

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE LLC,

Appellant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Respondent.

Supreme Court No. 77874
District Court Case No. A689240

Electronically Filed
Jun 17 2019 05:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Department XIV
The Honorable Adriana Escobar, District Judge
District Court Case No. A-13-689240-C

JOINT APPENDIX, VOLUME IV

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

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DATED June 17, 2019.

AKERMAN LLP

/s/ Donna M. Wittig

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Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

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Attorneys for Nationstar Mortgage LLC

CERTIFICATE OF SERVICE

I certify that I electronically filed on June 17, 2019, the foregoing **JOINT APPENDIX, VOLUME IV** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of Akerman LLP

1 Similarly, Nationstar plans to seek to amend to add Counterclaims against the HOA based upon
2 the same cases and the completion of a mediation with the State of Nevada, Department of
3 Business and Industry – Real Estate Division, Office of the Ombudsman for Common-Interest
4 Communities and Condominium Hotels (“NRED”). The parties have not had an opportunity to
5 conduct discovery on some issues related to the claims Nationstar intends to assert against
6 Plaintiff and the HOA.

7 The parties met and conferred and determined that they needed to extend the deadlines
8 from the original dates. The parties now submit this stipulation and order requesting an amended
9 Scheduling Order and amended Order resetting the civil non-jury trial and calendar call dates.

10 **I. PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY**

11 **Current Discovery Schedule:**

12	Deadline to complete discovery	May 12, 2016
13	Motions to Amend Pleadings	February 12, 2016
14	Initial Expert Disclosures	February 12, 2016
15	Rebuttal Expert Disclosures	March 14, 2016
16	Dispositive Motion Deadline	June 13, 2016

17 **Proposed Discovery Schedule**

18	Deadline to complete discovery	April 13, 2017
19	Motions to Amend Pleadings	January 13, 2017
20	Initial Expert Disclosures	January 13, 2017
21	Rebuttal Expert Disclosures	February 13, 2017
22	Dispositive Motion Deadline	May 15, 2017

23 **II. CURRENT TRIAL DATE**

24 The bench trial is scheduled for February 6, 2017. The parties request a new trial date
25 consistent with the proposed discovery deadlines. The parties request the trial date be continued
26 at this time to a date no earlier than July 14, 2017, as the Court’s calendar permits. The parties
27 also request that the Calendar Call set for January 26, 2017 be vacated.

1 **III. CERTIFICATE OF CONFERENCE**

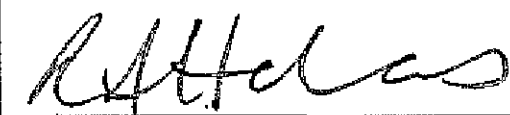
2 Counsel for the parties have conferred via telephone and e-mail on these issues. Counsel
3 for the parties have signed below, thereby indicating their approval of the instant Stipulation and
4 Order to Extend Discovery and Continue Trial (First Request) and do not request a conference
5 before the Discovery Commissioner or Court prior to entry of a new Scheduling Order.

6 DATED this 10 day of January, 2017.

 DATED this 10 day of January, 2017.

7 WRIGHT, FINLAY & ZAK, LLP

 LAW OFFICE OF MICHAEL F. BOHN,
 ESQ.

9 



10 Dana Jonathon Nitz, Esq.

 Michael F. Bohn, Esq.

11 Nevada Bar No. 0050

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 Attorney for Plaintiff, Saticoy Bay, LLC

15 Las Vegas, NV 89117

 Series 4641 Viareggio Ct.

16 Attorneys for Defendant/Counterclaimant

17 Nationstar Mortgage, LLC

ORDER

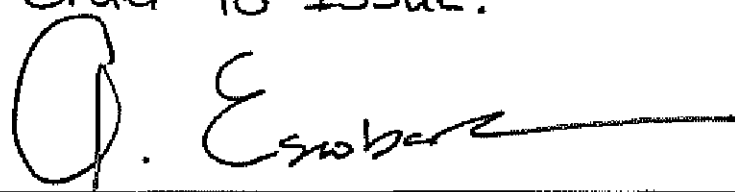
Pursuant to the foregoing Stipulation of the Parties and good cause appearing, the discovery deadlines will be extended as agreed to by the parties; a separate amended scheduling order will not be issued; the trial date of October 10, 2016, will be vacated and reset in accordance with this Stipulation. The new deadlines shall be:

- a) Close of discovery: April 13, 2017
- b) Final date to file motions to amend pleadings or add parties (without a further court order): January 13, 2017
- c) Final Dates for expert disclosures:
 - i. Initial disclosures: January 13, 2017
 - ii. Rebuttal disclosures: February 13, 2017
- d) Final day for dispositive motions: May 15, 2017

The above entitled case is set to be tried on August 21, 2017 at 9:30 a.m./p.m. A Calendar Call will be held on August 10, 2017 at 9:30 a.m./p.m. The Pre-trial Memorandum must be filed no later than August 1, 2017, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with. All motions in limine must be in writing and set for a hearing no later than 30 days prior to Trial. All other matters are controlled by the previously issued Scheduling Order and/or any amendments or subsequent orders.

IT IS SO ORDERED. *New Trial Order to Issue.*

DATED: 1-12-2017


DISTRICT COURT JUDGE *es*

Respectfully Submitted by:
WRIGHT, FINLAY & ZAK, LLP



Regina A. Habermas, Esq.

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Attorneys for Defendant/Counterclaimant Nationstar Mortgage, LLC

1 OCNJ

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 SATICOY BAY LLC SERIES 4641
6 VIAREGGIO CT,

7 Plaintiff(s),

8 vs.

9 NATIONSTAR MORTGAGE, LLC;
10 COOPER CASTLE LAW FIRM, LLP; and
11 MONIQUE GUILLORY,

12 Defendant(s).

13 NATIONSTAR MORTGAGE, LLC,

14 Counterclaimant,

15 vs.

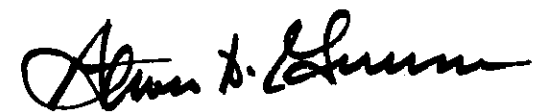
16 SATICOY BAY LLC SERIES 4641
17 VIAREGGIO CT; NAPLES
18 COMMUNITY HOMEOWNERS
19 ASSOCIATION; LEACH JOHNSON
20 SONG & GRUCHOW; DOES I through X;
21 and ROE CORPORATIONS I through X,
22 inclusive,

23 Counter-Defendant(s).

CASE NO.: A-13-689240-C

DEPT. NO. XIV

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CLERK OF THE COURT

24 **AMENDED ORDER SETTING CIVIL NON-JURY TRIAL**

25 **IT IS HEREBY ORDERED THAT:**

26 A. The above-entitled case is set for a **Non-Jury Trial** on a **Four week stack**
27 to begin on **Monday, August 21, 2017, at 9:30 a.m.**, in Department 14, located at 200
28 Lewis Avenue, Las Vegas, Nevada 89155 in Courtroom 14C.

29 B. A **Calendar Call** will be held on **Thursday, August 10, 2017, at 9:30**
30 **a.m.** Trial Counsel (and any party in proper person) must appear. Please note,
31 Department 14 does not conduct Pretrial Conferences. Parties must bring to **Calendar**

1 **Call** the following and be prepared to discuss in detail how much time you will require
2 for opening and closing arguments as well as for your case-in-chief.

3 **Parties must bring to Calendar Call the following:**

- 4 (1) Typed Exhibit lists, with all stipulated exhibits marked;
5 (2) All exhibits marked by counsel for identification purposes;
6 (3) List of depositions;
7 (4) List of equipment needed for trial, including audiovisual equipment;¹
8 (5) Courtesy copies of any legal briefs on trial issues.

9 C. **Pre-Trial Memorandum** - The Pre-Trial Memorandum must be filed no
10 later than 4:00 p.m. 10 days prior to Calendar Call, with a courtesy copy delivered or
11 emailed to Department 14. All parties (attorneys and parties in proper person), **MUST**
12 comply with **ALL REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Parties should
13 include in the Memorandum an identification of orders on all motions in limine or
14 motions for partial summary judgment previously made, a summary of any anticipated
15 legal issues remaining, a brief summary of the opinions to be offered by any witness to be
16 called to offer opinion testimony as well as any objections to the opinion testimony.

17 D. **Motions in Limine** – All motions in limine must be in writing and filed
18 no later than 8 weeks before trial. Orders Shortening Time will not be signed except in
19 extreme emergencies.

20 E. **Discovery Issues** – All discovery deadlines, deadlines for filing
21 dispositive motions, and motions to amend the pleadings or add parties are controlled by
22 the previously issues Scheduling Order.

23 F. Stipulations to continue a trial date will not be considered by the Court.
24 Pursuant to E.D.C.R. 2.35, a motion to continue trial due to any discovery issues or
25 deadlines must be made before the Discovery Commissioner.

26 ¹ If counsel anticipates the need for audio visual equipment or appearance(s) during the trial, a
27 request must be submitted to the District Courts AV department following the calendar call.
28 Please visit <http://www.clarkcountycourts.us/> for instructions on Audio/Visual Appearance
Request Instructions.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacating of trial date; and/or any other appropriate remedy or sanction.

Counsel is asked to notify the Court Recorder Sandra Anderson at least one month in advance if they are going to require daily copies of the transcripts of this trial. Failure to do so may result in a delay in the production of the transcripts.

Counsel must advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be provided to Chambers.

DATED this 17 day of January, 2017.

ADRIANA ESCOBAR
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

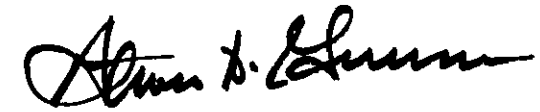
I hereby certify that I caused the foregoing Order to be served by facsimile, by placing a copy in the attorney's folder in the Court Clerk's Office, or by mailing, or faxing, as indicated to:

Dan Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
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Diana D. Powell, Judicial Assistant



CLERK OF THE COURT

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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 4641
16 VIAREGGIO CT,

17 Plaintiff,

18 vs.

19 NATIONSTAR MORTGAGE, LLC; COOPER
20 CASTLE LAW FIRM, LLP; and MONIQUE
21 GUILLORY,

22 Defendants.

23 NATIONSTAR MORTGAGE, LLC,

24 Counterclaimant,

25 vs.

26 SATICOY BAY LLC SERIES 4641
27 VIAREGGIO CT; NAPLES COMMUNITY
28 HOMEOWNERS ASSOCIATION; DOES I
through X; and ROE CORPORATIONS I through
X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept. No.: XIV

**NATIONSTAR MORTGAGE, LLC'S
MOTION FOR LEAVE TO AMEND ITS
ANSWER AND ASSERT
COUNTERCLAIMS ON ORDER
SHORTENING TIME**

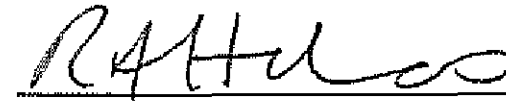
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[Signature]

Pursuant to N.R.C.P. 15, Defendant/Counterclaimant, Nationstar Mortgage, LLC
(hereinafter "Nationstar"), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and
Regina A. Habermas, Esq., of the law firm of Wright Finlay & Zak, LLP, hereby moves for leave of

1 Court to amend its Answer to assert additional Affirmative Defenses, to name Naples Community
2 Homeowners Association (the "HOA") as a party, and assert Counterclaims against Plaintiff and the
3 HOA. A copy of the proposed Amended Answer and Counterclaims is attached as **Exhibit A**.

4 DATED this 13 day of January, 2017.

5 WRIGHT, FINLAY & ZAK, LLP

6 

7 Dana Jonathon Nitz, Esq.

8 Nevada Bar No. 0050

9 Regina A. Habermas, Esq.

10 Nevada Bar No. 8481

11 7785 W. Sahara Ave., Suite 200

12 Las Vegas, Nevada 89117

13 *Attorneys for Defendant/Counterclaimant,*

14 *Nationstar Mortgage, LLC*

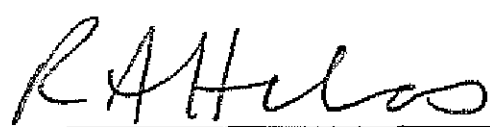
ORDER SHORTENING TIME

GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED that the foregoing NATIONSTAR MORTGAGE, LLC'S MOTION FOR LEAVE TO AMEND ITS ANSWER AND ASSERT COUNTERCLAIMS ON ORDER SHORTENING TIME shall be heard on the 9th day of February, 2017, at the hour of 9:30 a.m./p.m.

DATED this 17 day of January, 2017.


DISTRICT COURT JUDGE 5

Respectfully Submitted by:
WRIGHT, FINLAY & ZAK, LLP


Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorneys for Defendant/Counterclaimant,
Nationstar Mortgage, LLC

DECLARATION OF REGINA A. HABERMAS, ESQ. IN SUPPORT OF NATIONSTAR MORTGAGE, LLC'S MOTION FOR LEAVE TO AMEND ITS ANSWER AND ASSERT COUNTERCLAIMS ON ORDER SHORTENING TIME

I, Regina A. Habermas, under the penalty of perjury, hereby declare and say that:

1. I am an associate attorney with the law firm of Wright, Finlay & Zak, LLP, counsel for Defendant/Counterclaimant Nationstar Mortgage, LLC ("Nationstar") in the above-identified pending action. I am one of the attorneys responsible for the day-to-day handling of this matter.

2. I make this Declaration in support of NATIONSTAR MORTGAGE, LLC'S MOTION FOR LEAVE TO AMEND ITS ANSWER AND ASSERT COUNTERCLAIMS ON ORDER SHORTENING TIME (the "Motion to Amend") and make it on my personal

1 knowledge, except as to those matters stated on information and belief and, as to those matters, I
2 believe them to be true.

3 3. An Amended Order Setting Civil Nonjury Trial and Calendar Call was filed in
4 this action on September 9, 2016, setting the Calendar Call for January 26, 2017 and trial for
5 February 6, 2017.

6 4. Counsel for Plaintiff and Nationstar have conferred and determined that they
7 needed to extend the deadlines from the original dates. The parties have submitted a Stipulation
8 and Order to Extend Discovery and Dispositive Motion Deadlines and Continue Trial (First
9 Request) (the "Stipulation") requesting the discovery and dispositive motion deadlines as well as
10 the civil non-jury trial and calendar call dates be reset.

11 5. Pursuant to the Stipulation, the parties will have only an additional 90 days to
12 complete discovery in this action.

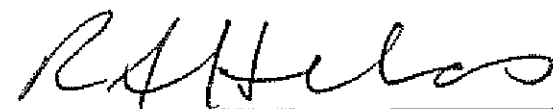
13 6. In its Motion to Amend, Nationstar is seeking leave to assert Counterclaims
14 against Plaintiff, name the HOA as a party, and assert Counterclaims against the HOA.

15 7. Good cause exists to hear the Motion to Amend on shortened time so the HOA
16 may be brought into the action and participate in discovery as quickly as possible.

17 8. This Declaration and Motion to Amend are made in good faith and not for the
18 purpose of delay.

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

21 DATED this 13 day of January, 2017.

22 

23 Regina A. Habermas, Esq.
24
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28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This quiet title action arises out of a non-judicial foreclosure sale of a homeowner's
5 association assessment lien. Plaintiff, allegedly the highest bidder at the sale, named as
6 defendant the beneficiary of record and servicer for the owner of the loan and the first deed of
7 trust encumbering the property, Federal Home Loan Mortgage Corporation ("Freddie Mac").
8 Defendant seeks to amend its Answer to assert certain affirmative defenses and assert
9 counterclaims against Plaintiff for quiet title/declaratory relief and the HOA for wrongful
10 foreclosure, among other claims, arising out of defects in the sale. This Motion is brought by
11 Defendant in good faith to protect the deed of trust, necessitated by the Nevada Supreme Court
12 decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d
13 408 (2014) ("*SFR*").

14 **II.**

15 **FACTUAL AND PROCEDURAL HISTORY**

16 On or about January 22, 2007, Monique Guillory ("Guillory") purchased the Property
17 located at 4641 Viareggio Court, Las Vegas, Nevada 89147 (the "Property").¹ On January 25,
18 2007, a Deed of Trust was recorded, wherein First Magnus Financial Corporation was identified
19 as the Lender, Great American Title was identified as the Trustee, and Mortgage Electronic
20 Registration Systems, Inc. ("MERS") as beneficiary acting solely as nominee for lender and
21 lender's successors and assigns (the "Deed of Trust"), and which secured a loan in the amount of
22 \$258,400.00 (the "Guillory Loan").² On August 30, 2012, a Corporate Assignment of Deed of
23
24

25 _____
26 ¹ A true and correct copy of the Grant, Bargain and Sale Deed recorded in the Clark County
27 Recorder's Office as Book and Instrument Number 20070125-0003582 is attached Nationstar's
28 Answer to the Complaint and Counterclaim (the "Answer and Counterclaim"), on file herein, as
Exhibit 1.

² A true and correct copy of the Deed of Trust recorded as Book and Instrument Number
20070125-0003583 is attached to the Answer and Counterclaim as **Exhibit 2.**

1 Trust was recorded, reflecting that MERS assigned the Deed of Trust to Nationstar.³

2 On August 18, 2011, a Notice of Delinquent Assessment Lien was recorded against the
3 Property on behalf of the HOA.⁴ On January 24, 2012, a Notice of Default and Election to Sell
4 under Homeowners Association Lien was recorded against the Property on behalf of the HOA.⁵
5 On July 30, 2012, a Notice of Foreclosure Sale Under Notice of Delinquent Assessment was
6 recorded against the Property.⁶ On September 6, 2013, a Foreclosure Deed was recorded stating
7 that Plaintiff was the grantee.⁷ Pursuant to the Foreclosure Deed, a non-judicial foreclosure sale
8 purportedly occurred on August 22, 2013 (the "HOA Sale"), whereby Plaintiff acquired its
9 interest in the Property, if any, for \$5,563.00.

10 On September 25, 2013, Plaintiff initiated this action against Nationstar, Cooper Castle
11 Law Firm, LLP and Guillory alleging causes of action for quiet title and declaratory relief and
12 seeking a writ of restitution against Guillory. Nationstar appeared in the action on December 3,
13 2013 and filed a Motion to Dismiss Plaintiff's Complaint. Plaintiff filed an Opposition and
14 Countermotion to Stay Case on December 5, 2013. The Court conducted a hearing on the
15 pending motions on January 24, 2014 during which the Court denied the Motion to Dismiss and
16 granted the Countermotion to Stay Case based upon the large number of HOA foreclosure
17 appeals then pending before the Nevada Supreme Court. The case remained stayed for more
18 than one year and the stay was lifted pursuant to the Court's Order Granting Motion to Lift Stay,
19 entered on February 12, 2015.

20
21
22 ³ A true and correct copy of the Corporate Assignment of Deed of Trust recorded as Book and
23 Instrument Number 20120830-0000676 is attached to the Answer and Counterclaim as
Exhibit 3.

24 ⁴ A true and correct copy of the Notice of Lien (HOA) recorded as Book and Instrument Number
25 20110818-0002904 is attached to the Answer and Counterclaim as **Exhibit 4.**

26 ⁵ A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument
27 Number 20120124-0000764 is attached to the Answer and Counterclaim as **Exhibit 5.**

28 ⁶ A true and correct copy of the Notice of Foreclosure Sale (HOA) recorded as Book and
Instrument Number 20120730-0001448 is attached to the Answer and Counterclaim as
Exhibit 6.

⁷ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
20130906-0000930 is attached to the Answer and Counterclaim as **Exhibit 7.**

1 On March 13, 2015, Nationstar filed an Answer to the Complaint and Counterclaim
2 against Plaintiff and the HOA. On March 19, 2015, Plaintiff filed a Motion to Dismiss
3 Nationstar's Counterclaim, which Nationstar opposed.

4 The Court conducted a hearing on Plaintiff's Motion to Dismiss on May 15, 2015 and
5 took the matter under advisement. Meanwhile, on April 29, 2015, the HOA filed a Motion to
6 Dismiss Nationstar's Counterclaim, which Nationstar also opposed. The Court held a hearing on
7 the HOA's Motion to Dismiss on June 19, 2015, during which the Court granted the motion and
8 dismissed Nationstar's Counterclaim against the HOA without prejudice for failure of Nationstar
9 to complete NRED mediation prior to naming the HOA. On July 28, 2015, the Court entered an
10 Order dismissing Nationstar's Counterclaim against Plaintiff without prejudice.

11 Nationstar submitted a Complaint to the State of Nevada, Department of Business and
12 Industry – Real Estate Division, Office of the Ombudsman for Common-Interest Communities
13 and Condominium Hotels ("NRED") against the HOA and its foreclosure trustee, Leach Johnson
14 Song & Gruchow (the "HOA Trustee") on August 7, 2015. Nationstar received the return
15 package from NRED on December 23, 2015, and served the NRED Complaint on the HOA and
16 HOA Trustee on January 4, 2016. Nationstar, the HOA and the HOA Trustee participated in
17 NRED mediation on May 9, 2016; however the mediation was unsuccessful and the matter was
18 closed. NRED issued its letter confirming the unsuccessful mediation on July 2, 2016.

19 III.

20 LEGAL ARGUMENT

21 A. LEGAL STANDARD FOR AMENDING PLEADINGS

22 Nevada Rule of Civil Procedure 15(a) permits a party to amend its pleading by leave of
23 court and states that "leave shall be freely given when justice so requires." N.R.C.P. 15(a); *see*
24 *also Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. Adv. Op. 18,
25 300 P.3d 124, 130-31 (2013). The Nevada rule mirrors that of the Federal Rules of Civil
26 Procedure, and the Ninth Circuit has similarly held that the policy of freely granting leave to
27 amend "is to be applied with extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244
28 F.3d 708, 712 (9th Cir. 2001).

Moreover, the Nevada Supreme Court maintains a “general policy to decide cases upon their merits.” *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720, 735 (2003); *see also DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (“In exercising its discretion a court must be guided by the underlying purpose of Rule 15 — to facilitate decision on the merits rather than on the pleadings or technicalities.”). Therefore, “justice requires” that leave to amend be freely given “in the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973); *see also* 3 MOORE’S FEDERAL PRACTICE - CIVIL § 15.14 (2011) (analyzing F.R.C.P. 15(a) and stating that “[d]enial of leave to amend is disfavored; and a district judge should grant leave absent a substantial reason to deny”).

B. AMENDMENT OF NATIONSTAR’S ANSWER SHOULD BE FREELY GIVEN IN ORDER FOR NATIONSTAR TO ASSERT ALL APPLICABLE POST-SFR AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Applying these well-established principles, the Court should grant Nationstar’s request for leave to amend its Answer. Justice requires leave to amend in response to the Nevada Supreme Court’s decision in *SFR*, which substantially changed the law of HOA sales and lien priority, and subsequent decisions in HOA foreclosure cases.

At the time the Answer and Counterclaim was filed, the legal community was still attempting to determine what allegations and causes of action were necessary to attack an HOA foreclosure sale in a post-*SFR* world. Additional guidance has developed over the course of the last few months, necessitating an update to the Answer. For instance, the proposed Amended Answer asserts additional Affirmative Defenses to Plaintiff’s Complaint, including the lack of commercial reasonableness of the HOA Sale and the non-retroactivity of the *SFR* decision. The proposed amended pleading also adds Counterclaims for Quiet Title/Declaratory Relief, Preliminary Injunction and Unjust Enrichment against Plaintiff as well as Counterclaims for Wrongful/Statutorily Defective Foreclosure, Negligence, Negligence Per Se, Breach of Contract, Misrepresentation, Unjust Enrichment and Breach of the Covenant of Good Faith and Fair Dealing against the HOA, all relating to and arising out of the non-judicial HOA Sale that is the subject of this litigation.

1 In evaluating a request for leave to amend, Nevada courts examine whether the reasons
2 outlined in *Stephens* – undue delay, bad faith, or dilatory motive – are present. *See, e.g., Cohen*,
3 119 Nev. at 23, 62 P.3d at 735 (finding that it was an abuse of discretion to deny leave to amend
4 where the movant had not delayed and “[t]here was no reason to believe the request to amend
5 was made in bad faith or for any dilatory motive”). Those reasons are not present here.
6 Nationstar’s request to amend the Answer is timely as the discovery deadline is set for April 13,
7 2017. Further, this Motion is timely filed pursuant to an agreement by the parties to extend the
8 deadline to amend pleadings and/or add parties to January 13, 2017. In addition, Nationstar
9 submitted and prosecuted its NRED Complaint as quickly as possible given the large number of
10 matters submitted to NRED since Fall 2015.

11 As noted above, the Court previously dismissed Nationstar’s Counterclaim against the
12 HOA. The sole basis for that dismissal was the failure of Nationstar to submit its claims against
13 the HOA to alternative dispute resolution with NRED prior to filing the Counterclaim. Despite
14 its belief that the claims did not fall within the purview of NRED, Nationstar submitted those
15 claims to NRED. Nationstar, the HOA and the HOA Trustee subsequently participated in
16 mediation, which was unsuccessful. Because Nationstar has completed the alternative dispute
17 resolution process, Nationstar should be granted leave to amend to assert Counterclaims against
18 the HOA.

19 The Court also previously dismissed Nationstar’s Counterclaim against Plaintiff. In its
20 dismissal Order, the Court found the Foreclosure Deed pursuant to which Plaintiff acquired its
21 interest in the Property, if any, provided conclusive proof as to the matters of notice of the
22 delinquency and foreclosure sale. However, in the recent *Shadow Wood* case, the Nevada
23 Supreme Court rejected the argument that the recitals in a foreclosure deed are conclusive. After
24 extensively examining the basis and history of NRS 116.31166, the *Shadow Wood* Court
25 concluded:

26 [T]he Legislature, through NRS 116.31166’s enactment, did not eliminate the
27 equitable authority of the courts to consider quiet title actions when an HOA’s
28 foreclosure deed contains conclusive recitals. We therefore reject [third party
buyer’s] contention that NRS 116.31166 defeats, as a matter of law, [the bank’s]

1 action to set aside the trustee's deed and to quiet title in itself.⁸

2 The Court should therefore grant Nationstar leave to amend to assert its Counterclaims
3 against Plaintiff.

4 This request is not made in bad faith or for any dilatory motive. To the contrary,
5 Nationstar is seeking leave to amend to ensure that this case may be fully evaluated on its merits.
6 *See Cohen*, 119 Nev. at 23, 62 P.3d at 735 (stating Nevada's "general policy to decide cases
7 upon their merits"); *see also* 3 MOORE'S FEDERAL PRACTICE - CIVIL § 15.14 (discussing F.R.C.P.
8 15(a) and noting that "a court should allow amendments to ensure that all the issues are before
9 the court").

10 In addition, the clear benefits of streamlining adjudication of common facts and related
11 issues weigh heavily in favor of permitting amendment, as joining all of the relevant issues and
12 adjudicating all claims in one action will benefit judicial economy, save the parties' and this
13 Court's time and resources, and enable a thorough and conclusive determination of the parties'
14 contentions. *See Lund v. Eighth Judicial Dist. Court of State, ex rel. Cnty. of Clark*, 127 Nev.
15 Adv. Op. 28, 255 P.3d 280, 282-83 (Nev. 2011) (noting that Rule 13(h), which provides for
16 counterclaims and cross-claims, should be construed "liberally 'in an effort to avoid multiplicity
17 of litigation, minimize the circuitry of actions, and foster judicial economy.'" (quoting Charles
18 Alan Wright, Arthur R. Miller & Mary Kay Kane FEDERAL PRACTICE AND PROCEDURE § 1434
19 (2010)); *accord* N.R.C.P. 1 (providing that Nevada's rules of civil procedure "shall be construed
20 and administered to secure the just, speedy, and inexpensive determination of every action.").

21 **C. AMENDMENT OF THE ANSWER SHOULD BE FREELY GIVEN IN**
22 **ORDER FOR NATIONSTAR TO NAME THE HOA AS A PROPER PARTY**
23 **WHOSE RIGHTS OR INTEREST MAY BE AFFECTED BY A**
24 **DECLARATION FROM THIS COURT**

25 The HOA may contend that it is not a proper party to this action since it does not claim
26 an adverse interest to the Property. However, the quiet title claim is directly tied to the
27 declaratory relief claim. And the relief sought in that cause of action is alternative: obtain entry
28 of an order of the Court establishing that the Deed of Trust was not extinguished but remains in
first position despite the sale or obtain entry of an order establishing that the sale was void and

⁸ 366 P.3d at 1112.

1 must be set aside. The HOA and its Trustee may have no interest if the first position status of the
2 Deed of Trust is re-affirmed. However, they would certainly have an interest if the sale were set
3 aside as void because the sale and any distribution of sale proceeds would have to be unwound.
4 Courts have the power to declare rights, status and other legal relations whether or not further
5 relief is or could be claimed. NRS 30.030; *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8,
6 10, 908 P.2d 724, 725 (1996). "When declaratory relief is sought, all persons shall be made
7 parties who have or claim any interest which would be affected by the declaration, and no
8 declaration shall prejudice the rights of persons not parties to the proceeding." NRS 30.130.

9 The declaratory relief in this case is akin to setting aside a foreclosure sale. In *McKnight*
10 *Family, LLP v. Adept Management Services, Inc.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013),
11 the Nevada Supreme Court reversed and remanded the lower court's order denying a motion to
12 set aside the homeowner association's foreclosure sale because the outcome depended on the
13 quiet title claim. 310 P.3d at 559. Likewise, the Court should void the HOA Sale in this case if
14 it finds (1) the CC&Rs prohibited the HOA from foreclosing on the Property; (2) the HOA or its
15 Trustee gave improper notice of the HOA Sale including improper notice of any claimed super-
16 priority lien; and/or (3) the HOA Sale was commercially unreasonable.

17 The question in this case then is not strictly limited to who is claiming an adverse interest
18 in the Property, but rather whose rights or interests may be affected by a declaration from this
19 Court that the foreclosure sale did not extinguish the Deed of Trust or that the foreclosure sale is
20 void. Consider N.R.C.P. 19(a), "Joinder of Persons Needed For Just Adjudication – Persons to
21 Be Joined if Feasible:"

22 A person who is subject to service of process and whose joinder will not deprive the court
23 of jurisdiction over the subject matter of the action shall be joined as a party in the action
24 if (1) in the person's absence complete relief cannot be accorded among those already
25 parties, or (2) the person claims an interest relating to the subject of the action and is so
26 situated that the disposition of the action in the person's absence may (i) as a practical
27 matter impair or impede the person's ability to protect that interest or (ii) leave any of the
28 persons already parties subject to a substantial risk of incurring double, multiple, or
otherwise inconsistent obligations by reason of the claimed interest.

27 The attendance in mediation by the HOA and not the Plaintiff or the litigation by
28 Nationstar against the Plaintiff without the HOA frustrates all the purposes of N.R.C.P. 19(a).

1 The same reasoning applies under N.R.C.P. 20, "Permissive Joinder of Parties – Permissive
2 Joinder:"

3 All persons may join in one action as plaintiffs if they assert any right to relief jointly,
4 severally, or in the alternative in respect of or arising out of the same transaction,
5 occurrence, or series of transactions or occurrences and if any question of law or of fact
6 common to all these persons will arise in the action. All persons may be joined in one
7 action as defendants if there is asserted against them jointly, severally, or in the
8 alternative, any right to relief in respect of or arising out of the same transaction,
9 occurrence, or series of transactions or occurrences and if any question of law or fact
common to all defendants will arise in the action. A plaintiff or defendant need not be
interested in obtaining or defending against all the relief demanded. Judgment may be
given for one or more of the plaintiffs according to their respective rights to relief, and
against one or more defendants according to their respective liabilities.

10 The sale procedures used by the HOA and its Trustee existed at the beginning of this
11 lawsuit and are the focal point of the dispute to either declare the HOA Sale invalid or
12 affirm/restore the Deed of Trust on the Property. While the HOA may not be currently claiming
13 an interest to the Property itself, they certainly did claim to have the power to sell the Property.
14 It is only logical that the HOA defend against the invalidation of its sale. Therefore, this Court
15 should permit Nationstar to name the HOA and assert counterclaims against it.

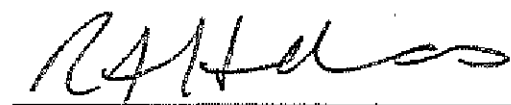
16 IV.

17 CONCLUSION

18 For these reasons, Nationstar respectfully requests leave to amend its Answer in this
19 matter as described above to add Affirmative Defenses, name the HOA as a party, and assert
20 Counterclaims against the HOA.

21 DATED this 13 day of January, 2017.

22 WRIGHT, FINLAY & ZAK, LLP

23 

24 Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

25 Regina A. Habermas, Esq.

Nevada Bar No. 8481

26 7785 W. Sahara Ave., Suite 200

27 Las Vegas, Nevada 89117

Attorneys for Defendant/Counterclaimant,

28 *Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 19th day of January, 2017, I did cause a true copy of **NOTICE OF COMPLETION OF MEDIATION PURSUANT TO NRS 38.310** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NECFR 9.

Law Offices of Michael F. Bohn, Esq.

Name	Email	Select
Eserve Contact	office@bohnlawfirm.com	<input checked="" type="checkbox"/>
Michael F Bohn Esq	mbohn@bohnlawfirm.com	<input checked="" type="checkbox"/>


An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

AACC

WRIGHT, FINLAY & ZAK, LLP

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rhabermas@wrightlegal.net

Attorneys for Defendant and Counterclaimant, Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641

VIAREGGIO CT,

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept. No.: XIV

**DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE LLC'S
AMENDED ANSWER TO THE
COMPLAINT AND COUNTERCLAIMS**

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants,

COMES NOW Defendant/Counterclaimant, NATIONSTAR MORTGAGE, LLC

("Nationstar" or "Defendant"), by and through its attorneys of record, Dana Jonathon Nitz, Esq.,

1 and Regina A. Habermas, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby
2 submits its Answer to the Plaintiff's Complaint.

3 **COMPLAINT**

4 1. Defendant does not possess enough information to admit or deny the allegations
5 in paragraph 1 of the Complaint; therefore, the Defendant denies said allegations.

6 2. Defendant admits only that Plaintiff was the successful bidder at a foreclosure
7 sale occurring on August 22, 2013, concerning the property located at 4641 Viareggio Court, Las
8 Vegas, Nevada 89147, APN No. 163-19-311-015 (the "Property"); and as to the remaining
9 allegations contained in paragraph 2, Defendant does not possess enough information to admit or
10 deny them; therefore, Defendant denies said allegations.

11 3. Defendant does not possess enough information to admit or deny the allegations
12 in paragraph 3 of the Complaint; therefore, the Defendant denies said allegations.

13 4. Defendant admits the allegations in paragraph 4 of the Complaint.

14 5. Defendant admits the allegations in paragraph 5 of the Complaint.

15 6. Defendant does not possess enough information to admit or deny the allegations
16 in paragraph 6 of the Complaint; therefore, the Defendant denies said allegations.

17 7. Defendant denies the allegations in paragraph 7 of the Complaint.

18 8. Defendant admits it has recorded a notice of default and election to sell under its
19 deed of trust pursuant to NRS 107.080; however, as to the remaining allegations in paragraph 8
20 of the Complaint, Defendant denies those allegations.

21 9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

22 10. Defendant denies the allegations in paragraph 10 of the Complaint.

23 **SECOND [sic] CLAIM FOR RELIEF**

24 11. Answering paragraph 11, Defendant hereby repeats, realleges and incorporates
25 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
26 if set forth at length and in full.

27 12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

28 13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

1 **THIRD [sic] CLAIM FOR RELIEF**

2 14. Answering paragraph 14, Defendant hereby repeats, realleges and incorporates
3 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
4 if set forth at length and in full.

5 15. Defendant denies the allegations in paragraph 15 of the Complaint.

6 16. Defendant denies the allegations in paragraph 16 of the Complaint.

7 **FOURTH [sic] CLAIM FOR RELIEF**

8 17. Answering paragraph 17, Defendant hereby repeats, realleges and incorporates
9 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
10 if set forth at length and in full.

11 18. Defendant does not possess enough information to admit or deny the allegations
12 in paragraph 18 of the Complaint; therefore, the Defendant denies said allegations.

13 19. Defendant does not possess enough information to admit or deny the allegations
14 in paragraph 19 of the Complaint; therefore, the Defendant denies said allegations.

15 20. Defendant does not possess enough information to admit or deny the allegations
16 in paragraph 20 of the Complaint; therefore, the Defendant denies said allegations.

17 21. Defendant denies the allegations in paragraph 21 of the Complaint.

18 22. Defendant denies the allegations in paragraph 22 of the Complaint.

19 Defendant denies that Plaintiff is entitled to the relief sought in the "Wherefore" clauses
20 of the Complaint.

21 Unless specifically admitted herein, all other allegations of the Complaint are expressly
22 denied.

23 **NATIONSTAR ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

24 **FIRST AFFIRMATIVE DEFENSE**

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

26 Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be
27 granted.
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1 “satisfy” the amount due and owing on the Loan and would not constitute a waiver of its rights
2 under the Note and Deed of Trust, or statute.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Waiver and Estoppel)**

5 By reason of Plaintiff’s acts and omissions, Plaintiff has waived its rights and is estopped
6 from asserting the claims against Defendant.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 **(Void for Vagueness)**

9 To the extent that Plaintiff’s interpretation of NRS 116.3116 is accurate, the statute and
10 Chapter 116 as a whole are void for vagueness and ambiguity.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(Due Process Violations)**

13 A senior deed of trust beneficiary cannot be deprived of its property interest in violation
14 of the Procedural Due Process Clause of the 5th and 14th Amendments of the United States
15 Constitution and Article 1, Sec. 8, of the Nevada Constitution.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(Violation of Procedural Due Process)**

18 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
19 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution
20 including for the reasons that the non-judicial foreclosure scheme of NRS 116.3116 et seq.
21 violates due process rights because its “opt-in” notice provisions do not mandate that reasonable
22 and affirmative steps be taken to give actual notice to lenders and other holders of recorded
23 security interests prior to a deprivation of their property rights and because the statutes do not
24 require the foreclosing party to take reasonable steps to ensure that actual notice is provided to
25 interested parties who are reasonably ascertainable unless the interested party first requests
26 notice.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Satisfaction of Super-Priority Lien)**

3 The claimed super-priority lien was satisfied prior to the homeowner's association
4 foreclosure under the doctrines of tender, estoppel, laches, or waiver.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Non-retroactivity)**

7 SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)
8 should not be applied retroactively to permit non-judicial foreclosure sales under NRS 116.3116
9 et seq. noticed or conducted before the holding was announced to operate to extinguish the Deed
10 of Trust or render it subordinate to Plaintiff's interest, if any.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(12 U.S.C. Section 4617(j)(3))**

13 Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. Section
14 4617(j)(3), which precludes an HOA sale from extinguishing Federal Home Loan Mortgage
15 Corporation's interest in the Deed of Trust and preempts any state law to the contrary.

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 **(Failure to Join Indispensable Parties)**

18 Plaintiff failed to join one or more indispensable parties.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Additional Affirmative Defenses)**

21 Defendant reserves the right to assert additional affirmative defenses in the event
22 discovery and/or investigation indicates that additional affirmative defenses are applicable.

23 **PRAYER**

24 WHEREFORE, Defendant prays for judgment as follows:

- 25 1. That the Court make a judicial determination that the Deed of Trust survived the
26 HOA Sale;
- 27 2. That the Court make a judicial determination that the Deed of Trust is superior to
28 Plaintiff's claim of title;

3. That the Court make a judicial determination that Plaintiff took title subject to the Deed of Trust;
4. That Plaintiff recover nothing on account of the claims made in the Complaint and each of its purported claims;
5. For reasonable attorney's fees and costs; and
6. For any such other and further relief as the Court may deem just and proper in the case.

NATIONSTAR'S COUNTERCLAIM

COMES NOW Defendant/Counterclaimant, Nationstar Mortgage, LLC ("Nationstar"), by and through their attorneys of record, Dana Jonathon Nitz, Esq., and Regina A. Habermas, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Counterclaim against Saticoy Bay LLC Series 4641 Viareggio Ct; Naples Community Homeowners Association; Does I through X; and Roe Corporations I through X, inclusive (collectively, "Counter-Defendants").

INTRODUCTION

1. Nationstar is authorized to bring this action in the State of Nevada by NRS 40.010.
2. The real property which is the subject of this civil action consists of a residence commonly known as 4641 Viareggio Court, Las Vegas, Nevada 89147, APN No. 163-19-311-015 (the "Property").

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this judicial district because Counter-Defendants reside in this district; a substantial part of the events or omissions giving rise to Nationstar's claims occurred in this district; and the Property that is the subject of this action is situated in this district, in Las Vegas, Clark County, Nevada.

PARTIES

4. Nationstar is a Delaware limited liability company and authorized to conduct business in the State of Nevada.
5. Nationstar was at all times relevant herein the assigned beneficiary of record

1 under the Deed of Trust signed by Monique Guillory ("Guillory"), recorded on January 25, 2007
2 ("Deed of Trust"), which encumbers the Property and secures a promissory note.

3 6. Upon information and belief, Counter-Defendant, Saticoy Bay LLC Series 4641
4 Viareggio Ct, ("Buyer"), is a Nevada limited liability company and at all times relevant was
5 doing business in the State of Nevada. Public records show Buyer is the current owner of record
6 for the Property.

7 7. Upon information and belief, Counter-Defendant, Naples Community
8 Homeowners Association ("Naples" or the "HOA"), is a Nevada non-profit corporation, licensed
9 to do business in the State of Nevada.

10 8. Nationstar does not know the true names, capacities or bases of liability of
11 Counter-Defendants sued as Does I through X and Roe Corporations I through X, inclusive
12 (collectively "fictitious Counter-Defendants"). Each fictitious Counter-Defendant is in some
13 way liable to Nationstar or claims some rights, title, or interest in the Property that is subsequent
14 to or subject to the interests of Nationstar, or both. Nationstar will amend this Counterclaim to
15 reflect the true names of said fictitious Counter-Defendants when the same have been
16 ascertained.

17 **FACTUAL BACKGROUND**

18 ***Guillory Loan Documents***

19 9. On or about January 22, 2007, Guillory purchased the Property.¹

20 10. On or about January 19, 2007, Guillory entered into a loan in the amount of
21 \$258,400.00 (hereinafter, the "Guillory Loan").

22 11. The Guillory Loan was secured by the Deed of Trust executed by Guillory, which
23 identified First Magnus Financial Corporation as the Lender, Great American Title as the
24 Trustee, and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary acting

25
26 ¹ A true and correct copy of the Grant, Bargain and Sale Deed recorded in the Clark County
27 Recorder's Office as Book and Instrument Number 20070125-0003582 on January 25, 2007, is
28 attached hereto as **Exhibit 1**. All other recordings stated hereafter are recorded in the same
manner.

solely as a nominee for lender and lender's successors and assigns.²

12. On August 30, 2012, MERS assigned the Deed of Trust to Nationstar.³

13. At the time of the HOA Sale, the Guillory Loan was owned by the Federal Home Loan Mortgage Corporation ("Freddie Mac").

14. On September 6, 2008, the Director of Federal Housing Finance Agency ("FHFA"), authorized by the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4617 et seq., placed Freddie Mac into conservatorship and appointed FHFA as Conservator.

15. FHFA, as conservator, succeeded by law to "all rights, title, powers, and privileges" of Freddie Mac. 12 U.S.C. § 4617(b)(2)(A)(i).

HOA Lien Documents.

16. Public records show that on July 30, 2007, a Lien for Delinquent Assessments was recorded against the Property by Red Rock Financial Services, LLC ("Red Rock") on behalf of the HOA.⁴

17. Red Rock and one or more fictitious Counter-Defendants are the agents of the HOA and the HOA is responsible for their acts and omissions under the doctrine of respondeat superior.

18. Public records show that on November 9, 2007, a Release of Lien for Delinquent Assessments was recorded against the Property by Red Rock on behalf of the HOA.⁵

19. Public records show that on August 18, 2011, a Notice of Delinquent Assessment Lien was recorded against the Property on behalf of the HOA by Leach Johnson Song &

² A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20070125-0003583 on January 25, 2007, is attached hereto as **Exhibit 2**.

³ A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument Number 20120830-0000676 on August 30, 2012, is attached hereto as **Exhibit 3**.

⁴ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 20070730-0000902 on July 30, 2007, is attached hereto as **Exhibit 4**.

⁵ A true and correct copy of the Release of Lien for Delinquent Assessments recorded as Book and Instrument Number 20071109-0001010 on November 9, 2007, is attached hereto as **Exhibit 5**.

1 Gruchow (the "HOA Trustee") on behalf of the HOA.⁶

2 20. Public records show that on January 24, 2012, a Notice of Default and Election to
3 Sell Real Property to Satisfy Notice of Delinquent Assessment Lien was recorded against the
4 Property by the HOA Trustee.⁷

5 21. Public records show that on July 30, 2012, a Notice of Foreclosure Sale Under
6 Notice of Delinquent Assessment was recorded against the Property by the HOA Trustee.⁸

7 22. Upon information and belief, a non-judicial foreclosure sale is alleged to have
8 occurred on August 22, 2013 (the "HOA Sale"), whereby Buyer acquired its interest in the
9 Property, if any, for the sum of \$5,563.00.

10 23. Public records show that on September 6, 2013, a Foreclosure Deed was recorded
11 by which Buyer claims its interest.⁹

12 24. At the time of the HOA Sale, the amount owed on the Guillory Loan exceeded
13 \$300,216.00.

14 25. Upon information and belief, at the time of the HOA Sale, the fair market value of
15 the Property was \$175,000.00.

16 26. The amount paid at the HOA Sale allegedly totaled \$5,563.00.

17 **GENERAL ALLEGATIONS**

18 27. The HOA Sale did not comply with NRS 116.3102 et seq. because none of the
19 aforementioned notices identified above identified what portion of the claimed lien were for
20 alleged late fees, interest, fines/violations, or collection fees/costs.

21 28. A homeowner's association sale conducted pursuant to NRS Chapter 116 must
22 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and NRS
23

24 ⁶ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and
Instrument Number 20110818-0002904 on August 18, 2011, is attached hereto as **Exhibit 6**.

25 ⁷ A true and correct copy of the Notice of Default and Election to Sell Under Homeowners
Association Lien recorded as Book and Instrument Number 20120124-0000764 on January 24,
26 2012, is attached hereto as **Exhibit 7**.

27 ⁸ A true and correct copy of the Notice of Foreclosure Sale recorded as Book and Instrument
Number 20120730-0001448 on July 30, 2012, is attached hereto as **Exhibit 8**.

28 ⁹ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
20130906-0000930 on September 6, 2013, is attached hereto as **Exhibit 9**.

1 107.090.

2 **29.** A lender or holder of a beneficial interest in a senior deed of trust, such as
3 Nationstar and its predecessors-in-interest in the Deed of Trust, has a right to cure a delinquent
4 homeowner's association lien in order to protect its interest.

5 **30.** Upon information and belief, the HOA and its agent, the HOA Trustee, did not
6 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
7 116.31168.

8 **31.** A recorded notice of default must "describe the deficiency in payment" as stated
9 in NRS 116.31162.

10 **32.** None of the aforementioned notices specified what portion of the lien, if any, that
11 the HOA claimed constituted a "super-priority" lien, specified whether the HOA was foreclosing
12 on the "super-priority" portion of its lien, if any, or under the non-super-priority portion of the
13 lien, or provided any notice of a right to cure.

14 **33.** The HOA Sale occurred without notice to Nationstar of a right to cure the
15 delinquent assessment and the super-priority lien, if any.

16 **34.** The HOA Sale violated Nationstar's rights to due process because Nationstar was
17 not given proper, adequate notice and the opportunity to cure the deficiency or default in the
18 payment of the HOA's assessments and the super-priority lien, if any.

19 **35.** The HOA Sale was an invalid sale and could not have extinguished Nationstar's
20 interest in the Deed of Trust because of the above-stated defects in the notices given to
21 Nationstar, or its predecessors, agents, servicers or trustees, if any.

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

24 **37.** Upon information and belief, the HOA assessment lien and foreclosure notices
25 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
26 properly included in a super-priority lien under Nevada law and that are not permissible under
27 NRS 116.3102 et seq.

28 **38.** The HOA Sale is unlawful and void under NRS 116.3102 et seq.

1 **39.** The HOA Sale is unlawful and void because the “opt-in” provision in NRS
2 116.3116 does not satisfy Constitutional Due Process safeguards under the 5th and 14th
3 Amendments to the United States Constitution, nor Article 1, Section 8, of the Nevada
4 Constitution, so that the statute is unconstitutional on its face.

5 **40.** NRS Chapter 116 is unconstitutional on its face and the HOA Sale is unlawful
6 and void because the “opt-in” provision in NRS 116.3116 does not satisfy Constitutional Due
7 Process safeguards under the 14th Amendment to the United States Constitution, nor Clause 1,
8 Section 8, of the Nevada Constitution.

9 **41.** NRS Chapter 116 is unconstitutional on its face as it lacks any express
10 requirement for an HOA or its agents to provide notice of a foreclosure to the holder of a first
11 deed of trust or mortgage.

12 **42.** NRS Chapter 116 is unconstitutional on its face as it lacks any express right by
13 the lender, beneficiary or holder, or their respective trustees, servicers, agents, or representatives,
14 to obtain payoff information for the super-priority portion, if any, of the homeowner’s
15 association lien or the express right to cure the default and protect the Deed of Trust, and it lacks
16 an express obligation for a homeowner’s association or its agents to accept a tendered payoff and
17 release the super-priority portion of the lien.

18 **43.** NRS Chapter 116 is unconstitutional on its face due to vagueness and ambiguity.

19 **44.** The HOA Sale deprived Nationstar of its right to due process because the
20 foreclosure notices failed to identify the super-priority amount, to adequately describe the
21 deficiency in payment, to provide Nationstar notice of the correct super-priority amount, or to
22 provide a reasonable opportunity for Nationstar to protect its priority by payment to satisfy that
23 amount.

24 **45.** Without providing Nationstar notice of the correct super-priority amount and a
25 reasonable opportunity to satisfy that amount, including its failure to identify the super-priority
26 amount and its failure to adequately describe the deficiency in payment as required by Nevada
27 law, the HOA Sale deprived Nationstar of its right to due process.

28 **46.** Pursuant to NRS 116.31162(1) an association may only proceed with foreclosure

1 under NRS 116.31162 – 116.31168 if the declaration of covenants, conditions and restrictions
2 and reservation of easements so provide.

3 47. The Declaration of Covenants, Conditions and Restrictions and Reservation of
4 Easements for Naples (the “CC&Rs”) provide in Section 7.8 that the Deed of Trust encumbers the
5 Property, even in the event the HOA conducts a sale pursuant to NRS 116.3116 et seq. (the
6 “Mortgagee Protection Clause.”¹⁰

7 48. The CC&Rs for the HOA provide in Section 7.9 that an HOA lien for assessments
8 is subordinate to the first Deed of Trust (the “Lien Subordination Clause”).

9 49. The CC&Rs, the Mortgagee Protection Clause, and Lien Subordination Clause
10 therefore prohibit the HOA from foreclosing on a unit where the mortgage or deed of trust would
11 be eliminated.

12 50. Because the CC&Rs contained a Mortgagee Protection Clause in Section 7.8 and
13 Lien Subordination Clause in Section 7.9, and because Nationstar was not given proper notice
14 that the HOA intended to foreclose on the super-priority portion of the dues owing, Nationstar
15 did not know that it had to attend the HOA Sale to protect its interest in the Deed of Trust.

16 51. Buyer, the HOA, and the HOA Trustee and fictitious Counter-Defendants knew
17 that Nationstar would rely on the Mortgagee Protection Clause and Lien Subordination Clause
18 contained in the recorded CC&Rs, and knew that Nationstar would not know that HOA was
19 foreclosing on super-priority amounts because of the failure of HOA to provide such notice.
20 Nationstar’s absence from the HOA Sale allowed Buyer to appear at the HOA Sale and purchase
21 the Property for a fraction of market value.

22 52. Buyer, the HOA, the HOA Trustee, and fictitious Counter-Defendants knew that
23 prospective bidders would be less likely to attend the HOA Sale because the public at large
24 believed that Nationstar was protected under the Mortgagee Protection Clause and Lien
25 Subordination Clause in the CC&Rs of public record, and that the public at large did not receive
26

27 ¹⁰ A true and correct copy of the Declaration of Covenants, Conditions and Restrictions recorded
28 as Book and Instrument Number 20000307-0000911 on March 7, 2000, is attached hereto as
Exhibit 10.

1 notice, constructive or actual, that HOA was foreclosing on a super-priority portion of its lien
2 because the HOA improperly failed to provide such notice. The general public's belief therefore
3 was that a buyer at the HOA Sale would take title to the Property subject to the Deed of Trust.
4 This general belief resulted in the absence of prospective bidders at the HOA Sale, which
5 allowed Buyer to appear at the HOA Sale and purchase the Property for a fraction of market
6 value.

7 **53.** The circumstances of the HOA Sale of the Property breached the HOA's and the
8 HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a
9 commercially reasonable manner.

10 **54.** Nationstar is informed and believes that Buyer is a professional property
11 purchaser.

12 **55.** The circumstances of the HOA Sale of the Property and Buyer's status as a
13 professional property purchaser prevent Buyer from being deemed a bona fide purchaser for
14 value.

15 **56.** Upon information and belief, Buyer had actual, constructive or inquiry notice of
16 the first Deed of Trust, which prevents Buyer from being deemed a bona fide purchaser or lender
17 for value.

18 **57.** In the event this Court determines that the Deed of Trust has been extinguished,
19 Nationstar suffered damages in the amount of the fair market value of the Property or the unpaid
20 balance of the Guillory Loan and Deed of Trust, at the time of the HOA Sale, whichever is
21 greater, as a proximate result of Counter-Defendants' acts and omissions.

22 **FIRST CAUSE OF ACTION**

23 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**
24 **versus Buyer and fictitious Counter-Defendants)**

25 **58.** Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
26 herein.

27 **59.** Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and
28 authority to declare Nationstar's rights and interests in the Property and to resolve Counter-

1 Defendants' adverse claims in the Property.

2 **60.** Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
3 declare the rights and interest of the parties following the acts and omissions of the HOA and
4 HOA Trustee in foreclosing on the Property.

5 **61.** The Deed of Trust is a first secured interest on the Property as intended by NRS
6 116.3116(2)(b).

7 **62.** As the current beneficiary of record under the Deed of Trust and the servicer on
8 behalf of Freddie Mac, Nationstar is entitled to enforce the Guillory Loan.

9 **63.** The Deed of Trust still encumbers the Property and retains its first position status
10 in the chain of title for the Property after the HOA Sale and is superior to the interest, if any,
11 acquired by Buyer, or held or claimed by any successor in interest to Buyer, for the reasons
12 alleged herein.

13 **64.** Upon information and belief, Buyer and fictitious Counter-Defendants dispute
14 Nationstar's claims and assert priority, so that their claims are adverse to Nationstar's claims.

15 **65.** Based on the adverse claims being asserted by the parties, Nationstar is entitled to
16 a judicial determination regarding the rights and interests of the respective parties to the case.

17 **66.** A justiciable controversy exists between Nationstar and Buyer and Nationstar has
18 a legally protectable interest in the controversy. The issue is ripe for judicial determination.

19 **67.** For all the reasons set forth above and in the Factual Allegations and General
20 Allegations, Nationstar is entitled to a determination from this Court, pursuant to NRS 40.010
21 and NRS 30.010, that the first position Deed of Trust still encumbers the Property.

22 **68.** Nationstar is entitled to a determination from this Court, pursuant to NRS 40.010
23 and NRS 30.010, that the Deed of Trust is superior to the interest, if any, acquired by Buyer
24 through the Foreclosure Deed, or held or claimed by any other party.

25 **69.** In the alternative, if it is found under state law that Nationstar's interest could
26 have been extinguished by the HOA Sale, for all the reasons set forth above and in the General
27 Allegations, Nationstar is entitled to a determination from this Court, pursuant to NRS 30.010
28 and NRS 40.010, that the HOA Sale was unlawful and void and conveyed no legitimate interest

1 to Buyer.

2 70. Nationstar has furthermore been required to retain counsel and is entitled to
3 recover reasonable attorney's fees for having brought the underlying action.

4 **SECOND CAUSE OF ACTION**

5 **(Permanent and Preliminary Injunction versus Buyer and fictitious Counter-Defendants)**

6 71. Nationstar incorporates by reference the allegations of all previous paragraphs, as
7 if fully set forth herein.

8 72. As set forth above, Buyer claims an ownership interest in the Property that is
9 adverse to Nationstar.

10 73. Any sale or transfer of the Property, prior to a judicial determination concerning
11 the respective rights and interests of the parties to the case, may be rendered invalid if the Deed
12 of Trust still encumbers the Property in a first position and was not extinguished by the HOA
13 Sale.

14 74. Nationstar has a reasonable probability of success on the merits of the
15 Counterclaim, for which compensatory damages will not compensate Nationstar for the
16 irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority
17 status secured by the Property.

18 75. Nationstar has no adequate remedy at law due to the uniqueness of the Property
19 involved in the case.

20 76. Nationstar is entitled to a preliminary and permanent injunction prohibiting
21 Buyer, its successors, assigns, and agents from conducting a sale, transfer or encumbrance of the
22 Property if such sale, transfer or encumbrance is claimed to be superior to the Deed of Trust or
23 not subject to that Deed of Trust.

24 77. Nationstar is entitled to a preliminary injunction requiring Buyer to pay all taxes,
25 insurance and homeowner's association dues during the pendency of this action.

26 78. Nationstar is entitled to a preliminary injunction requiring Buyer to segregate and
27 deposit all rents with the Court or a Court-approved trust account over which Buyer has no
28 control during the pendency of this action.

1 79. Nationstar is entitled to a mandatory injunction that the HOA and HOA Trustee
2 be compelled to deliver to the Clerk of the Court and deposit all funds collected at the HOA Sale
3 pending determination by the Court of the validity of the sale and the respective rights of the
4 parties to the sale proceeds.

5 80. Nationstar has been required to retain counsel to prosecute this action and is
6 entitled to recover reasonable attorney's fees to prosecute this action.

7 **THIRD CAUSE OF ACTION**

8 **(Wrongful/Statutorily Defective Foreclosure versus the HOA and fictitious Counter-**
9 **Defendants)**

10 81. Nationstar incorporates by reference the allegations of all previous paragraphs, as
11 if fully set forth herein.

12 82. Upon information and belief, the HOA and HOA Trustee did not comply with all
13 mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

14 83. The HOA and HOA Trustee failed to provide proper notice pursuant to Nevada
15 law and in accordance with due process.

16 84. Because the HOA Sale was wrongfully conducted and violated applicable law, the
17 Court should set it aside to the extent that it purports to have extinguished the Deed of Trust.

18 85. Because the HOA and HOA Trustee did not give Nationstar, or its agents,
19 servicers or predecessors in interest, proper, adequate notice and the opportunity to cure the
20 deficiency or default in the payment of the HOA's assessments required by Nevada statutes, the
21 CC&R's and due process, the HOA Sale should be set aside.

22 86. As a proximate result of the HOA and HOA Trustee's wrongful/statutorily
23 defective foreclosure of the Property by the HOA Sale, as more particularly set forth above and
24 in the General Allegations, Nationstar has suffered general and special damages in an amount not
25 presently known. Nationstar will seek leave of court to assert said amounts when they are
26 determined.

27 87. If it is determined that the Deed of Trust has been extinguished by the HOA Sale
28 as a proximate result of HOA and HOA Trustee's wrongful foreclosure of the Property by the

1 HOA Sale, Nationstar has suffered special damages in the amount equal to the fair market value
2 of the Property or the unpaid balance of the Guillory Loan, plus interest, at the time of the HOA
3 Sale, whichever is greater, in an amount not presently known or liquidated, and according to
4 proof at trial.

5 88. Nationstar has been required to retain counsel to prosecute this action and is
6 entitled to recover reasonable attorney's fees to prosecute this action.

7 **FOURTH CAUSE OF ACTION**

8 **(Negligence versus the HOA and fictitious Counter-Defendants)**

9 89. Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
10 herein.

11 90. The HOA and HOA Trustee owed a duty to Nationstar and subordinate
12 lienholders to conduct the HOA Sale at issue in this case properly.

13 91. The HOA and HOA Trustee breached their duty by failing to disclose the amount
14 of the super-priority lien, by failing to specify that it was foreclosing on the super-priority
15 portion of its lien as opposed to the non-super-priority portion, and by failing to provide notice
16 that Nationstar and subordinate lienholders had an opportunity to cure.

17 92. As an actual and proximate result of the breaches of duties owed by the HOA and
18 HOA Trustee, Nationstar has incurred general and special damages.

19 93. If Nationstar is found to have lost its interest in the Property, it was the proximate
20 result of the HOA and HOA Trustee's breaches of their duties, and Nationstar has thereby
21 suffered general and special damages.

22 94. Nationstar has been required to retain counsel to prosecute this action and is
23 entitled to recover reasonable attorney's fees to prosecute this action.

24 **FIFTH CAUSE OF ACTION**

25 **(Negligence Per Se versus the HOA and fictitious Counter-Defendants)**

26 95. Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
27 herein.

28 96. NRS Chapter 116 imposes a duty on homeowners associations to conduct HOA

1 foreclosure sales in a manner that is consistent with its provisions and, by reference, the
2 provisions of NRS 107.090.

3 **97.** The HOA and HOA Trustee breached the statutory duties imposed by NRS
4 Chapter 116 by proceeding with the HOA foreclosure sale; and by proceeding with the sale
5 without notice that the successful bidder would take title subject to the Deed of Trust.

6 **98.** The HOA and HOA Trustee violated NRS 116.31162(1)(b)(1) by failing to
7 disclose the correct amount in deficiency.

8 **99.** Nationstar is a member of the class of persons whom NRS Chapter 116 is
9 intended to protect.

10 **100.** The injury that Nationstar faces— extinguishment of the Deed of Trust —is the
11 type against which NRS Chapter 116 is intended to protect.

12 **101.** As an actual and proximate result of the HOA and the HOA Trustee's breaches of
13 their statutory duties, Nationstar was unable to cure by tendering a pay-off of the super-priority
14 lien threatening its security interest.

15 **102.** As a proximate result of the HOA and HOA Trustee's breaches of their duties,
16 Nationstar has incurred general and special damages to defend its title in this action, in an
17 amount not yet liquidated.

18 **103.** If it is determined that the Deed of Trust was extinguished and Nationstar is found
19 to have lost its interest in the Property, Nationstar's loss was actually and proximately caused by
20 the actions and inactions of the HOA and the HOA Trustee, and the breaches of their statutory
21 duties, and Nationstar has thereby suffered general and special damages, not yet liquidated.

22 **104.** Nationstar has been required to retain counsel to prosecute this action and is
23 entitled to recover reasonable attorney's fees to prosecute this action.

24 **SIXTH CAUSE OF ACTION**

25 **(Breach of Contract versus the HOA and fictitious Counter-Defendants)**

26 **105.** Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
27 herein.

28 **106.** Nationstar was an intended beneficiary of the HOA's CC&Rs.

107. The HOA and HOA Trustee breached the obligations, promises, covenants, and conditions of the CC&Rs owed to Nationstar by the circumstances under which they conducted the HOA Sale of the Property.

108. The HOA and HOA Trustee's breaches of the obligations, promises, covenants and conditions of the CC&RS proximately caused Nationstar general and special damages, not yet liquidated.

109. Nationstar has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

SEVENTH CAUSE OF ACTION

(Misrepresentation versus the HOA and fictitious Counter-Defendants)

110. Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

111. Nationstar is within the class of persons or entities that the HOA intended or had reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

112. Nationstar justifiably relied upon the provisions of the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust, and the Guillory Loan it secures, and the HOA intended or had reason to expect their conduct would be influenced.

113. The HOA's misrepresentations in the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false or it had an insufficient basis for making the representations.

114. The HOA had a pecuniary interest in having Nationstar and its predecessors in interest rely on the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

115. The HOA failed to exercise reasonable care or competence in communicating that the information within the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false or it had an insufficient basis for making.

116. The HOA and HOA Trustee acted in contravention to the provisions in the

1 CC&RS, including without limitation, the Mortgagee Protection Clause, when it conducted the
2 HOA Sale in a manner that could extinguish the Deed of Trust.

3 117. Nationstar suffered general and specific damages, not yet liquidated, as a
4 proximate cause of its reliance.

5 118. Nationstar has been required to retain counsel to prosecute this action and is
6 entitled to recover reasonable attorney's fees.

7 **EIGHTH CAUSE OF ACTION**

8 **(Unjust Enrichment versus Buyer, the HOA and fictitious Counter-Defendants)**

9 119. Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
10 herein.

11 120. Nationstar has been deprived of the benefit of the Deed of Trust by the actions of
12 Buyer, the HOA, the HOA Trustee, and fictitious Counter-Defendants.

13 121. Buyer, the HOA, the HOA Trustee and fictitious Counter-Defendants have
14 benefitted from the unlawful HOA Sale and nature of the real property.

15 122. Buyer, the HOA, the HOA Trustee, and fictitious Counter-Defendants have
16 benefitted from Nationstar's payment of taxes, insurance or homeowner's association
17 assessments since the time of the HOA Sale.

18 123. Should Nationstar's Counterclaim be successful in quieting title against Buyer
19 and setting aside the HOA Sale, Buyer, the HOA, the HOA Trustee, and fictitious Counter-
20 Defendants will have been unjustly enriched by the HOA Sale and usage of the Property.

21 124. Nationstar will have suffered damages if Buyer, the HOA, the HOA Trustee and
22 fictitious Counter-Defendants are allowed to retain their interests in the Property and the funds
23 received from the HOA Sale.

24 125. Nationstar will have suffered damages if Buyer, the HOA, the HOA Trustee and
25 fictitious Counter-Defendants are allowed to retain their interests in the Property and
26 Nationstar's payment of taxes, insurance or homeowner's association assessments since the time
27 of the HOA Sale.

28 126. Nationstar is entitled to general and special damages, not yet liquidated.

1 **127.** Nationstar has furthermore been required to retain counsel and is entitled to
2 recover reasonable attorney's fees for having brought the underlying action.

3 **NINTH CAUSE OF ACTION**

4 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and fictitious**
5 **Counter-Defendants)**

6 **128.** Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth
7 herein.

8 **129.** Implicit in every contract in the state of Nevada is an implied covenant of good
9 faith and fair dealing.

10 **130.** Nationstar was an intended beneficiary of the HOA's CC&Rs.

11 **131.** The HOA and HOA Trustee breached the duties, obligations, promises, covenants
12 and conditions, express and implied, in the CC&Rs owed to Nationstar by the circumstances
13 under which they conducted the HOA Sale and failed to act in good faith.

14 **132.** The HOA and HOA Trustee acts and omissions proximately caused Nationstar
15 general and special damages, not yet liquidated.

16 **133.** Nationstar has been required to retain counsel to prosecute this action and is
17 entitled to recover reasonable attorney's fees to prosecute this action

18 **PRAYER**

19 Wherefore, Nationstar prays for judgment against the Counter-Defendants, jointly and
20 severally, as follows:

- 21 1. That Buyer take nothing by way of its Complaint;
- 22 2. For a declaration and determination that the Deed of Trust was not extinguished
23 by the HOA Sale;
- 24 3. For a declaration and determination that the Deed of Trust is superior to the
25 interest of Buyer and all fictitious Counter-Defendants;
- 26 4. For a declaration and determination that all transfers of title to the Property are
27 and were subject to the Deed of Trust, and that the Deed of Trust continues to
28 encumber title in senior position in the chain of title;

- 1 5. In the alternative, for a declaration and determination that the HOA Sale was
- 2 invalid to the extent it purports to convey the Property free and clear to Buyer;
- 3 6. In the alternative, for a declaration and determination that the HOA Sale was
- 4 invalid and conveyed no legitimate right, title or interest to Buyer, or its
- 5 encumbrancers, successors and assigns;
- 6 7. For a preliminary injunction that Buyer, its successors, assigns, and agents are
- 7 prohibited from conducting a sale or transfer of the Property and representing that
- 8 the sale is free and clear of the Deed of Trust, unless Buyer tenders payment of
- 9 the debt secured by the Deed of Trust, or from encumbering the title to the
- 10 Property;
- 11 8. For a preliminary injunction that Buyer, its successors, assigns, and agents pay all
- 12 taxes, insurance and homeowner's association dues during the pendency of this
- 13 action;
- 14 9. For a preliminary injunction that Buyer, its successors, assigns, and agents be
- 15 required to segregate and deposit all rents with the Court or a Court-approved
- 16 trust account over which Buyer has no control during the pendency of this action;
- 17 10. If it is determined that the Deed of Trust has been extinguished by the HOA Sale,
- 18 for special damages in the amount of the fair market value of the Property or the
- 19 unpaid balance of the Guillory Loan and Deed of Trust, at the time of the HOA
- 20 Sale, whichever is greater;
- 21 11. For general and special damages in excess of \$10,000.00;
- 22 12. In the alternative, for restitution;
- 23 13. For attorney's fees;
- 24
- 25
- 26
- 27
- 28

1 14. For costs incurred herein, including post-judgment costs;

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

3 DATED this ____ day of January, 2017.

4 WRIGHT, FINLAY & ZAK, LLP

5 [PROPOSED]

6 Dana Jonathon Nitz, Esq.

7 Nevada Bar No. 0050

8 Regina A. Habermas, Esq.

9 Nevada Bar No. 8481

10 7785 W. Sahara Ave., Suite 200

11 Las Vegas, Nevada 89117

12 *Attorneys for Defendant/Counterclaimant,*

13 *Nationstar Mortgage, LLC*

14 **AFFIRMATION**

15 Pursuant to NRS 239B.030

16 The undersigned does hereby affirm that the preceding **DEFENDANT/**
17 **COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S AMENDED ANSWER TO**
18 **THE COMPLAINT AND COUNTERCLAIMS** filed in Case No. A-13-689240-C **does not**
19 contain the social security number of any person.

20 DATED this ____ day of January, 2017.

21 WRIGHT, FINLAY & ZAK, LLP

22 [PROPOSED]

23 Dana Jonathon Nitz, Esq.

24 Nevada Bar No. 0050

25 Regina A. Habermas, Esq.

26 Nevada Bar No. 8481

27 7785 W. Sahara Ave., Suite 200

28 Las Vegas, Nevada 89117

Attorneys for Defendant/Counterclaimant,

Nationstar Mortgage, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
3 ZAK, LLP, and that on this _____ day of January, 2017, I did cause a true copy of
4 **DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S AMENDED**
5 **ANSWER TO THE COMPLAINT AND COUNTERCLAIMS** to be e-filed and e-served
6 through the Eighth Judicial District EFP system pursuant to NEFCR 9.

7
8 **Law Offices of Michael F. Bohn, Esq.**

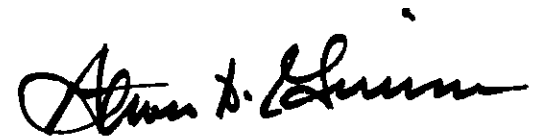
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14 [PROPOSED]

15 An Employee of WRIGHT, FINLAY & ZAK, LLP



CLERK OF THE COURT

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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 4641
11 VIAREGGIO CT

CASE NO.: A-13-689240-C
DEPT NO.: XIV

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
15 GUILLORY

16 Defendants.

17 **PLAINTIFF'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION**
18 **FOR LEAVE TO AMEND ANSWER AND ASSERT COUNTERCLAIMS**

19 Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct. (hereinafter "Plaintiff"), by and through its
20 attorney, Michael F. Bohn, Esq., submits the following points and authorities in response to the motion
21 for leave to amend its answer and assert counterclaims, filed on January 19, 2017, by Nationstar Mortgage,
22 LLC (hereinafter "defendant").

23 **POINTS AND AUTHORITIES**

24 **FACTS**

25 Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas,
26 Nevada. Plaintiff obtained title by a foreclosure deed recorded on September 6, 2013. (Exhibit 9 to
27 proposed amended counterclaim)

1 Nationstar Mortgage, LLC is the beneficiary of a deed of trust which was recorded as an
2 encumbrance to the subject property on January 25, 2007. (Exhibit 2 to proposed amended counterclaim)

3 On March 13, 2015, defendant filed an answer to the complaint and counterclaim including
4 thirteen affirmative defenses and a counterclaim alleging three causes of action: 1) quiet title/declaratory
5 relief against plaintiff and the HOA; 2) permanent and preliminary injunction against plaintiff; and 3)
6 wrongful foreclosure against the HOA and fictitious defendants.

7 On March 19, 2015, plaintiff filed a motion to dismiss defendant's counterclaim.

8 On April 20, 2015, defendant filed an opposition to plaintiff's motion to dismiss counterclaim
9 and, in the alternative, motion for continuance, and its countermotion for summary judgment.

10 On May 4, 2015, plaintiff filed a reply in support of plaintiff's motion to dismiss counterclaim
11 and opposition to countermotion for summary judgment.

12 On July 28, 2015, the court entered an order granting plaintiff's motion to dismiss and denying
13 Nationstar Mortgage, LLC's countermotion for summary judgment.

14 On January 19, 2017, defendant filed its motion for leave to amend its answer and assert
15 counterclaims on order shortening time.

16 **Legal Argument**

17 **A. Defendant's motion should be dismissed because the proposed amendment is futile.**

18 The Nevada Supreme Court has also held that leave to amend should not be granted where the
19 proposed amendment is futile. Halcrow v. Eighth Judicial District Court, 129 Nev. Adv. Op. 42, 302
20 P.3d 1148, 1152 (2013); Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993);
21 Soebbing v. Carpet Barn, Inc., 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).

22 **B. The proposed amendments to defendant's affirmative defenses are all futile.**

23 Comparing the counterclaim that was dismissed by the court's order entered on July 28, 2015 with
24 the proposed amended counterclaim reveals that the changes proposed by defendant all lack merit.

25 **1. The amended Tenth Affirmative Defense is without merit.**

26 Defendant has revised the tenth affirmative defense claiming that the non-judicial foreclosure
27 process in NRS 116.3116 et seq. violates due process rights. The court's order entered on July 28, 2015

1 specifically addressed this same due process argument at pages 6 to 12 and found that due process is not
2 an issue because there is no state action.

3 In Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev., Adv.
4 Op. 5 (Jan. 26, 2017), the Nevada Supreme Court found that due process is not an issue in an HOA
5 foreclosure sale because no “state actor” participates in the foreclosure process. At pages *6 and *7 of
6 its opinion, the court relied on the decisions by the United States Supreme Court in Lugar v. Edmondson
7 Oil Co., Inc., 475 U.S. 922 (1982), and Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), which hold that
8 due process is not an issue unless a “state actor” participates in the challenged procedure.

9 At page *7 of the opinion, the Nevada Supreme Court also recognized that based on this federal
10 precedent, “the Legislature’s mere enactment of NRS 116.3116 does not implicate due process absent
11 some additional showing that the state compelled the HOA to foreclose on its lien, or that the state was
12 involved with the sale.” In footnote 5 at the bottom of page *7, the court acknowledged the finding in
13 Bourne Valley “that the Legislature’s enactment of NRS 116.3116 *et seq.* does constitute state action,”
14 and stated: “However, for the aforementioned reasons, we decline to follow its holding.”

15 The misinterpretation of Nevada law by the majority opinion in Bourne Valley Court Trust v.
16 Wells Fargo Bank, N.A., 832 F.3d 1154 (9th Cir. 2016), is not a binding interpretation of the statute
17 because only the Nevada Supreme Court can authoritatively construe NRS Chapter 116.

18 In Blanton v. N. Las Vegas Mun. Ct., 103, Nev. 623, 633, 748 P.2d 494, 500 (1987), *aff’d*,
19 Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989), the Nevada Supreme Court stated:

20 We note initially that the decisions of the federal district court and panels of the federal
21 circuit court of appeal are not binding upon this court. United States ex rel. Lawrence v.
22 Woods, 432 F.2d 1072, 1075-76 (7th Cir. 1970), *cert. denied*, 402 U.S. 983, 91 S.Ct.
23 1658, 29 L.Ed. 2d 140 (1971). Even *en banc* decision of a federal circuit court would not
24 bind Nevada to restructure the court system of this state. Our state constitution binds the
25 courts of the State of Nevada to the United States Constitution as interpreted by the
26 United States Supreme Court. art. I, §2. See Bargas v. Warden, 87 Nev. 30, 482 P.2d
27 317, *cert. denied*, 403 U.S. 935, 91 S. Ct. 2267, 29 L.Ed.2d 715 (1971).

28 In California Teachers Association v. State Board of Education, 271 F.3d 1141 (9th Cir. 2001),
the court identified the following limits on a federal court’s power to interpret state law:

We recognize that it is **solely within the province of the state courts to authoritatively
construe state legislation.** See United States v. Thirty–Seven (37) Photographs, 402 U.S.

1 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we authorized to rewrite the
2 law so it will pass constitutional muster. Virginia v. American Booksellers Ass'n, Inc.,
3 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988). A federal court's duty, when
4 faced with a constitutional challenge such as this one, is to employ traditional tools of
5 statutory construction to determine the statute's "allowable meaning." Grayned v. City of
6 Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972); Stoianoff v.
7 Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In doing so, **we look to the words of the**
8 **statute itself as well as state court interpretations of the same or similar statutes.**
9 Grayned, 408 U.S. at 109–10, 92 S. Ct. 2294. Moreover, before invalidating a state statute
10 on its face, a federal court **must determine whether the statute is "readily susceptible"**
11 **to a narrowing construction by the state courts.** American Booksellers, 484 U.S. at
12 397, 108 S. Ct. 636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997).
13 (emphasis added)

14 271 F.3d at 1146-1147.

15 In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court stated:

16 Federal courts lack competence to rule definitively on the meaning of state legislation,
17 see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate
18 challenges to state measures absent a showing of actual impact on the challenger, see, e.g.,
19 Golden v. Zwickler, 394 U.S. 103, 110 (1969).

20 In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978), the
21 court stated that "the Oklahoma Courts may express their differing views on the retroactivity problem **or**
22 **similar federal questions** until we are all guided by a binding decision of the Supreme Court."
23 (emphasis added)

24 In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court stated
25 that "[a] more cautious approach was in order" and that "[t]hrough certification of novel or unsettled
26 questions of state law for authoritative answers by a State's highest court, a federal court may save 'time,
27 energy, and resources and hel[p] build a cooperative judicial federalism.'"

28 In the present case, the foreclosure deed (Exhibit 9 to defendant's amended counterclaim) states
that the conveyance is made pursuant to Chapter 116 of the Nevada Revised Statutes and the Declaration
of Covenants, Conditions and Restrictions (CC&Rs) recorded on May 7, 2000 in Book 20000507 as
Instrument No. 00911, in the office of the Clark County Recorder. (Exhibit 10 to defendant's amended
counterclaim) Defendant's deed of trust was not recorded until January 25, 2007. (Exhibit 2 to
defendant's amended counterclaim) The deed of trust was assigned to defendant on August 30, 2012.
(Exhibit 3 to defendant's amended counterclaim)

1 At the time that the deed of trust was recorded on January 25, 2007, NRS 116.3116(5) stated:

2 Recording of the declaration constitutes record notice and perfection of the lien.
3 No recordation of any claim of lien for assessment under this section is required.

4 As recognized by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
5 334 P.3d at 418, and in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133
6 Nev., Adv. Op. 5, at *10 (Jan. 26, 2017), both the CC&Rs recorded on May 7, 2000 and the statute
7 enacted in 1991 provided defendant with notice that its deed of trust was subordinate to the HOA's
8 superpriority lien rights.

9 This court is not bound by the incorrect interpretation of the statute by the majority opinion in
10 Bourne Valley. This court is instead bound by the constitutional interpretation of the statute adopted by
11 the Nevada Supreme Court.

12 **2. The amended Twelfth Affirmative Defense is without merit.**

13 Defendant's proposed twelfth affirmative defense asserts that the interpretation of the statute in
14 SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), should
15 not be applied retrospectively to the HOA foreclosure sale held on August 22, 2013.

16 In Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971), the United States Supreme Court
17 identified three factors to be considered in applying the doctrine of non-retroactivity. The first factor is
18 whether the Court's decision was foreseeable.

19 NRS 116.1108 expressly provides that "the law of real property . . . supplement the provisions
20 of this chapter, except to the extent inconsistent with this chapter," and the decision in SFR relied upon
21 the long-established principle that the nonjudicial foreclosure of a prior lien extinguishes all subordinate
22 liens. Brunzell v. Lawyers Title Insurance Corp. 101 Nev. 395, 705 P.2d 642 (1985); Aladdin Heating
23 Corp. v. Trustees of Central States, 93 Nev. 257, 563 P.2d 82 (1977); Erickson Construction Co. v.
24 Nevada National Bank 89 Nev. 350, 513 P.2d 1236 (1973). *See also* comment a to Restatement (Third)
25 of Prop.: Mortgages, § 7.1 (1997).

26 As recognized by the Court in SFR, the court in Summerhill Village Homeowners Association
27 v. Roughley, 289 P.3d 645 (Wash. App. 2012), held on February 21, 2012 that the judicial foreclosure

1 of an HOA's superpriority lien extinguished a first deed of trust. Furthermore, as recognized by the Court
2 in SFR, its interpretation relied on the official comments to UCIOA§ 3-116 that "forthrightly
3 acknowledge that the split-lien approach represents a 'significant departure from existing practice'" and
4 that lenders would most likely pay the "assessments demanded by the association rather than have the
5 association foreclose on the unit." 334 P.3d at 412-413. The Nevada Supreme Court also quoted from
6 Advisory Opinion No. 13-01 issued by the Nevada Real Estate Division on December 12, 2012 and
7 described the NRED's interpretation of the statute as "persuasive." 334 P.3d at 416-117. As stated at
8 page 9 of the NRED opinion: "An association can foreclose its super priority lien and the first security
9 interest holder will either pay the super priority lien amount or lose its security."

10 In the present case, because the HOA foreclosure sale took place on August 22, 2013, defendant
11 also had access to the interpretation of the HOA's super priority lien rights in the Report of the Joint
12 Editorial Board for Uniform Real Property Acts, dated June 1, 2013.

13 The Summerhill decision, the official comments to UCIOA§ 3-116, Advisory Opinion No. 13-01,
14 and the Report of the Joint Editorial Board all warned defendant of the consequences of allowing the
15 HOA to foreclose its superpriority lien. The interpretation of NRS Chapter 116 adopted in SFR was
16 "clearly foreshadowed."

17 The second factor identified by the Supreme Court asks the court to look to the "prior history of
18 the rule in question, its purpose and effect." Defendant should not be rewarded for ignoring the clear
19 provisions of the statute, established law that foreclosure of a senior lien extinguishes all subordinate
20 liens, the official comments to the UCIOA, the Joint Editorial Board report, the NRED opinion, and
21 Summerhill, all of which existed before the foreclosure sale on August 22, 2013.

22 Regarding the third factor where the court must weigh "the inequity imposed by retroactive
23 application," the Nevada Supreme Court recognized in SFR that "[t]he inequity U.S. Bank decries is thus
24 of its own making and not a reason to give NRS 116.3116(2) a singular reading at odds with its text and
25 the interpretation given it by the authors and editors of the UCIOA." 334 P.3d at 414.

26 Defendant's proposed twelfth affirmative defense is therefore without merit.

27 ///

1 **3. The amended Fourteenth Affirmative Defense is without merit.**

2 In its proposed Fourteenth Affirmative Defense, defendant asserts that “Plaintiff has failed to join
3 one or more indispensable parties.” Plaintiff, however, has named each of the persons and entities
4 holding a recorded interest in the Property on the date of the HOA foreclosure sale. The proposed
5 Fourteenth Affirmative Defense is without merit.

6 **C. The proposed amendments to defendant’s counterclaim are all futile.**

7 Comparing the proposed amended counterclaim to the counterclaim filed by defendant on March
8 13, 2015, defendant has not added any material allegations that would support relief against the plaintiff.

9 **1. Defendant has not alleged that the deed of trust has been assigned to Freddie
10 Mac or that defendant has standing to assert claims on behalf of FHFA.**

11 In the proposed amended counterclaim, defendant has added allegations in paragraphs 13, 14, and
12 15 that the Guillory Loan was owned by Freddie Mac on the date of the HOA foreclosure sale and that
13 FHFA is the conservator for Freddie Mac. In paragraph 62 of the proposed amended counterclaim,
14 defendant also alleges that it is “the servicer on behalf of Freddie Mac.”

15 On the other hand, both the Twelfth Affirmative Defense in the counterclaim filed on March 13,
16 2015 and the Thirteenth Affirmative Defense in the proposed amended counterclaim allege that 12 U.S.C.
17 § 4671(j)(3) “precludes an HOA sale from extinguishing the Deed of Trust and preempts any state law
18 to the contrary.” As a result, the court has already ruled that Freddie Mac’s alleged unrecorded interest
19 in the Guillory Loan does not support relief against plaintiff.

20 In addition, defendant does not have standing to appear for and assert claims in this action on
21 behalf of either Freddie Mac or FHFA. Paragraph 62 of the proposed amended counterclaim only states
22 that defendant is “the servicer on behalf of Freddie Mac.”

23 In Freedom Mortgage Corporation v. Las Vegas Development Group, LLC, 106 F. Supp. 3d 1174
24 (D. Nev. 2015), the lender challenged the extinguishment of its deed of trust by an HOA foreclosure sale
25 because the loan was insured by HUD. The court noted that prudential standing “encompasses ‘the
26 general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of
27 generalized grievances more appropriately addressed in representative branches, and the requirement that
28

1 a plaintiff's complaint fall within the zone of interests protected by the law invoked.” Id. at 1179, quoting
2 United States v. Lazarenko, 476 F.3d 642, 649-50 (9th Cir. 2007)(quoting Allen v. Wright, 468 U.S. 737,
3 751, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)). The court also stated: “Essentially, the standing question
4 in such cases is whether the constitutional . . . provision on which the claim rests properly can be
5 understood as granting persons in plaintiff's position a right to judicial relief.” Id. at 1179-1180, quoting
6 The Wilderness Soc’y v. Kane Cnty., Utah, 632 F.3d 1162, 1169 (10th Cir. 2011)(quoting Warth v.
7 Seldin, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)).

8 Furthermore, the proposed amended counterclaim does not allege that Freddie Mac has ever held
9 a recorded interest in the Property. Paragraph 12 of the proposed amended counterclaim instead alleges
10 that the deed of trust was assigned to defendant on August 30, 2012.

11 The United States Supreme Court recognized in Butner v. United States, 440 U.S. 48 (1979), that
12 “[p]roperty interests are created and defined by state law.” Id. at 55. The Court of Appeals in United
13 States v. View Crest Garden Apts., Inc., 268 F.2d 380 (9th Cir. 1959), agreed that “state recording acts
14 interfere with no federal policy as there is no federal recording system for the type of mortgages here
15 involved.” Id. at 383.

16 NRS 106.210(1) states:

17 Any assignment of a mortgage of real property, or of a mortgage of personal property or
18 crops recorded prior to March 27, 1935, and any assignment of the beneficial interest
19 under a deed of trust **must be recorded** in the office of the recorder of the county in
20 which the property is located, **and from the time any of the same are so filed for record**
21 **shall operate as constructive notice of the contents thereof to all persons.** (emphasis
22 added)

23 Recording of an assignment is critical because NRS 111.325 provides that an unrecorded
24 conveyance of the deed of trust is “void” as to subsequent purchasers like plaintiff. NRS 111.325 states:

25 **Every conveyance of real property** within this State hereafter made, **which shall not be**
26 **recorded** as provided in this chapter, **shall be void** as against any subsequent purchaser,
27 in good faith and for a valuable consideration, of the same real property, or any portion
28 thereof, where his or her own conveyance shall be first duly recorded. (emphasis added)

Because no recorded document has assigned any interest in the deed of trust to either Freddie Mac
or FHFA, any such interest is void as to plaintiff.

///

1 **2. Defendant’s allegations regarding violation of defendant’s due process rights**
2 **are without merit.**

3 In paragraphs 34, 39, 40, 41, 42, 43, 44 and 45 of the proposed amended counterclaim, defendant
4 alleges that the its rights to due process were violated and that the HOA foreclosure statute is facially
5 unconstitutional. As set forth at page 4 above, the Nevada Supreme Court found in Saticoy Bay LLC
6 Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev., Adv. Op. 5 (Jan. 26, 2017), that due
7 process is not an issue with an HOA foreclosure sale because no “state actor” participates in the
8 foreclosure process.

9 **3. The “commercial reasonableness” requirements contained in the Uniform**
10 **Commercial Code do not apply to the foreclosure sale in this case.**

11 Paragraph 24 of the proposed amended counterclaim alleges that the “fair market value of the
12 Property was \$175,000.00” on the date of the foreclosure sale, and paragraph 25 of the proposed amended
13 counterclaim alleges that the amount paid at the HOA sale was \$5,563.00.

14 Paragraph 53 of the proposed amended counterclaim alleges that the HOA sale “breached the
15 HOA’s and HOA Trustee’s obligations of good faith under NRS 116.1113 and their duty to act in a
16 commercially reasonable manner.”

17 NRS Chapter 116 does not contain any language that requires that an HOA foreclosure sale be
18 “commercially reasonable,” and no language in NRS Chapter 116 even suggests that an interested party
19 can seek to set aside an HOA foreclosure sale as being “commercially unreasonable” under the terms of
20 the Uniform Commercial Code.

21 Although the comment to Section 1-113 of the Uniform Common Interest Ownership Act
22 (“UCIOA”) states that the definition of “good faith” contained in Section 1-113 of the UCIOA is “derived
23 from and used in the same manner as in Sections 2-103(i)(b) and 7-404 of the Uniform Commercial
24 Code,” the definition adopted in the comment does not include the word “commercial.”

25 The amendment to NRS Chapter 104 made in 2005 placed the current definition of “good faith”
26 in Nevada’s Uniform Commercial Code in NRS 104.1201(2)(t). NRS 104.1102 expressly provides that
27 Article 1 of the Uniform Commercial Code “applies to a transaction to the extent that is governed by
28 another Article of the Uniform Commercial Code.” No provision of the Uniform Commercial Code

1 purports to govern an HOA foreclosure sale.

2 Prior to the 2005 amendment, the definition of “good faith” contained in NRS 104.2103(1)(b)
3 stated: “‘Good faith’ **in the case of a merchant** means honesty in fact and the observance of reasonable
4 commercial standards of fair dealing in the trade.” (emphasis added) The HOA is not a “merchant,” so
5 the former definition of “good faith” in NRS 104.2103(1)(b) could not apply to it.

6 NRS 104.9109(4)(k) states that Article 9 of the Uniform Commercial Code does not apply to
7 “[t]he creation or transfer of an interest in or lien on real property” except in four instances. An HOA
8 assessment lien is not one of the four instances. Consequently, the language in NRS 104.9610(2)
9 requiring that “[e]very aspect of a disposition of collateral, including the method, manner, time, place and
10 other terms, must be commercially reasonable” does not apply to the HOA foreclosure sale held in the
11 present case pursuant to NRS 116.31162 through NRS 116.31168 and, by incorporation, NRS 107.090.

12 NRS 116.1108 states that “[t]he principles of law and equity, including . . . the law of real
13 property . . . supplement the provisions of this chapter, except to the extent inconsistent with this
14 chapter.” The Uniform Commercial Code is not one of the areas of law incorporated by NRS 116.1108.

15 In addition, the words “commercially reasonable” do not appear in Shadow Wood Homeowners
16 Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016),
17 which applied Nevada case law governing real property foreclosure sales to the HOA foreclosure sale in
18 that case.

19 Although the court referred to comment b to Restatement (Third) of Property: Mortgages § 8.3,
20 the reference was made solely regarding the one factor of inadequacy of price:

21 The question remains whether NYCB demonstrated sufficient grounds to justify the
22 district court in setting aside Shadow Wood's foreclosure sale on NYCB's motion for
23 summary judgment. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d
24 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in
its favor). **As discussed above, demonstrating that an association sold a property at
its foreclosure sale for an inadequate price is not enough to set aside that sale; there
must also be a showing of fraud, unfairness, or oppression.** *Long*, 98 Nev. at 13, 639
P.2d at 530.

25 **NYCB failed to establish that the foreclosure sale price was grossly inadequate as a**
26 **matter of law.** NYCB compares Gogo Way's purchase price, \$11,018.39, to the amount
27 NYCB bought the property for at its foreclosure sale, \$45,900.00. Even using NYCB's
purchase price as a comparator, and adding to that sum the \$1,519.29 NYCB admits

1 remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's
2 purchase price reflects 23 percent of that amount and is therefore not obviously
3 inadequate. *See Golden*, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a
4 property was “sold for a smaller proportion of its value than 28.5%,” it did not justify
5 setting aside the sale); *see also Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b*
6 **(1997) (stating that while “[g]ross inadequacy cannot be precisely defined in terms**
of a specific percentage of fair market value[, g]enerally ... a court is warranted in
invalidating a sale where the price is less than 20 percent of fair market value and,
absent other foreclosure defects, is usually not warranted in invalidating a sale that
yields in excess of that amount”). (emphasis added)
366 P.3d at 1112-1113.

7 In this section of its opinion, the Court focused only on the burden placed on the former owner
8 that was seeking to overturn the sale that divested it of title. No burden was placed on the bona fide
9 purchaser to prove that it paid at least 20% of fair market value at the HOA foreclosure sale.

10 The Court in *Shadow Wood* applied the California rule from *Golden v. Tomiyasu*, 79 Nev. 503,
11 387 P.2d 989 (1963), which holds that “**inadequacy of price, however gross, is not in itself a sufficient**
12 **ground** for setting aside a trustee's sale legally made; there must be in addition proof of some element
13 of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.” (quoting
14 *Oller v. Sonoma Cty. Land Title Co.*, 137 Cal. App.2d 633, 290 P.2d 880, 882 (Cal. Ct. App.1955))) .
15 “. . .” 366 P.3d at 1111. (emphasis added)

16 In the present case, defendant’s proposed amended counterclaim does not include the required
17 allegations of “fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.”

18 **4. The statutes take priority over any mortgage saving clause.**

19 Paragraphs 47 and 48 of the proposed first amended counterclaim repeat the allegations
20 concerning Sections 7.8 and 7.9 of the CC&Rs that appeared in paragraphs 43 and 45 of the counterclaim
21 filed on March 13, 2015. The argument that a mortgage protection clause or a lien subordination clause
22 can affect the HOA’s superpriority lien rights was specifically rejected by the Supreme Court in *SFR*
23 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014).

24 **5. Defendant is not entitled to injunctive relief against plaintiff.**

25 In the second cause of action in defendant’s proposed amended counterclaim, defendant alleges
26 in paragraph 76 that defendant is entitled to a preliminary and permanent injunction plaintiff from making
27 a sale or transfer of the Property “if such sale, transfer or encumbrance is claimed to be superior to the
28

1 Deed of Trust or not subject to the Deed of Trust.”

2 Because defendant’s deed of trust was extinguished by the foreclosure sale pursuant to the HOA’s
3 superpriority lien, however, defendant is not entitled to any such relief against plaintiff.

4 **6. Defendant’s claim for unjust enrichment is barred by the voluntary**
5 **payment doctrine.**

6 In paragraph 122 of its Eighth Cause of Action, defendant alleges that “Buyer, the HOA, the HOA
7 Trustee, and fictitious Counter-Defendants have benefitted from Nationstar’s payment of taxes, insurance
8 or homeowner’s association assessments since the time of the HOA Sale.”

9 Even if assumed to be true, defendant has not stated a claim for which relief can be granted against
10 plaintiff. Because defendant had no interest in the Property when it allegedly made the payments
11 identified in paragraph 122 of the proposed amended counterclaim, the voluntary payment doctrine
12 prevents defendant from recovering the payments from plaintiff.

13 In Nevada Association Services, Inc. v. Eighth Judicial District Court, 130 Nev. Adv. Op. 94, 338
14 P.3d 1250, 1257 (2014), the Nevada Supreme Court recognized that the “voluntary payment doctrine”
15 was “a complete defense” to Elsinore, LLC’s claim to recover “excessive lien demands in violation of
16 NRS 116.3116 and the Peccole Ranch covenant, conditions, and restrictions (CC&Rs)”:

17 "The voluntary payment doctrine is a long-standing doctrine of law, which clearly
18 provides that one who makes a payment voluntarily cannot recover it on the ground that
19 he was under no legal obligation to make the payment." Best Buy Stores v.
20 Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir.2012) (internal quotations
omitted). This doctrine precludes recovery of a voluntary payment unless the party can
demonstrate that it meets an exception to the doctrine.

21 338 P.3d at 1252.

22 The voluntary payment doctrine prevents defendant from suing plaintiff to recover payments that
23 defendant had no obligation to make.

24 ///

25 ///

26 ///

27 ///

1 **CONCLUSION**

2 For the reasons set forth above, plaintiff respectfully requests that the court enter an order denying
3 defendant's motion for leave to amend its answer and assert counterclaims on order shortening time.

4 DATED this 31st day of January 2017.

5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.

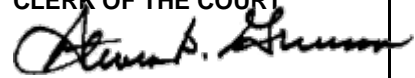
7 By: / s / Michael F. Bohn, Esq. /
8 Michael F. Bohn, Esq.
9 376 East Warm Springs Road, Ste. 140
10 Las Vegas, Nevada 89119
11 Attorney for plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCp 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
14 Offices of Michael F. Bohn., Esq., and on the 31st day of January, 2017 an electronic copy of the
15 PLAINTIFF'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR LEAVE TO
16 AMEND ANSWER AND ASSERT COUNTERCLAIMS was served on opposing counsel via the
17 Court's electronic service system to the following counsel of record:

18 Dana Jonathon Nitz, Esq.
19 Regina A. Habermas, Esq.
20 Wright Finlay & Zak, LLP
21 7785 W. Sahara Ave. # 200
22 Las Vegas, NV 89117

23 /s/ /Marc Sameroff /
24 An Employee of the LAW OFFICES OF
25 MICHAEL F. BOHN, ESQ., LTD.
26
27
28



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7 Attorneys for plaintiff/counterdefendant

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
12 VIAREGGIO CT

13 Plaintiff,

14 vs.

15 NATIONSTAR MORTGAGE, LLC; COOPER
16 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY

17 Defendants.

18 NATIONSTAR MORTGAGE, LLC

19 Counterclaimant,

20 vs.

21 SATICOY BAY LLC SERIES 4641
22 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
23 Through X; and ROE CORPORATIONS I
Through X, inclusive,

24 Counter-defendants

CASE NO.: A689240-C

DEPT NO.: XIV

25 **MOTION FOR SUMMARY JUDGMENT**

26 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct., by and through its attorneys, Michael F.

1 Bohn, Esq. and Adam R. Trippiedi, Esq., moves for summary judgment on its claims for quiet title and
2 declaratory relief, and for dismissal of defendant's counterclaims. This motion is based upon the points
3 and authorities contained herein.

4 DATED this 15th day of May, 2017.

5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.

7 By: / s / Michael F. Bohn, Esq. . /
8 Michael F. Bohn, Esq.
9 Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for plaintiff/counterdefendant

10 **NOTICE OF MOTION**

11 TO: Parties above named; and

12 TO: Their respective counsel of record:

13 YOU AND EACH OF YOU, PLEASE TAKE NOTICE that the undersigned will bring the above
14 and foregoing Motion on for hearing before the above entitled Court, Department XIV, on
15 the 15 day of June, 2017, at 9:30 :00 a.m. or as soon thereafter as counsel can be heard.
16

17 DATED this 15th day of May, 2017.

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

20 By: / s / Michael F. Bohn, Esq./
21 Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for plaintiff/counterdefendant

22 **FACTS**

23 **1. Facts regarding the foreclosure sale**

24 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. ("Saticoy Bay") is the owner of the real
25 property commonly known as 4641 Viareggio Court, Las Vegas, Nevada. ("the Property"). Saticoy Bay
26 acquired the property by foreclosure deed recorded September 6, 2013. A copy of the foreclosure deed
27

1 is Exhibit 1 hereto. The foreclosure deed arose from a delinquency in assessments due from the former
2 owners to the Naples Community Homeowners Association, pursuant to NRS Chapter 116.

3 Defendant Nationstar Mortgage, LLC ('defendant') is the beneficiary of a deed of trust that was
4 recorded as an encumbrance on the Property on January 25, 2007. Defendant obtained its interest by
5 an assignment recorded on October 18, 2012.

6 On August 18, 2011, the foreclosure agent sent the former owner the pre-lien letter and a copy
7 of the notice of lien. A copy of the letter and the proof of mailing is Exhibit 2.

8 On August 18, 2011, the foreclosure agent recorded the notice of lien. A copy of the recorded
9 notice of lien is attached as Exhibit 3.

10 On January 24, 2012, the foreclosure agent recorded the notice of default and election to sell. The
11 notice of default was mailed to the former owner, defendant's predecessor in interest, and other interested
12 parties. A copy of the notice of default and proof of mailing is attached as Exhibit 4.

13 On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale. A copy of the notice
14 of sale is attached as Exhibit 5. The foreclosure agent also mailed a copy of the notice of sale to the
15 former owner, defendant's predecessor in interest, and other interested parties. A copy of the proof of
16 mailing is Exhibit 6.

17 The notice of foreclosure sale under the lien for delinquent assessments was also served upon the
18 unit owner by posting a copy of the notice in a conspicuous place on the property. The notice of sale was
19 also posted in three locations within the county. Copies of the Affidavit of Service and Affidavit of
20 Posting Notice of Sale are Exhibit 7.

21 Additionally, the foreclosure agent published the notice of sale in Nevada Legal News on three
22 dates. A copy of the affidavit of publication is Exhibit 8.

23 As reflected by the recitals in the foreclosure deed, plaintiff appeared at the public auction
24 conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the Property.

25 The interest of each defendant has been extinguished by reason of the foreclosure resulting from
26 a delinquency in assessment due from the former owners to the HOA pursuant to NRS Chapter 116.

27 Defendant bank was on actual notice of the HOA foreclosure and failed to take any action to its
28

own detriment. Plaintiff now moves for summary judgment on its claims for quiet title and declaratory relief, and for dismissal of defendant's counterclaim.

2. Discovery conducted during litigation

Plaintiff conducted the deposition of the custodian of records for LJS&G, the foreclosure agent. Defendant produced a copy of the file produced by the custodian as a supplement to its 16.1 disclosures. The file contained the affidavit of the custodian of records to verify the authenticity of the documents produced. A copy of the affidavit is Exhibit 9. Exhibits 1 through 9 were contained in the LJS&G file as produced by the defendant.

During discovery in this case, the defendant was served with interrogatories regarding the plaintiff's status as a bona fide purchaser, and for proof of fraud, oppression or unfairness or irregularities regarding the noticing of the sale of the property. The defendant's answers contained objections and were otherwise non-responsive. A copy of the responses to interrogatories is Exhibit 10.

The plaintiff propounded interrogatory 19:

INTERROGATORY NO. 19: Identify all facts, information, and evidence of which you are aware that contradicts plaintiff's assertion that it was a bona fide purchaser for value at the Association foreclosure sale.

The defendant's response was:

Subject to the General Objections stated herein, this Interrogatory is further objected to on the grounds it calls for a legal conclusion; however, without waiving said objections, the First Deed of Trust was recorded on January 25, 2007 as Instrument Number 20070125 - 0003583 in the Clark County Recorder's Office, putting Plaintiff on notice of the Lender's First Deed of Trust on the property. Plaintiff is a professional property purchaser, and the circumstances of the HOA Sale of the Property and the status as a professional property purchaser prevent Plaintiff from being deemed a bona fide purchaser for value. Furthermore, the purchase price paid by Plaintiff at the HOA Sale was not a commercially reasonable amount. Investigation and discovery are continuing and this response will be supplemented as new information becomes available.

The plaintiff propounded interrogatory 24:

INTERROGATORY NO. 24: Identify all facts, information, and evidence of which you are aware which evidences any fraud, oppression or unfairness in regards to the association foreclosure sale.

The defendant's response was:

Subject to the General Objections stated herein, this Interrogatory is further objected to on

1 the grounds it calls for a legal conclusion; however, without waiving said objections, the
2 First Deed of Trust was recorded on January 25, 2007 as Instrument Number 20070125 -
3 0003583 in the Clark County Recorder's Office, putting Plaintiff on notice of the Lender's
4 First Deed of Trust on the property. Plaintiff is a professional property purchaser, and the
5 circumstances of the HOA Sale of the Property and the status as a professional property
6 purchaser prevent Plaintiff from being deemed a bona fide purchaser for value.
7 Furthermore, the purchase price paid by Plaintiff at the HOA Sale was not a commercially
8 reasonable amount. The Nevada foreclosure statute found at NRS Chapter 116 is also
9 unconstitutional because it does not provide for due process to lenders such as Defendant.
10 Moreover, Defendant has no record of receiving any of the notices regarding the
11 foreclosure required by the statute, other than the Notice of Sale. Investigation and
12 discovery are continuing and this response will be supplemented as new information
13 becomes available.

14 The plaintiff propounded interrogatory 25:

15 **INTERROGATORY NO. 25:** Identify all facts, information, and evidence of which
16 you are aware which evidences that the association foreclosure sale was not properly
17 conducted.

18 The defendant's response was:

19 Subject to the General Objections stated herein, this Interrogatory is further objected to on
20 the grounds it calls for a legal conclusion; however, without waiving said objections, the
21 purchase price paid by Plaintiff at the HOA Sale was not a commercially reasonable
22 amount. The Nevada foreclosure statute found at NRS Chapter 116 is also unconstitutional
23 because it does not provide for due process to lenders such as Defendant. Please refer to
24 the Notice of Delinquent Assessment, Notice of Default and Election to Sell and Notice of
25 Sale recorded by or on behalf of the HOA. Defendant has no record of receiving any of the
26 notices regarding the foreclosure required by the statute, other than the Notice of Sale.
27 Furthermore, Defendant believes the amounts claimed in the foreclosure notice included
28 improper fees and costs and that the notices did not properly identify the super-priority
amount or give notice of the same. Investigation and discovery are continuing and this
response will be supplemented as new information becomes available.

The plaintiff propounded interrogatory 26:

INTERROGATORY NO. 26: Identify all facts, information, and evidence of which
you are aware which evidences that the association foreclosure sale was not properly
noticed.

The defendant's response was:

Subject to the General Objections stated herein, this Interrogatory is further objected to on
the grounds it calls for a legal conclusion; however, without waiving said objections, the First
The Nevada foreclosure statute found at NRS Chapter 116 is unconstitutional because it
does not provide for due process to lenders such as Defendant. Please refer to the Notice
of Delinquent Assessment, Notice of Default and Election to Sell and Notice of Sale
recorded by or on behalf of the HOA. Furthermore, Defendant believes the amounts
claimed in the foreclosure notice included improper fees and costs and that the notices did
not properly identify the super-priority amount or give notice of the same. Investigation
and discovery are continuing and this response will be supplemented as new information

1 becomes available.

2 The defendant has no proof that the plaintiff was not a bona fide purchaser. The defendant also
3 has no proof of any fraud, oppression or unfairness, or that the sale was not properly noticed or
4 conducted. For this reason, the court should grant summary judgment granting quiet title to the plaintiff.

5 POINTS AND AUTHORITIES

6 **A. The sale is presumed valid**

7 There are a number of statutory and common law presumptions that the foreclosure sale is valid.
8 The burden is on the bank to prove otherwise.

9 NRS 47.250(16) provides the disputable presumption that “the law has been obeyed.”

10 NRS 47.250 (17) provides that “a trustee or other person, whose duty it was to convey real
11 property to a particular person, has actually conveyed to that person, when such presumption is necessary
12 to perfect the title of such person or a successor in interest.”

13 NRS 47.250 (18) provides:

14 In situations not governed by the Uniform Commercial Code:

- 15 (a) That an obligation delivered up to the debtor has been paid.
- 16 (b) That private transactions have been fair and regular.
- (c) That the ordinary course of business has been followed.
- (d) That there was good and sufficient consideration for a written contract.

17 The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a
18 public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc.
19 v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family
20 Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller
21 & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank,
22 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Court described the non-judicial foreclosure
23 provisions of NRS Chapter 116 as “elaborate,” and therefore indicative of the public policy favoring the
24 finality of a foreclosure sale.

25 Additionally, there is a common law presumption that a foreclosure sale was conducted validly.
26 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25
27 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014);

1 Timm v. Dewsnap 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen,
2 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust
3 Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431
4 S.E. 2d 475 (Ga. App 1993).

5 The purpose of the presumption of validity and the public policy of finality is to encourage
6 prospective purchasers to participate in the foreclosure process and to maximize the prices paid at
7 foreclosure sale. See Moeller v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994).

8 Additionally, by statute, the recitals in the deed are sufficient and conclusive proof that the
9 required notices were mailed by the foreclosure agent.

10 The controlling statute, NRS 116.31166, provides in part:

11
12 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper**
13 **application of purchase money; title vested in purchaser without equity or right of**
14 **redemption.**

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

- 16 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
17 the notice of default and election to sell;
18 (b) The elapsing of the 90 days; and
19 (c) The giving of notice of sale,
20 are **conclusive proof of the matters recited.**

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

25 ...
26 (emphasis added)

27 NRS 47.240 provides in part:

28 **Conclusive presumptions.** The following presumptions, and no others, are conclusive:

....

6. Any other presumption which, by statute, is expressly made conclusive.

The recitals in the deed between the foreclosure agent and the purchaser at the foreclosure sale
are conclusive from this statute, NRS116.31166. The sole exception would be in the case of fraud or
other grounds for equitable relief. See Shadow Wood Homeowners Association v. New York

1 Community Bank, 132 Nev. Ad. Op. 5, 366 P.3d 1105 (2016).

2 The burden of proof is upon the party seeking to quiet title in its favor. See Breliant v. Preferred
3 Equities Corp., 112 Nev. 663, 918 P.2d 314 (1996). The bank, seeking to set aside the foreclosure sale,
4 bears the burden of proof on all issues regarding the foreclosure, which is presumed to be valid.

5 **B. The Shadow Wood factors**

6 The Nevada Supreme Court in the case of Shadow Wood Homeowners Association v. New
7 York Community Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016) named 4 factors to be considered
8 by the court in determining an equitable challenge to a foreclosure sale. Those four factors are:

- 9 1. The price paid;
- 10 2. The presence of fraud, oppression or unfairness;
- 11 3. The failure of the complaining party to act to protect its interest prior to the sale;
- 12 4. The interests of a bona fide purchaser

13 In this case, the answers to interrogatories fail to disclose any fraud, oppression or unfairness or
14 to cite grounds to deny the plaintiff bona fide purchaser status. Summary judgment should therefore be
15 granted in favor of the purchaser.

16 **C. Fraud, oppression or unfairness and price paid**

17 The standard to set aside a sale is in inadequate sales price, inadequacy of price, and additional
18 proof of some fraud, oppression or unfairness **that accounts for and brings about the inadequacy of**
19 **price.**

20 The case of Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), cited by the court in Shadow
21 Wood specifically denied the inadequacy of price standard for setting aside foreclosure sales, stating:

22 (In approving the rule thus stated, we necessarily reject the dictum in Dazet v. Landry,
23 supra, implying that the rule requiring more than mere inadequacy of price will not be
applied if 'the inadequacy be so great as to shock the conscience.')

24 The case of Oller v. Sonoma County Land Title Company 137 Cal. App.2d 633, 290 P.2d 880,
25 (1955), cited by the court in Golden, held that an examination of the sales price is not necessary when
26 there is no showing of fraud, oppression or unfairness, stating:

1 Since inadequacy of price is not alone ground for setting aside the sale, the failure of the
2 court to find upon the value of the property is immaterial.

3 Both the Golden case and the Oller case cite to the case of Schroeder v. Young, 161 U.S. 334, 16
4 S. Ct. 512, 40 L. Ed 721 (1896). The U.S. Supreme Court cited examples of irregularities which may
5 affect the sale. The court stated:

6 ‘While mere inadequacy of price has rarely been held sufficient in itself to justify setting
7 aside a judicial sale of property, courts are not slow to seize upon other circumstances
8 impeaching the fairness of the transaction as a cause for vacating it, especially if the
9 inadequacy be so gross as to shock the conscience. If the sale has been attended by any
10 irregularity, as if several lots have been sold in bulk where they should have been sold
11 separately, or sold in such manner that their full value could not be realized; if bidders
12 have been kept away; if any undue advantage has been taken to the prejudice of the owner
13 of the property, or he has been lulled into a false security; or if the sale has been
14 collusively or in any other manner conducted for the benefit of the purchaser, and the
15 property has been sold at a greatly inadequate price, -the sale may be set aside, and the
16 owner may be permitted to redeem.’

17 The banks answers to interrogatories do not set forth any evidence or contentions of any defect
18 in the sale as are detailed in the Schroeder case.

19 **D. The bank is not entitled to relief against the bona fide purchaser**

20 Under both the Restatement and Nevada law, the defendant bank has no remedies against Saticoy
21 Bay in regard to the foreclosure sale because any damages which the defendant may have sustained as
22 a result of an alleged wrongful foreclosure can be compensated with money damages.

23 In Shadow Wood, the Supreme Court referred to the Restatement (Third) of Prop.: Mortgages
24 § 8.3. Comment (b) recognizes that where the property has been purchased by a bona fide purchaser,
25 “the real estate is unavailable” and that “price inadequacy” may be raised in a suit against the foreclosing
26 mortgagee for damages. Comment b states:

27 On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale
28 is usually not required and the issue of price inadequacy will therefore arise only if the
party attacking the sale files an independent judicial action. Typically this will be an
action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the
holders of other junior interests who are prejudiced by the sale. **If the real estate is
unavailable because title has been acquired by a bona fide purchaser**, the issues of
price inadequacy may be raised by the mortgagor or a junior interest holder in a suit
against the foreclosing mortgagee for damages for wrongful foreclosure. **This latter
remedy, however, is not available based on gross price inadequacy alone.** In addition,
the mortgagee must be responsible for a defect in the foreclosure process of the type
described in Comment c of this section. (emphasis added)

1 A copy of Section 8.3 from the Restatement is attached as Exhibit 11.

2 Shadow Wood, consistent with this stated:

3 *see also Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (“The decisions
4 are uniform that the bona fide purchaser of a legal title is not affected by any latent equity
or constructive.”).

5 Therefore, if the purchaser is a bona fide purchaser, the sale cannot be set aside. The bank,
6 however, is not without a remedy. It has an claim for money damages against the foreclosure agent for
7 any defect in the sale process.

8 Similarly, there is the common law rule that there is no equity jurisdiction when a party has
9 available to itself an adequate remedy at law.

10 Back in 1868, the court in Sherman v. Clark 4 Nev. 138 (1868) stated:

11 The writ is exclusively an equitable remedy. But equity is chary of its powers; it employs
12 them only when the impotent or tardy process of the law does not afford that complete and
perfect remedy or protection which the individual may be justly entitled to. **When
13 therefore it is shown that there is a complete and adequate remedy at law, equity will
afford no assistance.** “When a party has a remedy at law,” says Mr. Hilliard, “he cannot
14 come into equity, unless from circumstances not within his control he could not avail
himself of his legal remedy.” (Hill. Inj. sec. 23.) That full compensation can be had at law
15 is the great rule for withholding the strong arm of the chancellor,” says Mr. Justice
Thompson, in *Pusey v. Wright*, (31 Penn. 396.) See also *Thompson v. Matthews* (2 Edw.
16 Ch. R. 213; 9 Page, 323.) **Before refusing its aid upon this ground, however, it must
appear that the legal remedy is complete and adequate to afford the complainant full
17 redress; but when that fact does appear, equity at once relinquishes all control over
the case, and leaves the party to pursue his legal remedy.** (Emphasis added)

18 Likewise, in the case of Conley v. Chedic 6 Nev. 222 (1870) the court held:

19 Equity will not take jurisdiction or interpose its powers when there is a full, complete and
20 adequate remedy in the ordinary course of law; that is, when the wrong complained of
21 may be fully compensated in damages, which can easily be ascertained, and it is not
shown that a judgment at law cannot be satisfied by execution. (See *Sherman v. Clark*, 4
22 Nev. 138.)

23 In Turley v. Thomas 31 Nev. 181, 101 P. 568 (1909) the court stated:

24 Again, in a decision rendered last year, *Hills v. McMunn*, 232 Ill. 488, 83 N. E. 963, it is
25 stated: “It is also contended that the case made by the bill and proofs shows no grounds
for the interposition of a court of equity, and that if appellant has any remedy the law will
26 afford adequate relief.

27 In State v. Second Judicial District Court 49 Nev. 145, 241 P.317, 43 A.L.R. 1331 (1925), the
28

1 court stated:

2 As to the contention that pursuant to paragraph 6 the court was authorized to make the
3 appointment under its general equity jurisdiction, we need only say that where it does not
4 appear, as in this case, that the plaintiff has no adequate remedy at law, a court of equity
5 acquires no jurisdiction.

6 In Washoe County v. City of Reno 77 Nev. 152, 360 P.2d 602 (1961), the court held that the fact
7 that the judgment may not be collectable is not an issue to be considered. The court stated:

8 During oral argument, counsel for respondents suggested that an action at law would not
9 be adequate because it could not be enforced by a writ of execution against a county fund.
10 Whether this be true or not, it is hardly to be supposed that an execution would be
11 necessary in the event a judgment at law were obtained against the county in this type of
12 case any more than a contempt proceeding would be required in the event a peremptory
13 writ of mandamus were issued. **In answer to this suggestion however it is necessary to
14 say only that our concern is with the existence of a remedy and not whether it will
15 be unproductive in this particular case,** Hughes v. Newcastle Mutual Insurance Co., 13
16 U.C.Q.B. (Ont.) 153, or inconvenient, Gulf Research & Development Co. v. Harrison, 9
17 Cir., 185 F.2d 457, or ineffectual, United States ex rel. Crawford v. Addison, 22 How.
18 174, 63 U.S. 174, 16 L.Ed. 304.

19 In Stewart v. Manget, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill
20 in equity on the ground that the plaintiff had an adequate remedy at law, the Florida
21 Supreme Court cited with approval the following language from Tampa & G. C. R. Co.
22 v. Mulhern, 73 Fla. 146, 74 So. 297, 299:

23 ‘The inadequacy of a remedy at law to produce money is not the test of the
24 applicability of the rule. **All remedies, whether at law or in equity,
25 frequently fail to do that; and to make that the test of equity
26 jurisdiction would be substituting the result of a proceeding for the
27 proceeding which is invoked to produce the result. The true test is,
28 could a judgment be obtained in a proceeding at law, and not, would
the judgment procure pecuniary compensation.’**

(Emphasis added)

29 In the case of Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent
30 allowed a trustee’s sale to go forward even though it had available cash deposits to pay off the loan. Id.
31 at 828. The trial court set aside the sale because “[t]he value of the property was four times the amount
32 of the debt/sales price.” Id. at 829. The Court of Appeals reversed the trial court’s order and stated:

33 Thus **as a general rule, a trustor has no right to set aside a trustee’s deed as against
34 a bona fide purchaser for value by attacking the validity of the sale.** (Homestead
35 Savings v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption
36 precludes an attack by the trustor on a trustee’s sale to a bona fide purchaser **even though
37 there may have been a failure to comply with some required procedure which
38 deprived the trustor of his right of reinstatement or redemption.** (4 Miller & Starr,
supra, § 9:141, p. 463; cf. Homestead v. Damiento, supra, 230 Cal. App. 3d at p. 436.)

1 The conclusive presumption precludes an attack by the trustor on the trustee's sale to a
2 bona fide purchaser even where the trustee wrongfully rejected a proper tender of
3 reinstatement by the trustor. **Where the trustor is precluded from suing to set aside
the foreclosure sale, the trustor may recover damages from the trustee.** (Munger v.
4 Moore (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)

5 Id. at 831-832. (emphasis added)

6 **E. Bona fide purchaser in a foreclosure context**

7 The burden of proof is on the bank, seeking to invoke the equity jurisdiction of the court and have
8 the sale set aside, to prove that the purchaser is NOT a bona fide purchaser. See Shadow Wood
9 Homeowners Association v. New York Community Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016)
10 where the court stated:

11 The question remains whether NYCB demonstrated sufficient grounds to justify the
12 district court in setting aside Shadow Wood's foreclosure sale on NYCB's motion for
13 summary judgment.

14 Similarly, in First Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal.
15 Rptr. 2d 295 (1998), the court recognized that where a party is seeking equitable relief, the burden is on
16 the party seeking equitable relief to allege and prove that the person holding legal title is not a bona fide
17 purchaser:

18 **That Alliance had knowledge of First Fidelity's equitable claim for reinstatement of**
19 **its reconveyed deed of trust was an element of First Fidelity's case.** "The general rule
20 places the burden of proof upon a person claiming bona fide purchaser status to present
21 evidence that he or she acquired interest in the property without notice of the prior
22 interest. (Bell v. Pleasant (1904) 145 Cal. 410, 413-414, 78 P. 957; Alcorn v. Buschke
23 (1901) 133 Cal. 655, 657-658, 66 P. 15; Hodges v. Lochhead (1963) 217 Cal. App.2d 199,
24 203, 31 Cal. Rptr. 879; 2 Miller & Starr, Current Law of Cal. Real Estate [1977] § 11:28,
25 p. 51.) ... [¶] If the prior party claims an equitable rather than a legal title, however, the
26 burden of proof is upon the person asserting that title. (Bell v. Pleasant, *supra*, 145 Cal.
27 410, 414-415, 78 P. 957; Garber v. Gianella (1893) 98 Cal. 527, 529-530, 33 P. 458; 2
28 Miller & Starr, Current Law of Cal. Real Estate, *supra*, § 11:28, pp. 52-53.)" (Gates
Rubber Co. v. Ulman (1989) 214 Cal. App. 3d 356, 366, fn. 6, 262 Cal. Rptr. 630.) (2b)
Showing that Alliance was not an innocent purchaser for value was hence an element
of First Fidelity's claim. (Firato v. Tuttle, *supra*, 48 Cal.2d 136, 138, 308 P.2d 333.)
(emphasis added)

60 Cal. App. 4th at 1442, 71 Cal. Rptr. at 301.

The defendant has the burden to prove a defect with the sale, and that the purchaser knew of the
defect at or before the time of the sale. The defendant has failed in both counts.

1 The concept of bona fide purchaser has more application in voluntary sales in which title is
2 transferred by deed. In these cases, a purchaser takes subject to any matters which are recorded against
3 the property. However, in foreclosure cases, the bona fide purchaser doctrine rarely comes into play
4 because all interests on the property which are junior to the lien being foreclosed upon are extinguished.
5 This is even more so with an HOA foreclosure because it is senior to all other liens other than prior
6 existing debts and taxes are extinguished by the foreclosure. In these situations, the purchaser would be
7 precluded from bona fide purchaser status in HOA foreclosure cases only if there was some irregularity
8 in the sale AND the purchaser knew of the irregularity.

9 In the recent and unpublished Supreme Court decision of Stone Hollow v. Bank of America,
10 docket No. 64955, entered December 21, 2016, Justice Pickering issued a dissent in which she cited the
11 treatise 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate*
12 *Finance Law* §7:21 (6th ed. 2014). A copy of this section of the treatise is attached as Exhibit 12. This
13 treatise was also cited in the Shadow Wood decision.

14 And, while it is possible to read a conclusive recital statute like NRS 116.31166 as
15 conclusively establishing a default justifying foreclosure when, in fact, no default
16 occurred, such a reading would be “breathtakingly broad” and “is probably legislatively
unintended.” 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson
Freyermuth, *Real Estate Finance Law* § 7:22 (6th ed.2014).

17 Section 7.21 of this treatise is entitled “defective power of sale foreclosure-“void-
18 voidable” distinction. The treatise explains there are three types of defects which may affect the validity
19 of foreclosure sales, void, voidable, or inconsequential.

20 Void sales arise when there is a substantial defect with the sale, such as when the mortgage was
21 obtained by fraud or forgery, or the mortgage holder had no right to foreclose.

22 The treatise then explains:

23 Most defects render the foreclosure voidable and not void. When a voidable error occurs,
24 bare legal title passes to the sale purchaser, subject to the redemption rights of those
25 injured by the defective foreclosure. Typically, a voidable error is “an irregularity in the
execution of a foreclosure sale” and must be “substantial or result in a probably
unfairness.”

26

1 If the defect only renders the sale voidable, the redemption rights can be cut off if a bona
2 fide purchase for value acquires the land. When this occurs, an action for damages against
the foreclosing mortgagee or trustee may be the only remaining remedy.

...

3 The treatise then goes on to explain who is a bona fide purchaser in a foreclosure contest:

4 If the defective sale is only voidable, who is a bona fide purchaser? A mortgagee
5 purchaser should rarely, if every, qualify as a bona fide purchaser, because the mortgagee
6 or its attorney normally manages the power of sale foreclosure and should be responsible
7 for defects. The result should be the same when a deed of trust is foreclosed. Although
8 the trustee, rather than the lender, normally is in charge of the proceedings, the court
9 probably will treat the trustee as the lender's agent for purposes of determining BFP
10 status. **If the sale purchaser paid value and is unrelated to the mortgagee, he should
take free of voidable defects if : (a) he has no actual knowledge of he defects; (b) he
is not on reasonable notice from recorded instruments; and (c) the defects are such
that a person attending the sale and exercising reasonable care would be unaware
of the defects....**

(emphasis added, footnotes omitted)

11 From the three factors listed here, the plaintiff would be a bona fide purchaser. The purchaser's
12 representative, Eddie Haddad's affidavit is attached. It states in part:

13 6. Prior to and at the time of the foreclosure sale, there was nothing recorded in
14 the public record to put me on notice of any claims or notices that any portion of the lien
had been paid.

15 7. Prior to and at the time of the foreclosure sale, there is no way for myself or any
16 other potential bidder at the foreclosure sale to research if the notices were sent to the
17 proper parties at the proper address. I, and other potential bidders are forced to rely only
on the professional foreclosure agent to have obtained a trustee's sale guarantee issued by
a local title and escrow company and to serve the notices upon the parties who are entitled
to notice.

18 8. As a result of the limited information available to myself and other potential
19 bidders at foreclosure sales, I, on behalf of the plaintiff, am a bona fide purchaser of
20 the property, for value, without notice of any claims on the title to the property or any
alleged defects in the sale itself.

21 The mailing of notices, the addresses to where they are sent, or even an attempted tender of
22 the super priority lien are not matters to be found in the public record.

23 Additionally, the defendant's answers to interrogatories regarding the issue of bona fide
24 purchaser do not allege any defect in the sales process or that the purchaser knew of the defect in the
25 sales process. The court should therefore find that the plaintiff purchaser is a bona fide purchaser, and
26 its title should not be affected.

1 **F. The failure of the defendant to protect its interest before the sale precludes relief in its favor**

2 The Supreme Court in both SFR and Shadow Wood noted that the defendant banks were
3 responsible for their own damages. In SFR Investments Pool 1 v. U.S. Bank 130 Nev. Adv. Op. 75,
4 334 P.3d 408 (2014) the court said not once, but twice, that the price paid at the foreclosure sale was
5 not an issue because the bank could simply have paid the super priority amount to preserve its interest
6 in the property. The Court stated at page 414:

7 U.S. Bank's final objection is that it makes little sense and is unfair to allow a
8 relatively nominal lien—nine months of HOA dues—to extinguish a first deed of trust
9 securing hundreds of thousands of dollars of debt. But as a junior lienholder, U.S.
10 Bank could have paid off the SHHOA lien to avert loss of its security; it also could
11 have established an escrow for SHHOA assessments to avoid having to use its own
12 funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA §
13 3–116 cmt. 2. **The inequity U.S. Bank decries is thus of its own making and not a**
14 **reason to give NRS 116.3116(2) a singular reading at odds with its text and the**
15 **interpretation given it by the authors and editors of the UCIOA.** (emphasis added)

16 The Court also stated at page 418:

17 U.S. Bank further complains about the content of the notice it received. It argues that
18 due process requires specific notice indicating the amount of the superpriority piece of
19 the lien and explaining how the beneficiary of the first deed of trust can prevent the
20 superpriority foreclosure sale. But it appears from the record that specific lien amounts
21 were stated in the notices, ranging from \$1,149.24 when the notice of delinquency was
22 recorded to \$4,542.06 when the notice of sale was sent. The notices went to the
23 homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to
24 state the total amount of the lien. As U.S. Bank argues elsewhere, dues will typically
25 comprise most, perhaps even all, of the HOA lien. *See supra* note 3. **And from what**
26 **little the record contains, nothing appears to have stopped U.S. Bank from**
27 **determining the precise superpriority amount in advance of the sale or paying the**
28 **entire amount and requesting a refund of the balance.** *Cf. In re Medaglia*, 52 F.3d
451, 455 (2d Cir.1995) (“[I]t is well established that due process is not offended by
requiring a person with actual, timely knowledge of an event that may affect a right to
exercise due diligence and take necessary steps to preserve that right.”). (Emphasis
added)

21 In the case of Shadow Wood Homeowners Association v. New York Community Bank, 132
22 Nev. Ad. Op. 5, 366 P.3d 1105 (2016), the Supreme Court stated other ways that a bank could
23 protect itself.

24 Against these inconsistencies, however, must be weighed NYCB's (in)actions. The
25 NOS was recorded on January 27, 2012, and the sale did not occur until February 22,
26 2012. NYCB knew the sale had been scheduled and that it disputed the lien amount,
27 yet it did not attend the sale, request arbitration to determine the amount owed, or seek
28 to enjoin the sale pending judicial determination of the amount owed. The NOS
included a warning as required by NRS 116.311635(3)(b):

1

2 366 P.3d at 1114

3 The court in the Shadow Wood case also noted in footnote 7:

4 **Consideration of harm to potentially innocent third parties is**
5 **especially pertinent here where NYCB did not use the legal**
6 **remedies available to it to prevent the property from being sold to a**
7 **third party, such as by seeking a temporary restraining order and**
8 **preliminary injunction and filing a lis pendens on the property. See**
9 **NRS 14.010; NRS 40.060. Cf. Barkley's Appeal. Bentley's Estate, 2**
10 **Monag. 274, 277 (Pa.1888) ("In the case before us, we can see no way**
11 **of giving the petitioner the equitable relief she asks without doing great**
12 **injustice to other innocent parties who would not have been in a**
13 **position to be injured by such a decree as she asks if she had applied for**
14 **relief at an earlier day.").** (emphasis added)

15 The defendant bank had remedies available to it to protect its interests before the foreclosure
16 sale and failed to avail itself of these remedies. It cannot now seek relief from this court.

17 **G. The Trust Deed has been Extinguished.**

18 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.
19 Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court stated:

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

27 334 P.3d at 409.

28 At the conclusion of its opinion, the Nevada Supreme Court stated:

29 NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which
30 will extinguish a first deed of trust. Because Chapter 116 permits nonjudicial
31 foreclosure of HOA liens, and because SFR's complaint alleges that proper notices
32 were sent and received, we reverse the district court's order of dismissal. In view of
33 this holding, we vacate the order denying preliminary injunctive relief and remand for
34 further proceedings consistent with this opinion.

35 334 P.3d at 419.

1 Because the facts in the present case are substantially the same as the facts in SFR
2 Investments Pool 1, LLC v. U.S. Bank, N.A., this Honorable Court should reach the same conclusion
3 that the nonjudicial foreclosure arising from the HOA's super priority lien extinguished the deed of
4 trust held by the defendant bank on the date of sale. As a result, this Court should rule that the deed of
5 trust held by defendant was extinguished by the HOA's foreclosure sale.

6 **H. There is no requirement that the foreclosure agent obtain sums to satisfy junior liens.**

7 There is no authority for the proposition that a foreclosure agent must seek sufficient sums at
8 foreclosure sale to satisfy the claims of junior lienholders. Bourne Valley Court Trust v. Wells Fargo
9 Bank, 80 F. Supp. 3d 1131 (D. Nev. 2015), reversed on other grounds Bourne Valley Court Trust v.
10 Wells Fargo Bank 832 F.3d 1154 (9th Cir. 2016).

11 In the case of BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the U.S.
12 Supreme Court explained why the fair market value of a property sold at foreclosure or a "forced
13 sale" is in fact the price said at the foreclosure sale:

14 ...the fact that a piece of property is legally subject to forced sale, like any other fact
15 bearing upon the property's use or alienability, necessarily affects its worth. Unlike
16 most other legal restrictions, however, foreclosure has the effect of completely
17 redefining the market in which the property is offered for sale; normal free-market
18 rules of exchange are replaced by the far more restrictive rules governing forced sales.
19 Given this altered reality, and the concomitant inutility of the normal tool for
20 determining what property is worth (fair market value), the only legitimate evidence of
21 the property's value at the time it is sold is the foreclosure-sale price itself.

18 This BFP case is also cited in Restatement (Third) of Prop.: Mortgages § 8.3.

19 The Ninth Circuit recently expanded the holding in BFP v. Resolution Trust Corp. 511 U.S.
20 531 (1994) to tax sales conducted under state law, stating:

21 The Court's rationale also applies to tax sales. As stated by the BAP, "federal courts
22 should pay considerable deference to state law on matters relating to real estate." In re
23 Tracht Gut, 503 B.R. at 816. Like mortgage foreclosures, tax foreclosure sales
conducted by state and local governments are governed by state law.

24 The same procedural safeguards under California law that led the Supreme Court to
25 conclude that mortgage foreclosures would yield reasonably equivalent value are also
26 required in California for tax sales. "Foreclosure laws typically require notice to the
27 defaulting borrower, a substantial lead time before the commencement of foreclosure
28 proceedings, publication of a notice of sale, and strict adherence to prescribed bidding
rules and auction procedures." BFP, 511 U.S. at 542, 114 S.Ct. 1757.

1 As demonstrated by the authorities cited above, the bank's remedy for a wrongful foreclosure,
2 if any, would be a claim for money damages against the foreclosure agent because the plaintiff is a
3 bona fide purchaser.

4 Shadow Wood discusses bona fide purchaser in detail. The many points contained in the
5 decision can be summarized as:

- 6 1. A bona fide purchase is without notice of any **prior equity**.
- 7 2. "The decisions are uniform" that the title of a bona fide purchaser is not affected by any
8 matter of which he has no notice.
- 9 3. The bona fide purchaser must pay **valuable** consideration, not "adequate" consideration.
- 10 4. The fact that the foreclosure price may be "low" is not sufficient to put the purchaser on
11 notice of any alleged defects with the sale.
- 12 5. The fact that the court retains equitable power to void the sale does deprive the purchaser
13 of bona fide purchaser status.
- 14 6. The time to determine the status of bona fide purchaser is at the time of the sale.

15 The concept of bona fide purchaser has more application in voluntary sales in which title is
16 transferred by deed. In these cases, a purchaser takes subject to any matters which are recorded
17 against the property.

18 In HOA foreclosure cases, the bona fide purchaser doctrine rarely comes into play because all
19 interests on the property other than prior existing debts and taxes are extinguished by the foreclosure.
20 The plaintiff would be precluded from bona fide purchaser status in HOA foreclosure cases only if
21 there was some irregularity in the sale AND the purchaser knew of the irregularity.

22 **I. The foreclosure statutes are constitutional**

23 As recognized by the Nevada Supreme Court in Saticoy Bay LLC Series 350 Durango 104 v.
24 Wells Fargo Home Mortgage, 133 Nev., Adv. Op. 5, at *10 (Jan. 26, 2017), the foreclosure statutes as
25 found in NRS Chapter 116 are constitutional. The court found that the statutes do not involve either
26 state action or a state actor and does not constitute a taking.

1 This court is not bound by the incorrect interpretation of the statute by the majority opinion in
2 Bourne Valley. In the case of Blanton v. North Las Vegas Municipal Court 103 Nev. 623, 633, 748
3 P.2d 494, 500 (1987) the Supreme Court stated:

4 We note initially that the decisions of the federal district court and panels of the federal
5 circuit court of appeal are not binding upon this court. United States ex rel. Lawrence
6 v. Woods, 432 F.2d 1072, 1075–76 (7th Cir.1970), cert. denied, 402 U.S. 983, 91 S.Ct.
7 1658, 29 L.Ed.2d 140 (1971). Even an en banc decision of a federal circuit court
8 would not bind Nevada to restructure the court system of this state. Our state
9 constitution binds the courts of the State of Nevada to the United States Constitution
10 as interpreted by the United States Supreme Court. Nev. Const. art. I, § 2. See Bargas
11 v. Warden, 87 Nev. 30, 482 P.2d 317, cert. denied, 403 U.S. 935, 91 S.Ct. 2267, 29
12 L.Ed.2d 715 (1971).

13 This case was affirmed Blanton v. City of North Las Vegas 489. U.S. 538 (1989)

14 In the case of California Teachers Association v. State Board of Education, 271 F.3d 1141
15 (9th Cir. 2001), the court identified the following limits on a federal court’s power to interpret state
16 law:

17 We recognize that it is **solely within the province of the state courts to**
18 **authoritatively construe state legislation.** See United States v. Thirty–Seven (37)
19 Photographs, 402 U.S. 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we
20 authorized to rewrite the law so it will pass constitutional muster. Virginia v.
21 American Booksellers Ass’n, Inc., 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782
22 (1988). A federal court’s duty, when faced with a constitutional challenge such as this
23 one, is to employ traditional tools of statutory construction to determine the statute’s
24 “allowable meaning.” Grayned v. City of Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294,
25 33 L.Ed.2d 222 (1972); Stoianoff v. Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In
26 doing so, **we look to the words of the statute itself as well as state court**
27 **interpretations of the same or similar statutes.** Grayned, 408 U.S. at 109–10, 92 S.
28 Ct. 2294. Moreover, before invalidating a state statute on its face, a federal court **must**
determine whether the statute is “readily susceptible” to a narrowing
construction by the state courts. American Booksellers, 484 U.S. at 397, 108 S. Ct.
636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997). (emphasis added)

271 F.3d at 1146-1147.

22 In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court
23 stated:

24 Federal courts lack competence to rule definitively on the meaning of state legislation,
25 see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate
26 challenges to state measures absent a showing of actual impact on the challenger, see,
27 e.g., Golden v. Zwickler, 394 U.S. 103, 110 (1969).

26 In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978),
27 the court stated that “the Oklahoma Courts may express their differing views on the retroactivity
28

1 problem **or similar federal questions** until we are all guided by a binding decision of the Supreme
2 Court.” (emphasis added)

3 In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court
4 stated that “[a] more cautious approach was in order” and that “[t]hrough certification of novel or
5 unsettled questions of state law for authoritative answers by a State’s highest court, a federal court
6 may save ‘time, energy, and resources and hel[p] build a cooperative judicial federalism.’”

7 This court is therefore not bound by the decision of the federal appeals court in Bourne Valley,
8 but instead is bound by the constitutional interpretation of the statute adopted by the Nevada Supreme
9 Court.

10 CONCLUSION

11 The HOA’s foreclosure sale extinguished both the defendant’s deed of trust, and its interest in
12 the subject property. The foreclosure sale is presumed to be valid by statute, and the recitals in the
13 foreclosure deed are conclusive proof the HOA’s foreclosure sale complied with all requirements of
14 Nevada law. The recitals are supported by documentation to show the notices went out. The
15 defendant has not produced any evidence to show that the plaintiff is not a bona fide purchaser, and
16 has failed to demonstrate any defect in the sale to justify setting aside the foreclosure sale.
17 Additionally, the bank failed to take any steps to protect its interests, and permitted the sale to go
18 forward.

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1 Accordingly, it is respectfully requested that this Court enter an order granting the plaintiff's
2 motion for summary judgment and quieting title to the Property in the name of the plaintiff, free and
3 clear of all liens and encumbrances and forever enjoining defendant from asserting any estate, title,
4 right, interest, or claim to the property adverse to the plaintiff, and dismissing defendant's
5 counterclaims.

6 DATED this 15th day of May, 2017

7 LAW OFFICES OF
8 MICHAEL F. BOHN, ESQ., LTD.

9
10 By: /s/ Michael F. Bohn, Esq. /
11 Michael F. Bohn, Esq.
12 376 E. Warm Springs Road, Ste. 140
13 Las Vegas, Nevada 89119
14 Attorney for Plaintiff/counterdefendant

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the
17 Law Offices of Michael F. Bohn, Esq., Ltd., and on the 15th day of May, 2017, an electronic copy of
18 the MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's
19 electronic service system to the following counsel of record:

20 Dana Jonathon Nitz, Esq.
21 Regina A. Habermas, Esq.
22 Wright Finlay & Zak, LLP
23 7785 W. Sahara Ave. # 200
24 Las Vegas, NV 89117

25 /s/ Marc Sameroff/
26 An Employee of the LAW OFFICES OF
27 MICHAEL F. BOHN, ESQ., LTD.

1 **AFFT**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No. 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorneys for plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
12 VIAREGGIO CT

13 Plaintiff,

14 vs.

15 NATIONSTAR MORTGAGE, LLC; COOPER
16 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY

17 Defendants.

CASE NO.: A689240-C

DEPT NO.: XIV

18 **AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

19 STATE OF NEVADA)
20) ss:
COUNTY OF CLARK)

21 IYAD HADDAD being first duly sworn, deposes and says;

22 1. Affiant is the person most knowledgeable for Saticoy Bay LLC Series 4641 Viareggio Ct, the
23 plaintiff herein, and makes this affidavit based on personal knowledge.

24 2. Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct, is the owner of the real property
25 commonly known as 4641 Viareggio Court, Las Vegas, Nevada.

26 ///

1 3. Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct, acquired title to the property at
2 foreclosure sale conducted on August 22, 2013 as evidenced by the foreclosure deed recorded on
3 September 6, 2013.

4 4. The foreclosure deed reflects that valuable consideration in the sum of \$5,563.00 was paid for
5 the property.

6 5. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
7 due from the former owner to the Naples Community Homeowners Association pursuant to NRS Chapter
8 116.

9 6. Prior to and at the time of the foreclosure sale, there was nothing recorded in the public record
10 to put me on notice of any claims or notices that any portion of the lien had been paid.

11 7. Prior to and at the time of the foreclosure sale, there is no way for myself or any other potential
12 bidder at the foreclosure sale to research if the notices were sent to the proper parties at the proper
13 address. I, and other potential bidders are forced to rely only on the professional foreclosure agent to have
14 obtained a trustee's sale guarantee issued by a local title and escrow company and to serve the notices
15 upon the parties who are entitled to notice.

16 8. As a result of the limited information available to myself and other potential bidders at
17 foreclosure sale, I, on behalf of the plaintiff, am a bona fide purchaser of the property, for value,
18 without notice of any claims on the title to the property or any alleged defects in the sale itself.

19 9. At no time prior to the foreclosure sale did I receive any information from the HOA or the
20 foreclosure agent about the property or the foreclosure sale.

21 10. Neither myself or anyone associated with plaintiff, Saticoy Bay LLC Series 4641
22 Viareggio Ct, have any affiliation with the HOA board or the foreclosure agent.

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11. If called upon to testify to the above facts, affiant could do so competently.


IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 10 day of November, 2016.


NOTARY PUBLIC in and for said
County and State

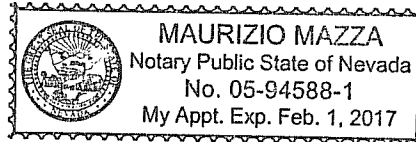


EXHIBIT 1

EXHIBIT 1

When recorded return to, and
Mail Tax Statements to:

Saticoy Bay LLC Series 4641 Viareggio Ct.
900 S. Las Vegas Blvd., Suite 810
Las Vegas, NV 89101

APN: 163-19-311-015

Inst #: 201309060000930
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$640.05 Ex: #
09/06/2013 09:03:24 AM
Receipt #: 1761079
Requestor:
RESOURCES GROUP
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

FORECLOSURE DEED

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as:
4641 Viareggio Ct., Las Vegas, NV

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record

and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

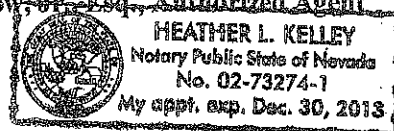
Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By:

Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA)
COUNTY OF CLARK)



On 8/27/13, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.

Heather L. Kelley
NOTARY PUBLIC

JA0836

Naples/Guillory0021

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-19-311-015
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 125,057.00

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

c. Transfer Tax Value:

\$ 125,057.00

d. Real Property Transfer Tax Due

\$ 640.05

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] 8/27/12
Kirby R. Gruchow, Jr., Esq.

Capacity: Agent for Seller

Signature _____ Capacity: Agent for Buyer

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Naples Community HOA
Address: c/o Leach Johnson Song & Gruchow
City: 8945 W. Russel Rd., Suite 330
State: Las Vegas, NV Zip: 89148

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SATICOY BAY LLC
Address: Series 4641 Viareggio Ct.
City: 900 S. Las Vegas Blvd., #810
State: Las Vegas, NV Zip: 89101

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

Print Name: SATICOY BAY LLC SERIES 4641 Escrow # _____

Address: 900 S. Las Vegas Blvd., #810 Viareggio Ct

City: L.V.

State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

JA0837

Naples/Guillory0022

EXHIBIT 2

EXHIBIT 2

**AFFIDAVIT OF MAILING NOTICE OF DELINQUENT
ASSESSMENT LIEN TO NEW ADDRESS**

DATE: December 1, 2011

PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

CHRISTIE VERNON being first duly sworn, deposes and says:

Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid on August 19, 2011, one (1) envelope at a cost of \$5.79, and Affiant also deposited in the United States Mail, first-class postage prepaid, one (1) envelope at a cost of \$0.44, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:


Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

The Notice sent on August 19, 2011, by United States Mail, Certified Mail, Return Receipt Requested, and United States Mail, first-class postage prepaid was returned with a new forwarding address. Therefore, Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, one envelope at a cost of \$5.79, and Affiant also deposited in the United States Mail, first-class postage prepaid, one (1) envelope at a cost of \$0.44, with each envelope containing a copy of the Notice with such recordation information as set forth above and previously sent on August 19, 2011, addressed to:

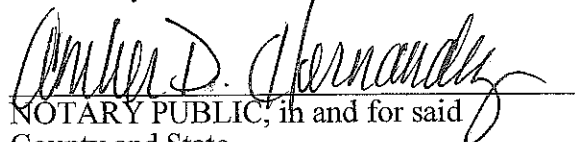
Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 1st day of December, 2011.

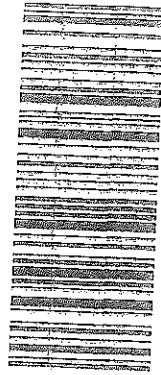

CHRISTIE VERNON, an employee of Leach
Johnson Song & Gruchow

SUBSCRIBED and SWORN to before me
this 1st day of December, 2011.


NOTARY PUBLIC, in and for said
County and State

John E. Leach, Esq.
Leach Johnson Song & Gruchow
8945 West Russell Road
Suite 330
Las Vegas, NV 89148

CERTIFIED MAIL™



7008 9111 0635 7310
RN RECEIPT REQUESTED

NIXIE 991 DE 1 00 08/08/11
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89148122760 *0694-05991-05-46

Monique Guillory
4641 Viareggio Ct
Las Vegas, NV 891

991 NFE 1 0101 00 07/06/94C
NOTIFY SENDER OF NEW ADDRESS
GUILLORY, MONIQUE
7805 CRUZ BLVD CT
LAS VEGAS NV 89128-7283

BC: 89128728303 *0694-05991-05-46

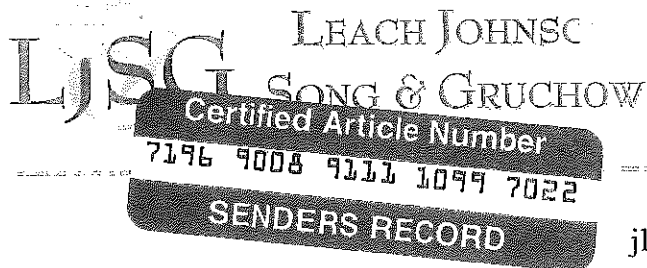
9914 89128728303

UNITED STATES POSTAGE
02 1P
0003819307 JUL 06 2011
MAILED FROM ZIP CODE 89148

W7811

JA0841

Naples/Guillory0249



John E. Leach, Esq.

jleach@leachjohnson.com

August 18, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
2636 2517 AND U.S. MAIL

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

Dear Ms. Guillory:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice").

If full payment on your account is not received by the Association within thirty (30) days of the date of the Notice, then this office has been instructed to commence foreclosure proceedings against the property located at 4641 Viareggio Court, Las Vegas, Nevada 89147, pursuant to Nevada Revised Statutes Chapter 116.

The creditor in this case is the Association and it is the Association to whom the foregoing debt is owed. Please contact John E. Leach, Esq. of the law firm of Leach Johnson Song & Gruchow at (702) 538-9074 for any questions regarding the payoff amount necessary to reinstate your membership account. You may dispute the validity of this notice/delinquency within thirty (30) days of your receipt of this letter. If you do not dispute the delinquency within said thirty (30) day period, then the debt will be assumed valid by the creditor. If you notify the Association, c/o Leach Johnson Song & Gruchow, Attn: John E. Leach, Esq., within thirty (30) days of your receipt of this notice, the Association will obtain any additional necessary verification of the delinquency and a copy of that verification will be mailed to you by the Association.

Monique Guillory

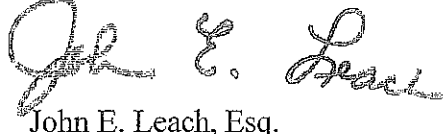
August 18, 2011

Page 2

Please contact either me or my assistant, Amber Hernandez, at (702) 538-9074 for the payoff amount necessary to reinstate your account, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song & Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Amber Hernandez.

Sincerely,

A handwritten signature in cursive script that reads "John E. Leach".

John E. Leach, Esq.

JEL/ah

Encl.

Inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

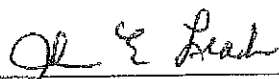
2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By 
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

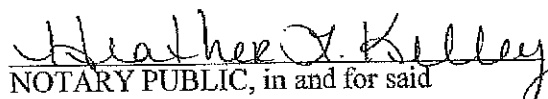
STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

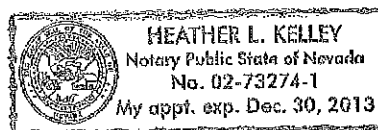
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


JOHN E. LEACH, ESQ.

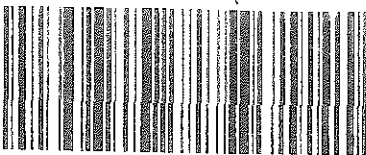
SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.


NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



CERTIFIED MAIL™

Gruchow, Jr., Esq.
Song & Gruchow
Russell Road



7196 9008 9111 1099 7022

RETURN RECEIPT REQUESTED

Monique Guillory
7605 Cruz Bay Court
Las Vegas, NV

NIXIE

091 DE 1

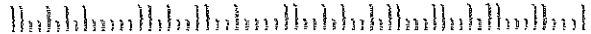
00 01/01/12

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

EC: 99148122760

*0694-01622-02-01

99148122760



JA0846

Naples/Guillory0254



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 2636 2517

John E. Leach, Esq.

SENDERS RECORD

jleach@leachjohnson.com

August 18, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
2636 2517 AND U.S. MAIL

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015

Dear Ms. Guillory:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice").

If full payment on your account is not received by the Association within thirty (30) days of the date of the Notice, then this office has been instructed to commence foreclosure proceedings against the property located at 4641 Viareggio Court, Las Vegas, Nevada 89147, pursuant to Nevada Revised Statutes Chapter 116.

The creditor in this case is the Association and it is the Association to whom the foregoing debt is owed. Please contact John E. Leach, Esq. of the law firm of Leach Johnson Song & Gruchow at (702) 538-9074 for any questions regarding the payoff amount necessary to reinstate your membership account. You may dispute the validity of this notice/delinquency within thirty (30) days of your receipt of this letter. If you do not dispute the delinquency within said thirty (30) day period, then the debt will be assumed valid by the creditor. If you notify the Association, c/o Leach Johnson Song & Gruchow, Attn: John E. Leach, Esq., within thirty (30) days of your receipt of this notice, the Association will obtain any additional necessary verification of the delinquency and a copy of that verification will be mailed to you by the Association.

Monique Guillory

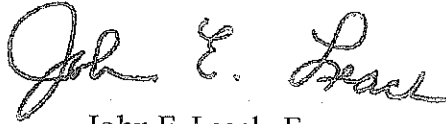
August 18, 2011

Page 2

Please contact either me or my assistant, Amber Hernandez, at (702) 538-9074 for the payoff amount necessary to reinstate your account, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song & Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Amber Hernandez.

Sincerely,

A handwritten signature in cursive script that reads "John E. Leach".

John E. Leach, Esq.

JEL/ah

Encl.

inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

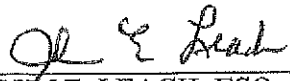
2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By 
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

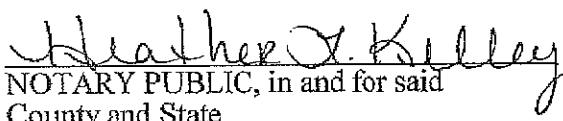
STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

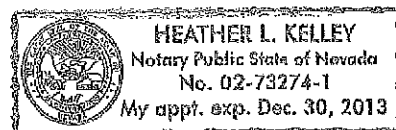
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

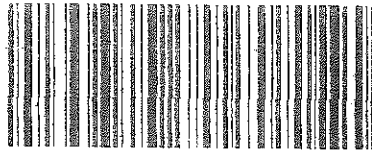

JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.


NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



CERTIFIED MAIL™



7196 9008 9211 2636 2517

RETURN RECEIPT REQUESTED

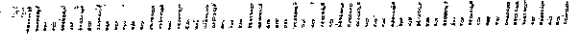
*W
8/20*

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

UNC

*9-10
3-1-9*

8914737208 0085



JA0851

Naples/Guillory0259

Inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By *John E. Leach*
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

John E. Leach
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

Heather L. Kelley
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013

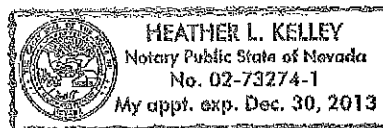


EXHIBIT 3

EXHIBIT 3

Inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By *John E. Leach*
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

John E. Leach
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

Heather L. Kelley
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013

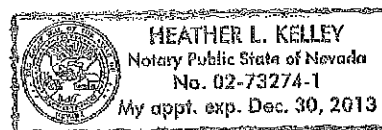


EXHIBIT 4

EXHIBIT 4

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0858

Naples/Guillory0185

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

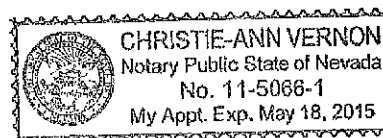
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012
PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
COUNTY OF CLARK) ss.

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:

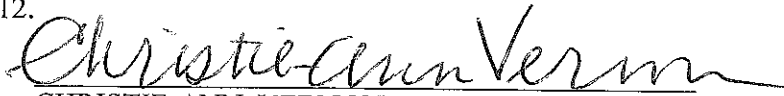
Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, two (2) envelopes at the cost of \$5.75 per envelope for a total of \$11.50, and Affiant also deposited in the United States Mail, first-class postage prepaid, two (2) envelope at the cost of \$0.45, per envelope for a total of \$0.90, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

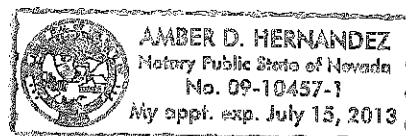
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State



JA0860

Naples/Guillory0183



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4910

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4910 AND U.S. MAIL**

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4927 AND U.S. MAIL**

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default").

If full payment on your Association account is not received within ninety (90) days of the date of this Default, then the Association may notice the sale of your Property and proceed with sale of your Property pursuant to Nevada Revised Statutes Chapter 116.

Please contact either me or my assistant, Christie Vernon, at (702) 538-9074 for the payoff amount necessary to cure this Default, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song and Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Christie Vernon.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0862

Naples/Guillory0185

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

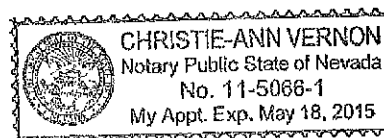
KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

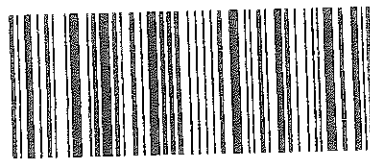
Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



JA0863

Naples/Guillory0186

CERTIFIED MAIL™



7196 9006 9111 0387 4910

RETURN RECEIPT REQUESTED

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

X 891 NFE 1 C100 00 02/03/12
FORWARD TIME EXP RTN TO SEND
GUILLORY MONIQUE
7805 CRUZ BAY CT
LAS VEGAS NV 89126-7283

RETURN TO SENDER

8914001227
8914787203 0025



JA0864

Naples/Guillory0187

Gruchow, Jr., Esq.
Gruchow & Gruchow
Russell Road

NV 89148

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

X 891 N7E 1 C10C 00 02/09/12
FORWARD TIME EXP RTN TO SEND
GUILLORY MONIQUE
7603 CRUZ BAY CT
LAS VEGAS NV 89128-7283

RETURN TO SENDER

8914801227
8914777208

Monique Guillory

JA0865

Naples/Guillory0188



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4927

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4910 AND U.S. MAIL**

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4927 AND U.S. MAIL**

Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default").

If full payment on your Association account is not received within ninety (90) days of the date of this Default, then the Association may notice the sale of your Property and proceed with sale of your Property pursuant to Nevada Revised Statutes Chapter 116.

Please contact either me or my assistant, Christie Vernon, at (702) 538-9074 for the payoff amount necessary to cure this Default, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song and Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Christie Vernon.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inet #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0867

Naples/Guillory0190

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By KIRBY C. GRUCHOW, JR., ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

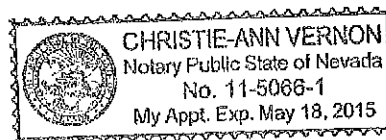
SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said

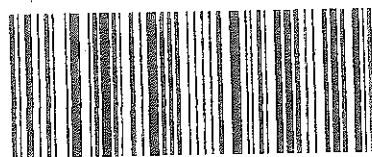
County and State

Notary Appointment No.: 11-5066-1

Notary Seal Expiration: May 18, 2015



CERTIFIED MAIL™



7176 9006 9111 0387 4927

RETURN RECEIPT REQUESTED



Monique Guillory
7605 Cruz Bay Cou
Las Vegas, NV 891

NIXIE

891 SE 1

00 02/23/12

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89148122780

*0679-12360-31-40



891481227
8012877223

JA0869

Naples/Guillory0192

**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012

PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:

Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, four (4) envelopes at the cost of \$5.75 per envelope for a total of \$23.00, and Affiant also deposited in the United States Mail, first-class postage prepaid, four (4) envelopes at the cost of \$0.45, per envelope for a total of \$1.80, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

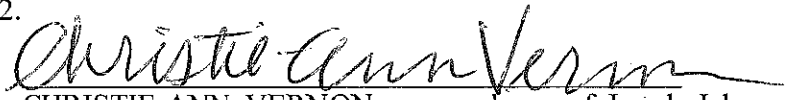
Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

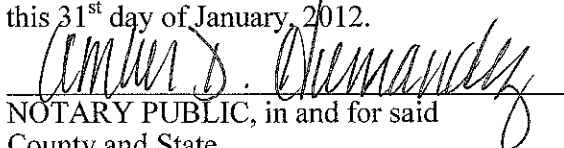
Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

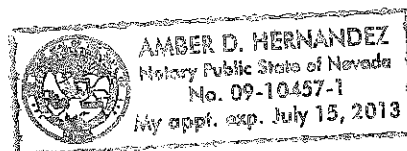
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State



JA0870

Naples/Guillory0193



LEACH JOHNSON

Certified Article Number

7196 9008 9111 0387 4934

SENDERS RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0872

Naples/Guillory0195

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

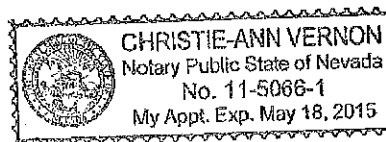
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



2. Article Number



7196 9008 9111 0367 4934

3. Service Type **CERTIFIED MAIL™**4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
P.O. Box 2026
Flint, MI 48501-2026

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

Linda Wilson

☐ Agent
☐ AddressD. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes
☐ NoReference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

JA0874

Naples/Guillory0197



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4941

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764
Fees: \$18.00
N/C Fee: \$0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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All that certain real property situated in the County of Clark, State of Nevada, described as follows:

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Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0876

Naples/Guillory0199

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By KIRBY C. GRUCHOW, JR., ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

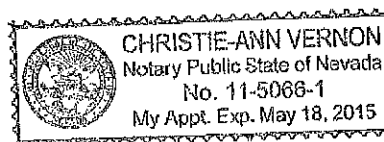
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



JA0877

Naples/Guillory0200

2. Article Number



7196 9008 9111 0387 4941

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
1901 East Voorhees Street, Suite C
Danville, IL 61834

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
FEB 8

C. Signature

X

☐ Agent
☐ Addres
☐ Yes
☐ No

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

JA0878

Naples/Guillory0201



LEACH JOHNSON

Certified Article Number

GRUCHOW

7196 9008 9111 0387 4958

SENDERS RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

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Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
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JA0880

Naples/Guillory0203

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

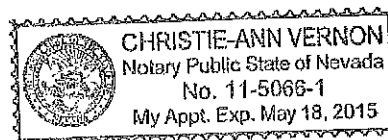
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

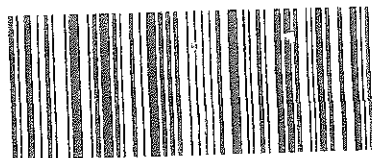
SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



CERTIFIED MAIL



7396 9008 9111 0387 4958

RETURN RECEIPT REQUESTED

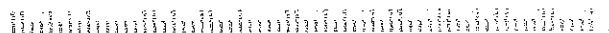


Mortgage Electronic Registration Systems,
Inc.

c/o First Magnus Financial
603 North Wilmot Road
Tucson, AZ 85711

NIXIE 850 DE 1 00 02/03/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
SC: 89148122780 *1314-05773-31-47

05711320880327



JA0882

Naples/Guillory0205

ruchow, Jr., Esq.
ison Song & Gruchow
Russell Road

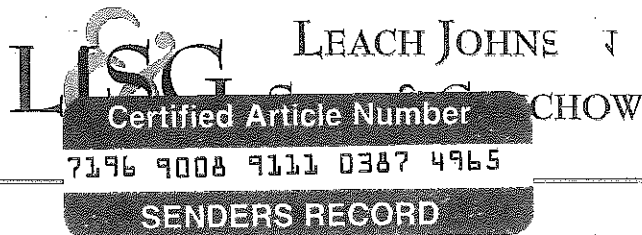
NV 89148

|||||
Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, AZ 85711

NIXIE 050 SE 1 GC 02/03/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 89148122780 *0679-12023-31-40

85711+89148@1227

|||||



Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

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REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

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THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764

Fee: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE
AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

JA0885

Naples/Guillory0208

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

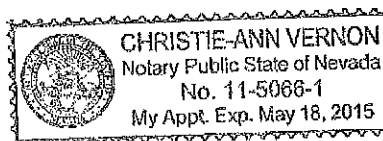
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

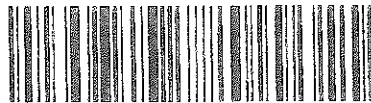
Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



JA0886

Naples/Guillory0209

2. Article Number



7196 9006 9111 0387 4965

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
c/o Clark County
P.O. Box 551220
Las Vegas, NV 89155

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

CLARK COUNTY MAIL SERVICE

C. Signature **309 SOUTH 3RD**

X LAS VEGAS, NV 89155 ☐ Agent ☒ Address:

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

JA0887

Naples/Guillory0210

**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012
PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:

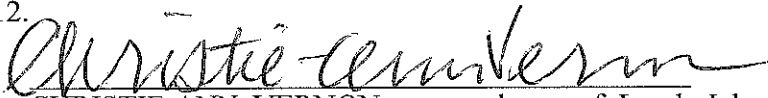
Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, two (2) envelopes at the cost of \$5.75 per envelope for a total of \$11.50, and Affiant also deposited in the United States Mail, first-class postage prepaid, two (4) envelopes at the cost of \$0.45, per envelope for a total of \$0.90, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

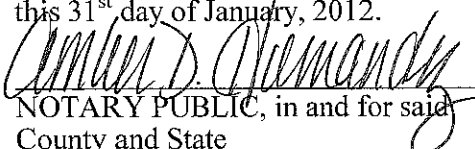
Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

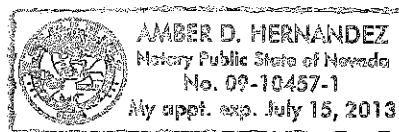
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State



JA0888

Naples/Guillory0211



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4972

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4972 AND U.S. MAIL

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4835 AND U.S. MAIL

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

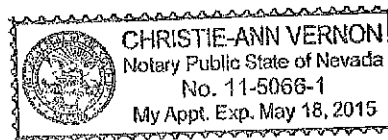
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



2. Article Number



7196 9006 9111 0387 4972

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

FEB 07 2012

C. Signature

X

Thank You

☐ Agent

☐ Address

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

JA0892

Naples/Guillory0215



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4835

SENDER'S RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4972 AND U.S. MAIL

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4835 AND U.S. MAIL

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

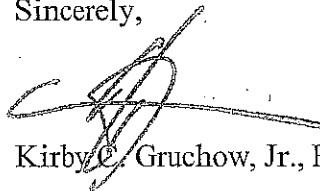
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Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015

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Sincerely,



Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

Inst #: 201201240000764
Fees: \$18.00
N/C Fee: \$0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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JA0894

Naples/Guillory0217

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

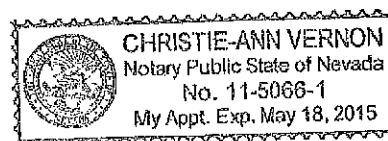
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



JA0895

Naples/Guillory0218

2. Article Number



7196 9006 9111 0387 4835

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, NE 69361-1706

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Agent

☐ Address

☐ Yes

☐ No

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

JA0896

Naples/Guillory0219

EXHIBIT 5

EXHIBIT 5

3

A P N: 163-19-311-015

Inst #: 201207300001448

Fees: \$19.00

N/C Fee: \$0.00

07/30/2012 01:36:24 PM

Receipt #: 1251958

Requestor:

NATIONAL SEARCH SOLUTIONS

Recorded By: SAO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT
ASSESSMENT LIEN

Recording Requested by:

Pro Forma Lien & Foreclosure Services

Return to:

Pro Forma Lien & Foreclosure Services
P.O. Box 96807
Las Vegas, NV 89193

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction **at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, plus any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. **The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.*

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 4/24/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By 
KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

EXHIBIT 6

EXHIBIT 6

3

A P N: 163-19-311-015

Inst #: 201207300001448
Fees: \$19.00
N/C Fee: \$0.00
07/30/2012 01:36:24 PM
Receipt #: 1251958
Requestor:
NATIONAL SEARCH SOLUTIONS
Recorded By: SAO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT
ASSESSMENT LIEN

Recording Requested by:

Pro Forma Lien & Foreclosure Services

Return to:

Pro Forma Lien & Foreclosure Services
P.O. Box 96807
Las Vegas, NV 89193

JA0902

Naples/Guillory0139

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction **at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, **plus** any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. ****The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.***


The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 6/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By


KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

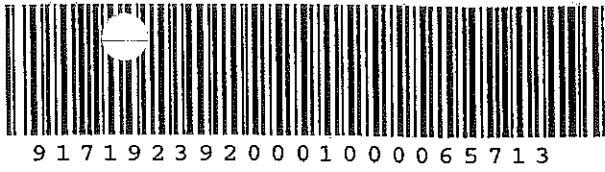
That Affiant is a citizen of the United States of America, and is, and at the time of mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF SALE, setting forth a sale date of 10-18-12 was deposited in the United States mail, Certified mail, Return receipt Requested, and with postage prepaid, 7 envelopes at \$4.55 and Affiant also deposited in the United States mail, and with postage prepaid, 7 envelopes at \$.45, each containing a copy of such Notice with such recording date shown thereon, addressed to:

Aurora Loan Services LLC
P.O. Box 1706
Scottsbluff, NE 69363

Debra Rafferty Baker
NOTARY PUBLIC



PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807

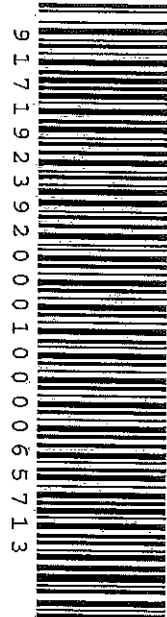


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Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

PRO FORMA SERVICES
P.O. Box 96807
Las Vegas, NV 89193-6807

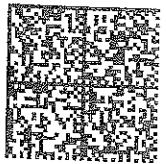
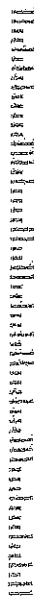


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CERTIFIED MAIL™

ES14 789426946807

NIXE 891 NYE 12C 00 07/25/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 89193680707 0779-07448-24-45



UNITED STATES POSTAGE
02 1P
0003174070
MAILED FROM ZIP CODE 89109
\$004.550
JUL 24 2012
PITNEY BOWES

JA0906

Naples/Guillory0143

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

✓
Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

|
Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

Public records disclose that you have an interest in the property being foreclosed. A copy of the NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN is enclosed for your information.

NOTICE REQUIRED BY 15 U.S.C. Section 1601, As Amended: This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to recover debts from anyone who has discharged the debt under the Bankruptcy laws of the United States.

If this sale is postponed for any reason it is your responsibility to determine the actual sale date and time of any postponed sale, and you may do this by personally appearing at the time and place set for the original sale date or postponed sale date. You may also call our office to determine postponed dates; however, to be certain you should personally appear at each scheduled sale date.

JA0907

Naples/Guillory0144

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 6 5 7 2 0

Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807

CERTIFIED MAIL



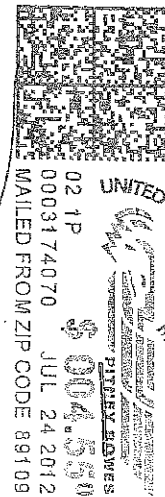
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Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

89125189797

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RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
B.C. 89125189797
1314-01180-25-00

W 7/25/12



02 1P
0003174070
MAILED FROM ZIP CODE 89109
\$004.550
JUL 24 2012
UNITED STATES POSTAGE
PILLEY BOWES

JA0908

Naples/Guillory0145

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State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

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JA0909

Naples/Guillory0146

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 0 6 5 7 3 7

MERS
P.O. Box 2026
Flint, MI 48501

JA0910

Naples/Guillory0147

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

✓ M.E.R.S.
P.O. Box 2026
Flint, MI 48501

M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
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JA0911

Naples/Guillory0148



Date Produced: 07/30/2012

LAPPIN INC

The following is the delivery information for Certified Mail™ item number 7192 3920 0010 0006 5737. Our records indicate that this item was delivered on 07/27/2012 at 02:43 p.m. in FLINT, MI, 48502. The scanned image of the recipient information is provided below.

Signature of Recipient:

A scanned image of a signature, which appears to be "Richard Mullens", written in dark ink on a light background.

Address of Recipient:

A scanned image of a handwritten address, which appears to be "11000 2000 1 1000 1000 1000".

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3116101 34354969

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 6 5 7 4 4

MERS
1901 E. Voorhees St. Suite C
Danville, IL 61834

JA0913

Naples/Guillory0150

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

M.E.R.S.
P.O. Box 2026
Flint, MI 48501

✓ M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
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JA0914

Naples/Guillory0151



Date Produced: 07/30/2012

LAPPIN INC

The following is the delivery information for Certified Mail™ item number 7192 3920 0010 0006 5744. Our records indicate that this item was delivered on 07/27/2012 at 09:22 a.m. in DANVILLE, IL, 61834. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section
re
d
Pamela J. Ray

Address of Recipient:

1901 - C E. Voorhees

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3116101 34354969

PRO-FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 0 6 5 7 5 1

MERS
c/o Clark County
P. O. Box 551220
Las Vegas, NV 89155

JA0916

Naples/Guillory0153

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

M.E.R.S.
P.O. Box 2026
Flint, MI 48501

M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

✓ M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

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THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
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JA0917

Naples/Guillory0154

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You entered: 917192392000100065751

Status: Delivered

Your item was delivered at 7:35 am on July 25, 2012 in LAS VEGAS, NV 89106.
Additional information for this item is stored in files offline.

You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

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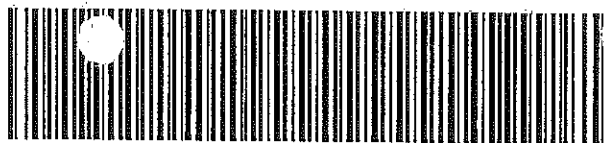
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PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



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Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

JA0919

Naples/Guillory0156

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

Aurora Loan Services LLC
P.O. Box 1706
Scottsbluff, NE 69363

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

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NOTICE REQUIRED BY 15 U.S.C. Section 1601, As Amended: This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to recover debts from anyone who has discharged the debt under the Bankruptcy laws of the United States.

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JA0920

Naples/Guillory0157

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Track & Confirm

You entered: 9171923920001000065768

Status: Electronic Shipping Info Received

The U.S. Postal Service was electronically notified by the shipper on July 24, 2012 to expect your package for mailing. This does not indicate receipt by the USPS or the actual mailing date. Delivery status information will be provided if / when available. No further information is available for this item. Additional information for this item is stored in files offline.

You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

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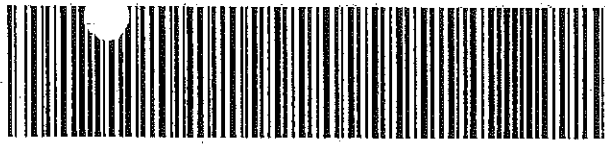
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PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



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Aurora Loan Services LLC
P. O. Box 1706
Scottsbluff, NE 69363

JA0922

Naples/Guillory0159

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

Aurora Loan Services LLC
P.O. Box 1706
Scottsbluff, NE 69363

Original via certified mail

Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
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JA0923

Naples/Guillory0160

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Track & Confirm

You entered: 9171923920001000065775

Status: Depart USPS Sort Facility

Your item departed our NORTH PLATTE, NE 69101 sort facility on July 27, 2012.
Additional information for this item is stored in files offline.

You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

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NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on **October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, **plus** any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. **The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.*

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 4/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By 

KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

EXHIBIT 7

EXHIBIT 7

Priority Posting & Publishing
Order # P984264
TS # 1079.005KCG

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, Ryan Kronbetter, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served **Monique Guillory** with a copy of the Notice of Sale, on 9/13/2012 at approximately 4:33 PM, by:

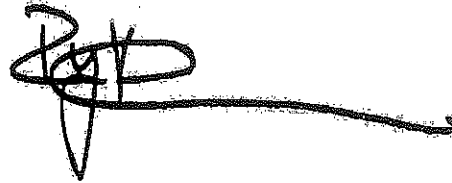
Attempting to personally serve the person(s) residing at the property, however no one answered the door. I thereafter posted a copy of the Notice of Sale on the property in the manner prescribed pursuant to NRS 107.087, in a conspicuous place on the property, upon information and belief, at least 15 days before the date of sale, which is located at:

**4641 Viareggio Court
Las Vegas NV 89147**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated 9/13/2012

Nevada Legal Support Services LLC

A handwritten signature in black ink, appearing to be 'Ryan Kronbetter', with a long horizontal flourish extending to the right.

Ryan Kronbetter, 2520342
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NLN ID# 412664 58
COUNTY OF SERVICE: CLARK
SERVER: Ryan Kronbetter

JA0928

Naples/Guillory0127

Priority Posting & Publishing
Order # P984264
TS # 1079.005KCG

AFFIDAVIT OF POSTING NOTICE OF TRUSTEE'S SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 9/13/2012, I posted a copy of the Notice of Trustee's Sale pursuant to NRS 107.080, concerning Trustee Sale 1079.005KCG, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

The purported owner and address of the property contained in the Notice of Trustee's Sale being:

Monique Guillory, 4641 Viareggio Court, Las Vegas NV 89147.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated 9/13/2012

Nevada Legal Support Services LLC

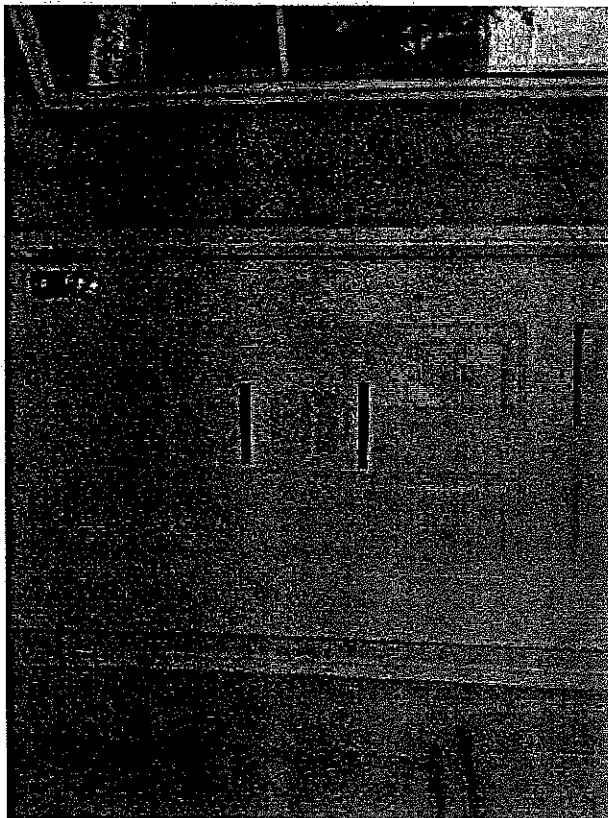
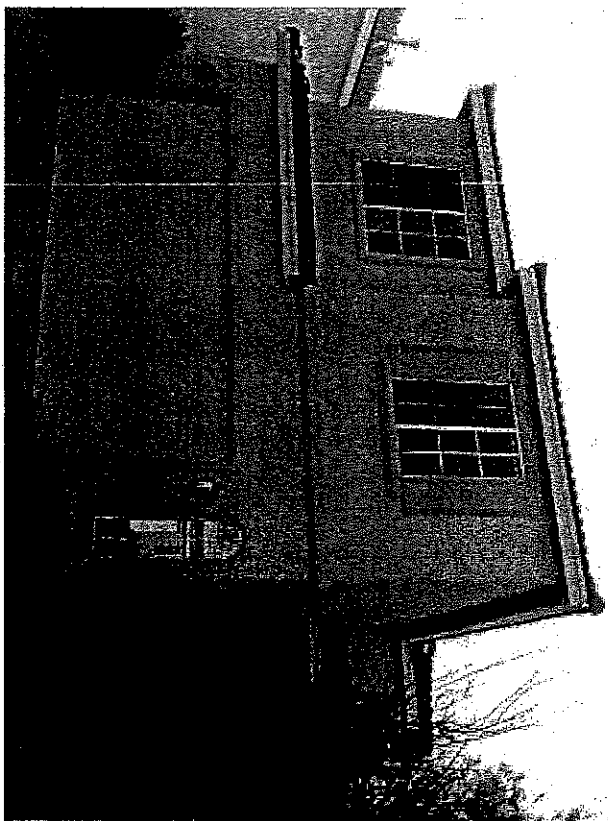


Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NLN ID# 412664 58
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
PRO FORMA

JA0929

Naples/Guillory0128



Photos taken by: Ryan Kronbetter County: CLARK 36
Photo Date: 9/13/2012 Time: 4:33 PM NLN ID# 412664 Page 1 of 1
Primary Borrower: Monique Guillory
Property Address: 4641 Viareggio Court, Las Vegas NV 89147

Vegas Legal Support Services, Inc.
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747 Lic. 988 & 988A

Priority Posting & Publishing Order # P984264 TS#1079.005KCG

JA0930

Naples/Guillory0129

EXHIBIT 8

EXHIBIT 8

Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS

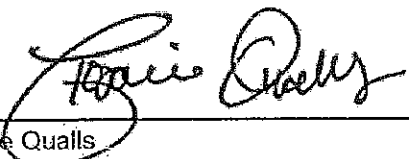
I, Rosalie Qualls state:

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

Sep 20, 2012
Sep 27, 2012
Oct 04, 2012

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

DATED: Oct 04, 2012



Rosalie Qualls

NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN TS# 1079.005KCG APN: 163-19-311-015 WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAYBE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER. NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, WILL BE SOLD at public auction at the front entrance to The Nevada Legal News located at 930 So. Fourth St., Las Vegas, NV 89101 on 10/18/2012 at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances at the time of initial publication of this notice, plus any subsequent quarterly Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. *The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property. The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions. The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on 1/24/2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory. Dated: 6/29/2012 NAPLES COMMUNITY HOMEOWNERS ASSOCIATION By KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory For information access www.priorityposting.com TS# 1079.005KCG P984264 9/20, 9/27, 10/04/2012

04106278 00333943

PRIORITY POSTING & PUBLISHING-2012
17501 IRVINE BLVD. SUITE 1
TUSTIN, CA 92780

JA0932

Naples/Guillory0126

EXHIBIT 8

EXHIBIT 8

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT vs. NATIONSTAR MORTGAGE, LLC, et al.

Eighth Judicial District Court Case No.: A-13-689240-C

DECLARATION OF CUSTODIAN OF RECORDS

The undersigned, declares under penalty of perjury and pursuant to NRS 52.260 and 53.045 (“**Declaration**”) that the following is true and correct:

1. That I, Kirby C. Gruchow, Jr., Esq., with the law firm LJS&G Ltd., am a shareholder of LJS&G Ltd., counsel for Naples Community Homeowners Association and custodian of the records attached to this Declaration.

2. That LJS&G Ltd. was requested to provide documents in the matter of Saticoy Bay LLC Series 4641 Viareggio Ct vs. Nationstar Mortgage, LLC, et al., Case No.: A-13-689240-C, more specifically documents relevant to the property located at 4641 Viareggio Court, Las Vegas, Nevada 89147. See the attached documents [Bates Stamped Naples/Guillory0001 through Naples/Guillory0286]. If a requested document is not attached, then either (a) I was unable to locate it following a good faith effort to locate and obtain such document; (b) the attorney or person seeking the document agreed that it need not be provided as part of this response; or (c) the document(s) are attorney/client and/or work-product privileged and are not being produced herewith. See Privilege Log [Bates Stamped Naples/Guillory0287].

3. That the documents may contain personal identifying information which is protected by law or other information which is protected by law or NRCP 26. If so, then the recipient is obligated to protect this information from unauthorized disclosure. See Redaction Log [Bates Stamped Naples/Guillory0288 through Naples/Guillory0289].

4. That said documents were generated, made or received by personnel employed by LJS&G Ltd., and that said documents were generated, made or received during the course of the regularly conducted business activities of LJS&G Ltd.

5. That true and correct copies of said documents have been delivered, or otherwise caused to be delivered, to the attorney or person requesting such documents.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 5th day of November, 2015.

LJS&G LTD.


KIRBY C. GRUCHOW, JR.

SUBSCRIBED and SWORN to before me
this 5th day of November, 2015.

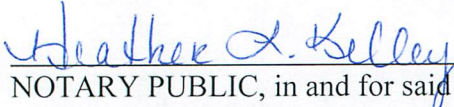

NOTARY PUBLIC, in and for said
County and State



EXHIBIT 10

EXHIBIT 10

1 **RSPN**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Dana Jonathon Nitz, Esq.

4 Nevada Bar NO. 0050

5 7785 W. Sahara Ave., Suite 200

6 Las Vegas, NV, 89117

7 (702) 475-7978; Fax: (702) 946-1345

8 dnitz@wrightlegal.net

9 *Attorneys for Defendant/Counterclaimant, NATIONSTAR MORTGAGE, LLC*

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

13 SATICOY BAY LLC SERIES 4641
14 VIAREGGIO CT,

15 Plaintiff,

16 vs.

17 NATIONSTAR MORTGAGE, LLC;
18 COOPER CASTLE LAW FIRM, LLP; and
19 MONIQUE GUILLORY,

20 Defendants.

21 NATIONSTAR MORTGAGE, LLC,

22 Counterclaimant,

23 vs.

24 SATICOY BAY LLC SERIES 4641
25 VIAREGGIO CT; NAPLES COMMUNITY
26 HOMEOWNERS ASSOCIATION; LEACH
27 JOHNSON SONG & GRUCHOW; DOES I
28 through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case NO. : A-13-689240-C
Dept. NO. : V

**DEFENDANT NATIONSTAR
MORTGAGE, LLC'S ANSWERS TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

COMES NOW Defendant, Nationstar Mortgage LLC (hereinafter "Nationstar") by and through its attorney of record, Dana Jonathon Nitz, Esq., of the law office of Wright, Finlay & Zak LLP, and herein, pursuant to NRCP 33, identifies and produces the following responses to Plaintiff's Interrogatories.

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 Defendant's responses herein to Plaintiff's First Set of Interrogatories (the "Responses")
3 are subject to the following general objections (the "General Objections"). The General
4 Objections may be specifically referred to in the Responses for the purpose of clarity. The failure
5 to specifically incorporate a General Objection, however, should not be construed as a waiver of
6 the General Objections.

7 1. Nothing herein shall be construed as an admission or waiver by Defendant of: (a)
8 its rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity
9 of any information provided in the Responses, any documents identified therein, or the subject
10 matter thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights
11 to object to the use of any information provided in the Responses, any document identified
12 therein, or the subject matter contained in the Responses during a subsequent proceeding,
13 including the trial of this or any other action.

14 2. The Responses are made solely for the purposes of, and in relation to, this
15 litigation.

16 3. Defendant objects to the Interrogatories to the extent they seek documents and
17 information protected by the attorney-client privilege and/or seek the work product of counsel.

18 4. Defendant has not completed: (a) its investigation of facts, witnesses, or
19 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
20 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
21 information where the same has been requested, it is not possible in some instance for
22 unqualified Responses to be made to the Discovery Requests. Further, the Responses are
23 necessarily made without prejudice to Defendant's right to produce evidence of subsequently
24 discovered fact, witnesses, or documents, as well as any new theories or contentions that
25 Defendant may adopt. The Responses are further given without prejudice to Defendant's right to
26 provide information concerning facts, witnesses, or documents omitted by the Responses as a
27 result of oversight, inadvertence, good faith error, or mistake. Defendant has responded to the
28 Interrogatories based on information that is presently available to it and to the best of its

1 knowledge to date. The Responses may include hearsay and other forms of evidence that may be
2 neither reliable nor admissible.

3 Without waiving its General Objections, Defendants responds to the Interrogatories as
4 follows:

5 **INTERROGATORY NO. 1:**

6 State the name, address, and phone number for each person who you intend to call as a
7 witness in the trial in this case.

8 **ANSWER TO INTERROGATORY NO. 1:**

9 At this time, no determination has been made regarding witnesses to testify at trial. This
10 decision will be based upon the witnesses called by Plaintiff and other parties to litigation, as
11 well as the testimony given at trial. It is expected the witnesses would be among those listed in
12 the Joint Case Conference Report and all Supplements.

13 **INTERROGATORY NO. 2:**

14 For each person identified by you in interrogatory number 1, please give a brief
15 description of the testimony you anticipate each witness will give at the trial in this case.

16 **ANSWER TO INTERROGATORY NO. 2:**

17 See Answer to Interrogatory NO. 1. At this time, no determination has been made
18 regarding witnesses to testify at trial. This decision will be based upon the witnesses called by
19 Plaintiff and other parties to litigation, as well as the testimony given at trial. See Joint Case
20 Conference Report and all Supplements for a brief description of their expected testimony.

21 **INTERROGATORY NO. 3:**

22 State the name, address, and phone number, and the area of expertise for each expert you
23 have consulted regarding this case.

24 **ANSWER TO INTERROGATORY NO. 3:**

25 Objection: NRCP 26(b) provides only for the disclosure of expert witnesses who are
26 expected to testify at trial, not for the disclosure of consultants. However, without waiving said
27 objection, no decision has been made regarding expert witnesses at this time. Investigation and
28 discovery are continuing. This Response will be supplemented when additional information is

1 learned.

2 **INTERROGATORY NO. 4:**

3 State the name, address, and phone number, and area of expertise for each expert you
4 have retained as a witness to testify in the trial in this case.

5 **ANSWER TO INTERROGATORY NO. 4:**

6 At this time, no determination has been made as to which expert witnesses will be called
7 to testify at trial. This decision will be based upon the witnesses and expert witnesses called by
8 Plaintiff and other parties to this action, as well as the testimony given at trial. Investigation and
9 discovery are continuing. This Response will be supplemented when additional information is
10 learned.

11 **INTERROGATORY NO. 5:**

12 For each expert witness identified by you in interrogatory number 4, please give a brief
13 description of the testimony you anticipate that each expert witness will give at the trial in this
14 case.

15 **ANSWER TO INTERROGATORY NO. 5:**

16 Please see Responses to Interrogatories Nos. 4 and 5.

17 **INTERROGATORY NO. 6:**

18 Identify each document or other exhibit you intend to introduce in evidence in the trial of
19 this case.

20 **ANSWER TO INTERROGATORY NO. 6:**

21 At this time, no determination has been made regarding documents to be used at trial.
22 This decision will be based upon the documents introduced by Plaintiff and other parties to
23 litigation, as well as the testimony given at trial. See Joint Case Conference Report and all
24 Supplements.

25 **INTERROGATORY NO. 7:**

26 Please state the amount of damages you will be seeking at trial.

27 **ANSWER TO INTERROGATORY NO. 7:**

28 Defendant has suffered general and special damages in an amount not presently known.

1 Defendant is also seeking recovery of all payments made including in the form of taxes,
2 insurance premiums and homeowners association dues since the foreclosure sale purportedly
3 occurring on August 22, 2013, as described in the Foreclosure Deed recorded as Book and
4 Instrument Number 20130906-0000930 on September 6, 2013 ("HOA Sale"). If it is determined
5 that the Deed of Trust executed by Guillory and recorded as Book and Instrument Number
6 20070125-0003583 on January 25, 2007 ("Deed of Trust") has been extinguished by the HOA
7 Sale, Defendant has suffered special damages in the amount equal to the fair market value of the
8 Property or the unpaid balance of the Guillory loan secured by the Deed of Trust, plus interest, at
9 the time of the HOA Sale, whichever is greater, in an amount not presently known. Defendant is
10 also seeking attorney's fees and costs incurred in pursuit of the litigation in this case. Plaintiff is
11 referred to the "Collection History Profile" at WFZ001-032 and the "Detail Transaction History"
12 at WFZ211-220. As these amounts become known, Defendant will supplement this response
13 prior to trial.

14 **INTERROGATORY NO. 8:**

15 Please explain the basis for each item of damages you will be seeking at trial.

16 **ANSWER TO INTERROGATORY NO. 8:**

17 Subject to the General Objections stated herein, this Interrogatory is further objected to
18 on the grounds it seeks information protected by the attorney-client privilege and work product
19 doctrine. Without waiving stated objections, see NRS 116.3116(8). See also terms of the Deed
20 of Trust. Also, refer to the Factual Allegations contained in Defendant's Counterclaim.

21 **INTERROGATORY NO. 9:**

22 Please explain what efforts, if any, you have made to mitigate your damages in this case.

23 **ANSWER TO INTERROGATORY NO. 9:**

24 Subject to the General Objections stated herein, this Interrogatory is further objected to
25 on the grounds it calls for a legal conclusion; without waiving said objections, Defendant is
26 defending the instant action on Plaintiff's claims and prosecuting its Counterclaims against the
27 HOA, among others. Defendant was proceeding with non-judicial foreclosure of the subject
28 Deed of Trust in accordance with Nevada Revised Statutes Chapter 107 prior to Plaintiff's

1 institution of the instant action. Investigation and discovery are continuing. This Response will
2 be supplemented when additional information is learned.

3 **INTERROGATORY NO. 10:**

4 To the extent you answered any of the Requests for Admission served upon you
5 contemporaneously herewith, anything other than an unqualified "Admit," then for each and
6 every answer, set forth the specific basis or grounds for your answer, whether you are aware of
7 any information, facts, writings or evidence whatsoever relating to this litigation that either
8 supports or contradicts your answer, and the identity of all persons who have any knowledge of
9 information which either supports or contradicts each of your answers which are not an
10 unqualified admission.

11 **ANSWER TO INTERROGATORY NO. 10:**

12 Subject to the General Objections stated herein, and without waiving said objections, for
13 each Request for Admission where an objection is asserted, please refer to those objections. For
14 each Request for Admission where a denial is given:

- 15 a. Request for Admission #4: Nothing in Defendant's record indicates that Defendant
16 received a copy of the notice of default.
- 17 b. Request for Admission #6: Defendant, after making reasonable inquiry, and on
18 information known or readily available to it, is unable to admit or deny because of
19 insufficient available information.
- 20 c. Request for Admission #7: The Deed of Trust required the borrower to pay "all taxes,
21 assessments, charges, fines, and impositions attributable to the Property which
22 [could] attain priority over this Security Instrument, leasehold payments or ground
23 rents on the Property, if any, and Community Association Dues, Fees, and
24 Assessments, if any," and further "to promptly discharge any lien which has priority
25 over this Security Instrument." Upon information and belief, Defendant was advised
26 by the borrower that she was making payments.
- 27 d. Request for Admission #8: Defendant, after making reasonable inquiry, and on
28 information known or readily available to it, is unable to admit or deny because of

1 insufficient available information. Investigation and discovery are continuing and
2 should any additional information be obtained, Defendant will supplement this
3 response.

- 4 e. Request for Admission #9: Defendant, after making reasonable inquiry, and on
5 information known or readily available to it, is unable to admit or deny because of
6 insufficient available information. However, investigation and discovery are
7 continuing and should any additional information be obtained, Defendant will
8 supplement this response.
- 9 f. Request for Admission #11: Nothing in Defendant's record indicates that Defendant
10 was aware that Borrowers had not paid the HOA dues before it obtained an interest in
11 the Property.
- 12 g. Request for Admission #12: See Objections to Request for Admissions #12.
- 13 h. Request for Admission #13: See Objections to Request for Admissions #13.
- 14 i. Request for Admission #14: Because the Guillory loan and Deed of Trust are owned
15 by the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal
16 Housing Finance Agency ("FHFA") did not consent to the HOA Sale, the Deed of
17 Trust remains a valid, enforceable first priority lien on the Property as 12 U.S.C. §
18 4617(j)(3) preempts any state law that would otherwise provide for the
19 extinguishment of the Deed of Trust as a result of the HOA Sale.
- 20 j. Request for Admission #15: Defendant, after making reasonable inquiry, and on
21 information known or readily available to it, is unable to admit or deny because of
22 insufficient available information.
- 23 k. Request for Admission #16: Nothing in Defendant's records indicates such a policy
24 or practice. However, investigation and discovery are continuing and should any
25 additional information be obtained, Defendant will supplement this response.

26 **INTERROGATORY NO. 11:**

27 Identify the facts, information and evidence of which you are aware that supports each
28 and every affirmative defense claimed in your answer.

1 **ANSWER TO INTERROGATORY NO. 11:**

2 Defendant objects to this Interrogatory on the ground that to the extent that it asks for any
3 investigative work performed at the request of defense counsel or anyone working for defense
4 counsel on behalf of Defendant, it attempts to invade the Attorney Work Product privilege. See
5 N.R.C.P. 26(b)(3), i.e., "the court shall protect against disclosure of the mental impressions,
6 conclusions, opinions, or legal theories of an attorney or other representative of a party
7 concerning the litigation." Defendant further objects to this Interrogatory on the ground that it is
8 overly broad, vague and ambiguous; however, without waiving said objection, many of
9 Defendant's affirmative defenses set forth legal theories raised by the allegations of the
10 Complaint and all applicable statutes. Because the Guillory loan and Deed of Trust are owned
11 by the Freddie Mac and the FHFA did not consent to the HOA Sale, the Deed of Trust remains a
12 valid, enforceable first priority lien on the Property as 12 U.S.C. § 4617(j)(3) preempts any state
13 law that would otherwise provide for the extinguishment of the Deed of Trust as a result of the
14 HOA Sale. In addition, the foreclosure sale of the alleged lien of Naples Community
15 Homeowners Association (the "HOA") by which Plaintiff took its interest was commercially
16 unreasonable based on the sales price, when compared to the outstanding balance of Defendant's
17 Note and Deed of Trust and the fair market value of the Property. Also, please refer to
18 Defendant's first priority Deed of Trust, which was signed by Monique Guillory, and recorded
19 on January 25, 2007, which encumbers the Property and secures a promissory note. See also all
20 documents identified in the Joint Case Conference Report and all Supplements thereto.

21 **INTERROGATORY NO. 12:**

22 Identify the facts, information and evidence of which you are aware that supports or
23 contradicts your assertion that you were not properly noticed of the Association foreclosure sale.

24 **ANSWER TO INTERROGATORY NO. 12:**

25 Subject to the General Objections stated herein, Defendant has no record of receiving the
26 required notices. Investigation and discovery are continuing. This response will be
27 supplemented as more information becomes available.
28

1 **INTERROGATORY NO. 13:** Identify all communications between you and the Association
2 and/or the Association's agents regarding the Property.

3 **ANSWER TO INTERROGATORY NO. 13:**

4 Subject to the General Objections stated herein, on August 30, 2012, records of
5 Nationstar indicate, "Rec d correspondence from Pro Forma Lien & Foreclosure Services with
6 notice of FLC sale under notice of DLQ Assessment Lien. Tax Sale set for 10/18/12."
7 Investigation and discovery are continuing. This response will be supplemented as more
8 information becomes available.

9 **INTERROGATORY NO. 14:** Identify any pooling and servicing agreement and/or servicing
10 guidelines applicable to your security interest in the Property, including any pooling and
11 servicing agreements for prior servicers.

12 **ANSWER TO INTERROGATORY NO. 14:**

13 Subject to the General Objections stated herein, this Interrogatory is further objected to
14 on the grounds it seeks confidential and private information regarding individuals and/or entities
15 who are not a party to this action, the disclosure of which would violate those individuals' or
16 entities' constitutionally protected right to privacy, and it seeks information that is protected by
17 privilege, including but not limited to the attorney-client privilege, the attorney work-product
18 doctrine, and/or confidential, proprietary, trade secret, financial or commercially sensitive
19 information.

20 **INTERROGATORY NO. 15:** Identify all communications between you and the current and
21 any prior servicer of your loan regarding any association lien on the property.

22 **ANSWER TO INTERROGATORY NO. 15:**

23 Subject to the General Objections stated herein, this Interrogatory is further objected to
24 on the grounds it seeks confidential and private information regarding individuals and/or entities
25 who are not a party to this action, the disclosure of which would violate those individuals' or
26 entities' constitutionally protected right to privacy, and it seeks information that is protected by
27 privilege, including but not limited to the attorney-client privilege, the attorney work-product
28 doctrine, and/or confidential, proprietary, trade secret, financial or commercially sensitive

1 information, and the information sought is not relevant to the subject matter of this litigation, nor
2 is it reasonably calculated to lead to the discovery of admissible evidence. However, without
3 waiving these objections, none are known. Investigation and discovery are continuing. This
4 response will be supplemented as more information becomes available.

5 **INTERROGATORY NO. 16:** Please provide a list of each and every monetary payment sent to
6 the Association or its agents relating to an Association lien on the Property. For each payment,
7 please include the date of payment, amount of payment, the name and address of the
8 person/entity to whom the payment was sent, the method and manner the payment was sent, the
9 name of the person who sent the payment, and whether the payment was accepted or rejected.

10 **ANSWER TO INTERROGATORY NO. 16:**

11 Subject to the General Objections stated herein, none are known. Investigation and
12 discovery are continuing. This response will be supplemented as more information becomes
13 available.

14 **INTERROGATORY NO. 17:** Identify any steps you took to ensure the Association received
15 the assessments owed in relation to the Property.

16 **ANSWER TO INTERROGATORY NO. 17:**

17 Subject to the General Objections stated herein, the Deed of Trust required the borrower
18 to pay "all taxes, assessments, charges, fines, and impositions attributable to the Property which
19 [could] attain priority over this Security Instrument, leasehold payments or ground rents on the
20 Property, if any, and Community Association Dues, Fees, and Assessments, if any," and further
21 "to promptly discharge any lien which has priority over this Security Instrument." The borrower
22 also advised Defendant that she was making payments. Investigation and discovery are
23 continuing. This response will be supplemented as more information becomes available.

24 **INTERROGATORY NO. 18:** Describe any action you or your predecessors in interest took
25 relating to the Association lien, if any, after receiving foreclosure notices, including, but not
26 limited to, notice of delinquent assessment lien, notice of default, and notice of sale.

1 **ANSWER TO INTERROGATORY NO. 18:**

2 Subject to the General Objections stated herein, after a diligent search, none are known.
3 Investigation and discovery are continuing. This response will be supplemented as more
4 information becomes available.

5 **INTERROGATORY NO. 19:** Identify all facts, information, and evidence of which you are
6 aware that contradicts Plaintiff's assertion that it was a bona fide purchaser for value at the
7 Association foreclosure sale.

8 **ANSWER TO INTERROGATORY NO. 19:**

9 Subject to the General Objections stated herein, this Interrogatory is further objected to
10 on the grounds it calls for a legal conclusion; however, without waiving said objections, the First
11 Deed of Trust was recorded on January 25, 2007 as Instrument Number 20070125-0003583 in
12 the Clark County Recorder's Office, putting Plaintiff on notice of the Lender's First Deed of
13 Trust on the Property. Plaintiff is a professional property purchaser, and the circumstances of the
14 HOA Sale of the Property and the status as a professional property purchaser prevent Plaintiff
15 from being deemed a bona fide purchaser for value. Furthermore, the purchase price paid by
16 Plaintiff at the HOA Sale was not a commercially reasonable amount. Investigation and
17 discovery are continuing and this response will be supplemented as new information becomes
18 available.

19 **INTERROGATORY NO. 20:** Describe any interest that any federal government entity may
20 have in the loan.

21 **ANSWER TO INTERROGATORY NO. 20:**

22 Subject to the General Objections stated herein, Freddie Mac owns both the loan and the
23 Deed of Trust secured by the Property, and the FHFA, in its capacity as conservator of Freddie
24 Mac, claim an interest in the Property.

25 **INTERROGATORY NO. 21:** Identify the current and all prior servicers for the loan allegedly
26 secured to the Property by the First Deed of Trust.

27 **ANSWER TO INTERROGATORY NO. 21:**

28 Nationstar Mortgage, LLC is the current servicer of the loan. Ocwen Loan Servicing LLC

1 was the prior servicer as of February 2, 2012.

2 **INTERROGATORY NO. 22:** State the name and mailing address for any servicing agent who
3 has serviced any loans on your behalf from the time you acquired the deed of trust in question in
4 this case until the present date.

5 **ANSWER TO INTERROGATORY NO. 22:**

6 Subject to the General Objections stated herein, this Interrogatory is further objected to
7 on the grounds it is overbroad in scope and time and it seeks confidential and private information
8 regarding individuals and/or entities who are not a party to this action. However, without
9 waiving said objections, Nationstar's principal address has been 8950 Cypress Waters Blvd.
10 Coppell, TX 75019 at all relevant times.

11 **INTERROGATORY NO. 23:** State each address, including post office boxes where you
12 received any mail from the time you acquired your interest in the deed of trust until the present.

13 **ANSWER TO INTERROGATORY NO. 23:**

14 Subject to the General Objections stated herein, this Interrogatory is further objected to
15 on the grounds that it is overbroad in scope and time and the information sought is not relevant to
16 the subject matter of this litigation, nor is it reasonably calculated to lead to the discovery of
17 admissible evidence. However, without waiving said objections, Nationstar's principal address
18 was 8950 Cypress Waters Blvd. Coppell, TX 75019 at all relevant times.

19 **INTERROGATORY NO. 24:** Identify all facts, information, and evidence of which you are
20 aware which evidences any fraud, oppression or unfairness in regards to the association
21 foreclosure sale.

22 **ANSWER TO INTERROGATORY NO. 24:**

23 Subject to the General Objections stated herein, this Interrogatory is further objected to
24 on the grounds it calls for a legal conclusion; however, without waiving said objections, the First
25 Deed of Trust was recorded on January 25, 2007 as Instrument Number 20070125-0003583 in
26 the Clark County Recorder's Office, putting Plaintiff on notice of the Lender's First Deed of
27 Trust on the Property. Plaintiff is a professional property purchaser, and the circumstances of the
28 HOA Sale of the Property and the status as a professional property purchaser prevent Plaintiff

1 from being deemed a bona fide purchaser for value. Furthermore, the purchase price paid by
2 Plaintiff at the HOA Sale was not a commercially reasonable amount. The Nevada foreclosure
3 statute found at NRS Chapter 116 is also unconstitutional because it does not provide for due
4 process to lenders such as Defendant. Moreover, Defendant has no record of receiving any of
5 the notices regarding the foreclosure required by the statute, other than the Notice of Sale.
6 Investigation and discovery are continuing and this response will be supplemented as new
7 information becomes available.

8 **INTERROGATORY NO. 25:** Identify all facts, information, and evidence of which you are
9 aware which evidences that the association foreclosure sale was not properly conducted.

10 **ANSWER TO INTERROGATORY NO. 25:**

11 Subject to the General Objections stated herein, this Interrogatory is further objected to
12 on the grounds it calls for a legal conclusion; however, without waiving said objections, the
13 purchase price paid by Plaintiff at the HOA Sale was not a commercially reasonable amount.
14 The Nevada foreclosure statute found at NRS Chapter 116 is also unconstitutional because it
15 does not provide for due process to lenders such as Defendant. Please refer to the Notice of
16 Delinquent Assessment, Notice of Default and Election to Sell and Notice of Sale recorded by or
17 on behalf of the HOA. Defendant has no record of receiving any of the notices regarding the
18 foreclosure required by the statute, other than the Notice of Sale. Furthermore, Defendant
19 believes the amounts claimed in the foreclosure notices included improper fees and costs and that
20 the notices did not properly identify the super-priority amount or give notice of the same.
21 Investigation and discovery are continuing and this response will be supplemented as new
22 information becomes available.

23 **INTERROGATORY NO. 26:** Identify all facts, information, and evidence of which you are
24 aware which evidences that the association foreclosure sale was not properly noticed.

25 **ANSWER TO INTERROGATORY NO. 26:**

26 Subject to the General Objections stated herein, this Interrogatory is further objected to on the
27 grounds it calls for a legal conclusion; however, without waiving said objections, the First The
28 Nevada foreclosure statute found at NRS Chapter 116 is unconstitutional because it does not

1 provide for due process to lenders such as Defendant. Please refer to the Notice of Delinquent
2 Assessment, Notice of Default and Election to Sell and Notice of Sale recorded by or on behalf
3 of the HOA. Furthermore, Defendant believes the amounts claimed in the foreclosure notices
4 included improper fees and costs and that the notices did not properly identify the super-priority
5 amount or give notice of the same. Investigation and discovery are continuing and this response
6 will be supplemented as new information becomes available.

7 DATED this 5th day of October, 2015

8 WRIGHT, FINLAY & ZAK, LLP

9
10 /s/ Dana Jonathon Nitz, Esq.

11 Dana Jonathon Nitz, Esq.

12 Nevada Bar NO. 0050

13 7785 W. Sahara Ave., Suite 200

14 Las Vegas, NV 89117

15 *Attorneys for Defendant/Counterclaimant,*

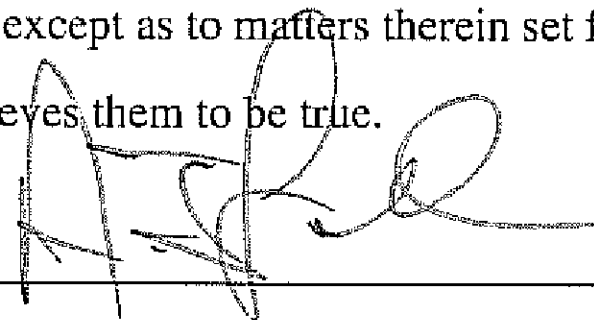
16 *Nationstar Mortgage, LLC*
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VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

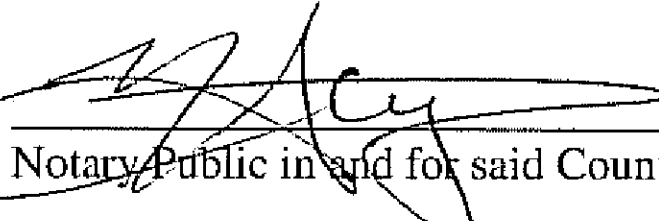
A. J. Loll, being first duly sworn according to law, deposes and says:

That they are a representative of Defendant in this action and has read the foregoing
NATIONSTAR'S ANSWERS TO INTERROGATORIES and knows the contents thereof,
and that the same are true to the best of their knowledge, except as to matters therein set forth
upon information and belief, and as to those matters, believes them to be true.

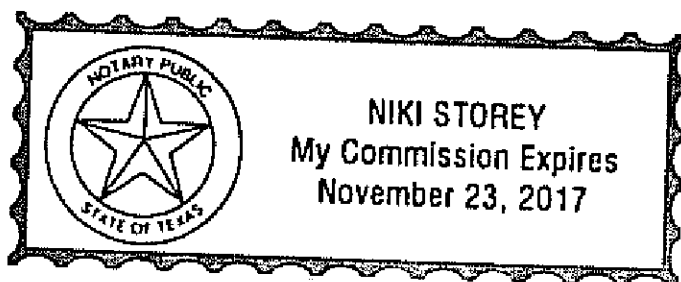


SUBSCRIBED and SWORN to before me
this 5th day of Oct, 2015.

A. J. Loll, Vice President
Nationstar Mortgage LLC



Notary Public in and for said County and State



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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT NATIONSTAR MORTGAGE, LLC'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** filed in Case No. A-13-689240-C **does not** contain the social security number of any person.

DATED this 5th day of October, 2015

WRIGHT, FINLAY & ZAK, LLP

/s/ Dana Jonathon Nitz, Esq.
Dana Jonathon Nitz, Esq.
Nevada Bar NO. 0050
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
*Attorneys for Defendant/Counterclaimant,
Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

I HERBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing **DEFENDANT NATIONSTAR MORTGAGE, LLC'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** was made on the 8th day of October, 2015, by e-service through the Eighth Judicial District EFP system pursuant to NEFR 9.

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/s/ Jenn Alexy

An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT 11

EXHIBIT 11

trap for the unwary, and often to be Draconian in its consequences. See, e.g., *Security Pacific National Bank v. Wozab*, 800 P.2d 557 (Cal. 1990); *Conley*, *The Sanction for Violation of California's One-Action Rule*, 79 Cal. L. Rev. 1601 (1991); *Hetland & Hanson*, *The "Mixed Collateral" Amendments to California's Commercial Code—Covert Repeal of California Real Property Foreclosure and Anti-deficiency Provisions or Exercise in Futility?*, 75 Cal. L. Rev. 185 (1987); *Hirsh, Arnold, Rabin & Sigman*, *The U.C.C. Mixed Collateral Statute—Has Paradise Really Been Lost?*, 36 U.C.L.A. L. Rev. 1, 6, 10 (1988); *Munoz & Rabin*, *The Sequel to Bank of America v. Daily: Security Pac. Nat'l Bank v. Wozab*, 12 Real Prop. L. Rep. 204 (1989).

For a consideration of the characteristics of judicial and power of sale foreclosure, see 1 G. Nelson & D. Whitman, *Real Estate Finance Law* §§ 7.11–7.14, 7.19–7.30 (3d ed. 1993).

Limitations on mortgagee's remedies, Comment b. Some states permit the mortgagee to sue on the mortgage obligation and simultaneously to bring a judicial foreclosure action or power of sale proceeding. See, e.g., *Hartford National Bank & Trust Co. v. Kotkin*, 441 A.2d 593 (Conn.1981); *Eastern Illinois Trust & Sav. Bank v. Vickery*, 517 N.E.2d 604 (Ill. App. Ct. 1987); *First Indiana Federal Sav.*

Bank v. Hartle, 567 N.E.2d 834 (Ind. Ct.App.1991); *Kepler v. Slade*, 896 P.2d 482 (N.M.1995); *Elmwood Federal Savings Bank v. Parker*, 666 A.2d 721 n.6 (Pa. Super. Ct. 1995); *In re Gayle*, 189 B.R. 914 (Bankr. S.D.Tex.1995). This section prohibits such a course of action. This reflects a policy of judicial economy and against harassment of the mortgagor by forcing him or her to defend two proceedings at once. This approach is supported by legislation in over a dozen states. See *Alaska Stat.* § 09.45.200; *Ariz. Rev. Stat.* § 33-722; *Fla. Stat. Ann.* § 702.06; *Idaho Code* § 45-1505(4); *Iowa Code Ann.* § 654.4; *Mich. Comp. Laws Ann.* §§ 600.3105(1), (2), 3204(2); *Minn. Stat. Ann.* § 580.02; *Neb. Rev. Stat.* §§ 25-2140, -2143; *N.Y. Real Prop. Acts. & Proc. L.* §§ 1301, 1401(2); *N.D. Cent. Code* § 32-19-05; *Or. Rev. Stat.* §§ 86.735(4), 88.040; *S.D. Comp. Laws Ann.* §§ 21-47-6, -48-4; *Wash. Rev. Code Ann.* § 61.12.120; *Wyo. Stat.* § 34-4-103.

For authority that an election of remedies statute similar to the language of this section does not prohibit a mortgagee from foreclosing on a guarantor's real estate after having obtained a judgment against the principal debtor, see *Ed Herman & Sons v. Russell*, 535 N.W.2d 803 (Minn. 1995).

§ 8.3 Adequacy of Foreclosure Sale Price

(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.

(b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

Cross-References:

Section 7.1, Effect of Mortgage Priority on Foreclosure; § 8.4, Foreclosure: Action for a Deficiency; § 8.5, The Merger Doctrine Inapplicable to Mortgages.

Comment:

a. Introduction. Many commentators have observed that the foreclosure process commonly fails to produce the fair market value for foreclosed real estate. The United States Supreme Court recently emphasized this widely perceived dichotomy between "foreclosure sale value" and fair market value:

An appraiser's reconstruction of "fair market value" could show what similar property would be worth if it did not have to be sold within the time and manner strictures of state-prescribed foreclosure. But property that *must* be sold with these strictures is simply *worth* less. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques. And it is no more realistic to ignore that characteristic of the property (the fact that state foreclosure law permits the mortgagee to sell it at a forced sale) than it is to ignore other price-affecting characteristics (such as the fact that state zoning law permits the owner of the neighboring lot to open a gas station).

BFP v. Resolution Trust Corp., 511 U.S. 531, 539, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994).

There are several reasons for low bids at foreclosure sales. First, because the mortgage lender can "credit bid" up to the amount of the mortgage obligation without putting up new cash, it has a distinct bidding advantage over a potential third party bidder. Second, while foreclosure legislation usually requires published notice to potential third party purchasers, this notice, especially in urban areas, is frequently published in the classified columns of legal newspapers with limited circulation. Moreover, because the publication is usually highly technical, unsophisticated potential bidders have little idea as to the nature of the real estate being sold. Third, many potential third party purchasers are reluctant to buy land at a foreclosure sale because of the difficulty in ascertaining whether the sale will produce a good and marketable title and the absence of any warranty of title or of physical quality from the foreclosing mortgagee. Finally, when a mortgagee forecloses on improved real estate, potential bidders may find it difficult to inspect the premises prior to sale. Even though it may be in the self-interest of the mortgagor to allow such persons to inspect the premises, mortgagors who are about to lose their real estate through a foreclosure sale understandably are frequently reluctant to cooperate.

Given the nature of the foreclosure sale process, courts have consistently been unwilling to impose a "fair market value" standard on the price it produces. Courts are rightly concerned that an increased willingness to invalidate foreclosure sales because of price inadequacy will make foreclosure titles more uncertain. When a foreclosure sale is set aside, the court may upset third party expectations. A third party may have acquired title to the foreclosed real estate by purchase at the sale or by conveyance from the mortgagee-purchaser. Thus, a general reluctance to set aside the sale is understandable and sensible. This reluctance may be especially justifiable when price inadequacy is the only objection to the sale. Consequently, the end result of additional judicial activism on this issue might well be further exacerbation of the foreclosure price problem. This section largely reflects this judicial concern.

However, close judicial scrutiny of the sale price is more justifiable when the price is being employed to calculate the amount of a deficiency judgment context. This is especially the case where the mortgagee purchases at the sale and, in addition, seeks a deficiency judgment. The potential for unjust enrichment of the mortgagee in this situation may well demand closer judicial scrutiny of the sale price. Moreover, the interests of third parties are not prejudiced by judicial intervention in an action for a deficiency judgment. Because a deficiency proceeding is merely an *in personam* action against the mortgagor for money, the title of the foreclosure purchaser is not placed at risk. Consequently, a more intensive examination of the foreclosure price in the deficiency context is appropriate. This view is reflected in § 8.4 of this Restatement.

Ultimately, however, price inadequacy must be addressed in the context of a fundamental legislative reform of the entire foreclosure process so that it yields a price more closely approximating "fair market value." In order to ameliorate the price-suppressing tendency of the "forced sale" system, such legislation could incorporate many of the sale and advertising techniques found in the normal real estate marketplace. These could include, for example, the use of real estate brokers and commonly used print and pictorial media advertising. While such a major restructuring of the foreclosure process is desirable, it is more appropriate subject for legislative action than for the Restatement process.

b. *Application of the standard.* Section 8.4 deals with the question of adequacy of the foreclosure price in the deficiency judgment context. This section, on the other hand, applies to actions to nullify the foreclosure sale itself based on price inadequacy. This issue may arise in any of several different procedural contexts, depending on whether the mortgage is being foreclosed judicially or by power of

sale. Where the foreclosure is by judicial action, the issue of price typically will arise when the mortgagee makes a motion to confirm the sale.

On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale is usually not required and the issue of price inadequacy will therefore arise only if the party attacking the sale files an independent judicial action. Typically this will be an action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the holders of other junior interests who were prejudiced by the sale. If the real estate is unavailable because title has been acquired by a bona fide purchaser, the issue of price inadequacy may be raised by the mortgagor or a junior interest holder in a suit against the foreclosing mortgagee for damages for wrongful foreclosure. This latter remedy, however, is not available based on gross price inadequacy alone. In addition, the mortgagee must be responsible for a defect in the foreclosure process of the type described in Comment *c* of this section.

This section articulates the traditional and widely held view that a foreclosure proceeding that otherwise complies with state law may not be invalidated because of the sale price unless that price is grossly inadequate. The standard by which "gross inadequacy" is measured is the fair market value of the real estate. For this purpose the latter means, not the fair "forced sale" value of the real estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate. Where the foreclosure is subject to senior liens, the amount of those liens must be subtracted from the unencumbered fair market value of the real estate in determining the fair market value of the title being transferred by the foreclosure sale.

"Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.

Foreclosures subject to senior liens can sometimes pose special problems in assessing price adequacy. For example, where one or

more senior liens are also in default and their amount substantial or controverted, a court may properly recognize the added uncertainties facing the foreclosure purchaser and refuse to invalidate a sale even though it produces a price that is less than 20 percent of the fair market value of the mortgagor's equity. This problem may be particularly acute where a senior mortgage has a substantial prepayment fee or if it is uncertain whether the senior mortgage is prepayable at all. See Illustration 6.

Moreover, courts can properly take into account the fact that the value shown on a recent appraisal is not necessarily the same as the property's fair market value on the foreclosure sale date, and that "gross inadequacy" cannot be precisely defined in terms of a specific percentage of appraised value. This is particularly the case in rapidly rising or falling market conditions. Appraisals are time-bound, and in such situations are often prone to error to the extent that they rely on comparable sales data, for such data are by definition historical in nature and cannot possibly reflect current market conditions with complete precision. For this reason, a court may be justified in approving a foreclosure price that is less than 20 percent of appraised value if the court determines that market prices are falling rapidly and that the appraisal does not take adequate account of recent declines in value as of the date of the foreclosure. See Illustration 7. Similarly, a court may be warranted in refusing to confirm a sale that produces more than 20 percent of appraised value if the court finds that market prices are rising rapidly and that the appraisal reflects an amount lower than the current fair market value as of the date of foreclosure. See Illustration 8.

Illustrations:

1. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre at the time of the sale is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.

2. The facts are the same as Illustration 1, except the foreclosure proceeding is by power of sale and Mortgagor files a judicial action to set aside the sale based on inadequacy of the sale price. A court is warranted in finding that the sale price is grossly inadequate and in setting aside the sale, provided that the property has not subsequently been sold to a bona fide purchaser.

3. The facts are the same as Illustration 2, except that the Mortgagee is responsible for conduct that chills bidding at the

sale. Blackacre is purchased at the foreclosure sale by a bona fide purchaser. Mortgagor files a suit against the Mortgagee to recover damages for wrongful foreclosure. A court is warranted in finding that the sale price is grossly inadequate and in awarding damages to Mortgagor.

4. Mortgagee forecloses a mortgage on Blackacre by judicial action. The foreclosure is subject to a senior lien in the amount of \$50,000. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$150,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.

5. The facts are the same as Illustration 1, except that Blackacre has a fair market value of \$60,000 at the time of the foreclosure sale. The court is not warranted in refusing to confirm the sale.

6. Mortgagee forecloses a mortgage on Blackacre by power of sale. The foreclosure is subject to a large (in relation to market value) senior lien that is in default, carries an above market interest rate, and provides for a substantial prepayment charge. At the time of the foreclosure sale, the current balance on the senior lien is \$500,000. Blackacre is sold at the foreclosure sale for \$10,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$600,000. The foreclosure proceeding is regularly conducted in compliance with state law. Mortgagor files suit to set aside the sale. A court is warranted in refusing to set the sale aside.

7. Mortgagee forecloses a mortgage on Blackacre, a vacant lot, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$10,000. The appraised value of Blackacre, based on an appraisal performed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been declining rapidly, and this is especially the case with respect to raw land. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$50,000 or less, the court is warranted in confirming the sale.

8. Mortgagee forecloses a mortgage on Blackacre, a residential duplex, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$35,000. The appraised value of Blackacre, based on an appraisal per-

formed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been rising rapidly, and this is especially the case with respect to residential rental real estate. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$175,000 or more, the court is warranted in refusing to confirm the sale.

c. Price inadequacy coupled with other defects. Even where the foreclosure price for less than fair market value cannot be characterized as "grossly inadequate," if the foreclosure proceeding is defective under local law in some other respect, a court is warranted in invalidating the sale and may even be required to do so. Such defects may include, for example, chilled bidding, an improper time or place of sale, fraudulent conduct by the mortgagee, a defective notice of sale, or selling too much or too little of the mortgaged real estate. For example, even a slight irregularity in the foreclosure process coupled with a sale price that is substantially below fair market value may justify or even compel the invalidation of the sale. See Illustrations 9 and 10. On the other hand, even a sale for slightly below fair market value may be enough to require invalidation of the sale where there is a major defect in the foreclosure process. See Illustration 11.

Illustrations:

9. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$15,000. The fair market value of Blackacre at the time of the sale is \$50,000. The foreclosure proceeding is regularly conducted in compliance with state law except that at the foreclosure sale the sheriff fails to read the foreclosure notice aloud as required by the applicable statute. A court is warranted in refusing to confirm the sale.

10. The facts are the same as Illustration 9, except that the foreclosure is by power of sale. The foreclosure proceeding is regularly conducted in compliance with state law except that notice of the sale is published only 16 times rather than 20 times as required by the applicable statute. Mortgagor files suit to set aside the sale. A court is warranted in setting the sale aside.

11. Mortgagee forecloses a deed of trust on Blackacre by power of sale. Blackacre is sold at the foreclosure sale for \$85,000. The fair market value of Blackacre as of the time of the sale is \$100,000. Although the foreclosure proceeding is otherwise regu-

larly conducted in compliance with state law, the trustee at the sale fails to recognize a higher bid from a junior lienor who is present at the sale. Mortgagor files suit to set aside the sale. The sale should be set aside.

REPORTERS' NOTE

Introduction, Comment a. Numerous commentators point out that foreclosure sales normally do not generally produce fair market value for the foreclosed real estate. See, e.g., Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L.J. 236 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959 (1993) (observing that there is a "disparity in values between the perceived fair market value of the foreclosed premises prior to foreclosure and amount actually realized upon foreclosure"); Ehrlich, *Avoidance of Foreclosure Sales as Fraudulent Conveyances: Accommodating State and Federal Objectives*, 71 Va. L. Rev. 933 (1985) ("contemporary foreclosure procedures are poorly designed to maximize sales price"); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 S. Cal. L. Rev. 843 (1980); G. Nelson & D. Whitman, *Real Estate Finance Law* § 8.8 (3d ed. 1994). In an empirical study of judicial foreclosure prices and resales in one New York county, Professor Wechsler has gone so far to conclude that

foreclosure by sale frequently operated as a meaningless charade, producing the functional equivalent of strict foreclosure, a process abandoned long ago. Mortgagees acquired properties at foreclosure sales and resold them at a significant profit in a large number of

cases.... In short, ... foreclosure by sale is not producing its intended results, and in many cases is yielding unjust and inequitable results.

Wechsler, *Through the Looking Glass: Foreclosure by Sale as De Facto Strict Foreclosure—An Empirical Study of Mortgage Foreclosure and Subsequent Resale*, 70 Cornell L. Rev. 850, 896 (1985). See *Resolution Trust Corp. v. Carr*, 13 F.3d 425 (1st Cir. 1993) ("It is common knowledge in the real world that the potential price to be realized from the sale of real estate, particularly in a recessionary period, usually is considerably lower when sold 'under the hammer' than the price obtainable when it is sold by an owner not under distress and who is able to sell at his convenience and to wait until a purchaser reaches his price.").

For a consideration of why foreclosure sales do not normally bring fair market value, see Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151, 152 (1982); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959, 966-72 (1993); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 848-851 (1980); *Carteret Savings & Loan Ass'n v. Davis*, 521 A.2d 831, 835 (N.J.1987) ("[I]t is likely that the

low turnout of third parties who actually buy property at foreclosure sales reflects a general conclusion that the risks of acquiring an imperfect title are often too high").

Until recently, claims of foreclosure price inadequacy commonly arose in the context of mortgagor bankruptcy proceedings. Debtors in possession and bankruptcy trustees frequently challenged pre-bankruptcy foreclosure sales as constructively fraudulent transfers under § 548 of the Bankruptcy Code. See 11 U.S.C. § 548. Under the latter section, a trustee or a debtor in possession may avoid a transfer by a debtor if it can be established that (1) the debtor had an interest in property; (2) the transfer took place within a year of the bankruptcy petition filing; (3) the debtor was insolvent at the time of the transfer or the transfer caused insolvency; and (4) the debtor received "less than a reasonably equivalent value" for the transfer. 11 U.S.C. § 548(a)(2)(A). In *Durrett v. Washington National Ins. Co.*, 621 F.2d 201 (5th Cir.1980), a controversial decision by the United States Court of Appeals for the Fifth Circuit, the court used the predecessor to § 548(a) to find, for the first time, that a foreclosure proceeding that otherwise complied with state law could be set aside if the sale price did not represent "reasonably equivalent value." In dictum the court suggested that a foreclosure price of less than 70 percent of fair market value failed to meet the "fair equivalency" test. Several other federal courts adopted *Durrett*. See, e.g., *In re Hulm*, 738 F.2d 323 (8th Cir.1984); *First Federal Savings & Loan Ass'n of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (N.D.Ga.1988); 1 G. Nelson & D. Whitman, Real

Estate Finance Law § 8.17 & notes 10-17 (3d ed. 1993).

Other courts, while rejecting a "bright line" 70 percent test, endorsed *Durrett* as a general principle, but adopted the view that "in defining reasonably equivalent value, the court should neither grant a conclusive presumption in favor of a purchaser at a regularly conducted, noncollusive foreclosure sale, nor limit its inquiry to a simple comparison of the sale price to the fair market value. Reasonable equivalence should depend on all the facts of each case." *Matter of Bundles*, 856 F.2d 815, 824 (7th Cir. 1988). *Durrett* was the subject of significant scholarly commentary. See, e.g., Baird & Jackson, *Fraudulent Conveyance Law and Its Proper Domain*, 38 Vand. L. Rev. 829 (1985); Henning, *An Analysis of Durrett and Its Impact on Real and Personal Property Foreclosures: Some Proposed Modifications*, 63 N.C. L. Rev. 257 (1984); Zinman, *Noncollusive Regularly Conducted Foreclosure Sales: Involuntary Nonfraudulent Transfers*, 9 Cardozo L. Rev. 581 (1987). The Ninth Circuit, however, rejected *Durrett* and its variations and held, in a case where the foreclosure price was allegedly less than 60 percent of the real estate's fair market value, "that the price received at a noncollusive, regularly conducted foreclosure establishes irrebuttably reasonably equivalent value" under § 548. *In re BFP*, 974 F.2d 1144 (9th Cir.1992). See also *Matter of Winshall Settlor's Trust*, 758 F.2d 1136 (6th Cir.1985).

The United States Supreme Court, in a 5-4 decision, affirmed the Ninth Circuit and rejected *Durrett* and its progeny:

[W]e decline to read the phrase "reasonably equivalent value" ...

to mean, in its application to foreclosure sales, either "fair market value" or "fair foreclosure price" (whether calculated as a percentage of fair market value or otherwise). We deem, as the law has always deemed, that a fair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with.

BFP v. Resolution Trust Corp., 511 U.S. 531, 545, 114 S.Ct. 1757, 1765, 128 L.Ed.2d 556 (1994). As a result, § 548 of the Bankruptcy Code now provides no basis for invalidating state foreclosure sales based on inadequacy of the price.

The *Durrett* principle has been rejected in another important context, the Uniform Fraudulent Transfer Act (UFTA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. Because of a fear that bankruptcy judges and state courts would interpret state fraudulent conveyance law as incorporating *Durrett* principles, the UFTA provides that "a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale ... under a mortgage, deed of trust or security agreement." U.F.T.A. § 3(b). The UFTA has been adopted by at least 30 states. See 7A Uniform Laws Ann. 170 (1993 Supp.).

For suggestions for statutory reform of the foreclosure process, see Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L. J. 286 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic*

Approach Based on the Paradigmatic Norms of Bankruptcy, 79 Va. L. Rev. 959 (1993); Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151 (1982).

The United States Supreme Court has yet to resolve whether an inadequate foreclosure sale price may under some circumstances be the basis for a preference attack under § 547 of the Bankruptcy Code. At least four cases hold that, assuming the mortgagor was insolvent at the time of foreclosure, a mortgagee foreclosure purchase for the amount of the mortgage obligation or less within 90 days of a mortgagor bankruptcy petition is a voidable preference to the extent that real estate was worth more than the mortgage obligation at the time of the foreclosure sale. See *In re Park North Partners, Ltd.*, 80 B.R. 551 (N.D.Ga.1987); *In re Winters*, 119 B.R. 283 (Bankr.M.D.Fla.1990); *In re Wheeler*, 34 B.R. 818 (Bankr.N.D.Ala. 1983); *Matter of Fountain*, 32 B.R. 965 (Bankr.W.D.Mo.1983). Cf. *In re Quinn*, 69 B.R. 776 (Bankr.W.D.Tenn. 1986) (foreclosure sale not a preference because mortgagor was not insolvent at time of the foreclosure sale). On the other hand, the United States Court of Appeals for the Ninth Circuit and at least one other court have rejected this use of § 547. See *In re Ehring*, 900 F.2d 184 (9th Cir. 1990); *First Federal Savings & Loan Assoc. of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (D.Ga.1988). See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 785-788 (3d ed. 1993). For criticism of the use of the preference approach in this context, see Kennedy, *Involuntary Fraudulent Transfer*, 9 Cardozo L. Rev. 531, 563-564 (1987).

Application of the standard, Comment b. An action to set aside a power of sale foreclosure may be brought not only by the mortgagor or other holder of the equity of redemption, but also by junior lienors. See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 537-540 (3d ed. 1993). This is also true with respect to actions for damages for wrongful foreclosure. *Id.* at 540-544.

All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not accompanied by other defects in the foreclosure process, will not automatically invalidate a sale. See, e.g., *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Boatmen's Bank of Jefferson County v. Community Interiors, Inc.*, 721 S.W.2d 72 (Mo.Ct.App.1986); *Greater Southwest Office Park, Ltd. v. Texas Commerce Bank, N.A.*, 786 S.W.2d 386 (Tex. Ct. App. 1990); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.1992).

In general, courts articulate two main standards for invalidating a foreclosure sale based on price. First, many courts require that, in the absence of some other defect or irregularity in the foreclosure process, the price be "grossly inadequate" before a sale may be invalidated. See, e.g., *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div.1994); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla. 1990); *Vend-A-Matic, Inc. v. Frankford Trust Co.*, 442

A.2d 1158 (Pa. Super. Ct. 1982). Second, other courts require a disparity between the sale price and fair market value so gross as to "shock the conscience of the court or raise a presumption of fraud or unfairness." See, e.g., *Allied Steel Corp. v. Cooper*, 607 So.2d 113 (Miss.1992); *Armstrong v. Csurilla*, 817 P.2d 1221 (N.M.1991); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991); *Trustco Bank New York v. Collins*, 623 N.Y.S.2d 642 (N.Y.App.Div.1995); *Key Bank of Western New York, N.A. v. Kessler Graphics Corp.*, 608 N.Y.S.2d 21 (N.Y.App.Div.1993); *Bascom Construction, Inc. v. City Bank & Trust*, 629 A.2d 797 (N.H.1993); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993); *Verec Assurance, Inc. v. AABREC, Inc.*, 436 N.W.2d 876 (Wis.Ct.App.1989). A few courts seem to conflate the foregoing standards by holding that a sale will be set aside only where the price is so "grossly inadequate as to shock the conscience." *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990).

At least one jurisdiction takes the position that "[i]f the fair market value of the property is over twice the sales price, the price is considered to be grossly inadequate, shocking 'the conscience of the court' and justifying the setting aside of the sale." *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414, 419 (Del.1994). At the other extreme, one state supreme court, in dealing with a price that was "shockingly inadequate" abandoned the "conscience shocking" standard as "impractical" and instead held that "[i]f a foreclosure sale is legally held, conducted and consummated, there must be some evidence of irregularity, misconduct, fraud, or unfairness

on the part of the trustee or mortgagee that caused or contributed to an inadequate price, for a court of equity to set aside the sale." *Holt v. Citizens Central Bank*, 688 S.W.2d 414, 416 (Tenn.1984). See also *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990).

It is unlikely that the "grossly inadequate" and "shock the conscience" standards differ materially. However, this section adopts the former standard on the theory that in form, if not in substance, it may afford a court somewhat greater flexibility in close cases to invalidate a foreclosure sale than does its "shock the conscience" counterpart.

Illustrations 1-4 establish that only rarely will a court be justified in invalidating a foreclosure sale based on substantial price disparity alone. Courts routinely uphold foreclosure sale prices of 50 percent or more of fair market value. See, e.g., *Danbury Savings & Loan Ass'n v. Hovi*, 569 A.2d 1143 (Conn. App. Ct. 1990); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Guerra v. Mutual Federal Savings & Loan Ass'n*, 194 So.2d 15 (Fla.Ct.App. 1967); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div. 1994); *Long Island Savings Bank v. Valiquette*, 584 N.Y.S.2d 127 (N.Y.App.Div.1992); *Glenville & 110 Corp. v. Tortora*, 524 N.Y.S.2d 747 (N.Y.App.Div.1988); *Zisser v. Noah Industrial Marine & Ship Repair, Inc.*, 514 N.Y.S.2d 786 (N.Y.App.Div. 1987); *S & T Bank v. Dalessio*, 632 A.2d 566 (Pa. Super. Ct. 1993); *Cedrone v. Warwick Federal Savings & Loan Ass'n*, 459 A.2d 944 (R.I.1983); *Federal Deposit Ins. Corp. v. Villemaire*, 849 F.Supp. 116 (D.Mass. 1994); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.

1992). But see *Murphy v. Financial Development Corp.*, 495 A.2d 1245 (N.H.1985) (sale price of 59% of fair market value indicated failure of due diligence on part of foreclosing mortgagee in exercising power of sale).

Moreover, courts usually uphold sales even when they produce significantly less than 50 percent. See, e.g., *Hurlock Food Processors Investment Associates v. Mercantile-Safe Deposit & Trust Co.*, 633 A.2d 438 (Md.Ct. App.1993) (35% of fair market value (FMV)); *Frank Buttermark Plumbing & Heating Corp. v. Sagarese*, 500 N.Y.S.2d 551 (N.Y.App.Div.1986) (30% of FMV); *Shipp Corp., Inc. v. Charpillot*, 414 So.2d 1122 (Fla.Dist. Ct.App.1982) (33% of FMV); *Moeller v. Lien*, 30 Cal.Rptr.2d 777 (Cal.Ct. App.1994) (25% of FMV). See generally *Dingus, Mortgages—Redemption After Foreclosure Sale in Missouri*, 25 Mo. L. Rev. 261, 262-63 (1960).

On the other hand, there are cases holding that a trial court is warranted in invalidating a foreclosure sale that produces a price of 20 percent of fair market value or less. See *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990) (approximately 20% of FMV); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (15% of FMV); *Rife v. Woolfolk*, 289 S.E.2d 220 (W.Va.1982) (14% of FMV); *Ballentyne v. Smith*, 205 U.S. 285, 27 S.Ct. 527, 51 L.Ed. 803 (1907) (14% of FMV); *Polish National Alliance v. White Eagle Hall Co., Inc.*, 470 N.Y.S.2d 642 (N.Y.App. Div.1983) ("foreclosure sales at prices below 10% of value have consistently been held unconscionably low"). According to the New Mexico Supreme Court, when the price falls into the 10-40 percent range, it should not be confirmed "absent good reasons why it should be." *Armstrong v. Csurilla*,

817 P.2d 1221, 1234 (N.M.1991). A Mississippi decision takes the position that a sale for less than 40 percent of fair market value "shocks the conscience." *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). One commentator maintains that there "is general agreement at the extremes as to what constitutes gross inadequacy. Sale prices less than 10 percent of value are generally held grossly inadequate, whereas those above 40 percent are held not grossly inadequate." Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 866 (1980).

On rare occasions, a trial court may abuse its discretion in confirming a grossly inadequate price. See *First National Bank of York v. Critel*, 555 N.W.2d 773 (Neb.1996) (reversing trial court's confirmation of a foreclosure sale that yielded 14% of appraised value).

Illustration 6 takes the position that a court may properly take into account that senior liens under some circumstances may make bidding at a junior foreclosure sale an especially precarious enterprise, and may thus be warranted in upholding the sale of the mortgagor's equity for an amount that would otherwise be deemed grossly inadequate. Support for this approach is found in *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). See also *Deibler v. Atlantic Properties Group, Inc.*, 652 A.2d 553, 558 (Del.1995); *Briehler v. Poseidon Venture, Inc.*, 502 A.2d 821, 822 (R.I.1986).

The "grossly inadequate" standard applied by this section is measured by reference to the fair market value of the mortgaged real estate at the time of the foreclosure sale. The definition of fair market value is derived

from *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-538, 114 S.Ct. 1757, 1761, 128 L.Ed.2d 556 (1994), which itself relies on *Black's Law Dictionary* 971 (6th ed. 1990):

The market value of . . . a piece of property is the price which it might be expected to bring if 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.

The formulation of "fair market value" used in this section also finds support in the definition used by the Internal Revenue Service. Under this approach, "fair market value" is defined as:

the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property . . . is not to be determined by a forced sale price. Nor is the fair market value . . . to be determined by the sale price of the item in a market other than that which such item is most commonly sold to the public.

Treas. Reg. § 20.2031-1(b).

Price inadequacy coupled with other defects, Comment c. Even if the price is not so low as to be deemed "grossly inadequate," the foreclosure sale may nevertheless be invalidated if it is otherwise defective under state

law. See, e.g., *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986) (sale for 28% of fair market value set aside where trustee failed to use due diligence to determine last known address of mortgagor); *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App.1988) (sale set aside where foreclosure price was for one third of fair market value and trustee refused to recognize a higher bid from a junior lienholder who was present at the sale); *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994) (sale for 12% of fair market value set aside where trustee failed to mail notice of default to executor); *Whitman v. Transtate Title Co.*, 211 Cal.Rptr. 582 (Cal.Ct.App.1985) (sale for 20% of FMV set aside where trustee refused request for one-day postponement of sale); *Federal National Mortgage Ass'n v. Brooks*, 405 S.E.2d 604 (S.C.Ct.App.1991) (sale for 3% of FMV set aside where improper information supplied to bidders); *Kouros v. Sewell*, 169 S.E.2d 816 (Ga.1969) (sale for 3% of FMV set aside where mortgagee gave mortgagor incorrect sale date). Conversely, more than nominal price inadequacy must exist notwithstanding other defects in the sale process in order to establish the requisite prejudice to sustain an attack on the sale. See *Cragin Federal Bank For Savings v. American National Bank & Trust Co. of Chicago*, 633 N.E.2d 1011 (Ill. App. Ct. 1994).

Illustration 11 is based in part on *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App. 1988).

It is not uncommon for the mortgagee, rather than the mortgagor or a junior lienor, to attempt to set aside a sale based on an inadequate price. Note that in this setting, the real estate not only will be sold for less

than fair market value, but usually, though not always, for a price that will not qualify as "grossly inadequate." Moreover, the foreclosure proceeding itself is normally not defective under state law. Rather, the mortgagee intends to enter a higher bid at the sale, but because of mistake or negligence on its part, actually makes a lower bid and a third party becomes the successful purchaser. Courts are deeply divided on this issue. Some take the position that mistake or negligence on the mortgagee's part should be treated as the functional equivalent of a defect under state law. As a result, these courts reason, the inadequate price plus the mistake or negligence are sufficient to justify setting aside the sale. See *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414 (Del. 1994) (sale for 71% to 80% of FMV set aside based on mistaken bid by mortgagee); *Alberts v. Federal Home Loan Mortgage Corp.*, 673 So.2d 158 (Fla.Dist.Ct.App.1996) (affirming trial court that set aside a foreclosure sale after mortgagee's agent, through a mistake in communications, entered a bid of \$18,995, instead of \$118,995 and property was sold to third party for a grossly inadequate \$19,000); *RSR Investments, Inc. v. Barnett Bank of Pinellas County*, 647 So.2d 874 (Fla.Dist.Ct.App.1994) (sale for 6% of FMV set aside because mortgagee inadvertently failed to appear at the sale); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (sale for 15% to 23% of FMV set aside based on mistaken bid by mortgagee). Other courts, however, have less sympathy for the mortgagee in this setting. See *Wells Fargo Credit Corp. v. Martin*, 605 So.2d 531 (Fla.Dist.Ct.App.1992) (trial court refusal to set aside sale affirmed even though mortgagee's agent, through a

misunderstanding, entered bid of \$15,500 instead of \$115,000 and property was sold to another for the grossly inadequate amount of \$20,000); *Mellon Financial Services Corp. #7 v. Cook*, 585 So.2d 1213 (La.Ct.App.1991) (sale upheld even though attorney for mortgagee, who was deaf in his right ear, failed to bid higher against a third party because he "contributed to the problem by not positioning himself in a more favorable position, considering his hearing disability."); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993) (sale to mortgagor's father for 28% to 34% of FMV upheld even though erroneous bidding instructions to mortgagee's agent caused him to cease bidding prematurely). According to the *Crossland* court, "[mortgagee's] mistake was unfortunate, [but] it did not pro-

vide a basis to invalidate the sale which was consummated in complete accord with lawful procedure ... since the mistake was unilateral on [mortgagee's] part." *Id.* at 131.

On balance, the latter approach to mortgagee mistake seems preferable. In general, third party bidding should be encouraged, and this section reflects that policy by making it extremely difficult to invalidate foreclosure sales based on price inadequacy alone. Where the foreclosure process itself complies with state law and the other parties to the process have not engaged in fraud or similar unlawful conduct, courts should be especially hesitant to upset third party expectations. This is especially the case where, as here, mortgagees can easily protect themselves by employing simple common-sense precautions.

§ 8.4 Foreclosure: Action for a Deficiency

(a) If the foreclosure sale price is less than the unpaid balance of the mortgage obligation, an action may be brought to recover a deficiency judgment against any person who is personally liable on the mortgage obligation in accordance with the provisions of this section.

(b) Subject to Subsections (c) and (d) of this section, the deficiency judgment is for the amount by which the mortgage obligation exceeds the foreclosure sale price.

(c) Any person against whom such a recovery is sought may request in the proceeding in which the action for a deficiency is pending a determination of the fair market value of the real estate as of the date of the foreclosure sale.

(d) If it is determined that the fair market value is greater than the foreclosure sale price, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any liens on the real estate that were not extinguished by the foreclosure, exceeds the sale price.

EXHIBIT 12

EXHIBIT 12

Pooling and Servicing Agreement (PSA).⁶² Surprisingly, many courts have held that borrowers do not have standing to make this type of claim, because they were not parties to or intended third party beneficiaries of the assignment or the PSA.⁶³ Recognizing that allowing a foreclosure by a person that does not own the note and mortgage may subject the borrower to multiple actions, other courts have held that the borrower does have standing to make this type of claim.⁶⁴ However, the borrower may have standing only if the alleged defect caused the assignment to be void, rather than merely voidable.⁶⁵ If the defect makes the assignment voidable, the assignor, rather than the borrower, has the right to decide whether to extinguish the assignment.

§ 7:21 Defective power of sale foreclosure—"Void-voidable" distinction

The next section examines a variety of defects that provide grounds for setting aside a power of sale foreclosure, but we should first consider those defects from a broader perspective. Generally, defects in the exercise of a power of sale can be categorized in at least three ways—void, voidable, or inconsequential.

Some defects are so substantial that they render the sale *void*. In this situation, neither legal nor equitable title transfers to the sale purchaser or subsequent grantees, except perhaps by adverse

⁶²E.g., *Schwend v. U.S. Bank, N.A.*, 2013 WL 686592 (E.D. Mo. 2013); *Kilpatrick v. U.S. Bank, NA*, 2013 WL 4525571 (S.D. Cal. 2013); *In re Washington*, 468 B.R. 846, 76 U.C.C. Rep. Serv. 2d 289 (Bankr. W.D. Mo. 2011), *aff'd*, 2012 WL 4483798 (W.D. Mo. 2012).

⁶³E.g., *Wells Fargo Bank, N.A. v. Strong*, 149 Conn. App. 384, 2014 WL 1364994 (Conn. Ct. App. 2014); *Schwend v. U.S. Bank, N.A.*, 2013 WL 686592 (E.D. Mo. 2013); *Palffy v. BSI Financial Services, Inc.*, 2013 WL 4718931 (E.D. Mich. 2013); *Kilpatrick v. U.S. Bank, NA*, 2013 WL 4525571 (S.D. Cal. 2013); *In re Washington*, 468 B.R. 846, 76 U.C.C. Rep. Serv. 2d 289 (Bankr. W.D. Mo. 2011), *aff'd*, 2012 WL 4483798 (W.D. Mo. 2012).

⁶⁴*Murphy v. Aurora Loan Services, LLC*, 699 F.3d 1027 (8th Cir. 2012), as

corrected, (Nov. 28, 2012) and cert. denied, 133 S. Ct. 2358, 185 L. Ed. 2d 1068 (2013); *Ball v. Bank of New York*, 2012 WL 6645695 (W.D. Mo. 2012) (not reported in F. Supp. 2d); *In re Bailey*, 468 B.R. 464 (Bankr. D. Mass. 2012).

⁶⁵*Reinagel v. Deutsche Bank Nat. Trust Co.*, 722 F.3d 700 (5th Cir. 2013), opinion amended and superseded on reh'g, 735 F.3d 220 (5th Cir. 2013) (strangely, the court held that the borrower could not assert a claim based on the PSA but that it could assert defects in the assignment that rendered it void); *Glaski v. Bank of America, National Association*, 218 Cal. App. 4th 1079, 160 Cal. Rptr. 3d 449 (5th Dist. 2013); *Wells Fargo Bank, N.A. v. Erobobo*, 39 Misc. 3d 1220(A), 972 N.Y.S.2d 147 (Sup 2013).

possession.¹ The most common defect that renders a sale void is that the mortgagee had no right to foreclose,² such as when the mortgage is forged, the loan is not in default, or the loan is void for illegality.³ Traditionally, courts characterized the sale as being void if the person foreclosing did not own the note,⁴ but courts

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¹Deep v. Rose, 234 Va. 631, 364 S.E.2d 228 (1988) (when defect renders sale void, "no title, legal or equitable, passes to the purchaser"); Henke v. First Southern Properties, Inc., 586 S.W.2d 617 (Tex. Civ. App. Waco 1979), writ refused n.r.e., (June 18, 1980); Dingus, Mortgages—Redemption After Foreclosure Sale in Missouri, 25 Mo. L. Rev. 261, 277 (1960); Tiffany, Real Property § 1552 (3d ed. 1939). But cf. Phillips v. Latham, 523 S.W.2d 19 (Tex. Civ. App. Dallas 1975), writ refused n.r.e., (July 16, 1975).

²Rosenberg v. Smidt, 727 P.2d 778 (Alaska 1986) ("only substantial defects such as a lack of substantive basis to foreclose in the first place will make a sale void"); Bevilacqua v. Rodriguez, 460 Mass. 762, 955 N.E.2d 884 (2011) (mortgage assignee foreclosed before mortgage assigned to it); Graham v. Oliver, 659 S.W.2d 601, 603 (Mo. Ct. App. S.D. 1983); Staffordshire Investments, Inc. v. Cal-Western Reconveyance Corp., 209 Or. App. 528, 149 P.3d 150 (2006) (sale held contrary to terms of valid forbearance agreement deemed void). But see Bottomly v. Kabachnick, 13 Mass. App. Ct. 480, 434 N.E.2d 667 (1982) (sale void though default existed because notice did not identify mortgage holder).

³See, e.g., La Jolla Group II v. Bruce, 211 Cal. App. 4th 461, 149 Cal. Rptr. 3d 716 (5th Dist. 2012) (forged deed of trust); Lona v. Citibank, N.A., 202 Cal. App. 4th 89, 134 Cal. Rptr. 3d 622 (6th Dist. 2011) (unconscionable loan void for illegality); Garcia v. World Sav., FSB, 183 Cal. App. 4th 1031, 107 Cal. Rptr. 3d 683 (2d Dist. 2010) (sale void because default cured before sale); Lee v. HSBC Bank USA, 121 Haw. 287, 218 P.3d 775 (2009) (sale void because default cured before

sale); Taylor v. Just, 138 Idaho 137, 59 P.3d 308 (2002) (sale void because default cured before sale); Bradford v. Thompson, 470 S.W.2d 633, 89 A.L.R.3d 941 (Tex. 1971); Diversified, Inc. v. Walker, 702 S.W.2d 717 (Tex. App. Houston 1st Dist. 1985), writ refused n.r.e., (Oct. 1, 1986) (sale void because mortgagor tendered late installments pursuant to mortgagee's agreement to accept late installments and cancel sale). "The power of sale is ordinarily conditioned upon a failure to pay the debt at a time named, and consequently a sale before that time would, it seems, ordinarily be invalid for any purpose, even in favor of an innocent purchaser from the purchaser at the sale." Tiffany, Real Property § 1552 (3d ed. 1939); see also Wellman v. Travelers Ins. Co., 689 P.2d 1151 (Colo. App. 1984), judgment rev'd on other grounds, 721 P.2d 685 (Colo. 1986) (sale void because debt previously satisfied). But see Brown v. Federal Home Loan Mortg. Co., 2013 Ark. App. 574, 2013 WL 5556267 (2013) (foreclosure statute eliminated borrowers' ability to have sale set aside on basis that loan was not in default).

⁴See Williams v. Kimes, 996 S.W.2d 43 (Mo. 1999), as modified on denial of reh'g, (June 29, 1999) ("There are numerous circumstances that may render a foreclosure sale void: (1) where the foreclosing party does not hold title to the secured note; (2) where there has been no default by the mortgagor at or before the first publication of notice for the sale; (3) where the secured note has been paid; and (4) where the deed of trust authorizes sale upon the request of its holder and no such request has been given."); Cobe v. Lovan, 193 Mo. 235, 92 S.W. 93 (1906); Graham v. Oliver, 659 S.W.2d 601 (Mo. Ct. App. S.D. 1983).

in a few recent cases surprisingly and incorrectly have held that the sale can be valid.⁵ The sale also is void if a trustee under a deed of trust forecloses without authorization.⁶ The mortgagee's failure to follow certain fundamental procedural requirements may render a sale void. For example, courts have held that a sale was void when the notice of sale omitted part of the mortgaged real estate⁷ or the mortgagee or trustee did not give statutorily-required notice⁸ or did not record all mortgage assignments before beginning the sale as statutorily required.⁹ A sale also is void

⁵*Debrunner v. Deutsche Bank Nat. Trust Co.*, 204 Cal. App. 4th 433, 138 Cal. Rptr. 3d 830 (6th Dist. 2012), review denied, (June 13, 2012); *You v. JP Morgan Chase Bank*, 293 Ga. 67, 743 S.E.2d 428 (2013). See Whitman and Milner, *Foreclosing on Nothing: The Curious Problem of the Deed of Trust Foreclosure Without Entitlement to Enforce the Note*, 66 Ark. L. Rev. 21 (2013).

⁶*In re Cedano*, 470 B.R. 522 (B.A.P. 9th Cir. 2012); *Lustenberger v. Hutchinson*, 343 Mo. 51, 119 S.W.2d 921 (1938); *Graham v. Oliver*, 659 S.W.2d 601 (Mo. Ct. App. S.D. 1983); *Albice v. Premier Mortg. Services of Washington, Inc.*, 174 Wash. 2d 560, 276 P.3d 1277 (2012). Cf. *Trotter v. Bank of New York Mellon*, 152 Idaho 842, 275 P.3d 857, 862 (2012).

⁷*Graham v. Oliver*, 659 S.W.2d 601 (Mo. Ct. App. S.D. 1983); cf. *Myrad Properties, Inc. v. LaSalle Bank Nat. Ass'n*, 252 S.W.3d 605 (Tex. App. Austin 2008), judgment rev'd, 300 S.W.3d 746 (Tex. 2009) (notice described only one of two parcels to be foreclosed; however, sale not void because notice included sufficient information for prospective bidders to determine that both parcels were being sold).

⁸See *Little v. Cfs Service Corp.*, 188 Cal. App. 3d 1354, 233 Cal. Rptr. 923 (2d Dist. 1987); *Reese v. Provident Funding Associates, LLP*, 317 Ga. App. 353, 730 S.E.2d 551 (2012), cert. granted, judgment vacated on other grounds, (May 20, 2013) (notice named servicer as lender); *Williams v. Kimes*, 996 S.W.2d 43 (Mo. 1999), as modified

on denial of reh'g, (June 29, 1999) (failure to provide notice to remaindermen rendered sale void); *Roylston v. Bank of America, N.A.*, 290 Ga. App. 556, 660 S.E.2d 412 (2008); *Terry L. Bell Generations Trust v. Flathead Bank of Bigfork*, 2013 MT 152, 370 Mont. 342, 302 P.3d 390 (2013) (failure to give statutorily required notice); *NW Property Wholesalers, LLC v. Spitz*, 252 Or. App. 29, 287 P.3d 1106 (2012), review denied, 353 Or. 203, 296 P.3d 1275 (2013) (failure to serve notice of sale); *Shearer v. Allied Live Oak Bank*, 758 S.W.2d 940 (Tex. App. Corpus Christi 1988), writ denied, (June 14, 1989); see also *In re Gatlin*, 357 B.R. 519 (Bankr. W.D. Ark. 2006) (incorrect street address); *In re AMRCO, Inc.*, 496 B.R. 442, 58 Bankr. Ct. Dec. (CRR) 76 (Bankr. W.D. Tex. 2013); *In re Nelson*, 134 B.R. 838 (Bankr. N.D. Tex. 1991) (sale void because notice by certified mail on 21st day before sale did not give owner full 21 days notice); *Deep v. Rose*, 234 Va. 631, 364 S.E.2d 228 (1988) (sale void because held on last day of advertisement in violation of statute). Cf. *Amos v. Aspen Alps 123, LLC*, 2012 CO 46, 280 P.3d 1256 (Colo. 2012) (sale valid despite failure to give statutorily-required notice because trustor had actual notice).

⁹*In re Rinehart*, 2012 WL 3018291 (Bankr. D. Idaho 2012); *U.S. Bank Nat. Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40, 86 A.L.R.6th 755 (2011); *Ruiz v. 1st Fidelity Loan Servicing, LLC*, 829 N.W.2d 53 (Minn. 2013); see *Barnett v. BAC Home Loan Servicing, L.P.*, 772 F. Supp. 2d 1328 (D. Or. 2011). *Contra Kim v. JPMorgan Chase Bank, N.A.*, 493 Mich. 98, 825 N.W.2d 329 (2012) (failure to record mortgage assignment as required by statute renders sale voidable, not void).

when someone other than the named trustee conducts the sale,¹⁰ including a successor who has not been validly appointed,¹¹ or, conversely, if the original trustee conducts the sale after a successor-trustee has been appointed.¹²

Most defects render the foreclosure *voidable* and not void. When a voidable error occurs, bare legal title passes to the sale purchaser, subject to the redemption rights of those injured by the defective foreclosure. Typically, a voidable error is “an irregularity in the execution of a foreclosure sale” and must be “substantial or result in a probable unfairness.”¹³ In many jurisdictions, the trustee’s purchase at a sale she is conducting under a deed of trust makes the sale voidable.¹⁴ Courts also have held that a sale is voidable when the mortgagee published the notice of sale for slightly fewer times than the statutorily prescribed number¹⁵ or when the sale is conducted at the east door, rather than west front door, of the county courthouse.¹⁶ If the defect only renders the sale voidable, the redemption rights

¹⁰See *Citizens Bank of Edina v. West Quincy Auto Auction, Inc.*, 742 S.W.2d 161 (Mo. 1987) (sale void because conducted by trustee’s son and law partner without trustee being present and without a provision authorizing delegation of trustee’s function). But cf. *Jones v. First American Title Ins. Co.*, 107 Cal. App. 4th 381, 131 Cal. Rptr. 2d 859 (2d Dist. 2003), as modified on denial of reh’g, (Apr. 23, 2003) (reformation permitted to show recorded substitution of trustee). See also *In re AMRCO, Inc.*, 496 B.R. 442, 58 Bankr. Ct. Dec. (CRR) 76 (Bankr. W.D. Tex. 2013) (failure to include substitute trustee’s address on notice of foreclosure rendered sale invalid).

¹¹*Lane v. Wells Fargo Bank, N.A.*, 2012 WL 1687105 (D. Nev. 2012) (unpublished); *In re Kitts*, 274 B.R. 491 (Bankr. E.D. Tenn. 2002); *Winters v. Winters*, 820 S.W.2d 694 (Mo. Ct. App. S.D. 1991). See *Jordan v. Plaza Home Mortg., Inc.*, 2011 WL 4809274 (D. Nev. 2011) (unpublished) (successor trustee executed notice of default before becoming properly substituted trustee; foreclosure not properly initiated). Compare *Reynolds v. Woodall*, 2012 UT App 206, 285 P.3d 7 (Utah Ct. App. 2012) (although successor trustee not validly appointed until af-

ter sale, borrower must show injury to invalidate sale).

¹²*Dimock v. Emerald Properties LLC*, 81 Cal. App. 4th 868, 97 Cal. Rptr. 2d 255 (4th Dist. 2000).

¹³*Conlin v. Mortgage Electronic Registration Systems, Inc.*, 714 F.3d 355 (6th Cir. 2013); *Lessl v. CitiMortgage, Inc.*, 515 Fed. Appx. 467 (6th Cir. 2013) (unpublished); *England v. Mortgage Electronic Registration Systems*, 2013 WL 1812194 (E.D. Mich. 2013); *Kim v. JPMorgan Chase Bank, N.A.*, 493 Mich. 98, 825 N.W.2d 329 (2012); *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003) (“We * * * hold that to establish a defect that renders the trustee’s sale voidable, the party seeking to set aside the sale must show not only the defect, but also that the defect caused the party prejudice.”).

¹⁴See, e.g., *Whitlow v. Mountain Trust Bank*, 215 Va. 149, 207 S.E.2d 837 (1974); *Dingus*, supra note 1, at 276–282.

¹⁵See, e.g., *Jackson Investment Corp. v. Pittsfield Products, Inc.*, 162 Mich. App. 750, 413 N.W.2d 99 (1987); *Kennon v. Camp*, 353 S.W.2d 693 (Mo. 1962).

¹⁶See *Wakefield v. Dinger*, 234

intervening purchaser with notice of the defect, because they could not reacquire the property in good faith.²¹

§ 7:22 Defective power of sale foreclosure—Specific problems

In this section, we focus on commonly raised grounds for setting aside a power of sale foreclosure. As we will note, some irregularities are considered so prejudicial that the presence of one of them alone may be sufficient to invalidate a foreclosure. Other deficiencies, however, may only be significant if they are found in conjunction with other defects. In any event, the chances for reversal of a sale are always strengthened by the cumulative impact of several irregularities in one foreclosure proceeding.

The following discussion analyzes challenges based on (1) inadequacy of the sale price, (2) the time of sale, (3) the place of sale, (4) sale by parcels or in bulk, (5) chilled bidding, (6) purchase by the mortgagee, and (7) the conduct of the trustee of a deed of trust. It then examines statutes that states have enacted in an attempt to enhance the stability of titles acquired at foreclosure sales.

Inadequacy of the Sale Price

All jurisdictions adhere to the recognized rule that mere inadequacy of the foreclosure sale price will not invalidate a sale, absent fraud, unfairness, or other irregularity.¹ Courts generally articulate two main standards for invalidating a foreclosure sale

²¹See *McDaniel v. Sprick*, 297 Mo. 424, 249 S.W. 611 (1923); see also 3 *Pomeroy, Equity Jurisprudence* 55-57 (5th ed. 1941) (support by analogy to recording act cases).

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¹*F.D.I.C. v. Myers*, 955 F.2d 348 (5th Cir. 1992); *Perales v. Wells Fargo Bank, N.A.*, 2013 WL 3456998 (W.D. Tex. 2013); *Kurtz v. Ripley County State Bank*, 785 F. Supp. 116 (E.D. Mo. 1992), judgment aff'd, 972 F.2d 354 (8th Cir. 1992); *Security Sav. and Loan Ass'n v. Fenton*, 167 Ariz. 268, 806 P.2d 362 (Ct. App. Div. 2 1990); 6 *Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2d Dist. 2001); *Handy v. Rogers*, 143 Colo. 1, 351 P.2d 819 (1960); *Kouros v. Sewell*, 225 Ga. 487, 169 S.E.2d 816 (1969); *Phillips v. Atlantic Bank & Trust Co.*, 168 Ga.

App. 590, 309 S.E.2d 813 (1983); *Gilbert v. Lusk*, 123 Ind. App. 167, 106 N.E.2d 404 (1952); *Lippold v. White*, 181 Md. 562, 31 A.2d 170 (1943); *Boatmen's Bank of Jefferson County v. Community Interiors, Inc.*, 721 S.W.2d 72 (Mo. Ct. App. E.D. 1986); *Robert R. Wisdom Oil Co., Inc. v. Gatewood*, 682 S.W.2d 882 (Mo. Ct. App. S.D. 1984); *Mueller v. Simmons*, 634 S.W.2d 533 (Mo. Ct. App. E.D. 1982); *Greater Southwest Office Park, Ltd. v. Texas Commerce Bank Nat. Ass'n*, 786 S.W.2d 386 (Tex. App. Houston 1st Dist. 1990), writ denied, (Nov. 21, 1990); *Ogden v. Gibraltar Sav. Ass'n*, 620 S.W.2d 926 (Tex. Civ. App. Corpus Christi 1981), judgment rev'd on other grounds, 640 S.W.2d 232 (Tex. 1982); *Pyper v. Bond*, 2011 UT 45, 258 P.3d 575 (Utah 2011); *Tiffany*, *Real Property* § 1550 (3rd ed. 1939).

If the defective sale is only voidable, who is a bona fide purchaser? A mortgagee-purchaser should rarely, if ever, qualify as a bona fide purchaser, because the mortgagee or its attorney normally manages the power of sale foreclosure and should be responsible for defects. The result should be the same when a deed of trust is foreclosed. Although the trustee, rather than the lender, normally is in charge of the proceedings, a court probably will treat the trustee as the lender's agent for purposes of determining BFP status. If the sale purchaser paid value and is unrelated to the mortgagee, he should take free of voidable defects if: (a) he has no actual knowledge of the defects; (b) he is not on reasonable notice from recorded instruments; and (c) the defects are such that a person attending the sale and exercising reasonable care would be unaware of the defects.²⁰ When a subsequent grantee has acquired the property, BFP status should be easier to achieve. If the grantee did not attend the sale, she is a bona fide purchaser unless she had actual notice of the defect or was on reasonable notice from the recorded documents. If the sale purchaser or some later purchaser is a BFP but conveys the property to a person who does not qualify, such as the original mortgagee, what should the result be? Most jurisdictions would probably refuse to confer BFP status on the mortgagee and on an

ute nor the deed of trust required that information to be in the notice. See *Goffney v. Family Savings & Loan Ass'n*, 98 Cal. Rptr. 2d 497 (App. 2d Dist. 2000), as modified on denial of reh'g, (June 30, 2000). For a complete catalogue of "insubstantial" defects, see *Graham v. Oliver*, 659 S.W.2d 601, 604 (Mo. Ct. App. S.D. 1983); see also *Burrill v. First Nat. Bank of Shawnee Mission, N.A.*, 668 S.W.2d 116 (Mo. Ct. App. W.D. 1984).

²⁰In *re Edry*, 201 B.R. 604 (Bankr. D. Mass. 1996) (foreclosure purchaser not a BFP, because he was an "experienced purchaser" who knew that display ads usually used to advertise foreclosure sale); *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986) (foreclosure sale purchasers were deemed to be on inquiry notice of trustee's failure to use "due diligence" to determine last known address of the mortgagor where trustee's deed failed to contain a factual recitation of the trustee's actions in complying with statutory notice requirements); *Federal Home Loan*

Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006) (quoting text with approval); *Mirjafari v. Cohn*, 183 Md. App. 701, 963 A.2d 247 (2009), judgment aff'd, 412 Md. 475, 988 A.2d 997 (2010) (BFP status determined at time of sale); *Pizza v. Walter*, 345 Md. 664, 694 A.2d 93 (1997) (purchaser who is attorney for mortgagee is not a BFP); *Swindell v. Overton*, 310 N.C. 707, 314 S.E.2d 512 (1984) (quoting text with approval); *Albice v. Premier Mortg. Services of Washington, Inc.*, 174 Wash. 2d 560, 276 P.3d 1277 (2012) (experienced real estate purchaser knew sufficient facts to put him on inquiry notice); cf. *Melendrez v. D & I Investment, Inc.*, 127 Cal. App. 4th 1238, 26 Cal. Rptr. 3d 413 (6th Dist. 2005) ("the two elements of being a BFP are that the buyer (1) purchase the property in good faith *for value*, and (2) have no knowledge or notice of the asserted rights of another"—the fact that third party buyer was an experienced foreclosure purchaser is not alone enough to destroy BFP status).

can be cut off if a bona fide purchaser for value acquires the land.¹⁷ When this occurs, an action for damages against the foreclosing mortgagee or trustee may be the only remaining remedy.

Finally, some defects are so *inconsequential* that they render the sale neither void nor voidable. These defects commonly involve minor discrepancies in the notice of sale. For example, when the first of four published notices of sale omitted the place of sale, the court held that the sale was valid because the mortgagee substantially complied with the deed of trust requirements and the omission did not affect the parties in a "material way."¹⁸ Similarly, a court held that a sale was valid though the mortgagee sent the notice of sale by regular mail, rather than by the statutorily required certified or registered mail, because the mortgagor had actual notice of the sale for more than the statutorily specified period.¹⁹

Mo. App. 407, 135 S.W.2d 17 (1939).

¹⁷See, e.g., *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986) (when "a defect in a foreclosure sale makes it merely voidable, * * * sale to a BFP cuts off the trustor's ability to set aside the sale"); *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012); *Mirjafari v. Cohn*, 183 Md. App. 701, 963 A.2d 247 (2009), judgment aff'd, 412 Md. 475, 988 A.2d 997 (2010); *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003) ("An injured party can have the sale set aside only so long as 'the legal title has not moved to a bona fide purchaser.'"); Note, 5 Alaska L. Rev. 799 (1988); *Jackson v. Klein*, 320 S.W.2d 553 (Mo. 1959); *Steward v. Good*, 51 Wash. App. 509, 754 P.2d 150 (Div. 1 1988); *Dingus*, supra note 1, at 277, 280.

¹⁸*In re Hoffman*, 280 B.R. 234 (Bankr. W.D. Mo. 2002) (defect inconsequential because "only abnormality with the Debtor's address was that the street name was misspelled *Lester* instead of *Lister*"); *Richards v. Phillips*, 925 So. 2d 216 (Ala. Civ. App. 2005) (foreclosure notice "furnished the means of eliminating any confusion that might have resulted from the reference to Shelby county in its preamble," therefore, that inaccurate state-

ment "was not a sufficient basis upon which to set aside a foreclosure deed"); *Fairfield Plantation Action Committee, Inc. v. Plantation Equity Group, Inc.*, 215 Ga. App. 746, 452 S.E.2d 147 (1994) (sale not set aside though first two publications included "two substitutions of 'southeast' for 'southwest' in describing an outparcel, and the omission of one line of text referring to a land lot identified immediately below but the errors" because they "were corrected in the third and fourth publications"); *Tarleton v. Griffin Federal Sav. Bank*, 202 Ga. App. 454, 415 S.E.2d 4 (1992) (foreclosure advertisement not legally defective for referring to security deed as being recorded at page three, rather than page two, of county records; potential purchaser would not have been misled because page three was part of the same recorded document); *Concepts, Inc. v. First Sec. Realty Services, Inc.*, 743 P.2d 1158 (Utah 1987) (sale not invalid though 1983 notice of sale stated that sale would take place in 1982); *Bailey v. Pioneer Federal Sav. & Loan Ass'n*, 210 Va. 558, 172 S.E.2d 730 (1970).

¹⁹*Macon-Atlanta State Bank v. Gall*, 666 S.W.2d 934 (Mo. Ct. App. W.D. 1984). A notice of default that misstated the number of defaulted monthly payments did not render the sale invalid, because neither the stat-

intervening purchaser with notice of the defect, because they could not reacquire the property in good faith.²¹

§ 7:22 Defective power of sale foreclosure—Specific problems

In this section, we focus on commonly raised grounds for setting aside a power of sale foreclosure. As we will note, some irregularities are considered so prejudicial that the presence of one of them alone may be sufficient to invalidate a foreclosure. Other deficiencies, however, may only be significant if they are found in conjunction with other defects. In any event, the chances for reversal of a sale are always strengthened by the cumulative impact of several irregularities in one foreclosure proceeding.

The following discussion analyzes challenges based on (1) inadequacy of the sale price, (2) the time of sale, (3) the place of sale, (4) sale by parcels or in bulk, (5) chilled bidding, (6) purchase by the mortgagee, and (7) the conduct of the trustee of a deed of trust. It then examines statutes that states have enacted in an attempt to enhance the stability of titles acquired at foreclosure sales.

Inadequacy of the Sale Price

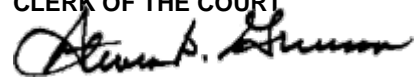
All jurisdictions adhere to the recognized rule that mere inadequacy of the foreclosure sale price will not invalidate a sale, absent fraud, unfairness, or other irregularity.¹ Courts generally articulate two main standards for invalidating a foreclosure sale

²¹See *McDaniel v. Sprick*, 297 Mo. 424, 249 S.W. 611 (1923); see also 3 Pomeroy, *Equity Jurisprudence* 55–57 (5th ed. 1941) (support by analogy to recording act cases).

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¹*F.D.I.C. v. Myers*, 955 F.2d 348 (5th Cir. 1992); *Perales v. Wells Fargo Bank, N.A.*, 2013 WL 3456998 (W.D. Tex. 2013); *Kurtz v. Ripley County State Bank*, 785 F. Supp. 116 (E.D. Mo. 1992), judgment aff'd, 972 F.2d 354 (8th Cir. 1992); *Security Sav. and Loan Ass'n v. Fenton*, 167 Ariz. 268, 806 P.2d 362 (Ct. App. Div. 2 1990); 6 *Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2d Dist. 2001); *Handy v. Rogers*, 143 Colo. 1, 351 P.2d 819 (1960); *Kouros v. Sewell*, 225 Ga. 487, 169 S.E.2d 816 (1969); *Phillips v. Atlantic Bank & Trust Co.*, 168 Ga.

App. 590, 309 S.E.2d 813 (1983); *Gilbert v. Lusk*, 123 Ind. App. 167, 106 N.E.2d 404 (1952); *Lippold v. White*, 181 Md. 562, 31 A.2d 170 (1943); *Boatmen's Bank of Jefferson County v. Community Interiors, Inc.*, 721 S.W.2d 72 (Mo. Ct. App. E.D. 1986); *Robert R. Wisdom Oil Co., Inc. v. Gatewood*, 682 S.W.2d 882 (Mo. Ct. App. S.D. 1984); *Mueller v. Simmons*, 634 S.W.2d 533 (Mo. Ct. App. E.D. 1982); *Greater Southwest Office Park, Ltd. v. Texas Commerce Bank Nat. Ass'n*, 786 S.W.2d 386 (Tex. App. Houston 1st Dist. 1990), writ denied, (Nov. 21, 1990); *Ogden v. Gibraltar Sav. Ass'n*, 620 S.W.2d 926 (Tex. Civ. App. Corpus Christi 1981), judgment rev'd on other grounds, 640 S.W.2d 232 (Tex. 1982); *Pyper v. Bond*, 2011 UT 45, 258 P.3d 575 (Utah 2011); *Tiffany*, *Real Property* § 1550 (3rd ed. 1939).



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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 4641
11 VIAREGGIO CT

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
15 GUILLORY

16 Defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

Date of hearing: February 9, 2017
Time of hearing: 9:30 a.m.

17 **ORDER DENYING DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR**
18 **LEAVE TO AMEND ITS ANSWER AND ASSERT COUNTERCLAIMS**

19 Defendant Nationstar Mortgage, LLC's ("Nationstar") Motion for Leave to Amend its Answer
20 and Assert Counterclaims ("Motion") having come before the court on the 9th day of February, 2017,
21 Adam R. Trippiedi, Esq. appearing on behalf of plaintiff, Regina A. Habermas, Esq. appearing on
22 behalf of Nationstar Mortgage, LLC and the court having reviewed the motion, opposition, and reply,
23 and having heard the arguments of counsel, and for good cause appearing, the court hereby orders as
24 follows:

25 ///

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JA0979

1 THE COURT FINDS that there has been no change in the law, as required under NRCP 60,
2 which would allow Nationstar to revive its previously dismissed claims. In SFR Investments Pool 1 v.
3 U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court did not change
4 NRS 116, but simply reviewed, analyzed, and interpreted that law.

5 THE COURT FURTHER FINDS that the previous dismissal of Nationstar's counterclaims as
6 against Saticoy Bay entered by the court on July 28, 2015, stands as a final judgment.

7 THE COURT FURTHER FINDS that Nationstar's claim for Unjust Enrichment is barred by
8 the voluntary payment doctrine.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Nationstar's Motion is
10 GRANTED IN PART AND DENIED IN PART.

11 IT IS FURTHER ORDERED that Nationstar Mortgage's Motion is GRANTED as to the claims
12 it requested to assert against Naples Community Homeowners Association, as the order entered August
13 12, 2015 was without prejudice, with the exception of the cause of action for unjust enrichment which
14 is barred by the voluntary payment doctrine. Specifically, Nationstar is allowed to amend its answer to
15 assert the following third-party claims included in the proposed amended answer:

- 16 (1) "Wrongful/Statutorily Defective Foreclosure versus the HOA and fictitious
17 Counter-Defendants;"
- 18 (2) "Negligence versus the HOA and fictitious Counter-Defendants;"
- 19 (3) "Negligence Per Se versus the HOA and fictitious Counter-Defendants;"
- 20 (4) "Breach of Contract versus the HOA and fictitious Counter-Defendants;"
- 21 (5) "Misrepresentation versus the HOA and fictitious Counter-Defendants;" and
- 22 (6) "Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and
23 fictitious Counter-Defendants;"

24 ///

25 ///

26 ///

1 IT IS FURTHER ORDERED that Nationstar's Motion is DENIED as to the counterclaims it
2 requested to bring against Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct ("Saticoy Bay"), and as
3 to any affirmative defenses or new allegations regarding due process or retroactivity of SFR
4 Investments Pool 1 v. U.S. Bank.

5 DATED this 9 day of June, 2017.

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8 _____
9 DISTRICT COURT JUDGE
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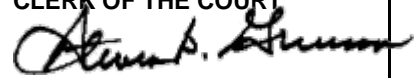
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PTD

MICHAEL F. BOHN, ESQ.

Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No.: 12294

atrippiedi@bohnlawfirm.com

LAW OFFICES OF

MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY

Defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
through X; and ROE CORPORATIONS I
Through X, inclusive,

Counter-defendants

PLAINTIFF'S NRCP 16.1(a)(3) PRETRIAL DISCLOSURES

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct, by and through its attorney, the Law Offices of Michael F. Bohn, Esq., Ltd. hereby submits its pretrial disclosure of witnesses and documents pursuant

1 to NRCP 16.1(a)(3):

2 **WITNESSES**

3 Plaintiff hereby designates the following witnesses who are intended to be called to testify at trial
4 in the above-reference matter:

5 1. Iyad Haddad aka Eddie Haddad, person most knowledgeable for Saticoy Bay LLC Series 4641
6 Viareggio Ct
7 c/o Michael F. Bohn, Esq.
8 376 E. Warm Springs Road, Ste. 140
9 Las Vegas, NV 89119

10 Mr. Haddad is expected to testify as to the facts and circumstances surrounding the allegations
11 involved in this matter.

12 2. Person Most Knowledgeable for Naples Community Homeowners Association
13 c/o Mesa Management
14 9512 W. Flamingo Road #102
15 Las Vegas, Nevada 89147

16 This witness is expected to testify as to the facts and circumstances surrounding the
17 allegations involved in this matter.

18 3. Person Most Knowledgeable for Leach Johnson Song & Gruchow
19 8945 West Russell Road, Suite 330
20 Las Vegas, Nevada 89148

21 This witness is expected to testify as to the facts and circumstances surrounding the
22 allegations involved in this matter.

23 Plaintiff reserves the right to supplement this list of witnesses with any witnesses which may
24 become known through further discovery and as necessary for rebuttal and/or impeachment. Plaintiff
25 further reserves the right to call any witnesses called or subpoenaed by plaintiff.

26 **DOCUMENTS**

27 Plaintiff expects to offer the following documents at the time of trial:

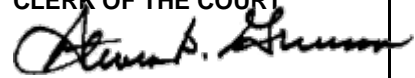
- 28 1. Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for
Naples [WFZ00001-00077];
2. Annexation Amendment Naples [WFZ0078-00080];
3. Assignment of Declarant Rights recorded January 24, 2008 [WFZ0198-0205];
4. Deed of Trust recorded January 25, 2007 [WFZ00089-00115];

- 1 5. Deed of Trust – Second Mortgage recorded January 25, 2007 [WFZ00116-WFZ00129];
2 6. Corporate Assignment of Deed of Trust recorded February 11, 2011 [WFZ00134-
3 WFZ00135];
4 7. Notice of Delinquent Assessment Lien recorded August 18, 2011 [WFZ00137-WFZ00138];
5 8. Affidavit of Mailing of Notice of Delinquent Assessment Lien and accompanying letters
6 9. Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent
7 Assessment Lien recorded January 24, 2012 [WFZ00139-WFZ00140];
8 10. Proof of mailing of Notice of Default and Election to Sell Real Property to Satisfy Notice of
9 Delinquent Assessment Lien [Naples/Guillory0185-0219];
10 11. Notice of Foreclosure Sale Under Notice of Delinquent Assessment Lien recorded July 30,
11 2012 [WFZ00144-WFZ00146];
12 12. Proof of mailing Notice of Foreclosure Sale Under Notice of Delinquent Assessment Lien
13 [Naples/Guillory0185-0219];
14 13. Affidavit of Service of Notice of Sale dated September 13, 2012 [Naples/Guillory0127 and
15 0129];
16 14. Affidavit of Posting Notice of Sale in Public Places dated September 13, 2012
17 [Naples/Guillory0128];
18 15. Affidavit of Publication of Notice of Foreclosure Sale dated October 4, 2012
19 [Naples/Guillory0126];
20 16. Corporate Assignment of Deed of Trust recorded August 30, 2012 [WFZ00147-WFZ00149];
21 17. Assignment of Deed of Trust recorded October 18, 2012 [WFZ00150];
22 18. Foreclosure Deed recorded September 6, 2013 [WFZ00154-WFZ00156];
23 19. Relinquishment and Satisfaction of Notice of Delinquent Assessment Lien WFZ00157-
24 WFZ00158; and
25 20. Documents produced by LJS&G Ltd. Pursuant to a Subpoena Duces Tecum WFZ00161-
26 WFZ00451.

27 DATED this 28th day of July, 2017

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

By: /s/ Adam R. Trippiedi, Esq.
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
376 E. Warm Springs Road, Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff



1 **MFDJ**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No.: 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorneys for plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10
11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
15 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY

16 Defendants.

CASE NO.: A-13-689240-C

DEPT NO.: XIV

17 NATIONSTAR MORTGAGE, LLC

18 Counterclaimant,

19 vs.

20 SATICOY BAY LLC SERIES 4641
21 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
22 through X; and ROE CORPORATIONS I
Through X, inclusive,

23 Counter-defendants

24
25 **MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY**

26 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct, by and through its attorney, the Law Offices
27 of Michael F. Bohn, Esq., Ltd. hereby moves for default judgment against defendant Monique Guillory.

1 DATED this 31st day of July, 2017.

2 LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.

4 By: / s / Adam R. Trippiedi, Esq.
5 Michael F. Bohn, Esq.
6 Adam R. Trippiedi, Esq.
7 376 East Warm Springs Road, Suite 140
8 Las Vegas, Nevada 89119
9 Attorney for Plaintiff

10 **NOTICE OF MOTION**

11 TO: Defendants above named; and

12 TO: All counsel of record

13 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the
14 above and foregoing Motion on for hearing before the above entitled Court, Department XIV, on the
15 **7** day of **Sept.**, 2017, at **9:30** a.m. or as soon thereafter as counsel can be heard.

16 DATED this 31st day of July, 2017.

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

19 By: / s / Adam R. Trippiedi, Esq.
20 Michael F. Bohn, Esq.
21 Adam R. Trippiedi, Esq.
22 376 East Warm Springs Road, Suite 140
23 Las Vegas, Nevada 89119
24 Attorney for Plaintiff

25 **FACTS**

26 Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas,
27 Nevada ("the Property"). Plaintiff acquired the property by foreclosure deed recorded September 6, 2013
28 as instrument number 201309060000930. A copy of the foreclosure deed is Exhibit 1 hereto. The
foreclosure deed arose from a delinquency in assessments due from the former owner to the Naples
Community Homeowners Association, pursuant to NRS Chapter 116.

Leach Johnson Song & Gruchow was the foreclosure agent for the HOA. The foreclosure deed

1 provides in part:

2 This conveyance is made pursuant to the authority and powers vested to Naples by Chapter
3 116 of Nevada Revised Statutes and the Declaration of Covenants, Conditions, and
4 Restrictions recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the
5 Official Records of Clark County, Nevada, and any subsequent modifications,
6 amendments or updates of the said Declaration of Covenants, Conditions, and
7 Restrictions, and Naples having complied with all applicable statutory requirements of the
8 State of Nevada, and performed all duties required by such Declaration of Covenants,
9 Conditions, and Restrictions.

10 A Notice of Delinquent Assessment Lien, was recorded on August 18, 2011 in Book
11 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder,
12 Nevada, said Notice having been mailed by certified mai to the owners of record; a Notice
13 of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on
14 January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark
15 County, Nevada, said document having been mailed by certified mail to the owner of
16 record and all parties of interest, and more than ninety (90) days having elapsed from the
17 mailing of said Notice of Default, a Notice of Sale was published once a week for three
18 consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a
19 legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730
20 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and
21 at least twenty days before the date fixed therein for the sale, a true and correct copy of
22 said Notice of Sale was posted in three of the most public places in Clark County, Nevada,
23 and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

24 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada
25 Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada 89101,
26 Naples, by and through its Agent, exercised its power of sale and did sell the above
27 described property at public auction. Grantee, being the highest bidder at said sale,
28 became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE
HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United
States, in full satisfaction of the indebtedness secured by the lien of Naples.

See Exhibit 1.

Plaintiff filed a Complaint to quiet title on September 25, 2013. Defendant Monique Guillory was
served with the summons and complaint but failed to answer or otherwise make an appearance in this
action. As such, a Default against this defendant was entered on November 19, 2013. A copy of the
Defaults is attached as Exhibit 2.

Based on the foregoing facts, the plaintiff now moves for default judgment against defendant
Monique Guillory.

POINTS AND AUTHORITIES

NRS 116.31166 provides:

Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper

1 application of purchase money; title vested in purchaser without equity or right of
2 redemption.

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

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

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

(c) The giving of notice of sale,

5 are conclusive proof of the matters recited.

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

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

10 The statute provides that the recitals in the foreclosure deed are conclusive against the unit's
11 former owner, his or her heirs and assigns, and all other persons. *See also: SFR Invs. Pool 1, LLC v. U.S.*
12 *Bank, N.A.* 334 P.3d 408, 130 Nev. Adv. Op. 75 (2014).

13 As conclusively evidenced by the recitals of the foreclosure deed, the foreclosure sale complied
14 with all requirements of law and as such, the plaintiff became the rightful owner of the property.
15 Thereafter, plaintiff filed the instant action in part to ensure that all rights this defendant could claim to
16 title be permanently extinguished. Although personally served with the summons and complaint,
17 defendant never filed an answer or responsive pleading or otherwise made an appearance in this case.
18 As a result, plaintiff entered a default against defendant. Having complied with all prerequisite
19 obligations to a grant of default judgment, plaintiff is entitled to judgment against the defendant Monique
20 Guillory and is entitled to the relief of quiet title in favor of plaintiff.

21 CONCLUSION

22 The recitals contained in the foreclosure deed, which state that the foreclosure complied with all
23 requirements of law, are conclusive as against the former owner of the property, Monique Guillory as well
24 as all other persons. To ensure that title to the property located at 4641 Viareggio Court, Las Vegas,
25 Nevada be quieted to plaintiff, plaintiff initiated the instant action and served all defendants with a copy
26 of the summons and complaint, to which Monique Guillory never responded. A default has been entered
27 against this defendant. Accordingly, plaintiff respectfully requests that default judgment granting quiet

1 title in favor of plaintiff and against Monique Guillory be entered.

2 DATED this 31st day of July, 2017.

3
4 LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.

6 By: /s/ Adam R. Trippiedi, Esq.
7 Michael F. Bohn, Esq.
8 Adam R. Trippiedi, Esq.
9 376 East Warm Springs Road, Suite 140
10 Las Vegas, Nevada 89119
11 Attorney for Plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law
14 Offices of Michael F. Bohn, Esq., Ltd., and on the 31st day of July, 2017, an electronic copy of the
15 MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY was served
16 on opposing counsel via the Court's electronic service system to the following counsel of record:

17 Dana Jonathon Nitz, Esq.
18 Regina A. Habermas, Esq.
19 Wright Finlay & Zak, LLP
20 7785 W. Sahara Ave. # 200
21 Las Vegas, NV 89117

22 /s/ Marc Sameroff/
23 An Employee of the LAW OFFICES OF
24 MICHAEL F. BOHN, ESQ., LTD.
25
26
27
28

EXHIBIT 1

EXHIBIT 1

**When recorded return to, and
Mail Tax Statements to:**

**Saticoy Bay LLC Series 4641 Viareggio Ct.
900 S. Las Vegas Blvd., Suite 810
Las Vegas, NV 89101**

**Inst #: 201309060000930
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$640.05 Ex: #
09/06/2013 09:03:24 AM
Receipt #: 1761079
Requestor:
RESOURCES GROUP
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER**

APN: 163-19-311-015

FORECLOSURE DEED

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

**Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as:
4641 Viareggio Ct., Las Vegas, NV**

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record

and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

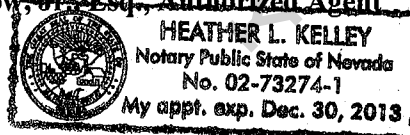
Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By: [Signature]

Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA)
COUNTY OF CLARK)



On 8/27/13, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.

Heather L. Kelley
NOTARY PUBLIC

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-19-311-015
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 125,057.00

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

c. Transfer Tax Value: \$ 125,057.00

d. Real Property Transfer Tax Due \$ 640.05

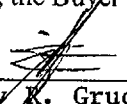
4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  8/27/13
Kirby R. Gruchow, Jr., Esq.

Capacity: Agent for Seller

Signature _____ Capacity: Agent for Buyer

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Naples Community HOA
Address: c/o Leach Johnson Song & Gruchow
City: 8945 W. Russel Rd., Suite 330
State: Las Vegas, NV Zip: 89148

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SATICOY BAY LLC
Address: Series 4641 Viareggio Ct.
City: 900 S. Las Vegas Blvd., #810
State: Las Vegas, NV Zip: 89101

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

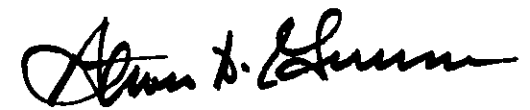
Print Name: SATICOY BAY LLC SERIES 4641 Escrow # _____
Address: 900 S Las Vegas Blvd #810 Viareggio Ct
City: L.V. State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

JA0994

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

DFLT

MICHAEL F. BOHN

Nevada Bar No.: /641

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

376 E. Warm Springs Road, Ste. 125

Las Vegas, NV 89119

(702) 642-3113

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641

VIAREGGIO CT

Plaintiff(s),

-VS-

CASE NO. A689240

DEPT NO. V

NATIONSTAR MORTGAGE, LLC;
COOPER CASTLE LAW FIRM, LLP; and
MONIQUE GUILLORY

Defendant(s).

DEFAULT

It appearing from the files and records in the above entitled action that
MONIQUE GUILLORY

Defendant(s) herein, being duly served with a copy of the Summons and Complaint on
October 11th, 2013 that more than 20 days, exclusive of the day
of service, having expired since service upon the Defendant(s); that no answer or other
appearance having been filed and no further time having been granted, the default of
the above-named Defendant(s) for failing to answer or otherwise plead to Plaintiff's
Complaint is hereby entered.

STEVEN D. GRIERSON, CLERK OF COURT

By:

Deputy Clerk

Date

Submitted By:

MICHELLE MCCARTHY

NOV 15 2013

MICHAEL F. BOHN, ESQ

Nevada Bar No.: 1641
LAW OFFICES OF MICHAEL F. BOHN, ESQ
376 E. Warm Springs Road, Ste. 125
Las Vegas, NV 89119
(702) 642-3113

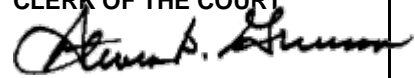
Default2.wpd/February 19, 2003

JA0996

RECEIVED

NOV 13 2013

CLERK OF THE COURT



CERT
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
Nevada Bar No.: 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY

Defendants.

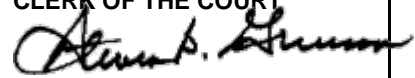
CASE NO.: A-13-689240-C
DEPT NO.: XIV

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of August, 2017, I served a photocopy of the
MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY
by placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited
in the United States mails addressed as follows:

Monique Quilory
7605 Cruz Bay Court
Las Vegas, NV 89128

/s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.



1 **PMEM**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 ADAM R. TRIPPIEDI, ESQ.

6 Nevada Bar No.: 12294

7 atrippiedi@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 East Warm Springs Road, Ste. 140

11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorneys for plaintiff

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 4641
17 VIAREGGIO CT

18 Plaintiff,

19 vs.

20 NATIONSTAR MORTGAGE, LLC; COOPER
21 CASTLE LAW FIRM, LLP; and MONIQUE
22 GUILLORY

23 Defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

24 NATIONSTAR MORTGAGE, LLC

25 Counterclaimant,

26 vs.

27 SATICOY BAY LLC SERIES 4641
28 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
through X; and ROE CORPORATIONS I
Through X, inclusive,

Counter-defendants

JOINT EDCR 2.67 PRE-TRIAL MEMORANDUM

Plaintiff/counterdefendant Saticoy Bay LLC Series 4641 Viareggio (hereinafter “plaintiff” or “Saticoy Bay”) and defendant/counterclaimant Nationstar Mortgage, LLC (hereinafter “defendant” or

1 “Nationstar”) pursuant to EDCR 2.67, by and through their respective counsel of record, hereby submit
2 this Joint Pre-Trial Memorandum pursuant to EDCR 2.67. The parties met and conferred on July 31,
3 2017 pursuant to EDCR 2.67(a).

4 **I. BRIEF STATEMENT OF FACTS OF THE CASE (EDCR 2.67(b)(1))**

5 This is an action for quiet title following the sale of real property at a homeowner’s association
6 foreclosure sale. On August 22, 2013, the Naples Community Homeowners Association (the “**HOA**”),
7 through its agent, Leach Johnson Song & Gruchow (“**LJSG**”) conducted a foreclosure sale on the real
8 property located at 4641 Viareggio Ct, Las Vegas, Nevada (the “**Property**”). The subject foreclosure sale
9 was conducted pursuant to NRS 116.3116, *et seq.* (2011). Nationstar is and was at the time of the
10 foreclosure sale the beneficiary of record of a Deed of Trust recorded in first position against the Property.
11 The parties are continuing to confer regarding any facts to which they may stipulated prior to the trial and
12 will file an Amended Joint Pre-Trial Memorandum once such facts have been identified.

13 **II. CLAIMS FOR RELIEF (EDCR 2.67(b)(2))**

14 **a. Plaintiff’s claims for relief against all defendants¹**

- 15 1. Injunctive relief;
- 16 2. Quiet Title/Declaratory Relief against defendant; and
- 17 3. Declaratory Relief.

17 **III. AFFIRMATIVE DEFENSES (EDCR 2.67(b)(3))**

18 **a. Nationstar’s Affirmative Defenses to Plaintiff’s Claims for Relief**

- 19 1. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be
20 granted.
- 21 2. Plaintiff took title of the Property subject to Defendant's first priority Deed of Trust,
22 which was signed by Monique Guillory, and recorded on January 25, 2007 (hereinafter
23 "Deed of Trust"), which encumbers the Property and secures a promissory note (the
24 "Note"), thereby forestalling any enjoinder/extinguishment of the Defendant's interest
25 in the Property.
- 26 3. Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
27 situations, actions, omissions, and transactions upon which it now bases its various claims
28 for relief and with such knowledge, Plaintiff undertook and thereby assumed such risks

26 ¹Plaintiff still has outstanding claims against former owner Monique Guillory, including an
27 additional cause of action for unlawful detainer. However, plaintiff has recently filed a motion for
28 default judgment against Guillory.

and is consequently barred from all recovery by such assumption of risk.

4. The foreclosure sale of the alleged lien of Naples Community Homeowners Association (the "HOA") by which Plaintiff took its interest was commercially unreasonable if it eliminated Defendant's Deed of Trust, as Plaintiff contends. The sales price, when compared to the outstanding balance of Defendant's Note and Deed of Trust and the fair market value of the Property, demonstrates that the sale was not conducted in good faith as a matter of law. The circumstances of sale of the property violated the HOA's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.
5. Defendant alleges that the Plaintiff's claims are barred by the equitable doctrines of laches, unclean hands, and failure to do equity.
6. Defendant asserts that any acceptance of any portion of the excess proceeds does not "satisfy" the amount due and owing on the Note and would not constitute a waiver of its rights under the Note and Deed of Trust, or statute.
7. Defendant alleges that by reason of Plaintiff's acts and omissions, Plaintiff has waived its rights and is estopped from asserting the claims against Defendant.
8. To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute and Chapter 116 as a whole are void for vagueness as applied to this matter.
9. A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 [sic] Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.
10. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.
11. The claimed super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.
12. Plaintiff's claim of free and clear title to the property is barred by 12 U.S.C Section 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust and preempts any state law to the contrary.
13. Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

IV. CLAIMS OR DEFENSES TO BE ABANDONED (EDCR 2.67(b)(4))

In light of the recent decision from the Nevada Supreme Court in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 133 Nev. Adv. Op. 5, 388 P.3d 970 (2017), Nationstar will not present evidence at trial to support the following affirmative defenses: