Mac's
17 authorized loan servicer and beneficiary of record of the Deed of Trust for the Loan. *See* Ex. 4 at
18 ¶ 5d. As Freddie Mac's servicer of the Loan, Chase was in a contractual relationship with
19 Freddie Mac requiring Chase, upon Freddie Mac's request, to assign all of its interest to Freddie
20 Mac. Under Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a
21 property interest in the underlying collateral at the time of the HOA Sale in March 2013.

22 Freddie Mac's acquisition and continued ownership of the Loan at the time of the HOA
23 Sale are amply supported by the business records data derived from the MIDAS system, a
24 database that Freddie Mac uses in its everyday business to track millions of loans that it acquires
25 and owns nationwide. It is also supported by Chase's business records, and also derived from a
26 database Chase uses to track the loans that it services. Under the applicable rules of evidence,
27 business records are, by their nature, admissible to prove the truth of their contents when
28 introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory

committee's note to 1972 proposed rules) (noting that business records have "unusual reliability" and include electronic database records).

i. Freddie Mac Owned the Note and Deed of Trust Under Nevada Law

(1) Nevada Adopts the Restatement Approach that Acknowledges the Loan Owner-Servicer Relationship

Pursuant to Nevada law, when Freddie Mac purchased the Loan, Freddie Mac thereby acquired ownership of the note and Deed of Trust. In *Edelstein v. Bank of New York Mellon*, the Nevada Supreme Court adopted the Restatement approach to the transfer of mortgages. 286 P.3d 249, 257-58 (Nev. 2012) (citing Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997) ("Restatement")). Recently, the Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement approach, including sections not discussed in *Edelstein*. *In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015). Under the Restatement approach adopted in *Edelstein* and *Montierth*, ownership of the Deed of Trust was transferred to Freddie Mac along with the promissory note when Freddie Mac purchased the Loan.

The Restatement describes the typical arrangement between investors in mortgages, such as Freddie Mac, and their servicers:

Institutional purchasers of loans in the secondary mortgage market often designate a third party, not the originating mortgagee, to collect payments on and otherwise "service" the loan for the investor. In such cases the promissory note is typically transferred to the purchaser, but an assignment of the mortgage from the originating mortgagee to the servicer may be executed and recorded. This assignment is convenient because it facilitates actions that the servicer might take, such as releasing the mortgage, at the instruction of the purchaser. The servicer may or may not execute a further unrecorded assignment of the mortgage to the purchaser.

Restatement § 5.4 cmt. c (emphasis added). The Restatement then emphasizes that this arrangement preserves the investor's ownership interest:

It is clear in this situation that the owner of both the note and mortgage is the investor and not the servicer. This follows from the express agreement to this effect that exists among the parties involved. The same result would be reached if the note and mortgage were originally transferred to the institutional purchaser, who thereafter designated another party as servicer and executed and recorded a mortgage assignment to that party for convenience while retaining the promissory note.

1 *Id.* (emphasis added). Thus, the Restatement acknowledges that the assignment of a deed of trust
2 to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note
3 and deed of trust. *See Berezovsky*, 2015 WL 8780198, at *3 (citing Restatement to hold that
4 Freddie Mac had a protected property interest while its servicer was beneficiary of the deed of
5 trust); *FHFA v. SFR*, 2016 WL 2350121, at *6 (similar; granting FHFA, Fannie Mae, and
6 Freddie Mac summary judgment regarding five properties). The Restatement approach is a
7 recognition of the realities of the mortgage industry: Freddie Mac and Fannie Mae can more
8 efficiently support the national secondary mortgage market if they can contract with servicers to
9 manage loans without relinquishing ownership of deeds of trust.⁹

10 *Montierth* clarified that the above provisions of the Restatement were incorporated into
11 Nevada law, although they were not mentioned in *Edelstein*: “Because it was not pertinent to
12 [the Nevada Supreme Court’s] analysis in *Edelstein*, [the court] did not include the exceptions
13 provided in the Restatement.” *Montierth*, 354 P.3d at 651. Accordingly, *Montierth* held that a
14 foreclosure could proceed when the noteholder was not the beneficiary named in the recorded
15 deed of trust, so long as the named beneficiary had authority to foreclose on the noteholder’s
16 behalf. *Id.* at 650-51. *Montierth* also stated unequivocally that in those circumstances a note
17 owner remains “a secured creditor” under Nevada law, meaning that it retains a property interest
18 in the collateral. *Id.*

19 The facts of *Montierth* help clarify the application of the Restatement approach. The
20 borrowers in *Montierth* had executed a promissory note in favor of the lender, 1st National
21 Lending Services, who later transferred the note to Deutsche Bank. *Id.* at 649. The borrowers
22 had also executed a deed of trust in favor of MERS “solely as nominee for Lender and Lender’s
23 successors and assigns.” *Id.* After the borrowers declared bankruptcy, they sought to rely upon
24 *Edelstein* to contend that Deutsche Bank was not a secured creditor because “it did not have a
25 unified note and deed of trust.” *Id.* at 650. The Nevada Supreme Court rejected the borrowers’
26 argument, explaining that “foreclosure is not impossible if there is either a principal-agent

27 ⁹ The Restatement approach also is consonant with federal law, which defines the scope of property
28 interests protected by statutes such as the Federal Foreclosure Bar broadly. *See supra* at Restatement
§ 5.4 cmt. c.

1 relationship between the note holder and the mortgage holder, or the mortgage holder ‘otherwise
2 has authority to foreclose on the [note holder]’s behalf.’ We agree with the Restatement’s
3 reasoning.” *Id.* at 651 (citing Restatement § 5.4 cmts. c, e). The Nevada Supreme Court
4 concluded that “in the present case, MERS would be authorized to foreclose on behalf of
5 Deutsche Bank at Deutsche Bank’s direction because MERS is its agent, and reunification of the
6 instruments would not be required.” *Id.* Thus, Deutsche Bank, as holder of the promissory note,
7 was a secured creditor, even though MERS was beneficiary of record of the deed of trust. *Id.*

8 Therefore, *Montierth* explains that where the record beneficiary of the deed of trust has
9 contractual authority to foreclose on the note owner’s behalf, the note owner maintains a
10 property interest in the collateral. *See id.*; *Edelstein*, 286 P.3d at 254. *Montierth* thus makes
11 clear that any “split” of the note and deed of trust is legally irrelevant in the context of a
12 relationship such as that between a note owner and servicer. In “agree[ing] with the
13 Restatement’s reasoning,” and specifically citing to Section 5.4, comment c of the Restatement,
14 the Nevada Supreme Court was adopting the principle that an investor acquires a property
15 interest in the deed of trust when it purchases the note when it has an agent or contractual
16 relationship with the beneficiary of record of the deed of trust. *See Montierth*, 354 P.3d at 651;
17 Restatement § 5.4 cmt. c. In such a circumstance, the purchaser of the note, like Freddie Mac
18 here, is a secured lender with a “fully-secured, first priority deed” that can be enforced. *See*
19 *Montierth*, 354 P.3d at 651; *see also Thomas v. BAC Home Loans Servicing, LP*, No. 56587,
20 2011 WL 6743044, at *1, 3 & n.9 (Nev. Dec. 20, 2011) (noting that Freddie Mac’s status as
21 owner of the note was not inconsistent with other entities being the assignee of the deed of trust
22 and holder of the note).

23 24 **(2) Nevada Adopts the Uniform Commercial Code, Which Is Consistent with the Restatement Approach**

25 The Restatement approach is consistent with Nevada’s version of the Uniform
26 Commercial Code Article 9, which applies to transfers of real property interests and likewise
27 provides that Freddie Mac’s acquisition of the promissory note gave it a secured interest in the
28 Property. Specifically, Nevada Revised Statute § 104.9203(7) provides that “[t]he attachment of

1 a security interest in a right to payment or performance secured by a security interest or other
2 lien on personal or real property is also attachment of a security interest in the security, mortgage
3 or other lien.” *See also* NRS § 104.9102(1)(ttt)(4) (defining “secured party” under UCC Art. 9
4 to include “[a] person to which . . . promissory notes have been sold”); Report of the Permanent
5 Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage
6 Notes at 14 (Nov. 14, 2011) (“Article 9 of the UCC provides that a transferee of a mortgage note
7 whose property right in the note has attached also automatically has an attached property right in
8 the mortgage that secures the note.”).

9 Similarly, the Restatement approach is consistent with Nevada’s adoption of UCC Article
10 3, which provides that “[a] person may be a person entitled to enforce the instrument even
11 though the person is not the owner of the instrument.” Nev. Rev. Stat. § 104.3301 (Nevada’s
12 adoption of UCC § 3-301). A “person entitled to enforce the instrument” may be a “holder of
13 the instrument” or even a “nonholder in possession of the instrument who has the rights of the
14 holder.” *Id.* Accordingly, “the status of holder merely pertains to one who may enforce the debt
15 and is a separate concept from that of ownership.” *Thomas*, 2011 WL 6743044, at *3 n.9
16 (quoting Nev. Rev. Stat. § 104.3301(2) and citing UCC § 3-203 cmt. 1). That is because
17 “[o]wnership rights in instruments may be determined by principles of the law of property . . .
18 which do not depend upon whether the instrument was transferred.” UCC § 3-203 cmt. 1. For
19 that reason, a transfer of a note “vests in the transferee any right of the transferor to enforce the
20 instrument,” but has no bearing on ownership. Nev. Rev. Stat. § 104.3203.

21 In fact, the Nevada Supreme Court has applied this principle in a similar circumstance,
22 where Freddie Mac claimed to be the owner of a note while BAC claimed to be the holder of the
23 note and the beneficiary of record of the associated deed of trust. The court held there was
24 nothing inconsistent with those two positions under Nevada law. *See Thomas*, 2011 WL
25 6743044, at *1, 3 & n.9. Here, too, there is nothing inconsistent with Freddie Mac being the
26 owner of the note and the Deed of Trust, while Chase, its servicer, was beneficiary of record of
27 the Deed of Trust.

28 ii. The Guide Confirms that Freddie Mac Retains Ownership of the Deed of
Trust While Its Servicer Serves as Beneficiary of Record

Freddie Mac is the owner of millions of mortgages nationwide and hundreds of thousands of mortgages in Nevada pursuant to its congressionally mandated mission to support the national secondary mortgage market. Therefore, it contracts with servicers that often serve as the beneficiary of record of deeds of trust to facilitate the servicers' efficient management of those loans. The Guide serves as a central document governing the contractual relationship between Freddie Mac and its servicers nationwide, including Chase. (*See* Ex. 9 at 1101.2(a).)

Reflecting the principles of Nevada law discussed *supra*, the Guide provides that a servicer may act as the beneficiary of record while Freddie Mac maintains ownership of the deed of trust and can "compel an assignment of the deed of trust." *Montierth*, 354 P.3d at 651. For example, the Guide provides that:

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

Ex. 9 at 1301.10. The Guide also provides that:

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

Id. at 6301.6 (emphasis added).¹⁰

The provisions of the Guide demonstrate that Freddie Mac and its loan servicers maintain the type of relationship described in the Restatement and consistent with Nevada's adoption of the UCC, as they also permit a temporary transfer of possession of the note when necessary for servicing and to protect the interests of Freddie Mac. *Id.* at 8107.1, 8107.2, 9301.11. For example, the note may be constructively transferred to the servicer when the servicer is pursuing a foreclosure on Freddie Mac's behalf. *See id.* Nevertheless, the Guide is clear that ownership always lies with Freddie Mac. For example, "[a]ll documents in the Mortgage file, . . . and all

¹⁰ Relatedly, Freddie Mac requires servicers that are transferring their servicing rights to complete assignments of deeds of trust depending on the circumstances. If the transferor servicer is the beneficiary of record, the transferor servicer must prepare and record an assignment to the transferee servicer. *See* Ex. 9 at 7101.6.

1 other documents and records related to the Mortgage of whatever kind or description . . . will be,
2 and will remain at all times, the property of Freddie Mac.” Ex. 9 at 1201.9; *see also id.* at
3 3302.5, 8107.1(b).

4 Thus, under Nevada law and pursuant to the Guide, the fact that Freddie Mac’s servicer,
5 Chase, was the beneficiary of record of the Deed of Trust at the time of the HOA Sale does not
6 negate the fact that Freddie Mac remained the owner of the note and the Deed of Trust at that
7 time. Accordingly, the Federal Foreclosure Bar, which protects Freddie Mac’s property
8 interests, protected the Deed of Trust from extinguishment, and Freddie Mac continued to own
9 both the Deed of Trust and the note after the HOA Sale.

10 b. The Federal Foreclosure Bar’s Protection Extends to Freddie Mac’s Property
11 Interest Here

12 i. *The Federal Foreclosure Bar Provides Broad Protection to Freddie*
13 *Mac’s Lien Interests*

14 Under federal law, Freddie Mac’s ownership of the Loan qualifies as a protected property
15 interest for purposes of the Federal Foreclosure Bar. Indeed, federal law defines the scope of
16 property interests protected by statutes such as the Federal Foreclosure Bar broadly. *See*
17 *Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir. 1994). Courts have repeatedly held
18 that mortgage liens constitute property for purposes of the analogous FDIC statute, 12 U.S.C.
19 § 1825(b)(2). “[T]he term ‘property’ in § 1825(b)(2) encompasses all forms of interest in
20 property, including mortgages and other liens.” *Simon v. Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995);
21 *see also S/N-1 REO Ltd. Liab. Co. v. City of Fall River*, 81 F. Supp. 2d 142, 150 (D. Mass. 1999)
22 (“A lien held by the FDIC as mortgagee is ‘property’ within the meaning of § 1825(b)(2).”); 37
23 *Huntington St., H, LLC v. City of Hartford*, 772 A.2d 633, 641 (Conn. 2001) (same); *Cambridge*
24 *Capital Corp. v. Halcon Enterps., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla. 1993) (same).
25 Likewise, Freddie Mac’s interest here—which, as described above, consisted of ownership of
26 both the Deed of Trust and the note—was a protected property interest under Section 4617(j)(3).

27 Foreclosure bars such as Section 4617(j)(3) and Section 1825(b)(2) bar other lien holders
28 from extinguishing protected property interests through foreclosure sale. *See Simon*, 53 F.3d at
20 (Section 1825(b)(2) “protect[s] the FDIC’s mortgages from being extinguished without its

1 consent through foreclosure.”); *Matagorda*, 19 F.3d at 221 (“If the taxing units were allowed to
2 foreclose their tax lien without the consent of the FDIC, the consensual mortgage lien . . .
3 acquired by the FDIC . . . would be extinguished. This is forbidden by the plain wording of
4 § 1825(b)(2).”); *Donna Indep. School Dist. v. Balli*, 21 F.3d 100, 101 (5th Cir. 1994) (holding
5 that taxing units could not extinguish FDIC liens without FDIC’s consent); *Beal Bank, SSB v.*
6 *Nassau Cty.*, 973 F. Supp. 130, 133 (E.D.N.Y. 1997) (“The language of § 1825(b)(2)
7 unequivocally prohibits the institution of collection techniques, including foreclosure, sale or
8 levy with regard to property owned by the FDIC.”); *Cambridge Capital*, 842 F. Supp. at 502
9 (“Section 1825(b)(2) could not be more specific in prohibiting the extinguishment of an FDIC
10 lien interest because it provides that no ‘property’ of the FDIC shall be subject to ‘levy,’
11 ‘foreclosure,’ or ‘sale’ without the ‘consent of the FDIC.’ This Court need look no further than
12 the statute itself to determine that Congress has expressed its intent that no property of the
13 FDIC—fee or lien—be subject to foreclosure without the FDIC’s consent.”).

14 In sum, just as courts routinely hold that foreclosures cannot extinguish property interests
15 to which the FDIC has succeeded as receiver without its consent, foreclosure sales do not
16 extinguish the property interests of Freddie Mac under Section 4617(j)(3) without FHFA’s
17 consent. *See Trembling Prairie Land Co. v. Verspoor*, 145 F.3d 686, 691 (5th Cir. 1998) (“In
18 deference to the will of Congress, we hold that the tax sale at issue was conducted without the
19 consent of the FDIC. Accordingly, the tax sale violated 12 U.S.C. § 1825(b)(2) and thus is null
20 and void.”); *FDIC v. Lee*, 130 F.3d 1139, 1143 (5th Cir. 1997) (“12 U.S.C. § 1825(b)(2)
21 applies . . . and that the tax sale conducted by Jefferson Parish is null and void.”).

22
23 *ii. The Federal Foreclosure Bar Extends to Freddie Mac When It Is Under
FHFA’s Conservatorship*

24 The Federal Foreclosure Bar necessarily protects the Deed of Trust because the
25 Conservator has succeeded by law to all of Freddie Mac’s “rights, titles, powers, and privileges,”
26 12 U.S.C. § 4617(b)(2)(A)(i). “Accordingly, the property of [Freddie Mac] effectively becomes
27 the property of FHFA once it assumes the role of conservator, and that property is protected by
28 section 4617(j)’s exemptions.” *Skylights*, 112 F. Supp. 3d at 1155; *accord Elmer*, 2015 WL

1 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4;
2 *My Glob. Vill.*, 2015 WL 4523501, at *4. This interpretation is supported by the text and
3 structure of HERA. *See Skylights*, 112 F. Supp. 3d at 1155. Section 4617 concerns FHFA’s
4 “[a]uthority over” Freddie Mac and Fannie Mae when they are “critically undercapitalized” and
5 thus must be placed into conservatorship or receivership. Furthermore, the protections of
6 Section 4617(j)(3) apply in “any case in which [FHFA] is acting as a conservator or a receiver.”
7 12 U.S.C. § 4617(j)(1).

8 Indeed, courts uniformly have rejected any argument that the immunities provided by
9 Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA
10 conservatorship. *See Skylights*, 112 F. Supp. 3d at *Nevada v. Countrywide Home Loans*
11 *Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) (“[W]hile under the conservatorship
12 with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and fines to the same
13 extent that the FHFA is.”); *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1064 (N.D. Ill.
14 2013) (argument is “meritless”); *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015
15 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4; *My Glob. Vill.*, 2015 WL 4523501, at
16 *4. The courts have also rejected similar arguments in the context of FDIC receiverships. *See In*
17 *re Cty. of Orange*, 262 F.3d 1014, 1020 (9th Cir. 2001) (“We also note that subsection (b)(2)
18 provides ‘nor shall any involuntary lien attach to the property of the Corporation.’ That
19 language’s plain meaning is that once the property belongs to the FDIC, that is, when the FDIC
20 acts as receiver, no liens shall attach.”) (emphasis omitted) (quoting 12 U.S.C. § 1825(b)(2));
21 *Cty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4 (D.D.C. Feb. 26, 1993)
22 (rejecting contention that statutory penalty bar applicable to the FDIC as receiver, 12 U.S.C.
23 § 1825(b)(3), only “exempts the FDIC *itself* from penalty assessment but not the [financial
24 institution] for which the FDIC assumes receivership”).

25 c. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

26 As discussed above, there can be no dispute that Freddie Mac—and, thus, its
27 Conservator, FHFA—had an interest in the Property at the time of the HOA Sale. The Federal
28 Foreclosure Bar thus precludes the HOA Sale from extinguishing Freddie Mac’s interest in the

1 Property unless SFR had obtained FHFA's consent to that extinguishment. SFR cannot show
2 that it received such consent. The Conservator has publicly announced that it has not and will
3 not consent to the extinguishment of Freddie Mac's property interest through HOA non-judicial
4 foreclosure sales. (See Ex. 22,[FHFA Statement](FHFA "has not consented, and will not
5 consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie
6 Mac lien or other property interest in connection with HOA foreclosures of super-priority
7 liens.")). This public statement on a government website is subject to judicial notice. See
8 *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010). Accordingly, the
9 Federal Foreclosure Bar protected Freddie Mac's interest, and the HOA Sale could not have
10 extinguished the Deed of Trust.

11
12 **3. *Chase May Assert the Federal Foreclosure Bar to Protect Its Interest and
Freddie Mac's Interest in the Deed of Trust***

13 The Federal Foreclosure Bar works automatically by operation of law, protecting the
14 Deed of Trust and thereby limiting the property rights SFR could have acquired in the HOA
15 Sale. While Freddie Mac is the owner of the Deed of Trust and the note, Chase, as Freddie
16 Mac's servicer, also has an interest to protect through its contractual servicing relationship with
17 Freddie Mac and as the beneficiary of record of the Deed of Trust. Therefore, when the Federal
18 Foreclosure Bar prevented the extinguishment of a Deed of Trust owned by Freddie Mac, it did
19 not merely preserve Freddie Mac's property interest; it also preserved Chase's interests. SFR's
20 claims would seek to undo the protection of the Federal Foreclosure Bar. Accordingly, Chase
21 has standing to raise the Federal Foreclosure Bar in this litigation because (1) Chase's interest in
22 the Deed of Trust as beneficiary of record is preserved when the Federal Foreclosure Bar applies,
23 and (2) Chase has a contractual duty as servicer to protect Freddie Mac's interest in litigation
24 relating to the Loan.

25 As discussed above, the Nevada Supreme Court recognized in *Montierth* that when a
26 noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the
27 beneficiary of record may do so. See *Montierth*, 354 P.3d at 651 (citing the Restatement § 5.4
28 cmt. c). Relatedly, Nevada law recognizes that servicers are valid representatives of note-holders

1 for purposes of participation in foreclosure mediations and other proceedings. *See Markowitz v.*
2 *Saxon Special Servicing*, 310 P.3d 569, 574 (Nev. 2013); *Edelstein*, 286 P.3d at 260 n.11.
3 Accordingly, it is common practice for servicers to appear in Nevada courts in litigation
4 concerning loans that they may service, but not own.

5 The United States Supreme Court has recognized that Article III standing may be
6 conferred by contract and assignment. *See, e.g., Sprint Comm'ns Co., L.P. v. APCC Servs., Inc.*,
7 554 U.S. 269, 271-72 (2008) (A third-party assignee has standing to litigate on behalf of its
8 assignor, even if the assignee has no interest in the litigation aside from the fee it is paid for its
9 service.). Federal courts have applied this principle in the context of the relationships common
10 in the mortgage industry. *See, e.g., CWC Capital Asset Mgmt., LLC v. Chicago Props.*, 610 F.3d
11 497, 501 (7th Cir. 2010) ("There is no doubt about Article III standing in this case; though the
12 plaintiff may not be an assignee, it has a personal stake in the outcome of the lawsuit because it
13 receives a percentage of the proceeds of a defaulted loan that it services."); *Mortg. Elec.*
14 *Registration Sys., Inc. v. Bellistri*, No. 4:09-cv-731, 2010 WL 2720802 (E.D. Mo. July 1, 2010)
15 ("MERS had a legal right to file suit to foreclose the mortgage [T]he right to file suit is a 'a
16 substantial property right.'" (quoting *Kinsella v. Landa*, 600 S.W.2d 104, 107 (Mo. Ct. App.
17 1980))).

18 Accordingly, federal courts have recognized that servicers like Chase, who may be the
19 record beneficiaries of a deed of trust but do not own the corresponding loan, have constitutional
20 and prudential standing to bring an action regarding the loan. *See, e.g., Greer v. O'Dell*, 305
21 F.3d 1297, 1299 (11th Cir. 2002) ("[A] loan servicer is a 'real party in interest' with standing to
22 conduct, through licensed counsel, the legal affairs of the investor relating to the debt that it
23 services."); *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d
24 884, 905-09 (S.D. Tex. 2012) (Mortgage servicer was a real party in interest and "clearly" had
25 constitutional standing to bring lawsuit in its own name to administer the loan.); *TFG-Illinois,*
26 *L.P. v. United Maint. Co., Inc.*, 829 F. Supp. 2d 1097, 1111 (D. Utah 2011) ("[S]ervicer standing
27 . . . does not seem to require anything more than that a servicer have a pecuniary interest that is
28 harmed by a borrower's default."); *Kiah v. Aurora Loan Serv., LLC*, No. 10-46161-FDS, 2011

1 WL 841282, at *5 (D. Mass. Mar. 4, 2011) (Fannie Mae often requires servicers to initiate legal
2 proceedings in the servicer's name if the servicer or MERS is the mortgagee of record.);
3 *CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL
4 6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin
5 foreclosure sale to enforce a super-priority lien).

6 Here, Chase is the beneficiary of record of the Deed of Trust and is in a contractual
7 relationship with Freddie Mac to service the Loan. *See* Ex. 4 at ¶ 5d. Pursuant to its contract
8 with Freddie Mac, Chase is authorized to protect Freddie Mac's interests— including, if
9 necessary, foreclosing on the Deed of Trust. *See* Ex. 9 at 8105.3, 9301.1, 9301.12, 9401.1.
10 Nothing more is required.

11 Moreover, the Conservator has stated that it supports invocation of the Federal Foreclosure
12 Bar by “authorized servicers” such as Chase, in litigation such as this one: “FHFA supports the
13 reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of
14 [Freddie Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]'s interest by
15 an HOA foreclosure sale.” *See* FHFA Statement on Servicer Reliance on the Housing and
16 Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations,
17 [http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf)
18 [Servicers-Reliance.pdf](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf).

19 Finally, there is no bar against private parties raising a federal preemption argument. *See*
20 *Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2015 WL 1926768, at *4 (D. Nev.
21 Apr. 28, 2015) (“[W]hether N.R.S. 116.3116 as applied to federally insured mortgages conflicts
22 with [the Supremacy Clause] is a question of law that may be raised by any party, and not just a
23 government agency.” (citing *Armstrong v. Exceptional Child Care Ctr., Inc.*, 135 S. Ct. 1378,
24 1383 (2015))); *see also Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015
25 WL 1990076, at *4 (D. Nev. Apr. 30, 2015) (“Plaintiff cites no case law, nor does the court
26 know of any, limiting federal preemption arguments to government parties.”); *Beal Bank*, 973 F.
27 Supp. at 133 (Private parties asserted claims to protect property interest by invoking the
28 operation of the FDIC's similar property-protection statute.); *Cambridge Capital*, 842 F. Supp.

1 499 (same); *Grimsley v. Bd. of Cty. Comm'rs of Atoka Cty., Okla.*, 9 F. App'x 970, 973 n.3 (10th
2 Cir. 2001) (noting that private party injured by a sale without FDIC consent could bring claim
3 invoking the operation of FDIC's property-protection statute).

4 Here, the federal preemption argument would protect both Freddie Mac's interest and, by
5 extension, Chase's interests derived from its contractual relationship with Freddie Mac and its
6 role as beneficiary of record of the Deed of Trust. Accordingly, Chase may assert the argument
7 that the Federal Foreclosure Bar preempts Nevada state law to protect both its interest and that of
8 Freddie Mac.

9 **C. SFR Cannot Apply Retroactively.**

10 Summary judgment also should be granted in Chase's favor because the Nevada Supreme
11 Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408
12 (2014) ("*SFR*") does not apply retroactively to HOA foreclosures conducted before September 18,
13 2014. Courts evaluate three factors to determine if a statute should only apply prospectively:
14 1) whether a new principle of law was not clearly foreshadowed, 2) whether applying the law
15 retroactively will further or frustrate the purpose of the law, 3) whether retroactive application
16 will cause substantial inequitable results. *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev.
17 31, 35, 867 P.2d 402, 405 (1994). Just recently, a federal court evaluated these factors, and held
18 they weighed heavily against applying *SFR* retroactively. See *Christiana Trust v. K&P Homes*,
19 2015 U.S. Dist. LEXIS 152385-RCJ-VCF (D. Nev. Nov. 9, 2015).

20 **1. *SFR vs. U.S. Bank Is a New Principle of Law Not Clearly Foreshadowed.***

21 *Christiana Trust* was soundly reasoned. First, *SFR vs. U.S. Bank* involved an issue of first
22 impression and the decision was not clearly foreshadowed. Prior to *SFR*, courts were sharply split
23 on the application of NRS 116.3116, specifically whether an association foreclosure sale could
24 extinguish a first deed of trust. *SFR*, 334 P.3d at 412; *Christiana Trust*, 2015 U.S. Dist. LEXIS
25 152385, at *14 ("state and federal trial courts were in sharp disagreement as to whether an HOA
26 foreclosure sale under NRS 116.3116 extinguished a prior-recorded first mortgage."). This
27 uncertainty is reflected in three different places in the record: 1) the CC&Rs, which purport to
28 protect a deed of trust from being extinguished; 2) the HOA Foreclosure Deed, whose plain

1 language conveys only a lien interest in the Property, not an ownership interest; and 3) the HOA's
2 deposition testimony, which reflects that the HOA thought the Deed of Trust was not
3 extinguished by the HOA Foreclosure Sale. *See* Ex. 26, Dep. Tr. of HOA at 41:23 – 42:14; 62:3-
4 13.

5 SFR's own behavior following the HOA Foreclosure Sale also demonstrates extreme
6 uncertainty prior to the *SFR* decision. After the HOA Foreclosure Sale but prior to the *SFR*
7 decision, SFR did not pay taxes or homeowners insurance for the Property. *See* Ex. 24. Rather,
8 Chase made these property preservation payments. *See id.* Had SFR believed it owned the
9 Property outright, free and clear of the Deed of Trust, it almost certainly would have made these
10 payments.¹¹

11 **2. *Barring Retroactive Application Will Not Frustrate The Statutory Purpose.***

12 Second, the purpose of the State Foreclosure Statute would not be frustrated by barring
13 retroactive application. The statute is intended to make sure "HOA's are quickly made whole on
14 the superpriority portions of their liens[.]" *Christiana Trust*, 2015 U.S. Dist. LEXIS 152385, at
15 *15. In this case and many others, associations often have received bids that made them whole.¹²
16 This would be true—that the HOA has been made whole—even if *SFR* did not apply retroactively
17 and the Deed of Trust survived the HOA Foreclosure Sale. Likewise, were the HOA Foreclosure
18 Sale rescinded, the HOA's lien would be reinstated and the HOA could still be made whole.

19 **3. *Retroactive Application Will Produce Substantial Inequitable Results.***

20 Third, applying *SFR* retroactively leads to substantial inequity. Retroactive application of
21 *SFR* would allow third party purchasers to buy properties for pennies on the dollar, without
22 proper notice and at the expense of lien holders, borrowers, and the community as a whole.
23 Speculators and investors should not profit off a statutory construction that the Nevada real estate
24 community almost unanimously rejected. *Id.* at *15-16; *In re Krohn*, 52 P.2d 774, 779 (Ariz.

25
26 ¹¹ Bob Diamond, a person who frequently bid on the Properties at HOA Sales on behalf of SFR, testified
27 in his deposition that it was his understanding that "you'd probably lose your investment" if a property
28 was purchased at a HOA foreclosure and then a bank foreclosed. *See* Ex. 27, Dep. Tr. of Bob Diamond at
69:23-25 – 70:1-3.

¹² In many cases homeowners associations receive the full amount of their liens, even the sub-priority
portion.

2002) (“Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do more than legally enrich speculators.”). Additionally, as a practical matter, to apply *SFR* retroactively would allow a nominal amount due for HOA fees to extinguish a lien worth hundreds of thousands of dollars. *See Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP*, Case No. 2:13-cv-00895-JCM-GWF, 2013 U.S. Dist. LEXIS 112590, at *10 (D. Nev. 9, 2013) (noting that it “would be completely absurd” to allow \$3,197.47 in HOA fees to extinguish a deed of trust securing a \$305,992 loan).

D. The Nominal Purchase Price of 3% of the Property’s Fair Market Value Is Grossly Inadequate.

SFR’s grossly inadequate purchase price of only \$3,700 invalidates the HOA Foreclosure Sale under the Restatement (Third) of Property: Mortgages (“Restatement”). In its most recent interpretation of NRS Chapter 116, the Nevada Supreme Court stated that “courts retain the power to grant equitable relief from a defective foreclosure sale,” and recognized that if the price paid at a foreclosure sale is so “obviously inadequate” then a foreclosure sale may be set aside for gross inadequacy of price alone. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1113 (2016) (quoting the Restatement (Third) of Property: Mortgages § 8.3 cmt. b (1997)).¹³

Section 8.3 of the Restatement provides:

(a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **unless the price is grossly inadequate.**

¹³ The Nevada Supreme Court also looked to the Restatement (Third) of Property: Mortgages for guidance in the *SFR* decision itself and has consistently done so in other recent decisions. *See SFR*, 334 P.3d at 412; *see also, Montierth v. Deutsche Bank (In re Montierth)*, 131 Nev. Adv. Rep. 55, 354 P.3d 648, 651 (2015) (adopting Restatement rule); *United States Bank Nat’l Ass’n v. Palmilla Dev. Co.*, 131 Nev. Adv. Rep. 9, 343 P.3d 603, 605-06 (2015) (citing Restatement); *First Fin. Bank, N.A. v. Lane*, 130 Nev. Adv. Rep. 96, 339 P.3d 1289, 1290-91 (2014) (citing Restatement); *Recontrust Co., N.A. v. Zhang*, 130 Nev. Adv. Rep. 1, 317 P.3d 814, 817-18 (2014) (citing Restatement); *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Rep. 61, 290 P.3d 249, 253 n.6 (2012) (citing Restatement); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. Adv. Rep. 48, 286 P.3d 249, 257-60 (2012) (adopting § 5.4 of Restatement); *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. Adv. Rep. 41, 245 P.3d 535, 539-41 (2010) (citing Restatement); *Houston v. Bank of Am.*, 119 Nev. 485, 490, 78 P.3d 71, 74 (2003) (adopting § 7.6 of Restatement).

(Emphasis added). The commentary to § 8.3, which is quoted in *Shadow Wood*, states that a sale price is “grossly inadequate” if it is less than 20% of the property’s fair market value. *Id.* at § 8.3 cmt. B. Thus, the Restatement allows a court to void a foreclosure sale based on **price alone** and suggests that refusing to invalidate a sale price well below the 20% standard would be an abuse of discretion. *See also In re Krohn*, 52 P.3d 774, 779 (Ariz. 2002)(“[w]indfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators.”).

In this case, SFR’s attempt to purchase property with a fair market value of \$123,000 for a mere \$3,700 – *i.e.*, **only 3%** of its fair market value – unquestionably constitutes a grossly inadequate price. *See* Ex. 23; *See also* Ex. 3. The sale price is also grossly inadequate when viewed in light of a \$117,609 tax valuation the Clark County Assessor performed just one month prior to the HOA Foreclosure Sale, *see* Ex. 25, Clark County Assessor’s Real Property Report, which would amount to a sale for 3.15% of the Property’s fair market value. N.R.S. § 375.010(2) (stating that “‘estimated fair market value’ . . . may be derived from the assessor’s taxable value.”)

As the Restatement instructs, it would be an abuse of discretion for this Court to refuse to invalidate the sale given this grossly inadequate purchase price. *See* Restatement § 8.3 cmt. b.

E. SFR’s Grossly Inadequate Purchase Price Was Accompanied by Unfairness in the Sale.

Even were the Court to require improprieties beyond an inadequate price, *see Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), the HOA Foreclosure Sale was marred by additional improprieties that amount to unfairness. As an initial matter, the HOA Notices violated the State Foreclosure Statute by containing debt amounts that were incorrect in that they included late fees and assessments that pre-dated Borrowers’ bankruptcy, *see* Exs. 19 & 20, and that were subject to the Bankruptcy Court’s discharge. 11 U.S.C. § 523(a)(3)(A); 11 U.S.C. § 727(b); *In re Breezely*, 994 F.2d 1433, 1435 (9th Cir. 1992).

Not only do these incorrect amounts in violation of the State Foreclosure Statute constitute improprieties on their own, they also likely drove the sale price down by dissuading

1 more investors from bidding on the Property at the foreclosure sale than just the 2 that actually
2 did.

3 Another impropriety is that the HOA purported to foreclose on a lien created pursuant to
4 its CC&Rs, which expressly provided that an HOA lien “shall be subordinate to the lien of any
5 first Mortgage upon any Lot.” The misleading references to the CC&Rs in the HOA’s notices
6 not only failed to provide Chase with any notice that the HOA Foreclosure Sale was, as SFR
7 claims, an attempt to extinguish the Deed of Trust; they also signaled to prospective purchasers
8 that they would be purchasing the Property subject to a protected deed of trust (in this case,
9 securing an obligation of \$240,000), which potentially also chilled bidding.

10 Finally, the plain language of the HOA Foreclosure Deed states that SFR purchased only
11 the HOA’s lien interest in the Property. The HOA Foreclosure Deed adheres to the CC&Rs by
12 recognizing the HOA Foreclosure Sale would not extinguish the Deed of Trust, providing further
13 support that SFR believed it was purchasing only the HOA’s lien interest in the Property.

14 The undisputed facts demonstrate at least five irregularities in the sale that may explain
15 why the Property sold for 3% of its value. Thus, even under the outdated *Golden* decision,
16 Chase is entitled to summary judgment.

17 **F. SFR Holds Only a Lien Interest in the Property, Not Title to the Property.**

18 SFR’s position also fails as a matter of law because, again, the plain language of the
19 HOA Foreclosure Deed conveys only the HOA’s interest in the Property—a mere lien.

20 As a matter of basic property law, a deed’s granting clause determines the interest
21 conveyed. *Griffith v. Cloud*, 764 P.2d 163, 165 (Okla. 1988); *see also* 23 Am. Jur 2d *Deeds*
22 § 237. A conveyance cannot transfer an interest greater than the interest provided for in the
23 granting clause. *Griffith*, 764 P.2d at 165. Thus, under NRS 116.31164, a foreclosure deed must
24 grant all title of the unit’s owner to a sale purchaser in order to vest in the purchaser “the title of
25 the unit’s owner without equity or right of redemption.” NRS 116.31164(3).

26 As discussed above, the HOA Foreclosure Deed grants SFR only the HOA’s interest in
27 the Property, rather than the unit owner’s. Since the HOA’s only interest in the Property was its
28 lien, SFR received, at most, this lien, *Griffith*, 764 P.2d at 165, and thus SFR does not have title

1 to the Property at all.

2
3 **G. The State Foreclosure Statute Is Unconstitutional.**

4 A party may challenge the constitutionality of a statute in two ways: based on the
5 statute's application to the specific facts of a case (*i.e.*, an as-applied challenge) or based on the
6 statute's intrinsic terms, which violated a constitutional right from the day of the law's enactment
7 (*i.e.*, a facial challenge). *See Ezell v. City of Chicago*, 651 F.3d 684, 698-99 (7th Cir. 2011);
8 *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997).

9 Chase presents a facial challenge to the State Foreclosure Statute – a pure legal issue that
10 is ripe for determination at the summary judgment stage. *See* N.R.C.P. 56(c). The Due Process
11 clause of the United States Constitution requires that “at a minimum, [the] deprivation of life,
12 liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate
13 to the nature of the case.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.
14 Ct. 652, 657, 94 L. Ed. 865 (1950)

15 Here, the Nevada Legislature gave, by statute, homeowners associations the right to non-
16 judicially foreclose. *See* NRS 116.3116 *et seq.* Thus, this statutorily-created foreclosure
17 mechanism must comply with due process before it can extinguish a deed of trust that, but for the
18 state's enactment of the statute, would enjoy priority status. *See J.D. Constr., Inc. v. IBEX Int'l*
19 *Grp., LLC*, 126 Nev. Adv. Rep. 36, 240 P.3d 1033, 1040 (2010).

20 The State Foreclosure Statute does not include any express or mandatory notice provision
21 requiring notice to a lender or other lienholder. It is not enough that the State Foreclosure Statute
22 required notice to the homeowner. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-
23 800 (1983) (“Notice to the property owner, who is not in privity with his creditor and who has
24 failed to take steps necessary to preserve his own property interest, also cannot be expected to
25 lead to actual notice to the mortgagee.”). While the State Foreclosure Statute does address notice
26 requirements in four separate provisions, none of those four provisions mandates actual notice to
27 the lender. *See NRS 116.31162; NRS 116.31163; NRS 116.31165; 116.31168.* Instead, each
28 requires the lender to “opt-in” and affirmatively request notice, which is inadequate. *See Small*

1 *Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 890-93 (5th Cir. 1989) (holding an opt-in notice
2 requirement under Louisiana law violated federal due process).

3 Further, recent amendments to the State Foreclosure Statute confirms that it contained an
4 unconstitutional opt-in provision. “[W]hen the [Nevada] Legislature substantially amends a
5 statute, it is ordinarily presumed that the Legislature intended to change the law.” *Pub. Emps.*
6 *Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 156-57, 179 P.3d 542, 554
7 (2008). Here, the Nevada Legislature passed two bills, A.B. 141 and S.B. 306, to amend the
8 notice provisions contained in NRS Chapter 116, thereby confirming that the State Foreclosure
9 Statute required a deed of trust beneficiary to opt in before it was assured of receiving notice. *See*
10 S.B. 306, 78th Leg., 2015 Nev. Stat. 266; A.B. 141, 78th Leg., 2015 Nev. Stat. 304.

11 Most significantly, S.B. 306 amends NRS 116.31163 to categorically require an
12 association to mail its notice of default to any holder of a recorded security interest. The second
13 bill, A.B. 141, focuses solely on notice. It amends NRS 116.31163(2), which governs the mailing
14 of an association’s notice of default. Therefore, the amended statute requires an association to
15 mail its notice of default to any holder of a recorded security interest, regardless of whether the
16 holder of the interest has opted in for such notice.¹⁴

17 Accordingly, on its face, the State Foreclosure Statute violates the Due Process Clause of
18 the Fourteenth Amendment of the United States Constitution, as well as the Due Process Clause
19 of the Nevada Constitution.

20 **H. SFR Was Unjustly Enriched.**

21 Alternatively, if the Court were to quiet title in favor of SFR, then the Court must grant
22 Chase’s claim for unjust enrichment. “The doctrine of unjust enrichment or recovery in quasi
23 contract applies to situations where there is no legal contract but where the person sought to be
24 charged is in possession of money or property which in good conscience and justice he should not
25 retain but should deliver to another [or should pay for].” *Leasepartners Corp. v. Robert L. Brooks*
26 *Trust*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997). Here, Chase paid for property insurance and
27

28 ¹⁴ *See, e.g., Hrg. on S.B. 306 before the S. Comm. on Jud.*, 2015 Leg., 78th Sess., at 6 (Nev. 2015),
available at www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/829.pdf

1 property taxes for the Property from September 2013 through September 2014 in the amount of
2 \$3,772.78. *See* Ex 24. Chase advanced these funds because it thought that the Deed of Trust was
3 a lien against the Property and it wanted to protect its collateral. SFR has benefited unjustly from
4 these payments and should disgorge the benefit. Accordingly, Chase requests judgment on the
5 unjust enrichment claim against SFR in the amount of \$3,772.78.

6 **IV. CONCLUSION**

7 For the reasons set forth above, Chase respectfully requests that the Court: 1) Grant
8 Chase's motion for summary judgment and declare that the Property remains subject to Chase's
9 Deed of Trust, 2) Invalidate the HOA Foreclosure Sale, 3) Quiet title in favor of Chase or 4) In
10 the alternative, grant judgment in Chase's favor in the amount of \$3,772.78 for the unjust
11 enrichment claim.

12 Dated: July 26, 2016

13 By: ____/s/ Holly Priest_____
14 Abran E. Vigil
15 Nevada Bar No. 7548
16 Russell J. Burke
17 Nevada Bar No. 12710
18 Holly Ann Priest
19 Nevada Bar No. 13226
20 BALLARD SPAHR LLP
21 100 North City Parkway, Suite 1750
22 Las Vegas, Nevada 89106-4617
23
24 *Attorneys for Plaintiff and Counter-*
25 *Defendant JPMorgan Chase Bank, N.A.*
26
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of **JPMorgan Chase Bank, N.A.’s Motion for Summary Judgment** was served to the following parties in the manner set forth below:

KIM GILBERT EBRON Howard C. Kim, Esq. Diana S. Cline, Esq. Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 <i>Attorneys for SFR Investments Pool 1, LLC</i>	
---	--

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Pre-Paid

☒ Via the Wiznet E-Service-generated “Service Notification of Filing” upon all counsel set up to receive notice via electronic service in this matter

/s/ Mary Kay Carlton
An employee of BALLARD SPAHR LLP

1 **A. No.**

2 Q. Are there any allonges to the note?

3 **A. Yes.**

4 Q. Just one?

5 **A. One.**

6 Q. Are there any endorsements on the allonge?

7 **A. Not that I'm aware of.**

8 MS. DEMAREE: Just for clarification; are
9 you talking about like another endorsement stamp, or
10 are you talking about the content of the allonges?

11 BY MS. EBRON:

12 Q. Well, what is the content of the allonge?

13 **A. It's payable to JPMorgan Chase.**

14 Q. From?

15 **A. Washington Mutual, I believe.**

16 Q. Is Freddie Mac mentioned anywhere on the
17 note as far as in the endorsements or on the allonge?

18 **A. Not that I'm aware of.**

19 Q. Is there more than one allonge?

20 **A. Not that I'm aware of am.**

21 Q. When Chase became the servicer in September
22 of 2008, did it receive documents from Washington
23 Mutual?

24 **A. Yes.**

25 Q. And were those incorporated into Chase's

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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* * * * *

I, SUSAN LYN NEWBY, deponent herein, do
hereby certify and declare the within and foregoing
transcription to be my deposition in said action;
that I have read, corrected and do hereby affix my
signature to said deposition.

SUSAN LYN NEWBY, Deponent

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Jane V. Efaw, CCR No. 601, do hereby certify:

5 That I reported the taking of the deposition of
6 the witness, SUSAN LYN NEWBY, at the time and place
7 aforesaid;

8 That prior to being examined, the witness was by
9 me duly sworn to testify to the truth, the whole
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand notes
12 into typewriting and that the typewritten transcript
13 of said deposition is a complete, true and accurate
14 transcription of said shorthand notes taken down at
15 said time, and that a request has been made to review
16 the transcript.

17 I further certify that I am not a relative or
18 employee of counsel of any party involved in said
19 action, nor a relative or employee of the parties
20 involved in said action, nor a person financially
21 interested in the action.

22 Dated at Las Vegas, Nevada, this _____ day of
23 _____, 2016.

24

25 _____
Jane V. Efaw, CCR #601

1 Abran E. Vigil
Nevada Bar No. 7548
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8

Attorneys for Plaintiff and Counter-Defendant
9 *JPMorgan Chase Bank N.A.*

10 DISTRICT COURT
CLARK COUNTY, NEVADA

11 JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,)

DEPT NO. XXIV

14 vs.)

15 SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company; DOES 1)
16 through 10, ROE BUSINESS ENTITIES 1)
through 10, inclusive,)

17 Defendants.)

18 SFR INVESTMENTS POOL 1, LLC a)
19 Nevada limited liability company,)

20 Counter-Claimant,)

21 vs.)

22 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
23 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
24 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

25 Counter-Defendant/Cross-)
26 Defendants.)
27
28

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

JPMORGAN CHASE BANK, N.A.'S RESPONSE TO SFR INVESTMENT POOL 1,
LLC'S REQUESTS FOR ADMISSION

TO: Defendant, SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company

TO: Howard C. Kim, Esq., Diana Cline Ebron, Esq., Jacqueline A. Gilbert, Esq., Kim Gilbert Ebron, their attorneys of record:

Pursuant to N.R.C.P. 26 and 36, in response to SFR Investments Pool 1, LLC's ("SFR" or "Defendant") Request for Admissions to JPMorgan Chase Bank, N.A., ("Chase" or "Plaintiff"), Chase states as follows:

PRELIMINARY STATEMENT

Plaintiff's discovery and investigation is ongoing. Plaintiff expressly reserves all of the following rights:

1. The right to conduct further discovery and investigation for information and documents which, if presently known, would have been included in these responses;

2. The right to present, use or rely on at any time, including trial of this action, additional information and documents as may be uncovered through continuing discovery and investigation;

3. The right to raise any objection on any ground, including without limitation authenticity, foundation, relevance, materiality, privilege and admissibility as evidence, to the use for any purpose of any document or information produced in response to any Request herein in any subsequent proceeding or trial in this or any other action;

4. The right to object on any ground at any time to any other discovery involving any documents or information produced in response to any Request herein; and

5. The right to amend, supplement or otherwise modify these responses.

The following responses are based upon information presently available to, and located by, Plaintiff after diligent inquiry and a reasonable search of its business

1 records. Plaintiff has not yet completed its investigation of the facts relating to this
2 case and has not completed preparation for trial. Therefore, the responses given
3 herein are without prejudice to Plaintiff's right to further supplement or amend its
4 responses if appropriate pursuant to the Nevada Rules of Civil Procedure and the
5 Local Rules of Practice for the Eighth Judicial District Court.

6 GENERAL OBJECTIONS

7 The following general objections apply to each Definition, Instruction and
8 Request and shall have the same force and effect as if fully set forth in the specific
9 objection to each of Plaintiff's discovery requests:

10 1. Plaintiff objects to each Request to the extent it seeks a response from
11 any party other than Plaintiff.

12 2. Plaintiff objects to each Request to the extent it imposes or purports to
13 impose obligations greater than those required by the Nevada Rules of Civil
14 Procedure and/or the Local Rules of Practice for the Eighth Judicial District Court.

15 3. Plaintiff objects to each Request to the extent it is overly broad, vague
16 and ambiguous, unduly burdensome, designed to harass or to annoy, or calls for
17 information neither relevant to any issue in the instant litigation nor reasonably
18 calculated to lead to the discovery of admissible evidence.

19 4. Plaintiff objects to each Request to the extent it seeks or purports to
20 seek information protected from disclosure by the attorney-client privilege, the work
21 product doctrine, the common legal interest privilege, the joint defense privilege, or
22 any other applicable privilege, immunity or protection against disclosure.

23 5. Plaintiff objects to each Request to the extent it requires or purports to
24 require Plaintiff: (a) to disclose information outside of its possession, custody or
25 control; (b) to seek information about or from persons not currently employed or
26 associated with Plaintiff; or (c) to provide or seek information regarding third parties.

27 6. Plaintiff objects to each Request to the extent it calls for legal
28 conclusions, contentions and/or legal theories.

1 7. Plaintiff objects to each Request to the extent it seeks information from
2 documents already in the possession, custody or control of, or readily available to
3 Defendant or its counsel, including, but not limited to the documents filed with the
4 Court or already disclosed and/or produced to Defendant.

5 8. Plaintiff objects to each Request to the extent it calls for the production
6 of information readily available through public sources, from sources that are more
7 convenient, less burdensome or less expensive, or from sources that are more readily
8 available to Defendant than Plaintiff.

9 9. Plaintiff objects to each Request to the extent it is internally repetitive,
10 overlapping or duplicative.

11 10. Plaintiff objects to each Request to the extent it seeks to abrogate
12 Plaintiff's right under the Nevada Rules of Civil Procedure to produce documents as
13 they are kept in the usual course of business.

14 11. Plaintiff objects to the disclosure of trade secrets, confidential and/or
15 private information related to loans to which Plaintiff is not a party, and/or
16 confidential research, development, or commercial information that can be
17 discovered, if at all, only through the entry of a protective order.

18 In providing responses and objections to a specific Request, Plaintiff does not
19 in any way waive, but rather preserves: (a) all objections as to competence, relevancy,
20 materiality, and admissibility; (b) all objections as to the vagueness, ambiguity, or
21 other infirmity in the form of any Request and any objections based on the undue
22 burden imposed by any Request; (c) all rights to object on any ground to the use of
23 any of the responses, or their subject matter, in any subsequent proceeding; (d) all
24 rights to object on any ground to any further requests involving or relating to the
25 subject matter of the Request; (e) the right to supplement responses and objections to
26 the Request before the disposition of this litigation; and (f) all privileges and/or rights
27 under the applicable Nevada Rules of Civil Procedure, Nevada Rules of Evidence, the
28 Local Rules of Practice of the Eighth Judicial District Court, statutes or common law.

1 Each response uses the defined terms stated in "SFR Investments Pool 1, LLC
2 Request for Admission to JPMorgan Chase Bank, N.A." with the exception of the
3 definition "Association foreclosure sale," which improperly assumes the sale was a
4 valid public auction, a fact that has yet to be established in this case.

5 RESPONSE TO REQUESTS FOR ADMISSIONS

6 REQUEST NO. 1:

7 Admit that you were aware of the Association's lien on the Property before
8 March 1, 2013.

9 RESPONSE TO REQUEST NO. 1:

10 Objection. Request No. 1 is vague and ambiguous as to the terms "aware" and
11 "Association's Lien," which are not defined and are susceptible to multiple
12 interpretations in the context of this request.

13 Subject to and without waiving any objection, Chase responds as follows:
14 Admit.

15 REQUEST NO. 2:

16 Admit that you were aware of the Association foreclosure sale before
17 March 1, 2013.

18 RESPONSE TO REQUEST NO. 2:

19 Objection. Request No. 2 is vague and ambiguous as to the term "aware,"
20 which is not defined and is susceptible to multiple interpretations in the context of
21 this request.

22 Subject to and without waiving any objection, Chase responds as follows:
23 Admit.

24 REQUEST NO. 3:

25 Admit that you did not attend the Association foreclosure sale on March 1,
26 2013.

27 RESPONSE TO REQUEST NO. 3:

28 Admit.

1 REQUEST NO. 4:

2 Admit that you are the current beneficiary of the First Deed of Trust.

3 RESPONSE TO REQUEST NO. 4:

4 Objection. Request No. 4 is vague and ambiguous as to the term "beneficiary,"
5 which is not defined and is susceptible to multiple interpretations in the context of
6 this request.

7 Subject to and without waiving any objection, Chase states that it is the
8 current beneficiary of record of the First Deed of Trust but the Federal Home Loan
9 Mortgage Corporation owns the First Deed of Trust and the loan at issue.

10 REQUEST NO. 5:

11 Admit that you or your predecessor in interest to the First Deed of Trust
12 received a notice of default from the Association or its agents.

13 RESPONSE TO REQUEST NO. 5:

14 Admit.

15 REQUEST NO. 6:

16 Admit that you have not transferred your interest in the First Deed of Trust
17 to HUD.

18 RESPONSE TO REQUEST NO. 6:

19 Admit.

20 REQUEST NO. 7:

21 Admit that you did not obtain consent from the FHFA to file this lawsuit.

22 RESPONSE TO REQUEST NO. 7:

23 Objection. Request No. 7 is vague and ambiguous as to the term "consent,"
24 which is not defined and is susceptible to multiple interpretations in the context of
25 this request. Request No. 7 also calls for a bare legal conclusion. Chase further
26 objects to Request No. 7 to the extent that it suggests that Chase had any legal
27 obligation to obtain consent. Chase objects to Request No. 7 to the extent it seems or
28 purports to seek information protected by the attorney-client privilege or common

1 legal interest privilege.

2 Subject to and without waiving any objection, Chase responds as follows: Deny

3 REQUEST NO. 8:

4 Admit that you did not obtain consent from Freddie Mac to file this lawsuit.

5 RESPONSE TO REQUEST NO. 8:

6 Objection. Request No. 8 is vague and ambiguous as to the term "consent,"
7 which is not defined and is susceptible to multiple interpretations in the context of
8 this request. Request No. 8 also calls for a bare legal conclusion. Chase further
9 objects to Request No. 8 to the extent that it suggests that Chase had any legal
10 obligation to obtain consent. Chase objects to Request No. 8 to the extent it seems or
11 purports to seek information protected by the attorney-client privilege or common
12 legal interest privilege.

13 Subject to and without waiving any objection, Chase responds as follows: Deny

14 REQUEST NO. 9:

15 Admit that you paid less than the face value of the note for your interest in
16 the First Deed of Trust.

17 RESPONSE TO REQUEST NO. 9:

18 Objection. Request No. 9 seeks information that not relevant to the claims and
19 defenses at issue in this lawsuit. Request No. 9 also improperly assumes facts that
20 have yet to be established to the extent it suggests that an interest in the First Deed
21 of Trust was purchased through a transaction that involved no other purchased
22 interests. Request No. 9 is vague and ambiguous as to the term "face value," which is
23 undefined and is susceptible to multiple interpretations given that the Note provides
24 for the payment of a principal sum, as well as interest. Request No. 9 also seeks
25 information that is confidential and proprietary. Disclosing such information would
26 be unduly burdensome given the needs of this case because it would reveal
27 confidential legal advice or business strategies that would diminish Chase's
28 competitive advantage.

1 Subject to and without waiving any objection, Chase states it cannot answer
2 and therefore denies Request No. 9.

3 REQUEST NO. 10:

4 Admit that you or predecessor in interest to the First Deed of Trust received
5 a notice of sale from the Association or its agents.

6 RESPONSE TO REQUEST NO. 10:

7 Objection. Request No. 10 is overly broad and unduly burdensome as to time
8 and scope. Request No. 10 is also, compound. Request No. 10 calls for Chase to
9 speculate regarding notices received by third parties for which Chase is not
10 responsible.

11 Subject to and without waiving any objection, Chase responds as follows:
12 Admit

13 REQUEST NO. 11:

14 Admit that you did not make any payment to the Association towards the
15 Association's lien on the Property.

16 RESPONSE TO REQUEST NO. 11:

17 Objection. Request No. 11 is vague and ambiguous as to the term
18 "Association's lien," which is susceptible to multiple meanings in the context of this
19 case.

20 Subject to and without waiving any objection, Chase responds as follows:
21 Admit

22 REQUEST NO. 12:

23 Admit that you did not take any steps to ensure the Association received
24 assessments owed by the Borrowers.

25 RESPONSE TO REQUEST NO. 12:

26 Objection. Request No. 12 is overly broad and unduly burdensome as to time
27 and scope. Request No. 12 is also vague and ambiguous as to the term "any steps."
28 Request No. 12 seeks information that is not relevant to the claims and defenses at

1 issue in this lawsuit. Chase further objects to Request No. 12 to the extent it
2 suggests that Chase had any legal obligations or duty to ensure that the Association
3 received assessments owed by the Borrower.

4 Subject to and without waiving any objection, Chase responds as follows:
5 Deny.

6 REQUEST NO. 13:

7 Admit that you did not attempt to contact the Association or its agents to
8 determine the super priority portion of the Association's lien on the Property.

9 RESPONSE TO REQUEST NO. 13:

10 Objection. Request No. 13 is overly broad and unduly burdensome as to time
11 and scope. Request No. 13 is also as to the term "Association's lien," which is
12 susceptible of multiple meanings in the context of this case. Chase further objects to
13 Request No. 13 the extent it suggests that Chase had any legal obligation or duty to
14 contact the Association to determine the super-priority portion of the Association's
15 alleged lien. Chase further objects because Request No. 13 assumes the Association's
16 lien included a "super priority portion."

17 Subject to and without waiving any objection, Chase admits that after a
18 reasonable investigation of its business records, to the best of its knowledge and
19 belief, it has not located any records showing that it contacted the Association or its
20 agents to determine the super-priority portion of the Association's alleged lien on the
21 Property prior to March 1, 2013, the date of the Association's alleged foreclosure sale.
22 Discovery and Chase's investigation are ongoing, and Chase reserves the right to
23 amend this answer.

24 REQUEST NO. 14:

25 Admit that you failed to cure the super priority portion of the Association's
26 lien before the Association foreclosure sale.

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1 RESPONSE TO REQUEST NO. 14:

2 Objection. Request No. 14 assumes that the Association's lien included a
3 "super priority portion," a fact that has yet to be established in this case. Request
4 No. 14 is also vague and ambiguous as to the term "Association's lien," which is
5 susceptible of multiple meanings in the context of this case. Chase further objects to
6 Request No. 14 to the extent it suggests that Chase had any legal obligation or duty
7 to cure.

8 Subject to and without waiving any objection, Chase admits that after a
9 reasonable investigation of its business records, to the best of its knowledge and
10 belief, it has not located any records showing that it paid any part of the Association's
11 purported lien prior to March 1, 2013, the date of the Association's alleged
12 foreclosure sale. Discovery and Chase's investigation are ongoing, and Chase
13 reserves the right to amend this answer.

14 REQUEST NO. 15:

15 Admit that you were aware that the Property was located within the
16 Association and was subject to the Association's declaration of covenants,
17 conditions and restrictions before you obtained an interest in the Property.

18 RESPONSE TO REQUEST NO. 15:

19 Objection. Request No. 15 is compound. Request No. 15 is also vague and
20 ambiguous as to the term "aware," which is not defined and is susceptible to multiple
21 interpretations in the context of this request.

22 Subject to and without waiving any objection, Chase admits that after a
23 reasonable investigation of its business records, to the best of its knowledge and
24 belief, the First Deed of Trust includes a Planned Unit Development Rider.
25 Discovery and Chase's investigation are ongoing, and Chase reserves the right to
26 amend this answer.

27
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1 REQUEST NO. 16:

2 Admit that you were aware that the Borrowers had not paid the Association
3 assessments as required by the Association's declaration of CC&Rs before you
4 obtained an interest in the Property.

5 RESPONSE TO REQUEST NO. 16:

6 Objection. Request No. 16 is overly broad and unduly burdensome as to time
7 and scope. Request No. 16 is also vague and ambiguous as to the terms "aware" and
8 "interest," which are not defined and are susceptible to multiple interpretations in
9 the context of this request. Request No. 16 also assumes that the Borrower did not
10 pay "Association assessments as required by the Association's declaration of CC&Rs
11 before [Chase] obtained an interest in the Property," a fact that has yet to be
12 established in this case.

13 Subject to and without waiving any objection, Chase responds as follows:
14 Deny.

15 REQUEST NO. 17:

16 Admit that you were aware before you took an interest in the Property that
17 your security interest could be extinguished if a lien with a higher priority
18 foreclosed.

19 RESPONSE TO REQUEST NO. 17:

20 Objection. Request No. 17 is vague and ambiguous as to the term "aware,"
21 which is not defined and is susceptible to multiple interpretations in the context of
22 this request. Request No. 17 also calls for a bare legal conclusion.

23 Subject to and without waiving any objection, Chase responds as follows:
24 Deny.

25 REQUEST NO. 18:

26 Admit that a portion of the Association's lien had priority over your First
27 Deed of Trust.

28

1 RESPONSE TO REQUEST NO. 18:

2 Deny.

3 REQUEST NO. 19:

4 Admit that you have servicing guidelines requiring you and your agents to
5 protect your lien priority by paying association liens.

6 RESPONSE TO REQUEST NO. 19:

7 Objection. Request No. 19 is overly broad and unduly burdensome as to time
8 and scope. Request No. 19 is also vague and ambiguous as to the terms "guidelines"
9 and "association liens." Request No. 19 calls for a legal conclusion and does not
10 "relate to statement or opinions of fact or the application of law to fact" as required
11 by N.R.C.P. 36. Request No. 19 also seeks information that is not relevant to the
12 claims and defenses at issue in this lawsuit. Request No. 19 seeks information that
13 is confidential and proprietary. Disclosing such information would be unduly
14 burdensome given the needs of this case because it would reveal confidential legal
15 advice or business strategies that would diminish Chase's competitive advantage.

16 Subject to and without waiving any objection, Chase states it cannot answer
17 and therefore denies Request No. 19.

18 REQUEST NO. 20:

19 Admit that the federal government has no contractual interest in the First
20 Deed of Trust.

21 RESPONSE TO REQUEST NO. 20:

22 Objection. Request No. 20 is also vague and ambiguous as to the term
23 "contractual interest," which is not defined and is susceptible to multiple
24 interpretations in the context of this request.

25 Subject to and without waiving any objection, Chase responds as follows:
26 Deny.

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1 REQUEST NO. 21:

2 Admit that the federal government has no beneficial interest in the First
3 Deed of Trust.

4 RESPONSE TO REQUEST NO. 21:

5 Objection. Request No. 20 is also vague and ambiguous as to the term
6 "beneficial interest," which is not defined and is susceptible to multiple
7 interpretations in the context of this request.

8 Subject to and without waiving any objection, Chase responds as follows:
9 Deny.

10 REQUEST NO. 22:

11 Admit the federal government does not insure the loan secured by the First
12 Deed of Trust.

13 RESPONSE TO REQUEST NO. 22:

14 Admit.

15 DATED this 2 day of May, 2016.

BALLARD SPAHR LLP

By: /s/

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
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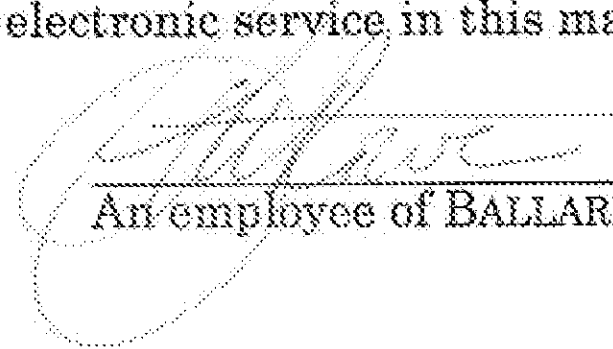
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(702) 471-7000 FAX (702) 471-7070

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of May, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing JPMORGAN CHASE BANK, N.A.'S RESPONSE TO SFR INVESTMENT POOL 1, LLC'S REQUESTS FOR ADMISSION, was served to the parties following in the manner set forth below:

Kim Gilbert Ebron Howard C. Kim, Esq. Diana S. Cline, Esq. Jacqueline A. Gilbert, Esq. 7625 Dean Martin Drive Suite 110 Las Vegas, NV 89139 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP

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Attorneys for JP Morgan Chase Bank N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10, ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Counter-Claimant,

vs.

JP MORGAN CHASE BANK National
Association, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1
DISCLOSURES

1 Plaintiff and Counter-Defendant JPMorgan Chase Bank, N.A. (“Chase”),
2 through Ballard Spahr, LLP, its counsel of record, submits the following second
3 supplement to its initial disclosures pursuant to N.R.C.P. 16.1. (**Bold text** indicates
4 supplemented information.)

5 I. Individuals Likely to Have Discoverable Information

- 6 1. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS**
7 **FOR DEFENDANT SFR INVESTMENTS POOL 1, LLC (“SFR”)**
8 **c/o Kim Gilbert Ebron**
9 **7625 Dean Martin Drive, Suite 110**
10 **Las Vegas, Nevada 89139**
11 **(702) 485-3300**

12 Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records
13 will testify regarding the transaction that is the subject of this litigation;
14 communications and relationships defendant SFR had with Nevada Association
15 Services, Inc. (“NAS”), Pebble Canyon Homeowner Association (the “Association”),
16 and borrowers Robert M. and Christine V. Hawkins; the consideration, if any, paid at
17 the Association sale that is the subject of this litigation; and any other matters
18 related to the claims and defenses in this case.

- 19 2. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS**
20 **FOR CHASE**
21 **1111 Polaris Parkway**
22 **Columbus, Ohio 43240**
23 **Do not contact witness except through undersigned counsel**

24 Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records
25 will testify regarding Chase’s involvement with the subject property; notices
26 related to the subject property; communications with defendant, NAS, the
27 borrowers, and/or the Association, if any; and any other matters related to the
28 claims and defenses in this case.

3. **ROBERT M. HAWKINS**
3263 Morning Springs Drive
Henderson, Nevada 89074

Chase anticipates that Mr. Hawkins will testify regarding his involvement
with the subject property; notices related to the subject property; communications

1 with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any;
2 and any other matters related to the claims and defenses in this case

3 4. CHRISTINE V. HAWKINS
3263 Morning Springs Drive
4 Henderson, Nevada 89074

5 Chase anticipates that Ms. Hawkins will testify regarding her involvement
6 with the subject property; notices related to the subject property; communications
7 with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any;
8 and any other matters related to the claims and defenses in this case.

9 5. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR PEBBLE CANYON HOMEOWNERS ASSOCIATION
10 c/o Taylor Association Management
259 N. Pecos Road, Suite 100
11 Henderson, Nevada 89074

12 Chase anticipates that the Rule 30(b)(6) Designee and the Custodian of
13 Records will testify regarding the Association's involvement with the subject
14 property; the Association's declarations of covenants, conditions and restrictions,
15 bylaws, rules, procedures, policies, patterns, and practices, and understandings
16 related to NRS Chapter 116.3116 et seq. (including, without limitation, the
17 statute's notice and sale provisions); the Association's schedule of assessments,
18 collections, and ledgers related to the subject property; notices related to the
19 subject property; communications and relationships with the subject property's
20 owner and/or residents, SFR, NAS, the Association sale purchaser, and Chase; the
21 basis for the purported Association lien under which the subject property was
22 offered for sale; the basis for purporting to extinguish the first deed of trust; the
23 Association's and/or Board of Directors for the Association's compliance, if any,
24 with the Association's governing documents and Nevada law; and any other
25 matters related to the claims and defenses in this case.

26 6. RULE 30(b)(6) DESIGNEE AND/OR CUSTODIAN OF RECORDS
FOR NAS
27 6244 West Desert Inn Road, Suite A
Las Vegas, Nevada 89146
28 (702) 804-8885

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records, will testify regarding NAS's and the Association's involvement with the subject property; notices related to subject property; the Association sale for the subject property; the Association's declarations of covenants, conditions and restrictions, bylaws, rules, procedures, policies, patterns, and NAS's practices, and understandings related to NRS Chapter 116.3116 et seq. (including, without limitation, the statute's notice and sale provisions); communications and relationships with the subject property's owner and/or residents, SFR, the Association, the Association sale purchaser, and Chase; the declaration of default by the Association, if any; the basis for the purported Association lien under which the subject property was offered for sale; the alleged Association foreclosure sale; the basis for purporting to extinguish the first deed of trust; and any other matters related to the claims and defenses in this case.

7. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS")
PO BOX 2026
Flint, Michigan 48501**

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the assignment of the deed of trust from MERS to Chase and Association foreclosure notices, if any, sent to MERS.

8. **THE AUCTIONEER AND SALE COORDINATOR FOR THE
ASSOCIATION FORECLOSURE SALE
c/o NAS
9500 W. Flamingo Road #101
Las Vegas, Nevada 89147**

It is anticipated that the Association Foreclosure Sale auctioneer and sale coordinator will testify regarding the facts and circumstances of the Association Foreclosure Sale, including, without limitation, any announcements made regarding the Association's lien, the bidding that occurred at the sale, the sale participants, and the purchase price tendered at the sale.

9. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS**

FOR CLARK COUNTY ASSESSOR
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor, the Assessor's valuation methods, and the property's value.

10. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR CLARK COUNTY RECORDER
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor and recorded documents pertaining to the property.

11. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR NEVADA STATE TREASURER
555 E. Washington Ave.
Suite 4600
Las Vegas, Nevada 89101

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the tax records and payments for the property.

Defendant incorporates all persons disclosed by all other parties and all persons identified in any disclosed document.

12. CORPORATE REPRESENTATIVE OF FEDERAL HOME LOAN
MORTGAGE CORPORATION ("FREDDIE MAC")
c/o Russell J. Burke
Ballard Spahr LLP
100 N. City Parkway, Suite 1750
Las Vegas, Nevada 89106

It is anticipated that the Corporate Representative of Freddie Mac will testify regarding its ownership interest in the Deed of Trust and loan.

II. List of Documents¹

	Document	Bates No.
1.	Appraisal Report, dated 02.13.11	Chase-Hawkin0001-0010
2.	Foreclosure Deed, recorded 03.06.13	Chase-Hawkins0011-0013
3.	Association Notice of Default, recorded 09.20.12	Chase-Hawkins0014-0015
4.	HOA Notice of Foreclosure, signed 02.01.13	Chase-Hawkins0016
5.	Assignment of Deed of Trust, recorded 10.27.09	Chase-Hawkins0017-0018
6.	Grant, Bargain and Sale Deed, recorded 06.12.06	Chase-Hawkins0019-0021
7.	Chase Notice of Default, recorded 10.27.09	Chase-Hawkins0022-0023
8.	Deed of Trust, recorded 06.12.06	Chase-Hawkins0024-0044
9.	Substitution of Trustee, recorded 10.27.09	Chase-Hawkins0045-0046
10.	Escrow Activity	Chase-Hawkins0047-50
11.	Corporate Advance Activity	Chase-Hawkins0051-56
12.	FHFA Statement of December 22, 2014	Chase-Hawkins0057-59
13.	FHFA Statement of April 21, 2015	Chase-Hawkins0060
14.	FHFA Statement of August 28, 2015	Chase-Hawkins0061
15.	Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Pebble Canyon Homeowners Association, recorded February 08, 1991	Chase-Hawkins0062-94
16.	Foreclosure Addendum To Residential Lease Agreement	Chase-Hawkins0095
17.	Notice of Default and Election to Sell Under Homeowners Association Lien	Chase-Hawkins0096
18.	Notice of Foreclosure Sale by Pebble Canyon HOA	Chase-Hawkins0100-101
19.	Notice of Default and Election to Sell Under Deed of Trust	Chase-Hawkins0102-103
20.	Loan Policy of Title Insurance	Chase-Hawkins0104-117

¹ Documents may include redactions of sensitive borrower information and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, only after a protective order is entered in the case.

21.	Trustee's Sale Guarantee, dated March 6, 2012	Chase-Hawkins0118-128
22.	Note	Chase-Hawkins 0129-132
23.	Profile Inquiry	Chase-Hawkins0133-0134
24.	Loan Status Manager	Chase-Hawkins0135
25.	Documents verifying Chase's status as servicer	To be supplemented ²
26.	Documents produced by National Association Services, Inc. pursuant to a subpoena duces tecum	HawkinsNAS00001-209
27.	Documents produced by HOA pursuant to a subpoena duces tecum	Chase-Hawkins_PebbleCreekHOA0001-0409
28.	Documents produced by Clark County Assessor pursuant to a subpoena duces tecum	Chase-Hawkins_TaxAssessor0001-0029

Documents may include redactions of the sensitive borrower and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, after a protective order is entered in this case. Chase does not waive any privilege or protection claim, including, without limitation, attorney-client privilege and work-product claims.

III. Computation of Any Category of Damages

In addition to the equitable relief sought in Chase's complaint, Chase seeks damages including, without limitation, reimbursement for all funds and resources Chase expended to preserve and/or maintain the property, including, without limitation, the following:

<i>Date</i>	<i>Amount</i>	<i>Item</i>
09/17/14	\$301.61	County Tax
07/29/14	\$302.37	County Tax
03/24/14	\$1,744.00	Homeowners Insurance
02/18/14	\$292.83	County Tax
12/17/13	\$292.83	County Tax
09/09/13	\$292.83	County Tax

² Documents will be supplemented once a protective order is agreed upon and filed.

07/25/13	\$546.31	County Tax
05/04/13	\$80.00	Yard Maintenance
04/09/13	\$80.00	Yard Maintenance
03/22/13	\$80.00	Yard Maintenance
TOTAL	\$4,012.78	

IV. Insurance Agreements

At this time, Chase is unaware of insurance coverage to satisfy a potential judgment in this case.

V. Reservations

Discovery is ongoing. Chase reserves: (a) its right to supplement any information in this disclosure; (b) all objections to the admissibility of documents and/or witnesses disclosed by any party; and (c) its right to use as evidence any documents and/or witness testimony disclosed by any party or filed in this action.

DATED this 6th day of May, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of May, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1 DISCLOSURES, was served to the following parties in the manner set forth below:

Kim Gilbert Ebron Howard C. Kim, Esq. Diana S. Cline, Esq. Jacqueline A. Gilbert, Esq. 7625 Dean Martin Drive Suite 110 Las Vegas, NV 89139	
---	--

Attorneys for SFR Investments Pool, LLC	
---	--

☐ HAND DELIVERY

☐ E-MAIL TRANSMISSION

☐ U.S. MAIL, POSTAGE PREPAID

☐ Certified Mail, Receipt No. _____,
Return receipt requested

☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Sarah H. Walton
An employee of BALLARD SPAHR LLP

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A A A

<==FUNCTION S/S PROFILE INQUIRY LSC60IK 0109
PAGE 001 OF 013 AS OF: 1603 04/25/16 1457

S/S NUMBER: 877903 STATUS: ACTIVE
S/S NAME: JPMORGAN CHASE BANK, N.A.
S/S ADDRESS: 3415 VISION DRIVE COLUMBUS OH 00000
S/S PHONE: 614 422 2277 POWER OF ATTORNEY: NO

APPROVAL STATES (FORM 100 ENTRY)
AK AL AR AZ CA CO CT DC DE FL GA HI IA ID IL IN KS KY LA MA
MD ME MI MN MO MS MT NC ND NE NH NJ NM NY OH OK OR PA RI
SC SD TN TX UT VA VT WA WI WY WY

SVCG PRD DTL PRD #LOANS #GROUPS \$ VOLUME TOT REQ REQ \$ VOL

FUNCTIONS: F=PAGE FORWARD B=PAGE BACKWARD R=RETURN TO MENU

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A A A

R <==FUNCTION S/S PROFILE INQUIRY LSC60IK 0109
PAGE 001 OF 001 AS OF: 04/25/16 1457

S/S NUMBER: 090803 STATUS: DISCONT
S/S NAME: WASHINGTON MUTUAL MORTGAGE SEC
S/S ADDRESS: 2210 ENTERPRISE DRIVE FLORENCE SC 00000
S/S PHONE: 843 673 4112 POWER OF ATTORNEY: NO

APPROVAL STATES (FORM 100 ENTRY)

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LOAN BASIC INQUIRY (DAU0010S) 04/25/16 1500

F <==FUNCTION PAGE 1 OF 2

LOAN NUMBER	: 6084	SSR LOAN NBR	: 5587
SERVICER NBR	: 877903	ORIG AMT PRIN	: 240,000
SELLER NBR	: 090803	PURCHASE UPB	: 239,585.56
APPROVAL STATE	: NV	INT BRG UPB	: 0.00
FHLMC REGION	: 07	DFRD UPB	: 0.00
PRODUCT	: A01	NOTE RATE	: 06.750
GROUP NBR	: 0870050	PART. PCT.	: 1.00
CONTRACT NBR	: 0609185021	FUNDING DATE (YYMMDD)	: 060927
LOAN DATA TYPE	: S	NOTE DATE (YYMMDD)	: 060607
LOAN TYPE	: 3	MATURITY DATE (YYMMDD)	: 360701
LOAN PROPERTY TYPE	: P1	LOAN ACCTNG NET YIELD	: 06.3250
LOAN STATUS	: 3	PAY OFF DATE (YYMMDD)	: 000000
OWNERSHIP CODE	: W	PAY OFF TYPE	:
REF CODE	:	LTV RATIO	: 0.80
LOAN ORIGINATOR	:	ASSOC FM LOAN NBR	:
APPR ST LIC	:	LN ORIGINATION COMPANY	:
LAST CHG DATE (YYMMDD)	: 160404	SPVR APPR ST LIC	:
		MOD/CONV DATE (YYMMDD)	:

F - PAGE FORWARD R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU
PF4/16 GSE/HMDA

1 Sess-1 172.24.166.229 FMAC2191 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

LOAN BASIC INQUIRY (DAU0010S) 04/25/16 1500

F <==FUNCTION PAGE 2 OF 2

LOAN NUMBER	: 6084		
BORROWER NAME	: ROBERT HAWKINS		
PROPERTY STREET	: 3263 MORNING SPRINGS DRIV		
CITY	: HENDERSON		
STATE	: NV		
ZIP	: 890740000	ORIG COMMITMENT FEE TAX	: 0000000.00
GENSUS TRACT	:	LOAN DATE INTEREST PAID TO:	: 060901
		MONTHLY PRIN AND INT	: 001556.64
INDEX SOURCE	: 000	BALLOON TERM	: 000
INDEX VALUE	: 00.000	DATE BALLOON DUE (YYMMDD)	: 000000
ADJ. PERIOD	: 00	SF MORTGAGE INS CODE	: 000
ADJ. NOTE RATE	: 00.000	GUAR MORTGAGE INS CODE	:
LL SERV FEE	: 00.250	INITIAL ADJ. DATE (YYMMDD)	: 000000
CAP AMOUNT	: 0.0	DISCOUNT	: 00000.00
FLEX MONTHS	: 000	PREMIUM	: 00000.00
FLEX PAYMT DATE (YYMMDD)	: 000000		

R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU
PF4/16 GSE/HMDA

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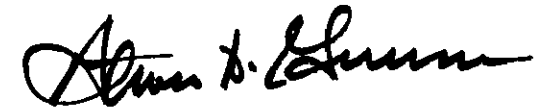
Loan StatusManager
TOS Summary Report

Report generated on Monday, April 25, 2016 at 2:54 pm.

SQL returned 1 rows

Fhlmc Loan Number: ^{REDACTED} 6084							
Date Requested	Status	Status Date	Date Effective	Servicer From	Servicer To	Servicer Family From	Servicer Family To
09/04/2014	APPROVED	09/05/2014	10/16/2014	112491 - JPMORGAN CHASE BANK, N.A.	877903 - JPMORGAN CHASE BANK, N.A.	139867 - JPMORGAN CHASE BANK, N.A.	139867 - JPMORGAN CHASE BANK, N.A.

REDACTED



CLERK OF THE COURT

1 SAO

2 Abran E. Vigil

3 Nevada Bar No. 7548

4 Holly Ann Priest

5 Nevada Bar No. 13226

6 BALLARD SPAHR LLP

7 100 North City Parkway, Suite 1750

8 Las Vegas, Nevada 89106-4617

9 Telephone: (702) 471-7000

10 Facsimile: (702) 471-7070

11 E-Mail: vigila@ballardspahr.com

12 E-Mail: priesth@ballardspahr.com

13 *Attorneys for Plaintiff and Counter-Defendant*
14 *JPMorgan Chase Bank, N.A.*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JPMORGAN CHASE BANK, NATIONAL)
18 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

19 Plaintiff,)

DEPT NO. XXIV

20 vs.)

21 SFR INVESTMENTS POOL 1, LLC, a)
22 Nevada limited liability company)

23 Defendants.)

24 SFR INVESTMENTS POOL 1, LLC a)
25 Nevada limited liability company,)

26 Counter-Claimant,)

27 vs.)

28 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

Counter-Defendant/Cross-)
Defendants.)

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES
(FIRST REQUEST)

1 Pursuant to E.D.C.R. 2.35, defendant SFR Investment Pool 1, LLC ("SFR") and
2 plaintiff JPMorgan Chase Bank, N.A. ("Chase" and together with SFR, the "Parties")
3 hereby submit the following Stipulation and Order to Extend Discovery Deadlines.

4 The parties hereby request an extension of the current plan and schedule as follows:

5 I. Statement of Discovery Completed

6 On June 29, 2015, the Court filed a Scheduling Order, which set the following
7 deadlines:

8 A. Close of discovery: May 2, 2016

9 B. Motions to amend pleadings or add parties: February 2, 2016

10 C. Initial expert disclosures: February 2, 2016

11 D. Rebuttal expert disclosures: March 3, 2016

12 E. Filing of dispositive motions: June 1, 2016

13 The parties have provided initial disclosures of documents and witnesses
14 pursuant to N.R.C.P. 16.1. The parties have served discovery and responded to
15 discovery. Chase designated and served its initial expert disclosure on February 2,
16 2016 and SFR designated its rebuttal expert on March 3, 2016. The deposition of
17 Chase's expert occurred on March 9, 2016. Chase also conducted the depositions of
18 third parties Nevada Association Services, Inc. and Pebble Canyon Homeowners
19 Association. The deposition of Chase occurred on April 21, 2016. The parties
20 previously agreed to extend the dispositive motion deadline until July 1, 2016 to
21 accommodate the deposition of SFR.

22 II. Discovery that Remains to be Completed

23 A. Deposition of Plaintiff

24 B. Supplement initial disclosures

25 III. The Reasons Why Remaining Discovery Was Not Completed

26 The remaining discovery to be completed before dispositive motion practice is
27 the deposition of SFR. On March 11, 2016, Chase noticed the deposition of SFR to
28 occur on May 2, 2016. Based on the agreement of the parties, the deposition of SFR

1 did not go forward to allow SFR sufficient time to file a motion for protective order
2 regarding several topics in the notice. Subsequently, the SFR filed the Motion for
3 Protective Order ("Motion") on April 27, 2016, Chase opposed the Motion on May 16,
4 2016 and SFR filed a Reply on June 7, 2016. The hearing on the Motion occurred on
5 June 13, 2016 and the report and recommendation is due to the Court on June 27,
6 2016. With the hearing of the Motion concluded, the parties request additional time
7 to conduct the deposition of SFR on July 12, 2016 prior to dispositive motions.

8 IV. Proposed Discovery Schedule

9 The parties stipulate and agree to the following proposed new deadlines:

- 10 A. The final date to file dispositive motions shall be extended to July 29,
11 2016.
12 B. Bench trial is set for a five-week trial stack to begin on September 6,
13 2016.

14 Dated: June 20th, 2016

Dated: June 20, 2016

15 KIM GILBERT EBRON

BALLARD SPAHR LLP

17 By: Howard C. Kim
18 Howard C. Kim (NVB 10386)
19 Diana Cline Ebron (NVB 10580)
20 Karen Hanks (NVB 9578)
21 7625 Dean Martin Dr., Suite 110
22 Las Vegas, Nevada 89014

By: Abram E. Vigil
Abram E. Vigil (NVB 7548)
Holly Ann Priest (NVB 13226)
100 North City Pkwy, Ste 1750
Las Vegas, Nevada 89106

23 *Attorneys for Plaintiff SFR*
24 *Investments Pool 1, LLC*

Attorneys for JP Morgan Chase Bank
N.A.

25 Order

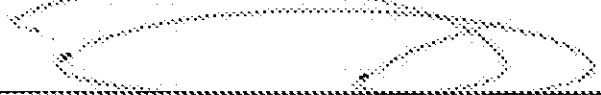
26 IT IS SO ORDERED

27 Dated June 27th, 2016.


DISCOVERY COMMISSIONER

1 Submitted by:

2 BALLARD SPAHR LLP

3 By: 

Abran E. Vigil

4 Holly Ann Priest

100 North City Parkway, Suite 1750

5 Las Vegas, Nevada 89106

6 *Attorneys for Plaintiff and Counter-*

Defendant JPMorgan Chase Bank,

7 *N.A.*

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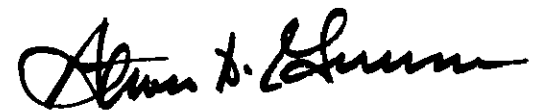
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CLERK OF THE COURT

MSJD

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

E-mail: jackie@kgelegal.com

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

E-mail: diana@kgelegal.com

KAREN L. HANKS, ESQ.

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E-mail: karen@kgelegal.com

KIM GILBERT EBRON

7625 Dean Martin Drive, Suite 110

Las Vegas, NV 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

**SFR INVESTMENTS POOL 1, LLC'S
MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") hereby moves for summary judgment against

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (the "Bank" ¹) pursuant to NRCP

¹ Herein, "the Bank" refers to Chase, any predecessors in interest to the First Deed of Trust, as well as any agents acting on behalf of these entities, including but not limited to servicers, trustees and nominee beneficiaries.

56(c). This Motion is based on the papers and pleadings on file herein, the following points and authorities, the Declaration of Jacqueline A. Gilbert, Esq. (“Gilbert Decl.”), attached hereto as **Exhibit A**, the Declaration of Christopher J. Hardin (“Hardin Decl.”), attached hereto as **Exhibit B**, and such evidence and/or oral argument as may be presented at the time of the hearing on this matter.

DATED this 7th day of July, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for SFR Investments Pool 1, LLC

NOTICE OF HEARING

PLEASE TAKE NOTICE that on 9 day of August, 2016, in Department XXIV of the above-entitled Court, at the hour of 9 : 0 0 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard, the undersigned will bring SFR’s Motion for Summary Judgment before this Court for hearing.

DATED this 7th day of July, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for SFR Investments Pool 1, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from Pebble Canyon Homeowners Association’s (the “Association”) foreclosure of real property commonly referred to as **3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043** (the “Property”). Specifically, on March 1, 2013, the Association held a public auction of the Property (“Foreclosure Sale”) based on unpaid monthly assessments. Despite receiving the notice of default and notice of sale, the Bank did

nothing to protect its interest in the Property. At the foreclosure sale, SFR made the highest bid.

Based on the underlying sale, **the Bank’s first deed of trust was extinguished by the Association’s non-judicial foreclosure sale.** See SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. ___, ___, 334 P.3d 408, 419 (2014). The recitals in the foreclosure deed provide conclusive proof that the Bank was given notice of the sale, which is supported by evidence of receipt by the Bank, and the Bank failed to protect its interest. SFR is entitled to summary judgment on its claims for quiet title and permanent injunction. Specifically, (1) title should be quieted in the name of SFR; (2) the deed of trust purportedly held by the Bank should be permanently removed from title; and (3) the Bank, and anyone acting on its behalf, should be permanently enjoined from any sale or transfer that would affect SFR’s title to the Property.

II. STATEMENT OF UNDISPUTED FACTS

The following contains facts that are undisputed by either party and is supported by documents disclosed by the parties, publicly recorded with the Clark County Recorder’s Office, produced by third-parties via subpoena or provided via deposition testimony:

DATE	FACTS
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
November 8, 1991	Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions & Restrictions (“CC&Rs”) as Instrument No. 01962 in Book 911108. ²
June 12, 2006	Grant, Bargain, Sale Deed recorded in Official Records of the Clark County Recorder as Instrument No. 200606120003525 reflecting ownership of the Property by Robert M. Hawkins and Christine V. Hawkins (“the Hawkinses”). ³
June 12, 2006	First Deed of Trust in favor of GreenPoint Mortgage Funding, Inc. recorded as Instrument No. 200606120003526. ⁴ The lender prepared, and the Hawkinses signed, a Planned Unit Development Rider as part of the First Deed of Trust, recognizing the

² See first and last pages of Association’s Declaration of CC&Rs, attached to Gilbert Decl. as **Exhibit A-1**, at [Chase-Hawkins0062, 0094].

³ See Grant, Bargain, Sale Deed, attached to Gilbert Decl. as **Exhibit A-2**, at [Chase-Hawkins0019-0021].

⁴ See First Deed of Trust, attached to Gilbert Decl. as **Exhibit A-3**, at [Chase-Hawkins0024-0044].

	need to pay assessments to the Association and the ability of the lender to pay the assessments should the Hawkinses default. ⁵
	The First Deed of Trust also included language that allowed the lender to escrow funds for “(a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property.” ⁶
July 1, 2009	The Hawkinses became delinquent on the First Deed of Trust payments. ⁷
October 27, 2009	The Bank recorded a Notice of Default and Election to Sell Under Deed of Trust. ⁸
October 27, 2009	Assignment of Deed of Trust transferring beneficial interest in First Deed of Trust to JPMorgan Chase Bank, recorded as Instrument No. 200910270000618. ⁹
October 27, 2009	Substitution of Trustee substituting MERS to California Reconveyance Company, recorded as Instrument No. 200910270000619. ¹⁰
August 3, 2012	Association recorded Notice of Delinquent Assessment Lien (“NODA”) as Instrument No. 201208030002972. ¹¹ The NODA was thereafter mailed to the Hawkinses. ¹²
September 20, 2012	After more than 30 days elapsed from the date of mailing of the NODA, Association recorded a Notice of Default and Election to Sell Under Homeowners Association Lien (“Notice of Default”) as Instrument No. 201209200001446. ¹³ The Notice of Default was thereafter mailed to numerous parties, including, in pertinent part, the Hawkinses and the Bank (including its agents). ¹⁴

⁵ Id. at [Chase-Hawkins0040-42].

⁶ Id. at [Chase-Hawkins0027].

⁷ See First Deed of Trust Notice of Default, attached to Gilbert Decl. as **Exhibit A-4**, at [Chase-Hawkins0022-0023].

⁸ Id.

⁹ See Assignment of Deed of Trust, attached to Gilbert Decl. as **Exhibit A-5**, at [Chase-Hawkins0017-18]

¹⁰ See Substitution of Trustee, attached to Gilbert Decl. as **Exhibit A-6**, at [Chase-Hawkins0045-0046].

¹¹ See Notice of Delinquent Assessment Lien, attached to Gilbert Decl. as **Exhibit A-7**, at [Chase-Hawkins_NAS0048].

¹² See Proof of Mailings of NODA, attached to Gilbert Decl. as **Exhibit A-8**, at [Chase-Hawkins_NAS00037-54].

¹³ See Notice of Default and Election to Sell Under Homeowners Association Lien, attached to Gilbert Decl. as **Exhibit A-9**, at [Chase-Hawkins0014-0015].

¹⁴ See Proof of Mailings of Notice of Default, attached to Gilbert Decl. as **Exhibit A-10**, at [Chase-Hawkins_NAS00075-116].

	Bank admits to receiving the Notice of Default. ^{15 16}
February 5, 2013	After more than 90 days elapsed from the date of the mailing of the Notice of Default, Association mailed a Notice of Foreclosure Sale ("Notice of Sale") to numerous parties, including, in pertinent part, the Hawkinses and the Bank (including its agents). ¹⁷ Bank admits to receiving the Notice of Sale. ¹⁸
February 5, 2013	The Notice of Sale was posted on the Property in a conspicuous place. ¹⁹ The Notice of Sale was thereafter posted at three public places within Clark County for 20 consecutive days. ²⁰ The Notice of Sale was published in the Nevada Legal News for three consecutive weeks. ²¹
February 7, 2013	Association recorded the Notice of Sale. ²²
February 22, 2013	The Bank recorded a Substitution of Trustee. ²³
March 1, 2013	Association foreclosure sale took place and SFR placed winning bid of \$3,700.00. ²⁴ There were multiple bidders in attendance at the sale. ²⁵ No one acting on behalf of the Bank attended the sale. ²⁶

¹⁵ See Bank's Responses to Requests for Admissions, attached to Gilbert Decl. as **Exhibit A-11**, at No. 5.

¹⁶ See Deposition transcript of the Bank's 30(b)(6) witness Susan Lyn Newby, attached to Gilbert Decl. as **Exhibit A-12**, at [8:16-9:25] and [30:1-19].

¹⁷ See Proof of Mailings of Notice of Sale, attached to Gilbert Decl. as **Exhibit A-13**, at [Chase-Hawkins_NAS00155-162].

¹⁸ See Exhibit A-11, at No. 10.

¹⁹ See Affidavits of Publication and Posting of the Notice of Sale, attached to Gilbert Decl. as **Exhibit A-14** at [Chase-Hawkins_NAS00170, 173].

²⁰ Id. at [Chase-Hawkins_NAS00172].

²¹ Id. at [Chase-Hawkins_NAS00169].

²² See Association Notice of Foreclosure Sale, attached Gilbert Decl. as **Exhibit A-15**, at [Chase-Hawkins0016].

²³ See Substitution of Trustee, attached to Gilbert Decl. as **Exhibit A-16**, at [Chase-Hawkins_NAS00179].

²⁴ See Hardin Decl. attached as **Exhibit B**, at ¶ 11; see also **Exhibits B-1 and B-2**.

²⁵ See Exhibit B, at ¶ 15.

²⁶ See Exhibit A-11, at No. 3; see also Exhibit A-12, at [33:1-3].

March 6, 2013	<p>Association foreclosure deed vesting title in SFR recorded as Instrument No. 201303060001648.²⁷</p> <p>As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.</p> <p>SFR has no reason to doubt the recitals in the Foreclosure Deed.²⁸ If there were any issues with delinquency or noticing, none of these were communicated to SFR.²⁹</p> <p>Further, neither SFR, nor its agent, have any relationship with the Association besides owning property within the community.³⁰</p> <p>Similarly, neither SFR, nor its agent, have any relationship with NAS, the Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties at publically-held auctions conducted by NAS.³¹</p>
Prior to March 1, 2013	<p>The Bank never contacted NAS or the Association prior to the sale.³²</p> <p>The Bank never paid or tried to pay any portion of the Association's lien.³³</p> <p>No release of the superpriority portion of the Association's lien was recorded against the Property.³⁴</p> <p>No lis pendens was recorded against the Property.³⁵</p>
August 23, 2013	A second Assignment of Deed of Trust transferring beneficial interest in First Deed of Trust to JPMorgan Chase Bank, recorded as Instrument No. 201308230002507. ³⁶
November 27, 2013	The Bank filed its Complaint for Declaratory Relief and Quiet Title. ³⁷

²⁷ See Exhibit B-2.

²⁸ See Exhibit B, at ¶ 13.

²⁹ Id., at ¶ 14.

³⁰ Id., at ¶ 16.

³¹ Id., at ¶ 17.

³² Exhibit A-11, at No. 13; see also Exhibit A-12, at [40:3-9].

³³ See Exhibit A-11, at No. 11; see also Exhibit A-12, at [40:10-14].

³⁴ See Exhibit B, at ¶ 18.

³⁵ See Exhibit B, at ¶ 19.

³⁶ See Corporate Assignment of Deed of Trust, attached to Gilbert Decl. as **Exhibit A-17**.

³⁷ See Complaint on file herein.

March 18, 2014	SFR filed its Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief. ³⁸
March 20, 2014	SFR filed its Amended Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief. ³⁹
March 21, 2014	SFR recorded its Notice of Lis Pendens against the Property. ⁴⁰
April 23, 2014	The Hawkinses were dismissed from the action without prejudice. ⁴¹
September 18, 2014	Nevada Supreme Court issues <u>SFR Investments Pool 1, LLC v. U.S. Bank, N.A.</u> , opinion holding that a properly held association foreclosure sale pursuant to NRS 116.31162-116.31168 extinguishes a first deed of trust. ⁴²
May 11, 2015	The Bank recorded a Request for Notice as Instrument No. 20150511000016. ⁴³
March 9, 2016	The Bank filed its Amended Complaint including a cause of action for unjust enrichment. ⁴⁴
March 23, 2016	SFR filed its Answer to Amended Complaint. ⁴⁵
July 1, 2016	SFR has been paying the homeowner's association assessments since it acquired the Property. ⁴⁶

III. LEGAL ARGUMENT

A. Motion for Summary Judgment Standard

Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be

³⁸ See Answer, Counterclaim and Cross-Claim on file herein.

³⁹ See Amended Answer, Counterclaim and Cross-Claim on file herein.

⁴⁰ See SFR's Notice of Lis Pendens, attached to Gilbert Decl. as **Exhibit A-18 [SFR129-131]**.

⁴¹ See Notice of Entry of Stipulation and Order Dismissing Defendants on file herein.

⁴² 334 P.3d 408, 419 (Nev. 2014)

⁴³ See Bank's Request for Notice, attached to Gilbert Decl. as **Exhibit A-19**.

⁴⁴ See Amended Complaint on file herein.

⁴⁵ See Answer to Amended Complaint on file herein.

⁴⁶ See Exhibit 2, at ¶ 20.

1 tried, and the movant is entitled to judgment as a matter of law.” McDonald v. D.P. Alexander
2 & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v.
3 Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party “must, by
4 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
5 trial or have summary judgment entered against [it].” Wood, 121 Nev. at 32, 121 P.3d at 1031.
6 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
7 speculation, and conjecture.” Id. Rather, the non-moving party must demonstrate specific facts as
8 opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d
9 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though
10 inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment,
11 like the Bank, must show that it can produce evidence at trial to support its claim or defense. Van
12 Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

13 **B. SFR is Entitled to Summary Judgment on its Claim for Quiet Title Because**
14 **the Bank’s Deed of Trust was Extinguished by the Association’s Non-Judicial**
15 **Foreclosure Sale.**

16 In Nevada, a homeowners association has a lien for delinquent assessments, a portion of
17 which has priority over a first deed of trust. NRS 116.3116(2); ⁴⁷ SFR, 334 P.3d at 419. Thus, the
18 Association’s lien in this case was prior to both the first deed of trust and second deed of trust.
19 Furthermore, when an association forecloses on its lien for delinquent assessment, the purchaser
20 at the foreclosure sale receives “a deed without warranty which conveys to the grantee all title of
21 the unit’s owner to the unit[.]” NRS 116.31164(3)(a).

22 While the party seeking to quiet title must prove good title in his name,⁴⁸ the following
23 presumptions apply:

24 1. Recorded title is presumed valid. See Breliant, 112 Nev. at 669 (“[T]here is a
25 presumption in favor of the record titleholder.”)

26
27 ⁴⁷ All references to NRS 116 are to the statutes in effect and governing the foreclosure sale in September
28 2013.

⁴⁸ Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d 314, 319 (1996).

2. Foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18) (stating that there are disputable presumptions “that the law has been obeyed”; “that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest”; “that private transactions have been fair and regular”; and “that the ordinary course of business has been followed.”);

3. A foreclosure deed issued pursuant to NRS 116.31164 that “recit[es] compliance with 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.” SFR, 334 P.3d at 411-12 (citing NRS 116.31166(2)).

These presumptions “not only fix[] the burden of going forward with evidence, but it also shifts the burden of proof.” Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) “These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” Id. (citing NRS 47.180.). Here, for the Bank to prevail, it has the burden to prove that it is more probable than not that the Association foreclosure sale and the resulting foreclosure deed conveying title to SFR are invalid. Yet The Bank has not produced any admissible evidence to prove such an allegation that would allow the sale to be set aside.⁴⁹ To overcome the presumption of validity, the Bank must plead and prove a claim for fraud with particularity or allege some unfairness or oppression that is not overshadowed by its own bad acts. Furthermore, the Bank failed to specifically allege such fraud, oppression or unfairness in its pleadings. NRCP 8(a)-(c), 12(b). **Thus, the Bank has waived any right to challenge the sale.**

Further, “[i]f the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is

⁴⁹ See Sections III(E) and III(F) herein.

1 **conclusive** as to a bona fide purchaser.” Moeller v. Lien, 25 Cal.App.4th 822, 831-832, 30
2 Cal.Rptr.2d 777, 783 (1994) (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d
3 ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and
4 Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). This conclusive proof
5 is key because “[t]he conclusive presumption precludes an attack by the trustor on the trustee’s
6 sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of
7 reinstatement by the trustor[,]” and even where “the sale price was only 25 percent of the value
8 of the property...” Moeller, 25 Cal.App.4th at 831-833 (emphasis added). Put simply, where
9 there were no irregularities in the proceedings of the sale, the sale cannot be set aside. Id. at 833.
10 Further, in Nevada, unlike California, the conclusive proof does not require that the purchaser
11 be a bonafide purchaser (“BFP”) to rely on the recitals. See Pro-Max Corp. v. Feenstra, 117
12 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh’g (Jan. 31, 2001) (holding
13 that no limitation of bonafide purchaser can be read into a statute providing a conclusive
14 presumption).⁵⁰ There needs to be finality to a foreclosure sale, so that buyers will attend and
15 bid, without the continued threat of lawsuits challenging their title. There is a sanctity and
16 finality to foreclosure sales where the deed contains the conclusive recitals. Cf. Moeller, 25
17 Cal.App.4th at 833.

18 Here, the Bank has the burden to overcome the conclusive presumption of the
19 foreclosure deed recitals with evidence of fraud, unfairness and oppression. Shadow Wood
20 Homeowners Association, Inc. v. New York Community Bancorp, Inc., 366 P.3d 1105, 1110
21 (Nev. 2016). This is consistent with the Hon. Philip Pro’s holding in Bourne Valley Court
22 Trust v. Wells Fargo Bank, N.A., where he granted summary judgment in favor of a purchaser
23 at an association sale. See Bourne Valley, 80 F.Supp.3d 1131 (D.Nev. 2015). When faced with
24 almost identical recitals as those in this case, the Bourne Valley court recognized the recitals in
25 the foreclosure deed, i.e. “that there was a default, the proper notices were given, the appropriate
26 amount of time ha[d] elapsed . . . and notice of the sale was given,” met the burden of showing
27

28 ⁵⁰ Although, as set forth more fully below, Sec. III(F), SFR is a bonafide purchaser for value.

1 the required notices were sent to the lender. Id. at 1135. The court continued that the lender was
2 then "required to come forward with evidence that a genuine issue of material fact remains for
3 trial as to notice." Id.

4 Here, like the lender in Bourne Valley, the Bank cannot dispute notice because the then-
5 holders of the First Deed of Trust actually received the Notice of Default and Notice of Sale.⁵¹
6 Furthermore, there is no evidence of any procedural irregularities related to the sale that would
7 explain The Bank's failure to pay the lien. Bourne Valley, 30 F.Supp.3d at 1135; see also
8 Moeller, 25 Cal.App.4th at 831-833. Therefore, ". . . no issue of fact remains as to whether the
9 required statutory notices were provided." Bourne Valley, 30 F.Supp.3d at 1135.

10 **C. The Bank, as a Lienholder, is Not Entitled to an Equitable Remedy.**

11 Undoubtedly, the Bank will argue that the Nevada Supreme Court recently found that
12 while the deed recitals contained in NRS 116.31166 are generally conclusive as to those matters
13 asserted, the court may still set aside a defective foreclosure sale on equitable grounds "when
14 appropriate." Shadow Wood, 366 P.3d at 1111. But Shadow Wood is distinguishable from this
15 case in one key aspect: the bank in Shadow Wood was the homeowner of the Property which the
16 Association foreclosed. Id. at 1107. In other words, it was the **homeowner** who challenged the
17 validity of the sale, not a lienholder. A homeowner has a whole bundle of rights that
18 accompany property ownership and, therefore, its property is unique and a homeowner can be
19 entitled to equity. Unlike a homeowner, the Bank simply had a collateral interest in the
20 Property, which gave it the right to foreclose. As such, the Bank's remedy at law, if one exists,
21 is money damages from the persons who harmed it, such as the foreclosing association or
22 trustee. Munger v. Moore, 11 Cal.App.3d 1, 89 Cal.Rptr. 323 (1970).

23 It is well-settled that, in Nevada, district courts lack authority to grant equitable relief
24 when an adequate remedy at law exists. Las Vegas Valley Water Dist. v. Curtis Park Manor
25 Water Users Ass'n, 98 Nev. 275, 277, 646 P.2d 549, 551 (1982). Because the Bank has an
26

27 ⁵¹ See Exhibit A-10 at [Chase-Hawkins_NAS00075-116]; see also Exhibit A-12, at [8:20-21]; [30:14-
28 31:4]; [33:1-3]; [39:13-15]; [39:23-40:9]; [43:20-44:4]; see also Exhibit A-13 at [Chase-
Hawkins_NAS000155-162].

adequate remedy at law, should they be able to prove some irregularity with the sale, equitable relief is not available to the Bank. To the extent the Bank suggests, even by inference, that taking title subject to the first deed of trust is an option, the statute does not provide such an option. Unless the Bank can demonstrate actual fraud, unfairness, or oppression **by the purchaser** at the publically advertised and held auction, the purchaser should not be subject to any acts that would set aside its unencumbered deed.

D. SFR is Entitled to Summary Judgment on its Claim for Quiet Title and Permanent Injunction Because the Non-Judicial Foreclosure Sale Vested Absolute Title in SFR Without Equity or Right of Redemption.

The association foreclosure sale vested title in SFR “without equity or right of redemption,” in other words, absolute title.⁵² SFR, 334 P.3d at 419 (citing NRS 116.31166(3)). As the dissent in SFR explained, “the owner, as well as the first security, will have no right to redeem the property under the majority's holding.” Id. (citing NRS 116.31166(3) and Bldg. Energetix Corp. v. EHE, LP, 129 Nev. ___, ___, 294 P.3d 1228, 1233 (2013) (recognizing that there is no right to redeem after a Chapter 107 non-judicial foreclosure sale because a sale under that chapter ‘vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption’ (quoting NRS 107.080(5)).)

This is consistent with long-standing Nevada non-judicial foreclosure law that “[i]f the sale is properly, lawfully and fairly carried out, [the bank] cannot unilaterally create a right of redemption in [itself].” Golden v. Tomiyasu, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963). Nevada law does not allow the Bank or the Court to create a redemption period to save the

⁵² According to the Nevada Supreme Court,

sales without equity or right of redemption vest the purchaser with absolute title:

[T]he law authorizing the mortgagee to sell is, in our opinion, so thoroughly settled that it cannot now admit of a question. Such being the right of the mortgagee, it follows as a necessary consequence that the purchaser from him obtains an absolute legal title as complete, perfect and indefeasible as can exist or be acquired by purchase; and a sale, upon due notice to the mortgagor, whether at public or private sale, forecloses all equity of redemption as completely as a decree of court.

In re Grant, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (quoting Bryant v. Carson River Lumbering Co., 3 Nev. 313, 317–18 (1867)) (emphasis added).

holder of the first deed of trust from its own failure to protect its interest.

As such, SFR is entitled to a declaration from this Court that the deed of trust was extinguished by the Association foreclosure sale, and SFR should have title quieted in its name.

E. SFR is Entitled to Summary Judgment on its Claim for Quiet Title Because the Foreclosure Sale Was Commercially Reasonable.

In short, SFR is entitled to quiet title because there is no requirement of commercial reasonableness in association non-judicial foreclosure sales conducted pursuant to NRS 116, but even if there was, the price paid by SFR was commercially reasonable. Furthermore, although not alleged by the Bank and thus waived, there is nonetheless no evidence that fraud, oppression or unfairness caused the purportedly “grossly inadequate” price, and price alone is never enough to unwind a sale.

As preliminary matter, NRS §116.31164, §116.31166 or its surrounding provisions contain a requirement that the sale be “commercially reasonable.”⁵³ However, to the extent this Court engages in any analysis of the commercial reasonableness of the foreclosure sale, the following must be considered.

When evaluating the commercial reasonableness of a sale, this Court has been instructed that an allegation of inadequate sales price alone is insufficient to set aside a foreclosure sale: “there must also be a showing of fraud, unfairness, or oppression.” Shadow Wood, 366 P.3d at 1110 (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see also Golden, 79 Nev. at 504, 514, 387 P.2d at 995 (adopting the California rule that “inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee’s sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price**”(internal citations omitted) (emphasis added); see Bourne Valley, 80 F.Supp.3d at 1136. This was recently reaffirmed again by a panel of the Nevada Supreme Court, post Shadow Wood, stating in an unpublished order that “this court’s

⁵³ See Pro-Max, 117 Nev. at 95, 16 P.3d at 1077 (“where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.”)

1 reaffirmation in [Shadow Wood], that a low sales price is not a basis for voiding a foreclosure
2 sale absent ‘fraud, unfairness, or oppression. . . .’ Centeno v. JPMorgan Chase Bank, N.A., Case
3 No. 67365 (Nev. Mar. 18, 2016) (unpublished Order Vacating and Remanding a denial of
4 preliminary injunction based in part on the district court’s determination that, based on price
5 alone, the sale was commercially unreasonable).⁵⁴

6 As will be shown below, not only can SFR show that the sale price itself was
7 commercially reasonable, but there is no evidence of fraud, unfairness or oppression that
8 accounted for or brought about a “grossly inadequate” sales price. Golden, 79 Nev. at 504, 514.

9 *a. The Foreclosure Price was Sufficient.*

10 Any evaluation that does not consider the entirety of a property’s circumstances,
11 including the fact that it was sold at an association non-judicial foreclosure sale, cannot shed
12 light on the proper disposition value of a property.⁵⁵ As the Bourne Valley Court recognized,
13 when assessing commercial reasonableness of an association sale, the material facts affecting the
14 specific market at that time must be considered, including the split in the courts as to the
15 interpretation of NRS 116.3116(2), and whether there was evidence of fraud, oppression or
16 unfairness:

17 The commercial reasonableness here must be assessed as of the time the sale
18 occurred. Wells Fargo’s argument that the HOA foreclosure sale was
19 commercially unreasonable due to the discrepancy between the sale price and the
20 assessed value of the property ignores the practical reality that confronted the
purchaser at the sale. Before the Nevada Supreme Court issued SFR Investments,
purchasing property at an HOA foreclosure sale was a risky investment, akin to

21 ⁵⁴ Available at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>, as Doc. 16-08672.

22 In that case, the price paid at the homeowners association’s auction was \$5,950.00. While the district
23 court did not establish a value for the property, on appeal the Bank argued that that the deed of trust
24 secured a loan for \$160,001.00 and the property later reverted to the Bank at its own auction for
\$145,550.00. (See Case No. 67365, Response to Appellant’s Pro se Appeal Statement, filed Feb. 17,
2016, available at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>, as Doc. 16-
04982. . . .

25 Thus, the price paid at the association’s foreclosure sale in Centeno was approximately 4% of the credit
26 bid by the Bank at its subsequent auction.

27 ⁵⁵ The Bank hired an expert who conducted a retrospective market analysis, and of course the market
28 value was higher than the price paid by the Association. SFR intends to file a Motion to Exclude the
Bank’s expert under NRS 50.275 and Hallmark v. Eldridge, 124 Nev. 492, 189 P.3d 646 (2008), based on
the utter lack of applicability of the expert’s market value appraisal to this forced sale transaction.

1 purchasing a lawsuit. Nevada state trial courts and decisions from the United
2 States District Court for the District of Nevada were divided on the issue of
3 whether HOA liens are true priority liens such that their foreclosure extinguishes
4 the first deed of trust on the property. SFR Investments, 334 P.3d at 412. Thus, a
5 purchaser at an HOA foreclosure sale risked purchasing merely a possessory
6 interest in the property subject to the first deed of trust. This risk is illustrated by
7 the fact that title insurance companies refused to issue title insurance policies on
8 titles received from foreclosures of HOA super priority liens absent a court order
9 quieting title. (Mot. to Remand to State Court (Doc. #6, Decl. of Ron Bloecker.)
10 Given these risks, a large discrepancy between the purchase price a buyer would
11 be willing to pay and the assessed value of the property is to be expected.

12 Bourne Valley, 80 F.Supp.3d at 1136.

13 Likewise, in BFP, the United States Supreme Court was analyzing whether the price
14 received at a mortgage foreclosure sale was less than “reasonably equivalent value” under the
15 bankruptcy code. Similar to the arguments made by the Bank in this case, the Chapter 11 debtor
16 in BFP argued that because the property sold for a fraction of its fair market value, the price paid
17 was not reasonable. The Court held that “a ‘reasonably equivalent value’ for foreclosed real
18 property is the price in fact received at the foreclosure sale, so long as all the requirements of the
19 State’s foreclosure law have been complied with.” BFP v. Resolution Trust Corporation, 511
20 U.S. 531, 545, 114 S.Ct. 1757 (1994). The Court explained that in a forced sale situation, “fair
21 market value cannot—or at least cannot always—be the benchmark[]’ used to determine
22 reasonably equivalent value. Id. at 537. This is so because the market conditions that generally
23 lead to “fair market value” do not exist in the forced sale context, where sales take place with
24 significant restrictions:

25 [M]arket value, as it is commonly understood, has no applicability in the forced-
26 sale context; indeed, it is the very antithesis of forced-sale value. ‘The market
27 value of ... a piece of property is the price which it might be expected to bring if
28 offered for sale in a fair market; not the price which might be obtained on a sale at
public auction or a sale forced by the necessities of the owner, but such a price as
would be fixed by negotiation and mutual agreement, after ample time to find a
purchaser, as between a vendor who is willing (but not compelled) to sell and a
purchaser who desires to buy but is not compelled to take the particular ... piece of
property.’ In short, ‘fair market value’ presumes market conditions that, by
definition, simply do not obtain in the context of a forced sale.

Id. at 537-538, quoting Black's Law Dictionary 971 (6th ed. 1990).

The Court recognized that property sold in a forced-sale context i.e. a foreclosure, “is
simply worth less [because] [n]o one would pay as much to own such property as he would pay

///

1 to own real estate that could be sold at leisure and pursuant to normal marketing techniques.” Id.
2 at 539. As the Court further noted,

3 **Unlike** most other legal restrictions, however, foreclosure has the effect of
4 completely redefining the market in which the property is offered for sale; normal
5 free-market rules of exchange are replaced by the far more restrictive rules
6 governing forced sales. Given this altered reality, and the concomitant inutility of
the normal tool for determining what property is worth (fair market value), the
only legitimate evidence of the property's value at the time it is sold is the
foreclosure-sale price itself.

7 Id. at 548-549 (emphasis in original).⁵⁶

8 In sum, any analysis that does not take into account that this was forced sale cannot
9 accurately depict the value of the property.

10 The evidence shows that SFR was the highest bidder at a publicly held auction with
11 multiple bidders present. See Ex. B. In other words, SFR paid more than any other bidder was
12 willing to pay. As discussed in BFP, a publicly held auction is a method used to sell property at
13 its current value as any person or entity, including the Bank, could have bid more to receive the
14 foreclosure deed to the Property. Although the Bank may be disappointed in the resulting sale
15 price, no other buyer present was willing to pay more based, in part, on the Bank’s reluctance to
16 accept Nevada law.

17 ***b. The Bank Has Not Present Evidence of Fraud, Unfairness or
Oppression that Brought About a Low Sale Price.***

18 Even if this Court finds the sale price to be low, in order for the Court to overturn the sale
19 based on price, the Bank must show that some fraud, oppression or unfairness brought about
20 such “grossly inadequate” price at the sale. As stated above, an allegation of inadequate sales
21 price alone is insufficient to set aside a foreclosure sale; “there must also be a showing of fraud,
22 unfairness, or oppression.” Shadow Wood, 366 P.3d at 1110 (citing Long, 98 Nev. at 13, 639
23 P.2d at 530); see also Golden, 79 Nev. at 504, 514, 387 P.2d at 995 (“inadequacy of price,
24 **however gross**, is not in itself a sufficient ground for setting aside a trustee’s sale legally made;

25 ⁵⁶ Courts have extended the BFP analysis to tax-defaulted sales of real property with adherence to
26 requirements of state law, where such statutes included public noticing or advertising of the sale and
27 competitive bidding or auction procedures. See In re Tracht Gut, LLC, 503 B.R. 804, 815-818 (9th Cir.
28 B.A.P. 2014); T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int’l Ltd. Co, 252
F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, however, the analysis still aptly explains how
market value cannot be compared to a forced sale transaction.

1 there must be in addition proof of some element of fraud, unfairness or oppression **as accounts**
2 **for and brings about the inadequacy of price**” (internal citations omitted) (emphasis added).)
3 Important to note is that the amount of the inadequacy in price cannot, by itself, allow this Court
4 to set aside a trustee sale. Id. Put simply, commercial reasonableness deals with looking at
5 whether there was **conduct in the sale process that led to the low price**, not simply comparing
6 price to value. See Iama Corp. v. Wham, 99 Nev. 730, 735-738, 669 P.2d 1076, 1079 (1983)
7 (must look to the sale process, i.e., “whether proper notice was given, whether the bidding was
8 competitive, and whether the sale was conducted pursuant to . . . normal procedures”) (emphasis
9 added).

10 Here, there are absolutely no allegations of fraud, oppression or unfairness that brought
11 about any inadequacy in price. The Association’s sale was publically noticed, as required by
12 statute; multiple bidders attended the auction; it is undisputed that neither the homeowner nor the
13 Bank paid an amount necessary to cure the lien before the sale. Furthermore, the Association’s
14 compliance with notice is not in question.

15 In sum, viewing the transaction as a whole, the sale was commercially reasonable, and
16 summary judgment should therefore be granted in favor of SFR.

17 **F. Even if there were Irregularities with the Sale, these Cannot be Imputed to**
18 **SFR Because SFR is a Bona Fide Purchaser.**

19 While SFR is a BFP as to this Property, nothing under Nevada law requires a buyer at an
20 NRS 116 sale to be a BFP. Instead, this is merely a defense alleged by SFR in the event the
21 Bank claims a pre-sale dispute or irregularity occurred (which the Bank has failed to do). In
22 other words, Shadow Wood stood for the proposition that if the Bank claims that a pre-sale
23 dispute occurred between it and the Association/Foreclosure Agent, and SFR had no knowledge
24 of this pre-sale dispute, then equity weighs in favor of SFR. “Where the complaining party has
25 access to all the facts surrounding the questioned transaction and merely makes a mistake as to
26 the legal consequences of his act, equity should normally not interfere, especially where the
27 rights of third parties might be prejudiced thereby.” Shadow Wood, 366 P.3d at 1116 (quoting
28 Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (1971).) So,

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case arises from a foreclosure sale under a homeowners association lien.
4 The subject real property is located at 3263 Morning Springs Drive, Henderson, NV
5 89074 (the "Property"). SFR Investments Pool 1, LLC ("SFR") purportedly purchased
6 the Property at a foreclosure sale to satisfy a lien held by Pebble Canyon HOA (the
7 "HOA"). In addition to the HOA's purported lien, the Property was encumbered by a
8 deed of trust owned by Freddie Mac for which Chase was beneficiary of record.
9 Chase filed a complaint against SFR for declaratory relief and quiet title prior to the
10 decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408
11 (2014). SFR claims in its answer that the HOA's foreclosure extinguished that deed
12 of trust pursuant to NRS 116.3116, *et seq.*

13 Since filing the operative complaint in November 2013, Chase has continued to
14 investigate the facts and legal arguments applicable to this case. Chase has
15 determined that additional allegations apply and now moves for leave to amend its
16 complaint to assert new allegations, as set forth in the proposed amended complaint
17 attached as Exhibit A. The Court should grant Chase leave to amend, as the
18 amendment will not result in undue delay or prejudice to SFR and is consistent with
19 Nevada's policy to decide a case on its merits.

20 II. BACKGROUND

21 In June of 2006, Robert and Christine Hawkins (the "Borrowers") obtained a
22 loan and provided the lender with a corresponding Deed of Trust (the "First Deed of
23 Trust"). On or about June 20, 2006, Federal Home Loan Mortgage Corporation
24 ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of
25 both the note and the Deed of Trust. In October 2009, MERS, as nominee for Lender
26 and Lender's successors and assigns, assigned the First Deed of Trust to Chase. On
27 March 06, 2013, Nevada Association Services, Inc. recorded a "Foreclosure Deed"
28

1 that purports to convey—without warranty—the HOA’s interest in the Property to
2 SFR.

3 Pursuant to the discovery plan agreed to by the parties, discovery does not
4 close until May 2, 2016. (*See* Scheduling order, filed June 29, 2015.) Chase likewise
5 submits this motion to amend within the time frame to amend pleadings agreed to by
6 the parties. (*See id.*) Since filing the complaint currently in effect, Chase has
7 continued to investigate the underlying facts of this case and monitor the developing
8 legal theories applicable to homeowners’ association lien cases such as this. In doing
9 so, Chase has uncovered additional allegations that apply to this matter. Since the
10 filing of the complaint, which pre-dated *SFR vs. U.S. Bank*, further defenses and
11 allegations have come to light, due to the fast-developing, hotly-contested, and
12 unsettled nature of homeowners’ association lien litigation. As set forth below,
13 justice dictates that Chase should be permitted to amend.

14 **III. CHASE SHOULD BE GRANTED LEAVE TO AMEND**

15 Under N.R.C.P. 15(a), a party may amend its pleading with leave of court,
16 which “leave shall be freely given when justice so requires.” N.R.C.P. 15(a). “A
17 motion for leave to amend pursuant to N.R.C.P. 15(a) is addressed to the sound
18 discretion of the trial court.” *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828
19 (2000) (internal quotations omitted). In applying Rule 15, courts should construe the
20 standard liberally. *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507
21 P.2d 138, 139 (1973). While a court may deny leave to amend in cases involving
22 undue delay, bad faith, or dilatory motives, when such factors are absent “N.R.C.P.
23 15(a) mandates that leave shall be freely given when justice so requires.” *Adamson*
24 *v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969) (emphasis added).

25 There is no bad faith or dilatory motive in Chase’s request for leave to amend.
26 Since Chase filed its complaint, the theories implicated by lien cases such as this one
27 have developed extensively. State and federal district courts have issued new
28 decisions and orders that continue to shape the claims and defenses of this legal

1 arena. Chase requests to amend its complaint to incorporate this evolving legal
2 landscape is made as a good faith effort to ensure that this case is comprehensively
3 litigated and decided on its merits.

4 For instance, several federal courts have found that, pursuant to federal law,
5 the HOA sale cannot extinguish an interest in property held by the Federal Home
6 Loan Mortgage Corporation ("Freddie Mac"). Freddie Mac owns the note relating to
7 the Property as well as the Deed of Trust securing that loan, while Chase serves as
8 the beneficiary of record of the Deed of Trust and servicer of the loan on behalf of
9 Freddie Mac. On September 6, 2008, the Director of Federal Housing Finance
10 Agency ("FHFA"), authorized by the Housing and Economic Recovery Act of 2008
11 ("HERA"), Pub. L. No. 110-228, 122 Stat. 2654, codified at 12 U.S.C. § 4617 *et seq.*,
12 placed Freddie Mac into conservatorship and appointed FHFA as Conservator. As
13 Conservator, FHFA succeeded by law to "all rights, title, powers, and privileges" of
14 Freddie Mac. Therefore, under 12 U.S.C. § 4617(j)(3), HOA foreclosures of "super-
15 priority" liens cannot extinguish Freddie Mac's lien absent FHFA's consent.¹ FHFA
16 has not consented to the extinguishment of Freddie Mac's interest here.² Therefore,
17 Chase seeks to amend the complaint to ensure that this issue is litigated.

18 Further, the Nevada Supreme Court recently decided a case making the value
19 of the property at the time of the HOA sale a vital issue in these cases. *Shadow*

20 ¹ See *Skylights LLC v. Byron*, No. 2:15-cv-00043-GMN-VCF (D. Nev. June 24, 2015);
21 *Williston Investment Group, LLC v. JP Morgan Chase Bank Nat'l Ass'n*, No. 2:15-cv-02038-
22 GMN-PAL (D. Nev. July 13, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-
23 2123 JCM-CWH (D. Nev. July 28, 2015); *My Global Village, LLC v. Fannie Mae*, No. 2:15-cv-
24 00211-RCJ-NJK (D. Nev. July 27, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No.
25 2:14-cv-2128-GMN-NJK (D. Nev. July 13, 2015); *Elmer v. JP Morgan Chase Bank Nat'l*
Ass'n, No. 2:14-cv-01999-GMN-NJK (D. Nev. July 13, 2015); *Fannie Mae v. SFR Investments*
Pool 1, LLC, No. 2:14-CV0-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015);
Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae, No. 2:14-CV-01975-KJD-NJK,
2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-1186-GMN-
GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015).

26 ² See Statement on HOA Super-Priority Lien Foreclosures,
27 [http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
28 [Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

1 *Wood HOA vs. N.Y Cmty. Bancorp*, 132 Nev. Adv. Op. 5 at 15 (2015). Based on this
2 significant issue, Chase further needs to add allegations to the complaint regarding
3 the adequacy of the sale price at the HOA Sale. Moreover, SFR should have already
4 been on notice of Chase's intent to assert an inadequacy of price argument

5 Chase's proposed amendment will not cause undue delay. SFR was the
6 purchaser at many of similar homeowners association lien foreclosure sales, is
7 involved in dozens of related cases and is undoubtedly familiar with the allegations
8 that Chase seeks to assert. In addition, the allegations involve many of the same
9 factual issues raised by the claims and previously asserted allegations. Given this
10 factual overlap, the parties will be able to complete discovery under the deadlines set
11 forth in the existing scheduling order.

12 Finally, allowing Chase to amend is just. Chase requests leave to amend to
13 assert additional allegations needed to protect its interest in the Property. Moreover,
14 Chase brings this motion within the time agreed to by the parties to amend pleadings
15 and only after conferring with SFR's counsel about the issue. Chase reached out to
16 SFR to seek a stipulation to amend this pleading, but SFR informed Chase that it
17 would be unable to stipulate the proposed Amended Complaint. As such, Chase has
18 no alternative but to move the Court, pursuant to N.R.C.P. 15(a), for leave to amend.

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28

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IV. CONCLUSION

For the foregoing reasons, and pursuant to N.R.C.P. 15, Chase requests the Court grant this motion for leave to file an amended Complaint, attached hereto as Exhibit A.

DATED this 2nd day of February, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke
Abran E. Vigil
Russell J. Burke
Holly Ann Priest
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and Counter-
Defendant JPMorgan Chase Bank N.A.*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2nd day of February, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, was served to the following parties in the manner set forth below:

HOWARD C. KIM
DIANA S. CLINE
JACQUELINE A. GILBERT
Nevada Bar No. 10593
Kim Gilbert Ebran
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Attorneys for SFR Investments Pool, LLC

☐ HAND DELIVERY

☐ E-MAIL TRANSMISSION

☐ U.S. MAIL, POSTAGE PREPAID

☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Sarah H. Walton
An employee of BALLARD SPAHR LLP

EXHIBIT 1

EXHIBIT 1

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9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

11 DISTRICT COURT
CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,)

DEPT NO. XXIV

14 vs.)

15 SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company)

16 Defendants.)

17 SFR INVESTMENTS POOL 1, LLC a)
18 Nevada limited liability company,)

19 Counter-Claimant,)

20 vs.)

21 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
22 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
23 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

24 Counter-Defendant/Cross-)
25 Defendants.)
26)
27)
28)

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complain against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 I.

6 PARTIES, JURISDICTION AND VENUE

7 1. Chase is a national banking association headquartered in Ohio and
8 doing business in Clark County.

9 2. Upon information and belief, SFR is a Nevada limited liability company
10 whose principal place of business in Nevada.

11 3. The real property that is the subject matter of this action is situated in
12 Clark County, Nevada.

13 4. This Court has personal jurisdiction over SFR because SFR is a Nevada
14 limited liability company and because this lawsuit arises out of and is connected with
15 SFR's purposeful purchase of an interest in real property situated in Clark County,
16 Nevada.

17 5. Venue is proper with this district pursuant to NRS 13.010 because the
18 property at issue in this action is located in Clark County.

19 6. Venue is also proper in this district pursuant to NRS 13.040 because
20 SFR resides in this district.

21 II.

22 GENERAL ALLEGATIONS

23 *The Property and the Deed of Trust*

24 7. This action related to the parties' rights in that certain real property
25 commonly described as 3263 Morning Springs Dr., Henderson, Nevada, 89074; APN
26 177-24-514-043 (the "Property"). The Property is legally described as:
27 Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE
28 CANYON, as shown by map thereof on file in Book 53 of
Plats, Page 45, in the Office of the County Recorded of
Clark County, Nevada.

11. On or about June 12, 2006, upon information and belief, the Property was conveyed from Nathan Van Noy to Robert and Christine Hawkins (the "Borrowers").

12. On or about June 12, 2006, a Deed of Trust (the "Deed of Trust") securing a loan in the amount of \$240,000 (the "Hawkins Loan") was recorded as Book and Instrument Number 20060612-0003526 in the Official Records of the Clark County Recorder, showing: the Borrowers as borrowers; GreenPoint Mortgage Funding, Inc. as lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for Lender and Lender's successor and assigns; and Marin Conveyancing Corp. as trustee.

13. On or about June 20, 2006, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of both the note and Deed of Trust. Chase became Freddie Mac's servicer for the Hawkins Loan.

a. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, was governed by Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide"). The Guide serves as a central governing document for Freddie Mac's relationship with servicers nationwide. See Guide at 1.2(a), www.freddiemac.com/singlefamily/guide.

b. The Guide provides that:
For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that *Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.*

Guide at 6.6 (emphasis added), www.freddiemac.com/singlefamily/guide.

c. The Guide also provides that:
The Seller/Servicer is not required to prepare an assignment of the Security

Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac). However, *Freddie Mac may, at its sole discretion and at any time, require a Seller/Service, at the Seller/Service's expense, to prepare execute and/or record assignments of the Security Instrument to Freddie Mac.*

Guide at 22.14 (emphasis added), www.freddiemac.com/singlefamily/guide.

14. On or about July 1, 2009, the Borrowers defaulted under the Hawkins Loan and Deed of Trust.

15. On or about October 27, 2009, an Assignment of Deed of Trust was recorded as Book and Instrument Number 20091027-0000618 in the Official Records of the Clark County Recorder whereby MERS assigned the Deed of Trust to Chase.

The HOA Foreclosure and SFR's Purported Acquisition of the Property

16. Upon information and belief, the Property is subject to a Declaration of Covenants, Conditions, and Restrictions (the "CC&Rs") for Pebble Canyon Homeowners Association ("HOA"). The CC&Rs were recorded in the Official Records of the Clark County Recorder on or about November 8, 1991, as Book and Instrument Number 911108-01962.

17. Upon information and belief, Nevada Association Services, Inc. ("NAS") is the agent of the HOA and acted as the foreclosure trustee and/or agent, which allegedly mailed and served the foreclosure notices, if any.

18. On or about August 3, 2012, a Notice of Delinquent Assessment Lien was recorded by NAS as Book and Instrument Number 20120803-0002972 in the Official Records of the Clark County Recorder. The Notice of Delinquent Assessment Lien states that the "[t]otal amount due as of today's date is \$1,333.00. This amount includes late fees, collection fees and interest in the amount of \$982.00."

19. On or about September 20, 2012, a Notice of Default and Election to Sell Under Homeowners Association Lien was recorded by NAS as Book and Instrument Number 20120920-0001446 in the Official Records of the Clark County Recorder. The Notice of Default and Election to Sell Under Homeowners Association Lien

1 states in part that the allegedly past due "amount is \$2,126.00 as of September 15,
2 2012."

3 20. On or about February 7, 2013, NAS recorded a Notice of Foreclosure
4 Sale as Book and Instrument Number 20130207-0000892 in the Official Records of
5 the Clark County Recorder. The Notice of Sale states that the "[t]otal amount of the
6 unpaid balance of the obligation secured by the property to be sold and reasonable
7 estimated costs, expenses and advances at the time of the initial publication of the
8 Notice of Sale is \$3,142.43."

9 21. On or about March 1, 2013, NAS conducted a foreclosure sale of the
10 Property ("HOA Sale").

11 22. Upon information and belief, SFR bid \$3,700 for the Property at the
12 foreclosure sale.

13 23. Upon information and belief, at the time of the HOA Sale, the fair
14 market value of the Property was approximately \$123,000.

15 24. The amount that SFR paid for the Property was grossly inadequate
16 when compared to the fair market value of the Property at the time of the HOA Sale.

17 24. On or about March 6, 2013, NAS recorded a Foreclosure Deed on the
18 Property as Book and Instrument Number 20130306-0001648 in the Official Records
19 of the Clark County Recorder.

20 26. After the date of the HOA Sale and recordation of the Foreclosure Deed,
21 Chase continued to advance property preservation payments, including but not
22 limited to payment of taxes and homeowners' insurance.

23 27. Neither the Notice of Delinquent Assessment Lien, Notice of Default
24 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale
25 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
26 notice of a right to cure by Plaintiff.

27 28. None of the HOA Assessment Lien and Foreclosure Notices specified
28 what portion, if any, that the HOA claimed constituted a "super-priority."

29. None of the HOA Assessment Lien and Foreclosure Notices specified whether the HOA was foreclosing on the “super-priority” portion of its lien, if any, or under the sub-priority lien.

30. Upon information and belief, Chase did not receive notice of all of the HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

31. The HOA Sale deprived Chase of its right to due process.

32. The HOA is estopped from claiming that the first Deed of Trust was extinguished by the HOA Sale.

33. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs and fees that are specifically enumerated in the statute.

34. A homeowners association may only collect as a part of the super-priority lien (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b) nine months of common assessments which became due prior to the institution of an action to enforce the lien.

35. Upon information and belief, the HOA Assessment Lien and Foreclosure Notices included improper fees and costs in the amount demanded.

36. The attorney’s fees and costs of collecting on a homeowners association lien cannot be included in the super-priority lien amount.

37. Upon information and belief, the HOA Assessment Lien and Foreclosure Notices included fines, interest, late fees, dues, attorney’s fees, and costs of collection that are not properly included in a super-priority lien under Nevada law and that are not permissible under NRS 116.3102 *et seq.*

38. Upon information and belief, the unpaid principle balance under the Hawkins Loan and Deed of Trust is at least \$198,136.50.

39. SFR maintains that it has an interest in the Property.

III.

FIRST CAUSE OF ACTION

(Declaratory Relief)

1 40. Chase repeats and re-alleges the preceding paragraphs as fully set forth
2 herein and incorporates the same by reference.

3 41. Pursuant to NRS 40.010, this Court has the power and authority to
4 declare Chase's rights and interest in the Property.

5 42. The Deed of Trust is a first secured interest on the Property and is
6 superior to the interest, if any, acquired by SFR.

7 43. SFR claims an interest in the Property adverse to the interest of Chase
8 and Freddie Mac.

9 44. SFR did not comply with NRS Chapter 116, including, but not limited
10 to, providing notice of the HOA Sale to Chase. The HOA Sale is void and should be
11 rescinded on that basis.

12 45. The HOA Sale is void and should be rescinded on the basis that it did
13 not provide due process to Chase.

14 46. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
15 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
16 Freddie Mac's interest in the Deed of Trust and preempts any state law to the
17 contrary.

18 47. The amount paid by SFR for the Property is grossly inadequate when
19 compared to the fair market value of the Property at the time of the HOA Sale.

20 48. For all the reasons set forth above in the General Allegations, Chase is
21 entitled to a declaration from this Court, pursuant to NRS 40.010, that a first
22 position Deed of Trust encumbered the Property and Chase's interest is superior to
23 the interest held by SFR, if any, and all other parties.

24 SECOND CAUSE OF ACTION

25 (Quiet Title)

26 49. Chase repeats and re-alleges the preceding paragraphs as though fully
27 set forth herein and incorporates the same by reference.

1 50. Pursuant NRS 40.010, this Court has the power and authority to declare
2 Chase's rights and interests in the Property.

3 51. The Deed of Trust is a first secured interest on the Property and is
4 superior to the interest, if any, acquired by SFR.

5 52. SFR claims an interest in the Property that is adverse to the interest of
6 Chase and Freddie Mac.

7 53. SFR did not comply with NRS Chapter 116, including, but not limited
8 to, providing notice of the HOA Sale.

9 54. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
10 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
11 Freddie Mac's interest in the Deed of Trust and preempts any state law to the
12 contrary.

13 55. For all the reasons set forth above in the General Allegations, Chase is
14 entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust
15 encumbered the Property and is superior to the interest held by SFR, if any, and all
16 other parties. Chase has furthermore been required to retain counsel and is entitled
17 to recover reasonable attorney's fees and costs.

18 THIRD CAUSE OF ACTION

19 (Unjust enrichment)

20 56. Chase repeats and re-alleges the preceding paragraphs as though fully
21 set forth herein and incorporate the same by reference.

22 57. The HOA Sale unjustly enriched SFR, in that it obtained real property
23 secured by the Deed of Trust with a grossly inadequate purchase price of \$3,700 to
24 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
25 and fair dealing.

26 58. If it is determined that the Deed of Trust has been extinguished by the
27 HOA Sale, SFR has been unjustly enriched, in that Chase (as servicer) has continued
28 to expend funds and resources to maintain and preserve the Property, including but

1 not limited to funds for taxes and insurance to the detriment of Chase, and contrary
2 to fundamental principles of fairness, justice, and fair dealing.

3 59. Chase is entitled to recoup the reasonable amount of benefits obtained
4 by SFR based on the theory of unjust enrichment.

5 60. Chase has furthermore been required to retain counsel and is entitled to
6 recover reasonable attorney's fees and costs.

7 IV.

8 PRAYER

9 Wherefore, Chase prays for judgment against SFR, as follows:

- 10 1. For a declaration and determination that the first position Deed of Trust
11 was not extinguished by the HOA sale.
- 12 2. For a declaration and determination that the HOA sale did not convey
13 the Property free and clear to SFR;
- 14 3. For a declaration and determination that Chase's interest is superior to
15 the interest of SFR;
- 16 4. For a preliminary and permanent injunction that SFR, its successors,
17 assigns, and agents are prohibited from conducting any sale, transfer or
18 encumbrance of the Property;
- 19 5. For a preliminary injunction that SFR, its successors and assigns, be
20 required to pay all taxes, insurance and homeowners association dues
21 during the pendency of this action;
- 22 6. For a preliminary and permanent injunction that SFR, its successors
23 and assigns, pay all taxes, insurance and homeowners association dues
24 during the pendency of this action;
- 25 7. If it is determined that the Deed of Trust has been extinguished by the
26 HOA sale, for special damages in the amount of the fair market value of
27 the Property or the unpaid balance of the Loan and Deed of Trust, at the
28 time of the HOA sale, whichever is greater;

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8. For all fees and costs of court incurred herein, including post-judgment costs; and

9. For any and all further relief deemed appropriate by this Court.

DATED this _____ day of _____, 2016.

BALLARD SPAHR LLP

By: _____
Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

Attorneys for Plaintiff and Counter-Defendant JPMorgan Chase Bank N.A.

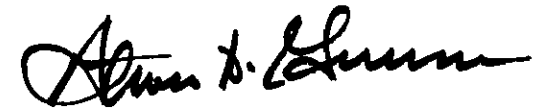
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the ____ day of ____, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Complaint, was served to the following parties in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

An employee of BALLARD SPAHR LLP



CLERK OF THE COURT

1 **ORDR**
Abran E. Vigil
2 Nevada Bar No. 7548
Russell J. Burke
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BALLARD SPAHR LLP
5 100 North City Parkway, Suite 1750
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8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
JPMorgan Chase Bank N.A.

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

12 **JPMORGAN CHASE BANK, NATIONAL**
ASSOCIATION, a national association,

13
14 **Plaintiff,**

15 **vs.**

16 **SFR INVESTMENTS POOL 1, LLC, a**
17 **Nevada limited liability company; DOES 1**
18 **through 10, ROE BUSINESS ENTITIES 1**
19 **through 10, inclusive,**

20 **Defendants.**

21 **SFR INVESTMENTS POOL 1, LLC a**
22 **Nevada limited liability company,**

23 **Counter-Claimant,**

24 **vs.**

25 **JPMORGAN CHASE BANK NATIONAL**
26 **ASSOCIATION, a national association;**
27 **ROBERT M. HAWKINS, an individual;**
28 **CHRISTINE V. HAWKINS, an individual;**
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross-
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

ORDER GRANTING MOTION FOR LEAVE TO AMEND THE COMPLAINT

This matter came before the Court on the unopposed Motion For leave to Amend the Complaint filed by Plaintiff JPMorgan Chase Bank N.A. ("Chase") in Department 24 of the Eighth Judicial District Court of Clark County, Nevada. SFR Investment Pool 1, LLC ("Defendant") was duly served with the Motion, Defendant failed to file a written opposition, which pursuant to EDCR 2.20(c) serves as independent grounds to grant the Motion.

Having reviewed the Motion, the memorandum of points and authorities and good cause appearing therefrom,

IT IS HEREBY ORDERED that Chase's Motion for Leave to Amend the Complaint is GRANTED.

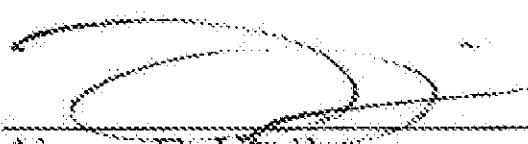
IT IS FURTHER ORDERED Chase may file the Amended Complaint, which was attached as Exhibit 1 to the Motion for Leave to Amend Complaint, within 10 days of the Notice Entry of this order.

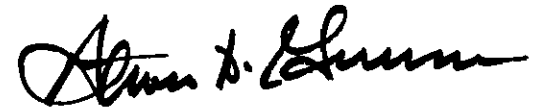
IT IS SO ORDERED.


District Court Judge
Dated: 3/8/16

Respectfully Submitted:

BALLARD SPAHR LLP

By: 
Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
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Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and
Counter-Defendant JPMorgan Chase Bank, N.A.*



CLERK OF THE COURT

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9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,

DEPT NO. XXIV

14 vs.

15 SFR INVESTMENTS POOL 1, LLC, a)
16 Nevada limited liability company)

Defendants.

17 SFR INVESTMENTS POOL 1, LLC a)
18 Nevada limited liability company,)

19 Counter-Claimant,

20 vs.

21 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
22 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
23 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

24 Counter-Defendant/Cross-)
25 Defendants.)
26)
27)
28)

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complain against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 I.

6 PARTIES, JURISDICTION AND VENUE

7 1. Chase is a national banking association headquartered in Ohio and
8 doing business in Clark County.

9 2. Upon information and belief, SFR is a Nevada limited liability company
10 whose principal place of business in Nevada.

11 3. The real property that is the subject matter of this action is situated in
12 Clark County, Nevada.

13 4. This Court has personal jurisdiction over SFR because SFR is a Nevada
14 limited liability company and because this lawsuit arises out of and is connected with
15 SFR's purposeful purchase of an interest in real property situated in Clark County,
16 Nevada.

17 5. Venue is proper with this district pursuant to NRS 13.010 because the
18 property at issue in this action is located in Clark County.

19 6. Venue is also proper in this district pursuant to NRS 13.040 because
20 SFR resides in this district.

21 II.

22 GENERAL ALLEGATIONS

23 *The Property and the Deed of Trust*

24 7. This action related to the parties' rights in that certain real property
25 commonly described as 3263 Morning Springs Dr., Henderson, Nevada, 89074; APN
26 177-24-514-043 (the "Property"). The Property is legally described as:
27 Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE
28 CANYON, as shown by map thereof on file in Book 53 of
Plats, Page 45, in the Office of the County Recorded of
Clark County, Nevada.

11. On or about June 12, 2006, upon information and belief, the Property was conveyed from Nathan Van Noy to Robert and Christine Hawkins (the "Borrowers").

12. On or about June 12, 2006, a Deed of Trust (the "Deed of Trust") securing a loan in the amount of \$240,000 (the "Hawkins Loan") was recorded as Book and Instrument Number 20060612-0003526 in the Official Records of the Clark County Recorder, showing: the Borrowers as borrowers; GreenPoint Mortgage Funding, Inc. as lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for Lender and Lender's successor and assigns; and Marin Conveyancing Corp. as trustee.

13. On or about June 20, 2006, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of both the note and Deed of Trust. Chase became Freddie Mac's servicer for the Hawkins Loan.

a. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, was governed by Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide"). The Guide serves as a central governing document for Freddie Mac's relationship with servicers nationwide. See Guide at 1.2(a), www.freddiemac.com/singlefamily/guide.

b. The Guide provides that:
For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that *Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.*

Guide at 6.6 (emphasis added), www.freddiemac.com/singlefamily/guide.

c. The Guide also provides that:
The Seller/Servicer is not required to prepare an assignment of the Security

1 Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac).
2 However, *Freddie Mac may, at its sole discretion and at any time, require a*
3 *Seller/Servicer, at the Seller/Servicer's expense, to prepare execute and/or record*
4 *assignments of the Security Instrument to Freddie Mac.*

5 Guide at 22.14 (emphasis added), www.freddiemac.com/singlefamily/guide.

6 14. On or about July 1, 2009, the Borrowers defaulted under the Hawkins
7 Loan and Deed of Trust.

8 15. On or about October 27, 2009, an Assignment of Deed of Trust was
9 recorded as Book and Instrument Number 20091027-0000618 in the Official Records
10 of the Clark County Recorder whereby MERS assigned the Deed of Trust to Chase.

11 ***The HOA Foreclosure and SFR's Purported Acquisition of the Property***

12 16. Upon information and belief, the Property is subject to a Declaration of
13 Covenants, Conditions, and Restrictions (the "CC&Rs") for Pebble Canyon
14 Homeowners Association ("HOA"). The CC&Rs were recorded in the Official Records
15 of the Clark County Recorder on or about November 8, 1991, as Book and Instrument
16 Number 911108-01962.

17 17. Upon information and belief, Nevada Association Services, Inc. ("NAS")
18 is the agent of the HOA and acted as the foreclosure trustee and/or agent, which
19 allegedly mailed and served the foreclosure notices, if any.

20 18. On or about August 3, 2012, a Notice of Delinquent Assessment Lien
21 was recorded by NAS as Book and Instrument Number 20120803-0002972 in the
22 Official Records of the Clark County Recorder. The Notice of Delinquent Assessment
23 Lien states that the "[t]otal amount due as of today's date is \$1,333.00. This amount
24 includes late fees, collection fees and interest in the amount of \$982.00."

25 19. On or about September 20, 2012, a Notice of Default and Election to Sell
26 Under Homeowners Association Lien was recorded by NAS as Book and Instrument
27 Number 20120920-0001446 in the Official Records of the Clark County Recorder.
28 The Notice of Default and Election to Sell Under Homeowners Association Lien

1 states in part that the allegedly past due "amount is \$2,126.00 as of September 15,
2 2012."

3 20. On or about February 7, 2013, NAS recorded a Notice of Foreclosure
4 Sale as Book and Instrument Number 20130207-0000892 in the Official Records of
5 the Clark County Recorder. The Notice of Sale states that the "[t]otal amount of the
6 unpaid balance of the obligation secured by the property to be sold and reasonable
7 estimated costs, expenses and advances at the time of the initial publication of the
8 Notice of Sale is \$3,142.43."

9 21. On or about March 1, 2013, NAS conducted a foreclosure sale of the
10 Property ("HOA Sale").

11 22. Upon information and belief, SFR bid \$3,700 for the Property at the
12 foreclosure sale.

13 23. Upon information and belief, at the time of the HOA Sale, the fair
14 market value of the Property was approximately \$123,000.

15 24. The amount that SFR paid for the Property was grossly inadequate
16 when compared to the fair market value of the Property at the time of the HOA Sale.

17 24. On or about March 6, 2013, NAS recorded a Foreclosure Deed on the
18 Property as Book and Instrument Number 20130306-0001648 in the Official Records
19 of the Clark County Recorder.

20 26. After the date of the HOA Sale and recordation of the Foreclosure Deed,
21 Chase continued to advance property preservation payments, including but not
22 limited to payment of taxes and homeowners' insurance.

23 27. Neither the Notice of Delinquent Assessment Lien, Notice of Default
24 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale
25 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
26 notice of a right to cure by Plaintiff.

27 28. None of the HOA Assessment Lien and Foreclosure Notices specified
28 what portion, if any, that the HOA claimed constituted a "super-priority."

1 29. None of the HOA Assessment Lien and Foreclosure Notices specified
2 whether the HOA was foreclosing on the "super-priority" portion of its lien, if any, or
3 under the sub-priority lien.

4 30. Upon information and belief, Chase did not receive notice of all of the
5 HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

6 31. The HOA Sale deprived Chase of its right to due process.

7 32. The HOA is estopped from claiming that the first Deed of Trust was
8 extinguished by the HOA Sale.

9 33. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include
10 costs and fees that are specifically enumerated in the statute.

11 34. A homeowners association may only collect as a part of the super-
12 priority lien (a) nuisance abatement charges incurred by the association pursuant to
13 NRS 116.310312 and (b) nine months of common assessments which became due
14 prior to the institution of an action to enforce the lien.

15 35. Upon information and belief, the HOA Assessment Lien and Foreclosure
16 Notices included improper fees and costs in the amount demanded.

17 36. The attorney's fees and costs of collecting on a homeowners association
18 lien cannot be included in the super-priority lien amount.

19 37. Upon information and belief, the HOA Assessment Lien and Foreclosure
20 Notices included fines, interest, late fees, dues, attorney's fees, and costs of collection
21 that are not properly included in a super-priority lien under Nevada law and that are
22 not permissible under NRS 116.3102 *et seq.*

23 38. Upon information and belief, the unpaid principle balance under the
24 Hawkins Loan and Deed of Trust is at least \$198,136.50.

25 39. SFR maintains that it has an interest in the Property.
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III.

FIRST CAUSE OF ACTION

(Declaratory Relief)

40. Chase repeats and re-alleges the preceding paragraphs as fully set forth herein and incorporates the same by reference.

41. Pursuant to NRS 40.010, this Court has the power and authority to declare Chase's rights and interest in the Property.

42. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

43. SFR claims an interest in the Property adverse to the interest of Chase and Freddie Mac.

44. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale to Chase. The HOA Sale is void and should be rescinded on that basis.

45. The HOA Sale is void and should be rescinded on the basis that it did not provide due process to Chase.

46. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

47. The amount paid by SFR for the Property is grossly inadequate when compared to the fair market value of the Property at the time of the HOA Sale.

48. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant to NRS 40.010, that a first position Deed of Trust encumbered the Property and Chase's interest is superior to the interest held by SFR, if any, and all other parties.

SECOND CAUSE OF ACTION

(Quiet Title)

49. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

50. Pursuant NRS 40.010, this Court has the power and authority to declare Chase's rights and interests in the Property.

51. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

52. SFR claims an interest in the Property that is adverse to the interest of Chase and Freddie Mac.

53. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale.

54. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

55. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust encumbered the Property and is superior to the interest held by SFR, if any, and all other parties. Chase has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

(Unjust enrichment)

56. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporate the same by reference.

57. The HOA Sale unjustly enriched SFR, in that it obtained real property secured by the Deed of Trust with a grossly inadequate purchase price of \$3,700 to

1 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
2 and fair dealing.

3 58. If it is determined that the Deed of Trust has been extinguished by the
4 HOA Sale, SFR has been unjustly enriched, in that Chase (as servicer) has continued
5 to expend funds and resources to maintain and preserve the Property, including but
6 not limited to funds for taxes and insurance to the detriment of Chase, and contrary
7 to fundamental principles of fairness, justice, and fair dealing.

8 59. Chase is entitled to recoup the reasonable amount of benefits obtained
9 by SFR based on the theory of unjust enrichment.

10 60. Chase has furthermore been required to retain counsel and is entitled to
11 recover reasonable attorney's fees and costs.

12 IV.

13 PRAYER

14 Wherefore, Chase prays for judgment against SFR, as follows:

- 15 1. For a declaration and determination that the first position Deed of Trust
16 was not extinguished by the HOA sale.
- 17 2. For a declaration and determination that the HOA sale did not convey
18 the Property free and clear to SFR;
- 19 3. For a declaration and determination that Chase's interest is superior to
20 the interest of SFR;
- 21 4. For a preliminary and permanent injunction that SFR, its successors,
22 assigns, and agents are prohibited from conducting any sale, transfer or
23 encumbrance of the Property;
- 24 5. For a preliminary injunction that SFR, its successors and assigns, be
25 required to pay all taxes, insurance and homeowners association dues
26 during the pendency of this action;
- 27 6. For a preliminary and permanent injunction that SFR, its successors
28 and assigns, pay all taxes, insurance and homeowners association dues

during the pendency of this action;

7. If it is determined that the Deed of Trust has been extinguished by the HOA sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Loan and Deed of Trust, at the time of the HOA sale, whichever is greater;

8. For all fees and costs of court incurred herein, including post-judgment costs; and

9. For any and all further relief deemed appropriate by this Court.

DATED this 8 day of March, 2016.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
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100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

*Attorneys for Plaintiff and Counter-
Defendant JPMorgan Chase Bank N.A.*

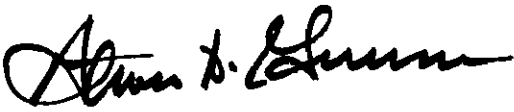
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9th day of March, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Complaint, was served to the following parties in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP


CLERK OF THE COURT

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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

**SFR INVESTMENTS POOL 1, LLC'S
ANSWER TO AMENDED COMPLAINT**

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR" or "Defendant"), hereby files an
answer to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase") Amended
Complaint as follows:

I. PARTIES, JURISDICTION, AND VENUE

1
2 1. Upon information and belief, SFR admits the factual allegations contained in paragraph
3 1 of the Amended Complaint.

4 2. Answering paragraph 2 of the Amended Complaint, SFR admits that it is a limited
5 liability company organized under the laws of the State of Nevada and that its principal place of
6 business is in Nevada.

7 3. Answering paragraph 3 of the Amended Complaint, SFR admits that the subject matter
8 of Chase's Amended Complaint is real property situated in Clark County, Nevada.

9 4. The allegations in paragraphs 4, 5, and 6 concerning jurisdiction and venue call for a
10 legal conclusion to which no response is required.

II. GENERAL ALLEGATIONS

11
12 5. Answering paragraph 7 of the Amended Complaint, SFR admits that the subject matter of
13 Chase's Amended Complaint is real property situated in Clark County, Nevada, commonly
14 known as **3263 Morning Springs Drive, Henderson, NV 89074, APN 177-24-514-043**; and
15 legally described as: "Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE CANYON, as
16 shown by map thereof on file in Book 53 of Plats, Page 45, in the Office of the County Recorder
17 of Clark County, Nevada."

18 6. In answering paragraph 11 [sic], upon information and belief, SFR admits that on or
19 about June 12, 2006, Nathan VanNoy conveyed the Property to Robert and Christine Hawkins
20 ("the Hawkinses") via a Grant, Bargain, Sale Deed.

21 7. The recorded Deed of Trust referenced in paragraph 12 of the amended Complaint
22 speaks for itself, and SFR denies any allegations inconsistent with said document. To the extent
23 paragraph 12 alleges that the Hawkinses were the title owners of record of the Property at times
24 prior to the Association foreclosure sale, SFR, upon information and belief, admits the
25 allegations in paragraph 12.

26 8. SFR is without sufficient knowledge or information to form a belief as to the truth of the
27 factual allegation concerning Freddie Mac's acquiring ownership of the note and deed of trust
28

1 contained in paragraph 13 of the Amended Complaint, and therefore denies said allegations.
2 The Freddy Mac "Guide" referenced in paragraph 13 speaks for itself, and SFR denies any
3 allegations inconsistent with said document.

4 9. SFR is without sufficient knowledge or information to form a belief as to the truth of the
5 factual allegations contained in paragraph 14 of the Amended Complaint, and therefore denies
6 said allegations.

7 10. The recorded Assignment of Deed of Trust referenced in paragraph 15 of the Amended
8 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

9 **The HOA Foreclosure and SFR's Purported Acquisition of the Property**

10 11. The recorded CC&Rs document referenced in paragraph 16 of the Complaint speaks for
11 itself, and SFR denies any allegations inconsistent with said document.

12 12. The allegations contained in paragraph 17 of the Amended Complaint call for a legal
13 conclusion, therefore, no answer is required. To the extent an answer is required, upon
14 information and belief, SFR admits the factual allegations contained in paragraph 17 of the
15 Amended Complaint.

16 13. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 18 of the
17 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
18 document.

19 14. The recorded Notice of Default and Election to Sell referenced in paragraph 19 of the
20 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
21 document.

22 15. The recorded Notice of Foreclosure Sale referenced in paragraph 20 of the Amended
23 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

24 16. SFR admits the factual allegations contained in paragraph 21 of the Amended
25 Complaint.

26 17. In answering paragraph 22, SFR admits a non-judicial publicly-held HOA foreclosure
27 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
28 purchased the Property for \$3,700.00.

1 18. The allegation in paragraph 23 of the Amended Complaint calls for a legal conclusion to
2 which no response is required. To the extent a response is required, SFR specifically denies the
3 fair market value of the Property at the time of the HOA sale on March 1, 2013 exceeded
4 \$123,000.00.

5 19. The allegations in paragraph 24 of the Amended Complaint calls for a legal conclusion
6 to which no response is required. To the extent a response is required, SFR denies the amount it
7 paid for the Property was grossly inadequate when compared to the fair market value of the
8 Property at the time of the HOA Sale on March 1, 2013.

9 20. The recorded Foreclosure Deed referenced in paragraph 24 [sic] of the Amended
10 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

11 21. The allegations in paragraph 26 [sic] of the Amended Complaint calls for a legal
12 conclusion to which no response is required. Further, SFR is without sufficient knowledge or
13 information to form a belief as to the truth of the factual allegations concerning “property
14 preservation payments” made by the Bank contained in paragraph 26 [sic] of the Amended
15 Complaint, and therefore denies said allegations.

16 22. The allegations in paragraphs 27, 28, and 29 of the Amended Complaint calls for a legal
17 conclusion to which no response is required.

18 23. The allegations in paragraph 30 of the Amended Complaint calls for a legal conclusion
19 to which no response is required. Further, SFR is without sufficient knowledge or information to
20 form a belief as to the truth of the factual allegations concerning “notices” Chase may or may
21 not have received prior to the HOA Sale, and therefore denies said allegations.

22 24. The allegations in paragraphs 31 and 32 of the Amended Complaint calls for a legal
23 conclusion to which no response is required.

24 25. The statutes referenced in paragraphs 33, 34, and 37 of the Amended Complaint speak
25 for themselves, and SFR denies any allegations inconsistent with said statutes.

26 26. The allegations in paragraphs 35 and 36 of the Amended Complaint calls for a legal
27 conclusion to which no response is required.

28 27. SFR is without sufficient knowledge or information to form a belief as to the truth of the

1 factual allegations contained in paragraph 38 of the Amended Complaint regarding the Bank's
2 interactions with the Hawkinses and the amount owed on their loan, and therefore denies said
3 allegations.

4 28. In answering paragraph 39, SFR admits a non-judicial publicly-held HOA foreclosure
5 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
6 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
7 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
8 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
9 March 1, 2013.

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Relief)**

12 29. SFR repeats and realleges its answers to paragraphs 1 through 39 of the Amended
13 Complaint as though fully set forth herein.

14 30. The allegations in paragraph 41 of the Amended Complaint calls for a legal conclusion
15 to which no response is required.

16 31. The allegation in paragraph 42 of the Amended Complaint calls for a legal conclusion to
17 which no response is required. To the extent a response is required, SFR specifically denies the
18 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
19 Trust is superior to SFR's ownership interest in the Property.

20 32. In answering paragraph 43, SFR admits a non-judicial publicly-held HOA foreclosure
21 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
22 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
23 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
24 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
25 March 1, 2013.

26 33. The allegation in paragraph 44 of the Amended Complaint calls for a legal conclusion to
27 which no response is required. To the extent a response is required, SFR specifically denies it
28 did not comply with NRS Chapter 116. SFR specifically denies NRS Chapter 116 requires that

1 a bona fide purchaser at a non-judicial publicly-held HOA foreclosure auction sale provide
2 notice of an HOA Sale to a lender before offering a bid.

3 34. The allegations contained in paragraphs 45, 46, and 47 of the Amended Complaint call
4 for a legal conclusion, therefore, no answer is required.

5 35. The allegation in paragraph 48 of the Amended Complaint calls for a legal conclusion to
6 which no response is required. To the extent a response is required, SFR specifically denies a
7 first position deed of trust presently encumbers the Property. SFR specifically denies that Chase
8 presently has in interest in the Property superior to SFR's ownership interest.

9 **SECOND CAUSE OF ACTION**
10 **(Quiet Title)**

11 36. SFR repeats and realleges its answers to paragraphs 1 through 48 of the Amended
12 Complaint as though fully set forth herein.

13 37. The allegations in paragraph 50 of the Amended Complaint calls for a legal conclusion
14 to which no response is required.

15 38. The allegation in paragraph 51 of the Amended Complaint calls for a legal conclusion to
16 which no response is required. To the extent a response is required, SFR specifically denies the
17 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
18 Trust is superior to SFR's ownership interest in the Property.

19 39. In answering paragraph 52, SFR admits a non-judicial publicly-held HOA foreclosure
20 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
21 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
22 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
23 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
24 March 1, 2013.

25 40. The allegation in paragraph 53 of the Amended Complaint calls for a legal conclusion to
26 which no response is required. To the extent a response is required, SFR specifically denies it
27 did not comply with NRS Chapter 116. SFR specifically denies NRS Chapter 116 requires that
28 a bona fide purchaser at a non-judicial publicly-held HOA foreclosure auction sale provide

1 notice of an HOA Sale to a lender before offering a bid.

2 41. The allegations contained in paragraph 54 of the Amended Complaint call for a legal
3 conclusion, therefore, no answer is required.

4 42. The allegation in paragraph 55 of the Amended Complaint calls for a legal conclusion to
5 which no response is required. To the extent a response is required, SFR specifically denies a
6 first position deed of trust presently encumbers the Property. SFR specifically denies that the
7 Bank presently has an interest in the Property superior to SFR's ownership interest. SFR denies
8 that the Bank has been required to retain counsel. SFR denies that the Bank is entitled to
9 recover reasonable attorney's fees and costs.

10 **THIRD CAUSE OF ACTION**
11 **(Unjust Enrichment)**

12 43. SFR repeats and realleges its answers to paragraphs 1 through 55 of the Amended
13 Complaint as though fully set forth herein.

14 44. The allegations in paragraph 57 of the Amended Complaint call for a legal conclusion to
15 which no response is required. To the extent a response is required, SFR specifically denies the
16 HOA Sale unjustly enriched SFR. SFR specifically denies the purchase price of \$3,700.00 was
17 grossly inadequate. SFR specifically denies the purchase price of \$3,700.00 was contrary to
18 fundamental principles of fairness, justice, and fair dealing.

19 45. The allegations contained in paragraphs 58 and 59 of the Amended Complaint call for a
20 legal conclusion, therefore, no answer is required.

21 46. SFR denies the allegations of paragraph 60.

22 **AFFIRMATIVE DEFENSES**

23 1. The Bank fails to state a claim upon which relief may be granted.

24 2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any
25 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

26 3. The occurrence referred to in the Complaint, and all injuries and damages, if any,
27 resulting therefrom, were caused by the acts or omissions of the Bank.

28 4. The occurrence referred to in the Complaint, and all injuries and damages, if any,

1 resulting therefrom, were caused by the acts or omissions of a third party or parties over whom
2 SFR had no control.

3 5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

4 6. The Bank's claims are barred because SFR complied with applicable statutes and with
5 the requirements and regulations of the State of Nevada.

6 7. The Bank's claims are barred because the Association and its agents complied with
7 applicable statutes and regulations.

8 8. The Bank's causes of action are barred in whole or in part by the applicable statutes of
9 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and
10 unclean hands.

11 9. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

12 10. The Bank has no standing to enforce the first deed of trust and/or the underlying
13 promissory note.

14 11. The Bank has no standing to enforce the statutes and regulations identified in the Third-
15 Party Complaint.

16 12. Any purported assignment of the first deed of trust after the Association foreclosure sale
17 is invalid and unenforceable.

18 13. The first deed of trust and other subordinate interests in the Property were extinguished
19 by the Association foreclosure sale held in accordance with NRS Chapter 116.

20 14. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is
21 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was
22 properly noticed and conducted.

23 15. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

24 16. The Bank's Complaint and all claims for relief therein are barred for the Bank's failure
25 to serve proper notice to the Attorney General of the State of Nevada pursuant to NRS 30.130.

26 17. The Bank's Counterclaim and all claims for relief therein should be dismissed on the
27 ground that the Bank has failed to join necessary or indispensable parties pursuant to NRCP 19,
28 namely the HOA's Agents who recorded a Notice of Delinquent Assessment Lien against the

1 property and ultimately initiated foreclosure of said property.

2 18. The Bank's Unjust Enrichment claim is barred by the Voluntary Payment Doctrine
3 which precludes such a claim on the facts alleged here. Any payments made to an agent of the
4 Bank to inspect or otherwise "care" or "preserve" the property were voluntarily made and
5 without benefit to SFR. Additionally, in order to prevail on an unjust enrichment claim, the Bank
6 must show that SFR retained the money or property of the Bank against fundamental principles
7 of justice or equity and good conscience. Thus, under the Voluntary Payment Doctrine, SFR was
8 not "unjustly enriched" by those monies.

9 19. Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative
10 defenses may not have been alleged herein insofar as sufficient facts were not available after
11 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend
12 this Answer to assert any affirmative defenses if subsequent investigation warrants.

13 DATED this 23rd day of March, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
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(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO AMENDED COMPLAINT**, to the following parties:

<u>Select All</u> <u>Select None</u>		
Ballard Spahr		
Name	Email	Select
Abran Vigil	vigila@ballardspahr.com	<input checked="" type="checkbox"/>
Holly Priest	priesth@ballardspahr.com	<input checked="" type="checkbox"/>
Mary Kay Carlton	carltonm@ballardspahr.com	<input checked="" type="checkbox"/>
Ballard Spahr Andrews & Ingersoll, LLP		
Name	Email	Select
Sarah Walton	waltons@ballardspahr.com	<input checked="" type="checkbox"/>
Ballard Spahr LLP		
Name	Email	Select
Catherine Wrangham-Rowe	wranghamrowec@ballardspahr.com	<input checked="" type="checkbox"/>
Las Vegas Docketing	lvdocket@ballardspahr.com	<input checked="" type="checkbox"/>
Lindsay Demaree	demareel@ballardspahr.com	<input checked="" type="checkbox"/>
Russell J. Burke	BurkeR@ballardspahr.com	<input checked="" type="checkbox"/>

/s/ Diana Cline Ebron
An Employee of Kim Gilbert Ebron

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national)
association,)

Plaintiff,)

vs.) Case No.
A-13-692304-C

SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability)
company; DOES 1 through 10; and)
ROE BUSINESS ENTITIES 1 through)
10, inclusive,)

Defendants.)

) ...

DEPOSITION OF SUSAN LYN NEWBY

30(b)(6) FOR JPMORGAN CHASE BANK, N.A.

Taken at the Offices of Ballard Spahr LLC
100 North City Parkway, Suite 1750
Las Vegas, Nevada

On Thursday, April 21, 2016
At 3:35 p.m.

Reported by: Jane V. Efaw, CCR #601, RPR

1 SFR INVESTMENTS POOL 1, LLC, a)...
Nevada limited liability)
2 company,)
3 Counter-Claimant,)
4 vs.)
5 JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national)
6 association; ROBERT M. HAWKINS,)
an individual; CHRISTINE V)
7 HAWKINS, an individual; DOES 1)
10 and ROE BUSINESS ENTITIES 1)
8 through 10 inclusive,)
9 Counter-Defendant/)
Cross-Defendants.)
10)

11 Appearances:

12 For Plaintiff:

13 LINDSAY C. DEMAREE, ESQ.
Ballard Spahr LLP
14 100 North City Parkway
Suite 1750
15 Las Vegas, Nevada 89106-4617
(702) 471-7000

16 JERMAINE L. MCPHERSON, ESQ.
17 JPMorgan Chase & Co.
4 Chase Metrotech Center
18 Floor 18
Brooklyn, New York 11245
19 (718) 242-1758

20 For Defendant:

21 DIANA CLINE EBRON, ESQ.
Kim Gilbert Ebron
22 7625 Dean Martin Drive
Suite 110
23 Las Vegas, Nevada 89139
(702) 485-3300
24

25 * * * * *

1 **A. No.**

2 Q. Did you see any communication in the
3 servicing notes or in iVault with the borrower about
4 the association lien, assessments or foreclosure?

5 **A. No.**

6 Q. I guess I should say "borrowers" in this
7 case. Going back to Exhibit 2. Who was the
8 originating lender for this loan?

9 **A. GreenPoint Mortgage Funding, Inc.**

10 Q. When was it originated?

11 **A. In 2006.**

12 Q. Is Chase the servicer for this loan?

13 **A. Yes.**

14 Q. When did Chase become the servicer?

15 **A. September 2008.**

16 Q. Do you know who the servicer was before
17 September 2008?

18 **A. Washington Mutual.**

19 Q. And so did Chase become the servicer when it
20 acquired Washington Mutual through the FDIC?

21 **A. Yes.**

22 Q. Is Chase also the investor of this loan?

23 **A. No.**

24 Q. Who is the investor?

25 **A. Freddie Mac.**

1 Q. When did Freddie Mac become the investor?

2 A. September 2007.

3 Q. How do you know that?

4 A. I saw it in the MERS milestones and our
5 transfer in the LTH screen.

6 Q. Do you know how much Freddie Mac paid to
7 become the investor?

8 MS. DEMAREE: Object to the extent it calls
9 for speculation.

10 THE WITNESS: No.

11 BY MS. EBRON:

12 Q. Do you know if Washington Mutual was ever
13 the investor?

14 A. Not that I'm aware of.

15 Q. Who sold the loan to Freddie Mac?

16 A. Bank of America as trustee.

17 Q. What was Bank of America the trustee of?

18 MS. DEMAREE: Object to the extent it calls
19 for speculation and to the extent it calls for a
20 legal conclusion.

21 THE WITNESS: And I don't have an answer for
22 that.

23 BY MS. EBRON:

24 Q. How do you know it was Bank of America as
25 trustee?

1 **A. The MERS milestones indicated that Bank of**
2 **America was the trustee.**

3 Q. It just says Bank of America as trustee or
4 Bank of America trustee, or did it have additional
5 information that you just can't remember right now?

6 **A. No, I think it only said Bank of America as**
7 **trustee. I don't remember it saying anything else.**

8 Q. Did you see any documents contained in
9 iVault that had to do with the transfer of the loan
10 or the sale of the loan from Bank of America to
11 Freddie Mac?

12 **A. No.**

13 Q. Where would those documents be stored?

14 MS. DEMAREE: Object to the extent it calls
15 for speculation.

16 THE WITNESS: I don't know.

17 BY MS. EBRON:

18 Q. Do you know who input the information or
19 what department was responsible for inputting the
20 information into the MERS milestones where you saw
21 that Freddie Mac has an interest in this loan in
22 2007?

23 MS. DEMAREE: Objection. Calls for
24 speculation.

25 THE WITNESS: No.

1 BY MS. EBRON:

2 Q. Do you know who input the information or
3 what department was responsible for inputting the
4 information into -- I believe you said the LTH
5 screen?

6 MS. DEMAREE: Same objection.

7 THE WITNESS: No.

8 BY MS. EBRON:

9 Q. I apologize. I may have asked this already.
10 Do you know if there was any other servicer before
11 Washington Mutual?

12 A. Yes.

13 Q. Who was that?

14 A. GreenPoint Mortgage Funding, Inc.

15 Q. Do you know when GreenPoint stopped being
16 the servicer?

17 A. September 2007.

18 Q. And that was when Washington Mutual became
19 the servicer?

20 A. Yes.

21 Q. And then a year later it was Chase; right,
22 as the servicer?

23 A. Close to a year later, yes.

24 Q. Do you know when Bank of America became the
25 investor?

1 **A. In 2006.**

2 MS. DEMAREE: I'll object to the extent that
3 calls for speculation.

4 BY MS. EBRON:

5 Q. Was that information included in the MERS
6 milestones?

7 **A. Yes.**

8 Q. Did you see any indication in the file that
9 Chase notified Freddie Mac about this litigation?

10 MS. DEMAREE: Object to the extent it calls
11 for attorney/client privileged information.

12 THE WITNESS: No.

13 BY MS. EBRON:

14 Q. Did you see any information in the file that
15 suggested that Chase notified the FHFA about this
16 litigation?

17 MS. DEMAREE: Objection to the extent that
18 it calls for attorney/client privilege.

19 THE WITNESS: No.

20 BY MS. EBRON:

21 Q. Did Chase attain consent from Freddie Mac to
22 file this lawsuit?

23 MS. DEMAREE: Objection. Legal conclusion.

24 THE WITNESS: Not that I'm aware of.

25 ///

1 BY MS. EBRON:

2 Q. Did Chase obtain consent from the FHFA to
3 file this lawsuit?

4 MR. McPHERSON: Objection.

5 MS. DEMAREE: Objection. Calls for a legal
6 con.

7 THE WITNESS: Not that I'm aware of.

8 BY MS. EBRON:

9 Q. Are there any recorded documents that show
10 that Freddie Mac is the investor?

11 MS. DEMAREE: Object to the extent it falls
12 outside the depo notice.

13 THE WITNESS: Not that I'm aware of.

14 BY MS. EBRON:

15 Q. Looking in the Deed of Trust that's marked
16 as Exhibit 2. On the second page, it references in
17 paragraph F a Promissory Note. Do you see that?

18 A. Where are you at?

19 Q. It's the page that's Bates-stamped
20 Chase-Hawkins 0025, paragraph F.

21 A. Okay. I'm there.

22 Q. Do you see that it references a Promissory
23 Note dated June 7th, 2006?

24 A. Yes.

25 Q. Have you seen a copy of that Promissory

1 Note?

2 **A. Yes.**

3 Q. Have you seen the original wet-ink-signature
4 Promissory Note?

5 **A. No.**

6 Q. Do you know where it is?

7 **A. Monroe, Louisiana.**

8 Q. How do you know that?

9 **A. Because I've seen a chain of custody report.**

10 Q. Have you talked to anybody who's seen the
11 original wet-ink-signature Promissory Note?

12 **A. No.**

13 Q. Did you talk to anyone besides your
14 attorneys in preparation for your deposition outside
15 of the e-mails with Investor Relations?

16 **A. No.**

17 Q. How many endorsements are on the promissory
18 note as it exists today, if any?

19 **A. One, I believe.**

20 Q. Who is it from, and who is it to?

21 **A. I think it's from GreenPoint to Washington
22 Mutual.**

23 Q. Not to Freddie Mac?

24 **A. No.**

25 Q. And not to Bank of America?

IN THE SUPREME COURT OF NEVADA

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, a national
association,

Appellant,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Respondent.

Supreme Court No. 77010

Electronically Filed
Apr 12 2019 08:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692304-C

APPELLANT'S APPENDIX – VOLUME 1

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CHRONOLOGICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
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Proof of Service of Summons and Complaint	March 11, 2014	1 AA 008-010
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Amended Answer, Counterclaim and Cross-Claim	March 20, 2014	1 AA 024-034
Scheduling Order	June 29, 2015	1 AA 035-037
Answer to Amended Counterclaim	August 11, 2015	1 AA 038-048
Motion for Leave to Amend Complaint	February 2, 2016	1 AA 049-068
Order Granting Motion for Leave to Amend the Complaint	March 8, 2016	1 AA 069-070
Amended Complaint	March 9, 2016	1 AA 071-081
SFR Investments Pool 1, LLC's Answer to Amended Complaint	March 23, 2016	1 AA 082-091
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JPMorgan Chase Bank, N.A.'s Response to SFR Investment Pool 1, LLC's Requests for Admission	May 2, 2016	1 AA 104-117
Excerpts from JPMorgan Chase Bank N.A.'s First Supplement to N.R.C.P. 16.1 Disclosures	May 6, 2016	1 AA 118-129
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JPMorgan Chase Bank, N.A.'s Reply in Support of Motion for Summary Judgment (Exhibits Omitted)	May 25, 2018	4 AA 575-594
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Answer, Counterclaim and Cross-Claim	March 18, 2014	1 AA 011-023
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Motion for Leave to Amend Complaint	February 2, 2016	1 AA 049-068
Motion to Extend Discovery Deadlines and to Re-Set Trial Date	January 23, 2018	2 AA 268-274
Notice of Appeal	September 17, 2018	4 AA 640-642
Notice of Entry of Findings of Fact and Conclusions of Law and Judgment in Favor of SFR Investments Pool 1, LLC	August 16, 2018	4 AA 631-639
Notice of Withdrawal of Motion to Extend Discovery Deadlines and to Re-Set Trial Date	February 1, 2018	2 AA 287-289
Order Granting Motion for Leave to Amend the Complaint	March 8, 2016	1 AA 069-070
Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 23, 2016	2 AA 258-267
Proof of Service of Summons and Complaint	March 11, 2014	1 AA 008-010
Reporter's Transcript of Proceedings re: Motions	June 5, 2018	4 AA 600-624
Scheduling Order	June 29, 2015	1 AA 035-037
SFR Investments Pool 1, LLC's Answer to Amended Complaint	March 23, 2016	1 AA 082-091
SFR Investments Pool 1, LLC's Motion for Summary Judgment (Exhibits Omitted)	July 7, 2016	1 AA 134-156
SFR Investments Pool 1, LLC's Motion for Summary Judgment (Exhibits Omitted)	April 13, 2018	3 AA 524-533
SFR Investments Pool 1, LLC's Opposition to JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment and Countermotion to Strike	May 4, 2018	4 AA 548-567
SFR Investments Pool 1, LLC's Opposition to Plaintiff's Motion to Extend (Exhibits Omitted)	January 30, 2018	2 AA 275-286
SFR Investments Pool 1, LLC's Reply in Support of Counter-motion to Strike	May 29, 2018	4 AA 595-599
SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	May 18, 2018	4 AA 568-574
Stipulation and Order	February 6, 2019	4 AA 643-646

Stipulation and Order Dismissing Third Cause of Action (Unjust Enrichment) with Prejudice	February 12, 2019	4 AA 647-649
Stipulation and Order to Extend Discovery Deadlines	June 28, 2016	1 AA 130-133

CERTIFICATE OF SERVICE

I certify that on April 12, 2019, I filed **Appellant's Appendix – Volume 1**.
Service will be made on the following through the Court's electronic filing
system:

Jacqueline A. Gilbert
KIM GILBERT EBRON

Counsel for Respondent

/s/ Matthew D.Lamb
An Employee of Ballard Spahr

I. Party Information

Plaintiff(s) (Name/Address/Phone): JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association Attorney (name/address/phone): TIFFANY & BOSCO, P.A. Gregory L. Wilde, Esq. Kevin S. Soderstrom, Esq. 212 South Jones Boulevard Las Vegas, Nevada 89107 Telephone: (702) 258-8200	Defendant(s) (Name/Address/Phone): SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10 and ROE BUSINESS ENTITES 1 through 10, inclusive Attorney (name/address/phone):
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II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) ☐ **Arbitration Requested**

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

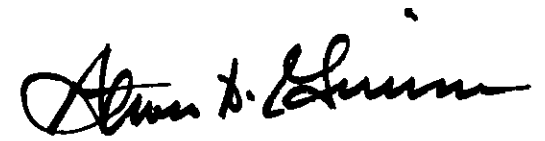
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

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

November 27, 2013
Date

Signature of initiating party or representative


CLERK OF THE COURT

GREGORY L. WILDE, ESQ.
Nevada Bar No. 4417
KEVIN S. SODERSTROM, ESQ.
Nevada Bar No. 10235
TIFFANY & BOSCO, P.A.
212 South Jones Blvd.
Las Vegas, Nevada 89107
(702) 258-8200
Attorney for Plaintiff
JPMorgan Chase Bank, National Association
13-73960

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

Case No.: A- 13 - 692304 - C
Dept. No.:

XVI I I

COMPLAINT

COMES NOW Plaintiff JPMorgan Chase Bank, National Association (hereinafter the "Plaintiff" or "Chase"), by and through its counsel of record, Gregory L. Wilde, Esq. of the law firm of Tiffany & Bosco, P.A., and complains and avers of the Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an entity properly conducting business which holds a note and deed of trust encumbering certain real property located at 3263 Morning Springs Drive, Henderson, Nevada, Assessor's Parcel Number 177-24-514-043 (hereinafter the "Subject Property") in Clark County, Nevada.

1 2. Plaintiff is a national association whose principal place of business is
2 located in New York, New York.

3 3. Defendant SFR Investments Pool 1, LLC (hereinafter “SFR” or the
4 “Defendant”) is a Nevada limited liability company whose principal place of business,
5 upon information and belief, is located in Las Vegas, Nevada.
6

7 4. Robert M. Hawkins and Christine V. Hawkins (hereinafter collectively the
8 “Borrowers”) are not named parties in this matter, were the borrowers on the
9 aforementioned debt, were previous owners of the Subject Property, and are detailed
10 herein only for informational purposes.
11

12 5. The Defendants DOES 1 through 10 and ROE BUSINESS ENTITIES 1
13 through 10 set forth herein are persons or business entities currently unknown to Plaintiff
14 who may have a claim to any interest in the subject matter of this action, whose true
15 name(s) is (are) unknown to Plaintiff, and who are believed to be responsible for the
16 events and happenings referred to in this Complaint, causing injuries and damages to
17 Plaintiff, or who are otherwise interested in the subject matter of this Complaint. At such
18 time when the names of said DOES and ROE BUSINESS ENTITIES have been
19 ascertained, Plaintiff will request leave from the court to insert their true names and
20 capacities and adjoin them in this action so that the Complaint will be amended to include
21 the appropriate names of said DOES and ROE BUSINESS ENTITIES.
22
23

24 6. The claims set forth in this Complaint pertain to a purported sale of real
25 property situated in Clark County, Nevada.

26 7. Jurisdiction is obtained and venue is properly set in the Eighth Judicial
27 District Court for the State of Nevada.
28

GENERAL ALLEGATIONS

8. On or about June 7, 2006, the Borrowers signed a note and deed of trust, borrowing \$240,000.00 against the Subject Property.

9. The deed of trust securing the \$240,000.00 loan was recorded with the Clark County Recorder on June 12, 2006 as Book and Instrument No. 20060612-0003526.

10. Plaintiff is the lender and beneficiary under the \$240,000.00 promissory note and corresponding deed of trust.

11. Sometime after signing the note and deed of trust the Borrowers allegedly fell behind in the payment of homeowners association assessments causing their homeowners association, upon information and belief, to record a lien against the Subject Property and later initiate foreclosure proceedings.

12. Nevada Association Services, Inc., as agent for Pebble Canyon HOA, purportedly conducted a foreclosure sale on the Subject Property wherein Defendant SFR bid \$3,700.00 and became the titled owner on March 1, 2013.

13. The Borrowers are in default on their monthly payments owed to the lender on the \$240,000.00 loan.

14. Plaintiff believes and asserts that Defendant is taking the position that Plaintiff's security interest, namely the deed of trust securing the note, has been abrogated by the homeowners association foreclosure sale.

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FIRST CAUSE OF ACTION

(Declaratory Relief)

15. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 14 and incorporates the same as though fully set forth herein.

16. A true and justiciable controversy exists between Plaintiff and Defendants concerning their interests in the Subject Property.

17. Plaintiff's interests are adverse to those of Defendants.

18. Plaintiff's rights, status, and claims in relation to those of Defendants in the Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien priority.

19. This matter is filed, in part, under the Uniform Declaratory Judgment Act.

20. Pursuant to NRS 30.040, Plaintiff is entitled to declaratory relief as to rights, status, and legal relations at issue in this matter in regards to the Subject Property.

21. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

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SECOND CAUSE OF ACTION

(Quiet Title)

22. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 21 and incorporates the same as though fully set forth herein.

23. Plaintiff seeks an order from this Court, pursuant to NRS 40.010, declaring that the deed of trust securing the \$240,000.00 loan continues to encumber the Subject Property as security for the note detailed herein notwithstanding the purported homeowners association sale and that Plaintiff's security interest was not abrogated by the purported homeowners association sale.

24. The claims between Plaintiff and Defendant pertain to real property and are clearly adverse, needing a determination from this Court.

25. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a Declaratory Judgment that the security interest recorded with the Clark County Recorder on June 12, 2006 as Book and Instrument No. 20060612-0003526 remains intact and was not extinguished by the purported homeowners association sale on March 1, 2013;
2. For an order quieting title in the name of Defendant subject to the security interest of Plaintiff;
3. For reasonable attorney's fees;

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4. For costs of suit; and,

5. For such other and further relief as this Court may deem just and proper.

DATED this 19th day of November, 2013.

TIFFANY & BOSCO, P.A.

/s/ Kevin S. Soderstrom

GREGORY L. WILDE, ESQ.

Nevada Bar No. 4417

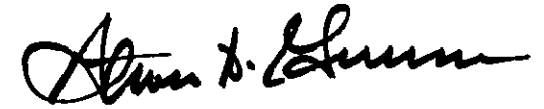
KEVIN S. SODERSTROM, ESQ.

Nevada Bar No. 10235

212 S. Jones Blvd.

Las Vegas NV 89107

Attorney for Plaintiff



CLERK OF THE COURT

SUMM

Gregory L. Wilde, Esq.

Nevada Bar No. 4417

Kevin S. Soderstrom, Esq.

Nevada Bar No. 10235



212 SOUTH JONES BOULEVARD

LAS VEGAS, NEVADA 89107

TELEPHONE: (702) 258-8200

FACSIMILE: (702) 258-8787

Attorneys for Plaintiff

JPMorgan Chase Bank

13-73960

EIGHTH JUDICIAL DISTRICT COURT

CLARK, COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; DOES 1 through 10;
and ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Defendants.

Case No.: A-13-692304-C
Dept. No.: XVIII

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.**

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

1 **TO THE DEFENDANT(S):** SFR INVESTMENTS POOL 1, LLC, a Nevada limited
2 liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10,
3 inclusive,

4 A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in
5 the Complaint.

6 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
7 on you exclusive of the day of service, you must do the following:

8 (a) File with the Clerk of this Court, whose address is shown below, a formal written
9 response to the Complaint in accordance with the rules of the Court, with the appropriate filing
10 fee.

11 (b) Serve a copy of your response upon the attorney whose name and address is shown
12 below.

13 2. Unless you respond, your default will be entered upon application of the Plaintiff
14 and this Court may enter a judgment against you for the relief demanded in the Complaint,
15 which could result in the taking of money or property or other relief requested in the Complaint.

16 3. If you intend to seek the advice of an attorney in this matter, you should do so
17 promptly so that your response may be filed on time.

18 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
19 members, commission members and legislators each have 45 days after service of this Summon
20 within which to file an Answer or other responsive pleading to the Complaint.

21 Issued at the direction of:

STEVEN D. GRIERSON
CLERK OF THE COURT

22 **TIFFANY & BOSCO, P.A.**

CLERK OF COURT

23 By  #10235

24 By 

25 GREGORY L. WILDE, ESQ.
26 Nevada State Bar No, 4417
27 212 South Jones Boulevard
28 Las Vegas, NV 89107

Deputy Clerk Date
County Courthouse
200 Lewis Avenue (3rd Floor)
Las Vegas, Nevada 89155

MICHELLE MCCARTHY

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, A NATIONAL
ASSOCIATION

Plaintiff,

Case No:A-13-692304-C

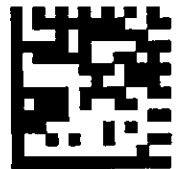
vs.

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

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF WASHOE ss.:



JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT; CIVIL COVER SHEET** on **02/26/2014** and served the same on **02/26/2014** at **2:00 PM** by delivering and leaving a copy with:

FRANCIS SEVERE, PROCESS SPECIALIST, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of **PARACORP INCORPORATED**, resident agent for **SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY**, at the registered address of:


Service address: 318 N. CARSON ST, #208, Carson City, NV 89701

A description of **FRANCIS SEVERE** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	BLK	31	5'3	135
Other Features:					

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

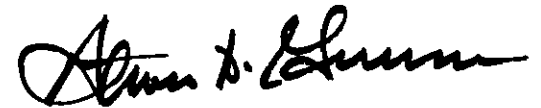
Executed on: 02/27/2014
by JOHN LEE


JOHN LEE
Registration#: R-004475
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: 13-73960

No Notary is Required per NRS 53.045



45628



CLERK OF THE COURT

1 **AACC**
HOWARD C. KIM, ESQ.
2 Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
3 DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
4 E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
5 Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
6 HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
7 Henderson, Nevada 89014
Telephone: (702) 485-3300
8 Facsimile: (702) 485-3301
Attorneys for Defendant/Counter-claimant
9 *SFR Investments Pool 1, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
18 1 through 10, inclusive,

19 Defendants.

20 SFR INVESTMENTS POOL 1, LLC, a
21 Nevada limited liability company,

22 Counter-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
26 DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby answers
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

PARTIES AND JURISDICTION

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that
the subject matter of Chase’s complaint is real property commonly known as **3263 Morning
Springs Drive, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the
complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer
is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraph 2 of the complaint, and therefore denies said
allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said
allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore
denies said allegations.

7. SFR admits the factual allegations contained in paragraph 12 of the complaint.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraph 13 of the complaint, and therefore denies said
allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

///

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 16 and 17 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

1. Chase fails to state a claim upon which relief may be granted.

2. Chase is not entitled to relief from or against SFR, as Chase has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Chase.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Chase.

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

7. Chase's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Chase is not entitled to equitable relief because it has an adequate remedy at law.

9. Chase has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase"), Counter Defendant and ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2006 deed of trust originated by GreenPoint Mortgage Funding, Inc.

3. Upon information and belief, Cross-Defendants, ROBERT M. HAWKINS and CHRISTINE V. HAWKINS (the “Hawkinses”) as husband and wife, are individuals who are the former homeowners that may claim an interest in the Property.

4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the Cross-Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“Association foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

7. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201303060001648 (“Association Foreclosure Deed”).

8. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent for the Pebble Canyon Homeowners Association (“Association”), pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Association’s governing documents (CC&R’s) and a Notice of Delinquent Assessment Lien,

1 recorded on August 3, 2012 in the Official Records of the Clark County Recorder as Instrument
2 Number 201208030002872 ("Association Lien").

3 9. As recited in the Association Foreclosure Deed, the Association foreclosure sale
4 complied with all requirements of law, including but not limited to, recording and mailing of
5 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
6 publication of the Notice of Sale.

7 10. Pursuant to NRS 116.3116(2), the entire Association Lien

8 is prior to all other liens and encumbrances of unit except:

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

11 (b) A first security interest on the unit recorded before the date on which the
12 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

13 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

14 11. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over
15 even a first security interest in the Property:

16 [the Association Lien] is also prior to all security interests described in paragraph
17 (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
18 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[.]

19
20 12. Upon information and belief, the Association took the necessary action to trigger the
21 super-priority portion of the Association Lien.

22 13. Upon information and belief, no party still claiming an interest in the Property recorded a
23 lien or encumbrance prior to the declaration creating the Association.

24 14. Upon information and belief, SFR's bid on the Property was in excess of the amount
25 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

26 15. Upon information and belief, the Association or its agent NAS has distributed or is
27 attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
28 116.3114(c).

1 16. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
2 constructive notice of the requirement to pay assessments to the Association and of the
3 Association Lien.

4 17. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
5 constructive notice of the Association's foreclosure proceedings.

6 18. Upon information and belief, prior to the Association foreclosure sale, no individual or
7 entity paid the full amount of delinquent assessments described in the Notice of Default.

8 19. Upon information and belief, Counter-Defendant Chase had actual or constructive notice
9 of the super-priority portion of the Association Lien.

10 20. Upon information and belief, Counter-Defendant Chase knew or should have known that
11 its interest in the Property could be extinguished through foreclosure if he failed to cure the
12 super-priority portion of the Association Lien representing 9 months of assessments for common
13 expenses based on the periodic budget adopted by the association which would have become due
14 in the absence of acceleration for the relevant time period.

15 21. Upon information and belief, prior to the Association foreclosure sale, no individual or
16 entity paid the super-priority portion of the Association Lien representing 9 months of
17 assessments for common expenses based on the periodic budget adopted by the association
18 which would have become due in the absence of acceleration for the relevant time period.

19 22. SFR is a bonafide purchaser.

20 23. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or
21 right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
22 owner, his or her heirs and assigns, and **all other persons.**"

23 ***Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien***

24 24. Upon information and belief, the Hawkinses, first obtained title to the Property in June
25 of 2006 through a Grant, Bargain Sale Deed from Nathan VanNoy recorded against the Property
26 in the Official Records of the Clark County Recorder as Instrument No. 200606120003525.

27 25. On or about June 12, 2006, GreenPoint Mortgage Funding, Inc. ("GreenPoint") recorded
28 a deed of trust against the Property in the Official Records of the Clark County Recorder as

Instrument No. 200606120003526 ("First Deed of Trust").

26. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust was recorded.

27. Upon information and belief, GreenPoint had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

28. The First Deed of Trust contains a Planned Unit Development Rider recognizing the applicability of Association's declaration of CC&Rs that were recorded.

29. Upon information and belief, on October 26, 2009, Colleen Irby, Officer for Mortgage Electronic Registration Systems, Inc. ("MERS") executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note to Chase. The assignment was recorded on October 27, 2009 against the Property in Official Records of the Clark County Recorder as Instrument No. 200910270000618.

30. Upon information and belief, Chase had actual or constructive notice of the Association Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

31. On or about October 27, 2009, Chase recorded a document substituting California Reconveyance Company ("CRC") as trustee of the First Deed of Trust.

32. On or about October 27, 2009, CRC recorded a notice of default pursuant to the First Deed of Trust for amounts that became due on July 1, 2009 in the Official Records of the Clark County Recorder as Instrument No. 200910270000620.

33. On or about, November 27, 2013, Chase filed a Complaint for declaratory relief and quiet title.

34. Counter-Defendant Chase's interest in the Property was extinguished by the foreclosure of the Association Lien.

35. Cross Defendants, the Hawkinses' interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

///

///

1 45. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

2 **IV. SECOND CLAIM FOR RELIEF**
3 **(Preliminary and Permanent Injunction)**

4 46. SFR repeats and realleges the allegations of paragraphs 1- 45 as though fully set forth
5 herein and incorporates the same by reference.

6 47. SFR properly acquired title to the Property at the Association foreclosure sale on March
7 1, 2013.

8 48. Counter-Defendant Chase may claim that it maintained an interest in the Property
9 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

10 49. Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

11 50. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant
12 Chase lost its interest in the Property, if any, at the Association foreclosure sale.

13 51. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
14 would be invalid because their interest in the Property, if any, was extinguished by the
15 Association foreclosure sale.

16 52. Any attempt to take or maintain possession of the Property by Counter-Defendant and
17 Cross-Defendants would be invalid because their interest in the Property, if any, was
18 extinguished by the Association foreclosure sale.

19 53. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-
20 Defendant and Cross-Defendants would be invalid because their interest in the Property, if any,
21 was extinguished by the Association foreclosure sale.

22 54. On the basis of the facts described herein, SFR has a reasonable probability of success on
23 the merits of its claims and has no other adequate remedies at law.

24 55. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-
25 Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that
26 would affect SFR's possession of the Property.

27 56. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-
28 Defendant and Cross-Defendants from any sale or transfer that would affect the title to the

Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For an award of attorney's fees and costs of suit; and

4. For any further relief that the Court may deem just and proper.

DATED March 18th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

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JACQUELINE A. GILBERT, ESQ.

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES 1
through 10 inclusive.

Counter-Defendant/Cross- Defendants.

Case No. A-13-692304-C

Dept. No. XVIII

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

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:

SFR INVESTMENTS POOL 1, LLC \$223.00

TOTAL \$223.00

DATED March 18th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

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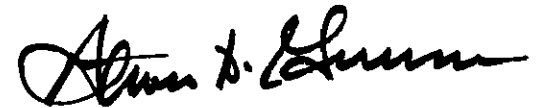
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CLERK OF THE COURT

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9 SFR Investments Pool 1, LLC

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
18 1 through 10, inclusive,

19 Defendants.

20 SFR INVESTMENTS POOL 1, LLC, a
21 Nevada limited liability company,

22 Counter-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
26 DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**AMENDED ANSWER, COUNTERCLAIM
AND CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby files an amended answer to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

PARTIES AND JURISDICTION

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that the subject matter of Chase’s complaint is real property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 2 of the complaint, and therefore denies said allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore denies said allegations.

7. SFR admits the factual allegations contained in paragraph 12 of the complaint.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 16 and 17 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

1. Chase fails to state a claim upon which relief may be granted.

2. Chase is not entitled to relief from or against SFR, as Chase has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Chase.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Chase.

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

7. Chase's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Chase is not entitled to equitable relief because it has an adequate remedy at law.

9. Chase has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase"), Counter Defendant and ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2006 deed of trust originated by GreenPoint Mortgage Funding, Inc.

3. Upon information and belief, Cross-Defendants, ROBERT M. HAWKINS and CHRISTINE V. HAWKINS (the “Hawkinses”) as husband and wife, are individuals who are the former homeowners that may claim an interest in the Property.

4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the Cross-Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. (“Association foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

7. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201303060001648 (“Association Foreclosure Deed”).

8. The Pebble Canyon Homeowners Association (“Association”) had a lien pursuant to NRS 116.3116(1) (“Association Lien”) that was perfected at the time the Association recorded its declaration of CC&Rs.

9. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent

1 for the Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
2 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of
3 Delinquent Assessments, recorded on August 3, 2012 in the Official Records of the Clark
4 County Recorder as Instrument Number 201208030002872.

5 10. As recited in the Association Foreclosure Deed, the Association foreclosure sale
6 complied with all requirements of law, including but not limited to, recording and mailing of
7 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
8 publication of the Notice of Sale.

9 11. Pursuant to NRS 116.3116(2), the entire Association Lien

10 is prior to all other liens and encumbrances of unit except:

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

13 (b) A first security interest on the unit recorded before the date on which the
14 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

15 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

16 12. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over
17 even a first security interest in the Property:

18 [the Association Lien] is also prior to all security interests described in paragraph
19 (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
20 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[.]

21 13. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot
22 be waived by agreement or contract, including any subordination clause in the CC&Rs.

23 14. According to NRS 116.1108, real property law principles supplement the provisions of
24 NRS 116.

25
26 15. Upon information and belief, the Association took the necessary action to trigger the
27 super-priority portion of the Association Lien.

28 16. Upon information and belief, no party still claiming an interest in the Property recorded a

1 lien or encumbrance prior to the declaration creating the Association.

2 17. Upon information and belief, SFR's bid on the Property was in excess of the amount
3 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

4 18. Upon information and belief, the Association or its agent NAS has distributed or are
5 attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
6 116.31164(c).

7 19. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
8 constructive notice of the requirement to pay assessments to the Association and of the
9 Association Lien.

10 20. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
11 constructive notice of the Association's foreclosure proceedings.

12 21. Upon information and belief, prior to the Association foreclosure sale, no individual or
13 entity paid the full amount of delinquent assessments described in the Notice of Default.

14 22. Upon information and belief, Counter-Defendant Chase had actual or constructive notice
15 of the super-priority portion of the Association Lien.

16 23. Upon information and belief, Counter-Defendant Chase knew or should have known that
17 its interest in the Property could be extinguished through foreclosure if he failed to cure the
18 super-priority portion of the Association Lien representing 9 months of assessments for common
19 expenses based on the periodic budget adopted by the association which would have become due
20 in the absence of acceleration for the relevant time period.

21 24. Upon information and belief, prior to the Association foreclosure sale, no individual or
22 entity paid the super-priority portion of the Association Lien representing 9 months of
23 assessments for common expenses based on the periodic budget adopted by the association
24 which would have become due in the absence of acceleration for the relevant time period.

25 25. SFR learned of the Association foreclosure sale through public notices.

26 26. Multiple bidders attended the public auction, which was held at the same time, day and
27 place that NAS generally conducts such auctions.

28 27. SFR is a bona fide purchaser.

28. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR “without equity or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former owner, his or her heirs and assigns, and all other persons.”

Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien

29. Upon information and belief, the Hawkinses, first obtained title to the Property in June of 2006 through a Grant, Bargain Sale Deed from Nathan VanNoy recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003525.

30. On or about June 12, 2006, GreenPoint Mortgage Funding, Inc. (“GreenPoint”) recorded a deed of trust against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003526 (“First Deed of Trust”).

31. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust was recorded.

32. Upon information and belief, GreenPoint had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

33. The First Deed of Trust contains a Planned Unit Development Rider recognizing the applicability of Association’s declaration of CC&Rs that were recorded.

34. Upon information and belief, on October 26, 2009, Colleen Irby, Officer for Mortgage Electronic Registration Systems, Inc. (“MERS”) executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note to Chase. The assignment was recorded on October 27, 2009 against the Property in Official Records of the Clark County Recorder as Instrument No. 200910270000618.

35. Upon information and belief, Chase had actual or constructive notice of the Association Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

36. On or about October 27, 2009, Chase recorded a document substituting California Reconveyance Company (“CRC”) as trustee of the First Deed of Trust.

37. On or about October 27, 2009, CRC recorded a notice of default pursuant to the First Deed of Trust for amounts that became due on July 1, 2009 in the Official Records of the Clark

County Recorder as Instrument No. 200910270000620.

38. On or about, November 27, 2013, Chase filed a Complaint for declaratory relief and quiet title.

39. Counter-Defendant Chase's interest in the Property was extinguished by the foreclosure of the Association Lien.

40. Cross Defendants, the Hawkinses' interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS 116.3116)

41. SFR repeats and realleges the allegations of paragraphs 1-40 as though fully set forth herein and incorporates the same by reference.

42. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant and Cross-Defendants' adverse claims in the Property.

43. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. and the resulting Association Foreclosure Deed vesting title in SFR was recorded on March 6, 2013.

44. Upon information and belief, Counter Defendant, Chase may claim an interest in the Property via the First Deed of Trust against the Property even after the Association foreclosure sale.

45. Upon information and belief, Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

46. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

47. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

48. Counter-Defendant and Cross-Defendants were duly notified of the Association

1 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately
2 existed.

3 49. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title
4 owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; (3) the
5 Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership
6 and security interests in the Property; and (4) SFR's rights and interest in the Property are
7 superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

8 50. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

9 **IV. SECOND CLAIM FOR RELIEF**
10 **(Preliminary and Permanent Injunction)**

11 51. SFR repeats and realleges the allegations of paragraphs 1-50 as though fully set forth
12 herein and incorporates the same by reference.

13 52. SFR properly acquired title to the Property at the Association foreclosure sale on March
14 1, 2013.

15 53. Counter-Defendant Chase may claim that it maintained an interest in the Property
16 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

17 54. Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

18 55. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant
19 Chase lost its interest in the Property, if any, at the Association foreclosure sale.

20 56. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
21 would be invalid because their interest in the Property, if any, was extinguished by the
22 Association foreclosure sale.

23 57. Any attempt to take or maintain possession of the Property by Counter-Defendant and
24 Cross-Defendants would be invalid because their interest in the Property, if any, was
25 extinguished by the Association foreclosure sale.

26 58. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-
27 Defendant and Cross-Defendants would be invalid because their interest in the Property, if any,
28 was extinguished by the Association foreclosure sale.

59. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

60. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

61. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For an award of attorney's fees and costs of suit; and

4. For any further relief that the Court may deem just and proper.

DATED March 20th, 2014.

HOWARD KIM & ASSOCIATES

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Attorneys for SFR Investments Pool 1, LLC



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DSO

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national
association,

Plaintiff,

v.

CASE NO. A692304
DEPT NO. XXIV

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
DOES 1 through 10; and ROE
BUSINESS ENTITIES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief/quiet title**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **6/1/15; 6/2/15**

TIME REQUIRED FOR TRIAL: **2-3 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiff:

Holly Ann Priest, Esq., Ballard Spahr

Counsel for Defendant:

Katherine C.S. Carstensen, Esq., Howard Kim & Associates

Counsel representing all parties have been heard and after
consideration by the Discovery Commissioner,

. . .

RECEIVED
JUN 29 2015
CLERK OF THE COURT
DISCOVERY
COMMISSIONER

1 IT IS HEREBY ORDERED:

2 1. all parties shall complete discovery on or before
3 5/2/16.
4

5 2. all parties shall file motions to amend pleadings or
6 add parties on or before 2/2/16.

7 3. all parties shall make initial expert disclosures
8 pursuant to N.R.C.P. 16.1(a)(2) on or before 2/2/16.

9 4. all parties shall make rebuttal expert disclosures
10 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/3/16.

11 5. all parties shall file dispositive motions on or
12 before 6/1/16.
13

14 Certain dates from your case conference report(s) may have
15 been changed to bring them into compliance with N.R.C.P. 16.1.

16 Within 60 days from the date of this Scheduling Order, the
17 Court shall notify counsel for the parties as to the date of
18 trial, as well as any further pretrial requirements in addition
19 to those set forth above.
20

21 Unless otherwise directed by the court, all pretrial
22 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
23 least 30 days before trial.

24 Motions for extensions of discovery shall be made to the
25 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
26 Discovery is completed on the day responses are due or the day a
27 deposition begins.
28

. . .

1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Dated this 26 day of June, 2015.

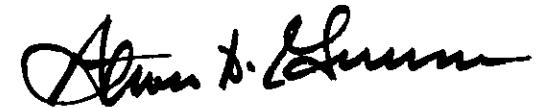
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7 
8
9 DISCOVERY COMMISSIONER

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the date filed, I placed a copy of
12 the foregoing DISCOVERY SCHEDULING ORDER in the attorney
13 folder(s), mailed or e-served as follows:

14 Holly Ann Priest, Esq.
15 Katherine C.S. Carstensen, Esq.

16
17 
18
19 COMMISSIONER DESIGNEE
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

1 CCAN
Abran E. Vigil
2 Nevada Bar No. 7548
Lindsay Demaree
3 Nevada Bar No. 11949
Holly Ann Priest
4 Nevada Bar No. 13226
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9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

11 DISTRICT COURT
CLARK COUNTY, NEVADA

12 JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,)

DEPT NO. XXIV

14 vs.)

15 SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company; DOES 1)
16 through 10, ROE BUSINESS ENTITIES 1)
through 10, inclusive,)

17 Defendants.)

18 SFR INVESTMENTS POOL 1, LLC a)
19 Nevada limited liability company,)

20 Counter-Claimant,)

21 vs.)

22 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
23 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
24 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

25 Counter-Defendant/Cross-)
26 Defendants.)
27)
28)

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

ANSWER TO AMENDED COUNTERCLAIM

Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A. ("Chase"), by and through its attorney of record, hereby submits its Answer to the Defendant/Counter-Claimant SFR Investments Pool 1, LLC's ("SFR") Amended Counterclaim as follows:

I. PARTIES

1. Chase denies that SFR is the current title owner of the property commonly known as 3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 1 of the Counterclaim and therefore denies them.

2. Chase admits the allegations of Paragraph 2 of the Counterclaim.

3. Chase is without sufficient information to admit or deny the allegations in Paragraph 3 of the Counterclaim and therefore denies them.

4. Chase is without sufficient information to admit or deny the allegations in Paragraph 4 of the Counterclaim and therefore denies them.

5. Chase is without sufficient information to admit or deny the allegations in Paragraph 5 of the Counterclaim and therefore denies them.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. Chase denies that SFR lawfully acquired the Property at the Association foreclosure sale. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 6 of the Counterclaim and therefore denies them.

7. Chase submits that the foreclosure deed recorded on the Property as Instrument No. 201303060001648 is a public record that speaks for itself. Chase denies any allegation inconsistent with this record and is without sufficient information to admit or deny the remaining allegations of Paragraph 7 of the Counterclaim and therefore denies them.

8. Chase submits that NRS 116.3116(1) speaks for itself, and Chase denies

1 the allegations of Paragraph 8 to the extent they misstate the statute's terms or are
2 not read in connection with other relevant laws, including the U.S. Constitution and
3 the Nevada Constitution.

4 9. Chase submits that NRS 116.3116, NRS 116.31162-116.31168 speak for
5 themselves, and Chase denies the allegations of Paragraph 9 to the extent they
6 misstate the statutes' terms or are not read in connection with other relevant laws,
7 including the U.S. Constitution and the Nevada Constitution. Chase further submits
8 that the Association's governing documents and Notice of Delinquent Assessments
9 are public record that speak for themselves. Chase denies any allegation inconsistent
10 with these records and is without sufficient information to admit or deny the
11 remaining allegations of Paragraph 9 of the Counterclaim and therefore denies them.

12 10. Chase denies the allegations of Paragraph 10 of the Counterclaim.

13 11. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
14 the allegations of Paragraph 11 to the extent they misstate the statute's terms or are
15 not read in connection with other relevant laws, including the U.S. Constitution and
16 the Nevada Constitution.

17 12. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
18 the allegations of Paragraph 12 to the extent they misstate the statute's terms or are
19 not read in connection with other relevant laws, including the U.S. Constitution and
20 the Nevada Constitution.

21 13. Chase submits that NRS 116.1104 and NRS 166.3116(2) speak for
22 themselves, and Chase denies the allegations of Paragraph 13 to the extent they
23 misstate the statutes' terms or are not read in connection with other relevant laws,
24 including the U.S. Constitution and the Nevada Constitution.

25 14. Chase submits that NRS 116.1108 speaks for itself, and Chase denies
26 the allegations of Paragraph 14 to the extent they misstate the statute's terms or are
27 not read in connection with other relevant laws, including the U.S. Constitution and
28 the Nevada Constitution.

1 15. Chase denies the allegations of Paragraph 15 of the Counterclaim.

2 16. Chase is without sufficient information to admit or deny the allegations
3 of Paragraph 16 of the Counterclaim and therefore denies them.

4 17. Chase is without sufficient information to admit or deny the allegations
5 of Paragraph 17 of the Counterclaim and therefore denies them.

6 18. Chase is without sufficient information to admit or deny the allegations
7 of Paragraph 18 of the Counterclaim and therefore denies them. Chase denies that
8 the Association or its agent NAS should distribute excess funds pursuant to NRS
9 116.31164(c) without leave of the Court.

10 19. Chase denies the allegations as they relate to Chase. Chase is without
11 sufficient information to admit or deny the remaining allegations of Paragraph 19 of
12 the Counterclaim and therefore denies them.

13 20. Chase denies the allegations as they relate to Chase. Chase is without
14 sufficient information to admit or deny the remaining allegations of Paragraph 20 of
15 the Counterclaim and therefore denies them.

16 21. Chase is without sufficient information to admit or deny the allegations
17 of Paragraph 21 of the Counterclaim and therefore denies them.

18 22. Chase denies the allegations of Paragraph 22 of the Counterclaim.

19 23. Chase denies the allegations of Paragraph 23 of the Counterclaim.

20 24. Chase is without sufficient information to admit or deny the allegations
21 of Paragraph 24 of the Counterclaim and therefore denies them.

22 25. Chase is without sufficient information to admit or deny the allegations
23 of Paragraph 25 of the Counterclaim and therefore denies them.

24 26. Chase is without sufficient information to admit or deny the allegations
25 of Paragraph 26 of the Counterclaim and therefore denies them.

26 27. Chase denies the allegations of Paragraph 27 of the Counterclaim.

27 28. Chase submits that NRS 116.31166 speaks for itself, and Chase denies
28 the allegations of Paragraph 28 to the extent they misstate the statute's terms or are

1 not read in connection with other relevant laws, including the U.S. Constitution and
2 the Nevada Constitution.

3 **Interests, Liens and Encumbrances Extinguished by the Super-Priority Association**
4 **Lien**

5 29. Chase submits that the Grant, Bargain Sale Deed recorded on the
6 Property as Instrument No. 200606120003525 is a public record that speaks for
7 itself. Chase denies any allegation inconsistent with this record and is without
8 sufficient information to admit or deny the remaining allegations of Paragraph 29 of
9 the Counterclaim and therefore denies them.

10 30. Chase admits the allegations of Paragraph 30 of the Counterclaim.

11 31. Chase submits that the declaration of CC&Rs is a public record that
12 speaks for itself. Chase denies any allegation inconsistent with this record and is
13 without sufficient information to admit or deny the remaining allegations of
14 Paragraph 31 of the Counterclaim and therefore denies them.

15 32. Chase is without sufficient information to admit or deny the allegations
16 of Paragraph 32 of the Counterclaim and therefore denies them.

17 33. Chase submits that the First Deed of Trust recorded on the Property is
18 a public record that speaks for itself. Chase denies any allegation inconsistent with
19 this record and is without sufficient information to admit or deny the remaining
20 allegations of Paragraph 33 of the Counterclaim and therefore denies them.

21 34. Chase admits the allegations of Paragraph 34 of the Counterclaim.

22 35. Chase denies the allegations of Paragraph 35 of the Counterclaim.

23 36. Chase admits the allegations of Paragraph 36 of the Counterclaim.

24 37. Chase admits the allegations of Paragraph 37 of the Counterclaim.

25 38. Chase admits the allegations of Paragraph 38 of the Counterclaim.

26 39. Chase denies the allegations of Paragraph 39 of the Counterclaim.

27 40. Chase denies the allegations of Paragraph 40 of the Counterclaim.

41. Chase repeats its answers contained in Paragraphs 1 through 40.
42. Chase submits that NRS 30.010, *et. seq.* and NRS 40.010 speaks for themselves, and Chase denies the allegations of Paragraph 42 to the extent they state the statutes' terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
43. Chase submits that the foreclosure deed recorded on the Property is a public record that speaks for itself. Chase denies any allegation inconsistent with the record and denies the remaining allegations of Paragraph 43 of the Counterclaim.
44. Chase admits the allegations of Paragraph 44 of the Counterclaim.
45. Chase is without sufficient information to admit or deny the allegations of Paragraph 45 of the Counterclaim and therefore denies them.
46. Chase submits that NRS 116.31162, 116.31163 and 116.31164 speak for themselves, and Chase denies the allegations of Paragraph 46 to the extent they state the statutes' terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
47. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies the allegations of Paragraph 47 to the extent they misstate the statute's terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
48. Chase denies the allegations as they relate to Chase. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 48 of the Counterclaim and therefore denies them.
49. Chase denies the allegations of Paragraph 49 of the Counterclaim.
50. Chase admits that SFR is seeking an order from the Court quieting title in its favour, but Chase denies that SFR is entitled to such an order.

1 IV. SECOND CLAIM FOR RELIEF
2 (Preliminary and Permanent Injunction)

3 51. Chase repeats its answers contained in Paragraphs 1 through 50.

4 52. Chase denies the allegations of Paragraph 52 of the Counterclaim.

5 53. Chase admits that it claims an interest in the Property through the
6 First Deed of Trust. Chase denies the remaining allegations of Paragraph 53 of the
7 Counterclaim.

8 54. Chase is without sufficient information to admit or deny the allegations
9 of Paragraph 54 of the Counterclaim and therefore denies them.

10 55. Chase denies the allegations of Paragraph 55 of the Counterclaim.

11 56. Chase denies the allegations of Paragraph 56 of the Counterclaim.

12 57. Chase denies the allegations of Paragraph 57 of the Counterclaim.

13 58. Chase denies the allegations of Paragraph 58 of the Counterclaim.

14 59. Chase denies the allegations of Paragraph 59 of the Counterclaim.

15 60. Chase denies the allegations of Paragraph 60 of the Counterclaim.

16 61. Chase denies the allegations of Paragraph 61 of the Counterclaim.

17 Unless expressly admitted in this Answer, Chase denies all other allegations
18 in SFR's Counterclaim, including, without limitation, any allegations suggested by
19 the counterclaim's headings.

20 **AFFIRMATIVE DEFENSES:**

21 Chase is continuing to investigate SFR's claims and does not waive any
22 affirmative defenses. Chase reserves its right to amend this Answer and add any
23 subsequently discovered affirmative defenses or claims.

24 **First Affirmative Defense**

25 The Counterclaim fails to state a claim upon which relief can be granted.

26 **Second Affirmative Defense**

27 The alleged homeowner's association foreclosure sale was not reasonable, and
28 the circumstances of the sale of the property violated the Association's obligation of

1 good faith under NRS 116.1113 and duty to act in a reasonable manner.

2 **Third Affirmative Defense**

3 SFR purchased the property with notice of the interest of the senior deed of
4 trust recorded against the property and is not a bona fide purchaser for value.

5 **Fourth Affirmative Defense**

6 To the extent Chase has continued to expend funds and resources to maintain
7 and preserve the Property after the alleged Association foreclosure sale, it is entitled
8 to recoup those amounts.

9 **Fifth Affirmative Defense**

10 To the extent that SFR's interpretation of NRS § 116.3116 *et seq.* is accurate,
11 the statute and Chapter 116 as a whole are void for vagueness.

12 **Sixth Affirmative Defense**

13 SFR's claims are barred by the Due Process clause of the Nevada Constitution
14 and United States Constitution and the Takings Clause of the United State
15 Constitution.

16 **Seventh Affirmative Defense**

17 The claimed lien, including the super-priority portion of it and the sub-priority
18 portion of it, was satisfied prior to the Association foreclosure sale under the
19 doctrines of tender, estoppel, laches, or waiver.

20 **Eighth Affirmative Defense**

21 The Association foreclosure sale is void or otherwise does not operate to
22 extinguish the first deed of trust based on the provisions of the declaration of CC&Rs
23 recorded against the Property on or about November 8, 1991.

24 **Ninth Affirmative Defense**

25 The Association foreclosure sale is void or otherwise insufficient to extinguish
26 the deed of trust based on the failure to provide proper notice of the "super-priority"
27 assessment amounts in accordance with the requirements of NRS Chapter 116,
28 federal law, and constitutional law.

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Tenth Affirmative Defense

The Association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the Association's failure to comply with all mailing, noticing and/or other requirements of Nevada and federal law.

Eleventh Affirmative Defense

The Association foreclosure sale is a voidable fraudulent transfer under the Uniform Fraudulent Transfer Act (NRS 112.140 *et seq.*).

Twelfth Affirmative Defense

The Association foreclosure sale is void to the extent the Association foreclosed on an alleged lien comprised of assessments and/or other charges discharged in bankruptcy.

Thirteenth Affirmative Defense

SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes the Association foreclosure sale from extinguishing Freddie Mac's interest in the Property and preempts any state law to the contrary.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant Chase requests the following relief:

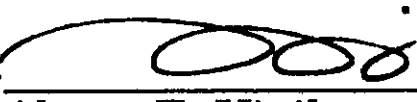
1. That the Court make a judicial determination that HOA sale was invalid;
2. That the Court make a judicial determination that Chase's Deed of Trust survived the HOA sale;
3. That the Court make a judicial determination that SFR took title subject to Chase's ownership interest and/or Deed of Trust;
4. That SFR recover nothing on account of its claims made in the Counterclaim;
5. For reasonable attorney's fees and costs; and
6. For any other relief that the Court deems just and proper in the case.

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DATED this 11 day of August, 2015.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Nevada Bar No. 7548
Lindsay Demaree
Nevada Bar No. 11949
Holly Ann Priest
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*Attorneys for Plaintiff and Counter-
Defendant JP Morgan Chase Bank N.A.*

CERTIFICATE OF MAILING

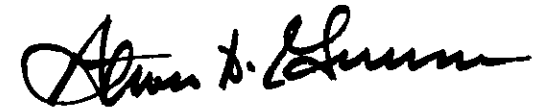
I HEREBY CERTIFY that on the 11 day of August, 2015, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Answer to Counterclaim, was served to the parties following in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014	
Attorneys for SFR Investments Pool, LLC	

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


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CLERK OF THE COURT

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*Attorneys for Plaintiff and Counter-Defendant
JPMorgan Chase Bank N.A.*

DISTRICT COURT
CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10, ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross-
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

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MOTION FOR LEAVE TO AMEND COMPLAINT

Defendant JPMorgan Chase Bank, NA, ("Chase") moves for leave to amend its complaint to add additional allegations. This motion is based on N.R.C.P. 15, the following memorandum of points and authorities, the attached proposed amended pleading, the documents on file in this case, and any oral argument the Court may consider.

NOTICE OF MOTION

Please take notice that the undersigned will bring Motion for Leave to Amend Complaint on for hearing in Department XXIV of the above-entitled Court on the 8 day of MARCH at 9:00 AM.m.

DATED this 2nd day of February, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke
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Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
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Defendant JPMorgan Chase Bank N.A.*