

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Petitioners, )

vs. )

THE THIRD JUDICIAL DISTRICT )  
COURT OF NEVADA, IN AND FOR )  
COUNTY OF LYON; HONORABLE )  
LEON A. ABERASTURI, DISTRICT )  
COURT JUDGE, )

Respondent, )

and )

SABLES, LLC, a Nevada limited liability )  
company; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; )  
BANK OF AMERICA, N.A. )

Real Parties in Interest. )

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Jul 12 2019 03:11 p.m.  
Case No. 79152 Elizabeth A. Brown  
Clerk of Supreme Court  
District Court Case No.: 18-CV-  
01332

**PETITIONERS' APPENDIX TO**  
**PETITION FOR WRIT OF MANDAMUS**

**VOLUME II**

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# Exhibit 13

**AFFIDAVIT OF ALBERT ELLIS LINCICOME, JR.**

STATE OF NEVADA            )  
  )ss.  
COUNTY OF DOUGLAS        )

I, Albert Ellis Lincicome, Jr., being first duly sworn, under penalty of perjury, hereby state as follows:

1. In May of 2007, my wife Vicenta Lincicome and I purchased a home located at 70 Riverside Drive, Dayton, Nevada 89403. In order to qualify for the loan, Sierra Pacific requested that I make a withdrawal of \$80,000 from my 401K retirement plan to be contributed as part of the down payment of the home purchase.

2. In or about March of 2008, Vicenta and I (hereafter collectively referred to as "we") learned that we had incurred a tax bill of nearly \$20,000 for having taken the \$80,000 distribution from my 401k. Because of the additional tax burden as well as our other debts and liabilities, we were unable to make our June 1, 2008, mortgage payment.

3. After receiving a Notice of Default in early 2009, we began the process of applying for a mortgage workout with Bank of America. On July 11, 2009, Bank of America sent us a *Loan Modification Agreement* which provided terms extending the maturity date of the loan to August 1, 2049, and, as of August 1, 2009, the interest rate applicable to our loan would be reduced from the current rate of 6.875% to 4.875%. The Loan Modification Agreement provided that on September 1, 2014, the interest rate would increase to 5.375%. Under the Agreement all arrears were to be capitalized as of September 1, 2009.

4. On September 1, 2009, we travelled to the Bank of America branch located in Carson City to make our first payment under the Loan Modification Agreement. The banker assisting us was a young woman named Crystal. After searching for information concerning our loan, Crystal could not find any record of the Loan Modification Agreement in their system. The payment was accepted to be credited against our loan once the Loan Modification Agreement was entered into Bank of America's system. Crystal asked us to



1 contact Bank of America customer service and request a coupon book that would reference  
2 the modified loan.

3 5. Later that day, September 1, 2009, Vicenta contacted Bank of America  
4 Customer Service and was told to go to the Customer Assistance Center on located on Rose  
5 Drive in Reno, Nevada. We were assisted by Manager Barbara Keady. Ms. Keady informed  
6 us that Bank of America would investigate the status of the Loan Modification Agreement.  
7 We showed Ms. Keady a signed copy of the Loan Modification Agreement.

8 6. From October 1, 2009 to December of 2011, we continued to contact Bank of  
9 America by phone to check on the status of the Loan Modification Agreement so that we  
10 could make payments. Each time, Bank of America informed us that the matter was being  
11 investigated.

12 7. In April of 2010, we met with HUD Counselor Lucy Powell, who assisted us with  
13 the design of an action plan, which included the filing of a Chapter 13 Bankruptcy petition to  
14 cure the arrearage with Bank of America that would have accrued since the Loan  
15 Modification Agreement was signed, and also to force Bank of America to find and recognize  
16 the Loan Modification Agreement.

17 8. We filed a petition for Chapter 13 Bankruptcy protection before the United  
18 States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-51219,  
19 and therein listed Bank of America as a secured creditor.

20 9. On May 4, 2011, unbeknownst to us at the time, Bank of America recorded a  
21 fully executed copy of the July 11, 2009 Loan Modification Agreement with the office of the  
22 Lyon County Recorder, as Document No. 475808. We remained unaware of the fact that the  
23 Loan Modification Agreement had been found and executed by Bank of America until 2017.

24 10. On or about April 24, 2015, Bank of America accepted a loan modification  
25 application from us and required that we complete three trial modification payments before  
26 we could move forward with permanently modifying our mortgage loan.

27 //

28 //

1           11.    The April 24, 2015 loan modification notice provided that upon completion of  
2 the trial payments, our mortgage would be extended to May 1, 2055, that the interest rate  
3 would be reduced to 4.125%, and that if it was determined that the unpaid balance of our  
4 mortgage exceeded 115% of the current value of our home, we would be eligible to have up  
5 to 30% of our principal balance deferred and not be subject to interest.

6           12.    We made the first two payments timely. However, on August 1, 2015, while  
7 attempting to make the third trial payment to Bank of America, we were informed that our  
8 loan had been transferred to Fay Servicing. We called Fay Servicing that same day, August  
9 1, 2015, to make payment and spoke with account manager Rosalind Jackson. Ms. Jackson  
10 informed us that Fay Servicing does not honor Bank of America trial modifications.

11           13.    We were devastated when neither Bank of America nor Fay Servicing would  
12 accept our payment and that Fay Servicing would not honor Bank of America's April 24,  
13 2015 loan modification offer.

14           14.    In 2016, we applied for the Home Affordable Modification Program (HAMP)  
15 modification through Fay Servicing. Fay Servicing informed us that we only qualified for a  
16 HAFA Short Sale. We appealed Fay Servicing's denial of our qualification for HAMP.

17           15.    On September 7, 2016, Fay Servicing sent us a response to our appeal of our  
18 denial therein indicating that we did not have sufficient income to qualify for a modification,  
19 and also that we were not qualified for the HAMP Unemployment Program (HAMP UP)  
20 "because the property is not your primary residence." We have continuously used and  
21 claimed our home located at 70 Riverside Drive, Dayton, Nevada, as our residence since our  
22 purchase of the Property in 2007.

23           16.    After being denied, we reached out to Senator Harry Reid's office for help, and  
24 thereafter, Fay Servicing offered us a trial modification at \$2,528.86 per month. After  
25 completion of the three trial payments, Fay Servicing sent us the final modification  
26 agreement.

27    //

28    //




1 17. Upon reviewing the agreement, we realized that we could not accept the  
2 modification because it would leave us in a terrible financial position, and would likely result  
3 in a default.

4 18. We have searched our files and records and were not ever provided with a  
5 notice that accurately complies with the requirements of NRS 107.500(1)(b)(1).

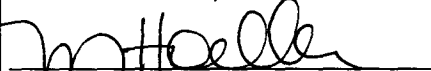
6 19. We believe that because neither Bank of America nor Fay Servicing has applied  
7 the terms of the Loan Modification Agreement, that the amount stated owed is incorrect for  
8 having accrued at a higher interest rate than that reflected in the Agreement.

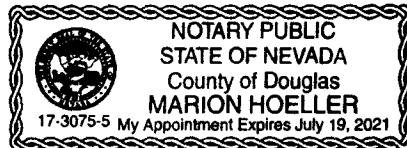
9 Further Affiant sayeth naught.

10  
11   
12 Albert Ellis Lincicome, Jr.

12 State of Nevada )  
13 )ss.  
14 County of Douglas )

15 This instrument was sworn to before me on the 6<sup>th</sup> day of November, 2018, by Albert  
16 Ellis Lincicome, Jr.

17   
18 Notary Public



FILED

2018 NOV -8 PM 1:51

Case No: 18-CV-01332

Dept.: II

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )  
Plaintiffs, )  
v. )  
SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )  
Defendants. )

ORDER

THIS MATTER comes before the Court upon the Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted therewith, and the representations of counsel, hereby makes the following FINDINGS OF FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007, as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

ORDER

PAGE 1 OF 3

00256

MILLWARD LAW, LTD  
1591 Mono Ave., Minden NV 89423  
(775) 600-2776



2. That Plaintiffs have established that irreparable injury will result if Defendant Sables, LLC, is permitted to exercise the power of sale and foreclosure on the Plaintiffs' real property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel Number 29-401-17; and

3. That Plaintiffs have established to the Court's satisfaction that Plaintiffs are likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for material violations of the Homeowner's Bill of Rights.

THEREFORE, GOOD CAUSE APPEARING, the Court hereby enters the following Orders:

1. That Sables, LLC, is hereby restrained and temporarily enjoined from selling at public auction the real property identified in the Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document No. 587470, at public auction until further order of the Court.

2. That the Notice of Trustee's Sale recorded on October 12, 2019, is hereby cancelled and that the public auction of the property described in the Notice of Trustee's Sale is hereby vacated.

3. That a hearing to determine whether a preliminary injunction should issue shall be held on 20<sup>TH</sup> November, 2018 at 2:30 PM, at the courthouse located at 911 Harvey Way, Yerington, Nevada. Defendants, or any one of them, may appear at that time to be heard why the injunction should not issue;

4. That Plaintiffs are ordered to provide proper service of this Order, pursuant to NRCP 5.

5. That Plaintiffs are not required to post bond.

6. That Plaintiffs are hereby ordered to appear at the above stated time set for the hearing in order to address their request for issuance of a preliminary injunction.

IT IS SO ORDERED.

Dated this 20<sup>TH</sup> day of November, 2018

  
DISTRICT JUDGE

**AFFIRMATION**

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 7<sup>th</sup> day of November, 2018

  
Michael G. Millward, Esq.



FILED

Case No: 18-CV-01332

2018 NOV -9 AM 11:22

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
KATHY THOMAS  
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

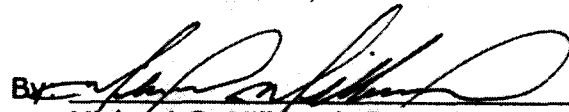
NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 8, 2018, the Court entered the attached Order.

Dated this 8<sup>th</sup> day of November, 2018

MILLWARD LAW, LTD

By 

Michael G. Millward, Esq.  
NSB# 11212  
1591 Mono Ave  
Minden, NV 89423  
Attorney for Plaintiffs

NOTICE OF ENTRY OF ORDER

PAGE 1 OF 2

00259

MILLWARD LAW, LTD  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776



**CERTIFICATE OF SERVICE**

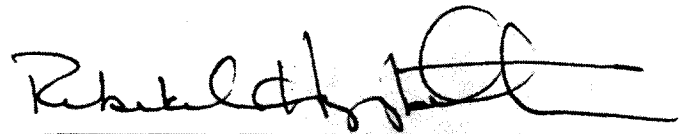
Pursuant to NRCPS(b), I hereby certify that on November 8, 2018, service of the *Notice of Entry of Order* concerning entry of the *Order* entered in the above-captioned matter on November 8, 2018, was sent by way of facsimile transmission to the following at the facsimile numbers set forth below:

**SABLES, LLC**  
c/o Shadd A. Wade, Esq.  
Zieve, Brodnax & Steel  
Fax No. 702-446-9898

**FAY SERVICING, LLC**  
c/o Registered Agent Solutions, Inc.  
Fax No. 888-717-7274

**US BANK**  
**PROF-2013-M4 LEGAL TITLE TRUST**  
Fax No. 651-466-7430

**BANK OF AMERICA**  
Legal Order Processing Dept.  
Fax No. 302-525-378



Rebekah Higginbotham, Paralegal



FILED

2018 NOV -8 PM 1:51

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*\*\*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

ORDER

THIS MATTER comes before the Court upon the Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted therewith, and the representations of counsel, hereby makes the following FINDINGS OF FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007, as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

ORDER

PAGE 1 OF 3

00261



2. That Plaintiffs have established that irreparable injury will result if Defendant Sables, LLC, is permitted to exercise the power of sale and foreclosure on the Plaintiffs' real property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel Number 29-401-17; and

3. That Plaintiffs have established to the Court's satisfaction that Plaintiffs are likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for material violations of the Homeowner's Bill of Rights.

THEREFORE, GOOD CAUSE APPEARING, the Court hereby enters the following Orders:

1. That Sables, LLC, is hereby restrained and temporarily enjoined from selling at public auction the real property identified in the Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document No. 587470, at public auction until further order of the Court.

2. That the Notice of Trustee's Sale recorded on October 12, 2019, is hereby cancelled and that the public auction of the property described in the Notice of Trustee's Sale is hereby vacated.

3. That a hearing to determine whether a preliminary injunction should issue shall be held on 20<sup>th</sup> November, 2018 at 2:30 PM, at the courthouse located at 911 Harvey Way, Yerington, Nevada. Defendants, or any one of them, may appear at that time to be heard why the injunction should not issue;

4. That Plaintiffs are ordered to provide proper service of this Order, pursuant to NRCP 5.

5. That Plaintiffs are not required to post bond.

6. That Plaintiffs are hereby ordered to appear at the above stated time set for the hearing in order to address their request for issuance of a preliminary injunction.

IT IS SO ORDERED.

Dated this 20<sup>th</sup> day of November, 2018

  
DISTRICT JUDGE



**AFFIRMATION**

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 7<sup>th</sup> day of November, 2018

  
Michael G. Millward, Esq.



FILED

Case No: 18-CV-01332

2018 NOV 14 PM 2:42

Dept.: II

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**CORRECTED ORDER**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER came before the Court upon the Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted therewith, and the representations of counsel, hereby makes the following FINDINGS OF FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007, as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

CORRECTED ORDER

PAGE 1 OF 3

00264



1           2.     That Plaintiffs have established that irreparable injury will result if Defendant  
2 Sables, LLC, is permitted to exercise the power of sale and foreclosure on the Plaintiffs' real  
3 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
4 Number 29-401-17; and

5           3.     That Plaintiffs have established to the Court's satisfaction that Plaintiffs are  
6 likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for  
7 material violations of the Homeowner's Bill of Rights.

8           THEREFORE, GOOD CAUSE APPEARING, the Court hereby enters the following Orders:

9           1.     That Sables, LLC, is hereby restrained and temporarily enjoined from selling at  
10 public auction the real property identified in the Notice of Trustee's Sale recorded with the  
11 Office of the Lyon County Recorder as Document No. 587470, at public auction until further  
12 order of the Court.

13           2.     That the Notice of Trustee's Sale recorded on October 12, 2018, is hereby  
14 cancelled and that the public auction of the property described in the Notice of Trustee's Sale  
15 is hereby vacated.

16           3.     That a hearing to determine whether a preliminary injunction should issue shall  
17 be held on 20 November, 2018 at 2:30 p.m., at the courthouse located at 911 Harvey Way,  
18 Yerington, Nevada. Defendants, or any one of them, may appear at that time to be heard  
19 why the injunction should not issue;

20           4.     That Plaintiffs are ordered to provide proper service of this Order, pursuant to  
21 NRCP 5.

22           5.     That Plaintiffs are not required to post bond.

23           6.     That Plaintiffs are hereby ordered to appear at the above stated time set for  
24 the hearing in order to address their request for issuance of a preliminary Injunction.

25           IT IS SO ORDERED.

26           Dated this 14<sup>th</sup> day of November, 2018

27 

28           DISTRICT JUDGE



**AFFIRMATION**

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 12<sup>th</sup> day of November, 2018

  
Michael G. Millward, Esq.



ORIGINAL FILED

2018 NOV 15 PM 12:34

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Anderson*

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as*  
11 *Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

Case No.: 18-cv-01332

Dept. No.: II

16 Plaintiffs,

17 vs.

**NOTICE OF APPEARANCE**

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust given  
20 by Vicenta Lincicome and dated 5/23/2007;  
21 FAY SERVICING, LLC, a Delaware limited  
22 liability company and subsidiary of Fay  
23 Financial, LLC; PROF-2013-M4 LEGAL  
24 TITLE TRUST by U.S. BANK, N.A., as Legal  
25 Title Trustee; for BANK OF AMERICA, N.A.;  
26 and DOES 1-50,

27 Defendants.

28 PLEASE TAKE NOTICE that Christopher A. J. Swift, Esq., and Ramir M. Hernandez,  
Esq., of the law firm of WRIGHT, FINLAY & ZAK, LLP, are hereby appearing on behalf of  
Defendants, **DEFENDANTS, PROF-2013 M4-LEGAL TITLE TRUST. BY U.S. BANK,**  
**NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE and FAY SERVICING**  
**LLC** in the above referenced matter. Please address all pleadings and correspondences to:

///


///

///

1 Ramir M. Hernandez, Esq.  
2 7785 W. Sahara Ave, Suite 200  
3 Las Vegas, NV 89117  
4 (702) 475-7964; Fax: (702) 946-1345  
5 rhernandez@wrightlegal.net

6 DATED this 14th day of November, 2018.

7 WRIGHT, FINLAY & ZAK, LLP

8 

9 Christopher A. J. Swift, Esq.

10 Nevada Bar No. 11291

11 Ramir M. Hernandez, Esq.

12 Nevada Bar No. 13146

13 7785 W. Sahara Ave, Suite 200

14 Las Vegas, NV 89117

15 *Attorney for Defendants, Prof-2013 M4-Legal Title*  
16 *Trust, by U.S. Bank, National Association, as Legal*  
17 *Title Trustee and Fay Servicing LLC*  
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**AFFIRMATION**

**Pursuant to NRS 239B.03/603A.040**

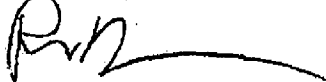
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 14th day of November, 2018.

WRIGHT, FINLAY & ZAK, LLP



Christopher A.J. Swift

Nevada Bar No. 11291

Ramir M. Hernandez, Esq.

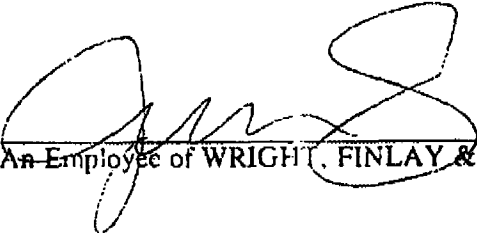
Nevada Bar No. 13146

*Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC*

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 14th day of November, 2018, I did cause a true copy of the foregoing  
4 **NOTICE OF APPEARANCE** to be served by placing a copy in the mail, addressed as follows:

5  
6 Michael G. Millward, Esq.  
7 MILLWARD LAW, LTD.  
8 1591 Mono Ave.  
9 Minden, NV 89423

10   
An Employee of WRIGHT, FINLAY & ZAK, LLP



FILED

2018 NOV 15 PM 12:36

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and

15 VICENTA LINCICOME,

Case No.: 18-cv-01332

Dept. No.: II

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust given  
20 by Vicenta Lincicome and dated 5/23/2007;

21 FAY SERVICING, LLC, a Delaware limited  
22 liability company and subsidiary of Fay  
23 Financial, LLC; PROF-2013 M4 LEGAL  
24 TITLE TRUST by U.S. BANK, N.A., as Legal  
25 Title Trustee; for BANK OF AMERICA, N.A.  
26 and DOES 1-50.

**DECLARATION OF FAY SERVICING,  
LLC IN RESPONSE TO APPLICATION  
FOR EX PARTE RESTRAINING ORDER,  
PRELIMINARY INJUNCTION AND  
PERMANENT INJUNCTION**

27 Defendants.

28 I, Vonterro White, declare as follows:

1. I am a Trial & Mediation Specialist for Fay Servicing, LLC ("Fay"), and at all times relevant herein have been employed by Fay.

2. Fay is the current servicer of the loan for the real property located at 70 Riverside Drive, Dayton, Nevada 89403; APN 29-401-17 (the "Property"). The Property is the subject of the above-captioned case.

3. Fay is the loan servicer and authorized attorney-in-fact for Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee ("U.S. Bank Trust"), the

1 current beneficiary of record of the loan that is the subject of this litigation.

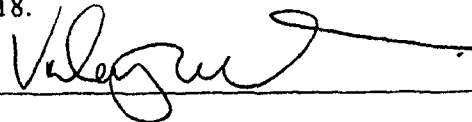
2 4. Fay maintains a computer database (the "Loan Records") of acts, transactions,  
3 payments, communications, escrow account activity, disbursements, events, and analyses (the  
4 "Loan Transactions") with respect to the mortgage loans which Fay services. The information  
5 described herein and referenced below is found in the business records of said servicing agent.  
6 The entries in those records are made at the time of the events and conditions they describe  
7 either by people with first-hand knowledge of those events and conditions or from information  
8 provided by people with such first-hand knowledge. Recording such information is a regular  
9 practice of the servicing agent's or Fay's regularly conducted business activities. I have access  
10 to the Loan Records with respect to the subject loan, and have knowledge of how they are  
11 maintained. Based upon my review of those records, I have gained knowledge of the facts set  
12 forth herein and, if called upon as a witness to testify, I could and would competently testify as  
13 to those facts under penalty of perjury.

14 5. I make this Declaration in support of the Response to Plaintiffs' Application for  
15 Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction, and upon my  
16 personal knowledge, except as to those matters stated on information and belief and, as to those  
17 matters, I believe them to be true.

18 6. I have reviewed the documents attached as exhibit to the Response to Plaintiffs'  
19 Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.  
20 Those exhibits are true and correct copies of the documents maintained by Fay for this loan in  
21 its Loan Records.

22 7. Pursuant to NRS 53.045, I hereby declare under penalty of perjury under the  
23 laws of the state of Nevada that the foregoing is true and correct.

24 Executed on this 14 day of November, 2018.

25 

26 NAME: Vonterro White

27 TITLE: Trial & Mediation Specialist  
28 Fay Servicing, LLC

**AFFIRMATION**

**Pursuant to NRS 239B.03/603A.040**

The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 14th day of November, 2018.

WRIGHT, FINLAY & ZAK, LLP



Christopher A.J. Swift

Nevada Bar No. 11291

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 14th day of November, 2018, I did cause a true copy of the foregoing  
4 **DECLARATION OF FAY SERVICING, LLC IN RESPONSE TO APPLICATION FOR**  
5 **EX PARTE RESTRAINING ORDER, PRELIMINARY INJUNCTION AND**  
6 **PERMANENT INJUNCTION** to be served by placing a copy in the mail, addressed as  
7 follows:

8  
9 Michael G. Millward, Esq.  
10 MILLWARD LAW, LTD.  
11 1591 Mono Ave.  
12 Minden, NV 89423

13   
14 An Employee of WRIGHT, FINLAY & ZAK, LLP  
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TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

KATHY THOMAS DEPUTY

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

NOTICE OF ENTRY OF ORDER

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

Defendants. )

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 14, 2018, the Court entered the attached  
Corrected Order.

Dated this 20<sup>th</sup> day of November, 2018

MILLWARD LAW, LTD

By:

Michael G. Millward, Esq.

NSB# 11212

Attorney for Plaintiffs

NOTICE OF ENTRY OF ORDER

PAGE 1 OF 2

00275

MILLWARD LAW, LTD  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP5(b), I hereby certify that on November 20<sup>th</sup>, 2018, service of the *Notice of Entry of Order* concerning entry of the *Corrected Order* entered on November 14, 2018, was made by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following::

SABLES, LLC  
c/o Shadd A. Wade, Esq.  
Zieve, Brodnax & Steel  
9435 W. Russel Rd., Suite 120  
Las Vegas, NV 89148

Ramir M. Hernandez, Esq.  
Christopher A.J. Smith, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Avenue, Suite 200  
Las Vegas, NV 89117

BANK OF AMERICA  
Legal Order Processing Dept.  
C.T. Corporation System  
818 W. Seventh Street, 2<sup>nd</sup> Floor  
Los Angeles, CA 90017

Scott R. Lachman, Esq.  
Ackerman's Consumer Financial Services  
Practice Group  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134



Rebekah Higginbotham, Paralegal



FILED

Case No: 18-CV-01332

2018 NOV 14 PM 2:42

Dept.: II

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**CORRECTED ORDER**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER came before the Court upon the Application for Ex Parte Restraining  
Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by  
Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted  
therewith, and the representations of counsel, hereby makes the following FINDINGS OF  
FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current  
trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007,  
as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

CORRECTED ORDER

PAGE 1 OF 3

00277



2. That Plaintiffs have established that irreparable injury will result if Defendant Sables, LLC, is permitted to exercise the power of sale and foreclosure on the Plaintiffs' real property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel Number 29-401-17; and

3. That Plaintiffs have established to the Court's satisfaction that Plaintiffs are likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for material violations of the Homeowner's Bill of Rights.

**THEREFORE, GOOD CAUSE APPEARING, the Court hereby enters the following Orders:**

1. That Sables, LLC, is hereby restrained and temporarily enjoined from selling at public auction the real property identified in the Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document No. 587470, at public auction until further order of the Court.

2. That the Notice of Trustee's Sale recorded on October 12, 2018, is hereby cancelled and that the public auction of the property described in the Notice of Trustee's Sale is hereby vacated.

3. That a hearing to determine whether a preliminary injunction should issue shall be held on 20 November, 2018 at 2:30 p.m., at the courthouse located at 911 Harvey Way, Yerington, Nevada. Defendants, or any one of them, may appear at that time to be heard why the injunction should not issue;

4. That Plaintiffs are ordered to provide proper service of this Order, pursuant to  
 NRCP 5.

**5. That Plaintiffs are not required to post bond.**

6. That Plaintiffs are hereby ordered to appear at the above stated time set for the hearing in order to address their request for issuance of a preliminary injunction.

**IT IS SO ORDERED.**

Dated this 14<sup>th</sup> day of November, 2018

h. Aul  
DISTRICT JUDGE

## CORRECTED ORDER

PAGE 2 OF 3

00278





**AFFIRMATION**

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 12<sup>th</sup> day of November, 2018

  
Michael G. Millward, Esq.

**MILLWARD LAW, LTD**  
1591 Mono Ave. Minden NV 89423  
(775) 600-2776



CORRECTED ORDER

PAGE 3 OF 3

00279

FILED

2018 NOV 29 PM 12:12

TANYA SCHEIDT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

1 WRIGHT, FINLAY & ZAK, LLP  
2 Christopher A.J. Swift, Esq.  
3 Nevada Bar No. 11291  
4 Ramir M. Hernandez, Esq.  
5 Nevada Bar No. 13146  
6 7785 W. Sahara Ave, Suite 200  
7 Las Vegas, NV 89117  
8 (702) 475-7964; Fax: (702) 946-1345  
9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

Case No.: 18-cv-01332

Dept. No.: II

16 Plaintiffs,

17 vs.

**ANSWER TO COMPLAINT**

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust given  
20 by Vicenta Lincicome and dated 5/23/2007;  
21 FAY SERVICING, LLC, a Delaware limited  
22 liability company and subsidiary of Fay  
23 Financial, LLC; PROF-2013 M4 LEGAL  
24 TITLE TRUST by U.S. BANK, N.A., as Legal  
25 Title Trustee; for BANK OF AMERICA, N.A.  
26 and DOES 1-50.

27 Defendants.

28 Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as  
Legal Title Trustee ("U.S. Bank Trust") and Fay Servicing LLC ("Fay")(collectively  
"Defendants"), by and through their attorneys of record, the law firm of Wright, Finlay & Zak,  
LLP, hereby files this Answer to Plaintiff's Complaint.

**PARTIES**

1. Answering Paragraph 1 of the Complaint, Defendants do not possess enough  
information to admit or deny the allegations; therefore, Defendants deny said allegations.

2. Answering Paragraph 2 of the Complaint, Defendants do not possess enough

1 information to admit or deny the allegations; therefore, Defendants deny said allegations.

2       3.     Answering Paragraph 3 of the Complaint, Defendants do not possess enough  
3 information to admit or deny the allegations; therefore, Defendants deny said allegations.

4       4.     Answering Paragraph 4 of the Complaint, Defendants admit the allegations  
5 therein.

6       5.     Answering Paragraph 5 of the Complaint, Defendants admit that US Bank is  
7 licensed to do business in Nevada. As to the remaining allegations, Defendants do not possess  
8 enough information to admit or deny the allegations; therefore, Defendants deny said  
9 allegations.

10       6.     Answering Paragraph 6 of the Complaint, Defendants do not possess enough  
11 information to admit or deny the allegations; therefore, Defendants deny said allegations.

12       7.     Answering Paragraph 7 of the Complaint, Defendants do not possess enough  
13 information to admit or deny the allegations; therefore, Defendants deny said allegations.

14                                   **JURISDICTION**

15       8.     Defendants do not possess enough information to admit or deny the allegations  
16 in paragraph 8 of the Complaint; therefore, Defendants deny said allegations.

17                                   **VENUE**

18       9.     Defendants do not possess enough information to admit or deny the allegations  
19 in paragraph 9 of the Complaint; therefore, Defendants deny said allegations.

20                                   **GENERAL ALLEGATIONS**

21       10.    Defendants do not possess enough information to admit or deny the allegations  
22 in paragraph 10 of the Complaint; therefore, Defendants deny said allegations.

23       11.    Defendants do not possess enough information to admit or deny the allegations  
24 in paragraph 11 of the Complaint; therefore, Defendants deny said allegations.

25       12.    Answering Paragraph 12 of the Complaint, Defendants admit that the referenced  
26 documents speak for themselves.

27       13.    Answering Paragraph 13 of the Complaint, Defendants admit that the referenced  
28 documents speak for themselves.

1           14. Defendants do not possess enough information to admit or deny the allegations  
2 in paragraph 14 of the Complaint; therefore, Defendants deny said allegations.

3           15. Defendants do not possess enough information to admit or deny the allegations  
4 in paragraph 15 of the Complaint; therefore, Defendants deny said allegations.

5           16. Defendants do not possess enough information to admit or deny the allegations  
6 in paragraph 16 of the Complaint; therefore, Defendants deny said allegations.

7           17. Defendants do not possess enough information to admit or deny the allegations  
8 in paragraph 17 of the Complaint; therefore, Defendants deny said allegations.

9           18. Answering Paragraph 18 of the Complaint, Defendants admit that the referenced  
10 document speaks for itself.

11           19. Answering Paragraph 19 of the Complaint, Defendants admit that the referenced  
12 document speaks for itself.

13           20. Defendants do not possess enough information to admit or deny the allegations  
14 in paragraph 20 of the Complaint; therefore, Defendants deny said allegations.

15           21. Defendants do not possess enough information to admit or deny the allegations  
16 in paragraph 21 of the Complaint; therefore, Defendants deny said allegations.

17           22. Defendants do not possess enough information to admit or deny the allegations  
18 in paragraph 22 of the Complaint; therefore, Defendants deny said allegations.

19           23. Defendants do not possess enough information to admit or deny the allegations  
20 in paragraph 23 of the Complaint; therefore, Defendants deny said allegations.

21           24. Defendants do not possess enough information to admit or deny the allegations  
22 in paragraph 24 of the Complaint; therefore, Defendants deny said allegations.

23           25. Defendants do not possess enough information to admit or deny the allegations  
24 in paragraph 25 of the Complaint; therefore, Defendants deny said allegations.

25           26. Defendants do not possess enough information to admit or deny the allegations  
26 in paragraph 26 of the Complaint; therefore, Defendants deny said allegations.

27           27. Defendants do not possess enough information to admit or deny the allegations  
28 in paragraph 27 of the Complaint; therefore, Defendants deny said allegations.

1       28. Defendants do not possess enough information to admit or deny the allegations  
2 in paragraph 28 of the Complaint; therefore, Defendants deny said allegations.

3       29. Defendants do not possess enough information to admit or deny the allegations  
4 in paragraph 29 of the Complaint; therefore, Defendants deny said allegations.

5       30. Defendants do not possess enough information to admit or deny the allegations  
6 in paragraph 30 of the Complaint; therefore, Defendants deny said allegations.

7       31. Defendants do not possess enough information to admit or deny the allegations  
8 in paragraph 31 of the Complaint; therefore, Defendants deny said allegations.

9       32. Defendants do not possess enough information to admit or deny the allegations  
10 in paragraph 32 of the Complaint; therefore, Defendants deny said allegations.

11       33. Defendants do not possess enough information to admit or deny the allegations  
12 in paragraph 33 of the Complaint; therefore, Defendants deny said allegations.

13       34. Defendants do not possess enough information to admit or deny the allegations  
14 in paragraph 34 of the Complaint; therefore, Defendants deny said allegations.

15       35. Defendants do not possess enough information to admit or deny the allegations  
16 in paragraph 35 of the Complaint; therefore, Defendants deny said allegations.

17       36. Answering paragraph 36 of the Complaint, Defendants admit that the referenced  
18 bankruptcy docket speaks for itself.

19       37. Answering paragraph 37 of the Complaint, Defendants admit that the referenced  
20 bankruptcy document speaks for itself.

21       38. Answering paragraph 38 of the Complaint, Defendants admit that the referenced  
22 bankruptcy document speaks for itself.

23       39. Defendants do not possess enough information to admit or deny the allegations  
24 in paragraph 39 of the Complaint; therefore, Defendants deny said allegations.

25       40. Answering Paragraph 40 of the Complaint, Defendants admit that the referenced  
26 document speaks for itself.

27       41. Answering Paragraph 41 of the Complaint, Defendants admit that the referenced  
28 document speaks for itself.

1           **42.** Defendants do not possess enough information to admit or deny the allegations  
2 in paragraph 42 of the Complaint; therefore, Defendants deny said allegations.

3           **43.** Defendants do not possess enough information to admit or deny the allegations  
4 in paragraph 43 of the Complaint; therefore, Defendants deny said allegations.

5           **44.** Defendants do not possess enough information to admit or deny the allegations  
6 in paragraph 44 of the Complaint; therefore, Defendants deny said allegations.

7           **45.** Answering Paragraph 45 of the Complaint, Defendants admit that the referenced  
8 document speaks for itself.

9           **46.** Defendants do not possess enough information to admit or deny the allegations  
10 in paragraph 46 of the Complaint; therefore, Defendants deny said allegations.

11           **47.** Defendants do not possess enough information to admit or deny the allegations  
12 in paragraph 47 of the Complaint; therefore, Defendants deny said allegations.

13           **48.** Answering Paragraph 48 of the Complaint, Defendants admit that the referenced  
14 document speaks for itself.

15           **49.** Answering Paragraph 49 of the Complaint, Defendants admit that the referenced  
16 document speaks for itself.

17           **50.** Defendants do not possess enough information to admit or deny the allegations  
18 in paragraph 50 of the Complaint; therefore, Defendants deny said allegations.

19           **51.** Defendants do not possess enough information to admit or deny the allegations  
20 in paragraph 51 of the Complaint; therefore, Defendants deny said allegations.

21           **52.** Defendants do not possess enough information to admit or deny the allegations  
22 in paragraph 52 of the Complaint; therefore, Defendants deny said allegations.

23           **53.** Defendants do not possess enough information to admit or deny the allegations  
24 in paragraph 53 of the Complaint; therefore, Defendants deny said allegations.

25           **54.** Defendants do not possess enough information to admit or deny the allegations  
26 in paragraph 54 of the Complaint; therefore, Defendants deny said allegations.

27           **55.** Defendants do not possess enough information to admit or deny the allegations  
28 in paragraph 55 of the Complaint; therefore, Defendants deny said allegations.

1           **56.**     Defendants do not possess enough information to admit or deny the allegations  
2 in paragraph 56 of the Complaint; therefore, Defendants deny said allegations.

3           **57.**     Answering Paragraph 57 of the Complaint, Defendants admit that the referenced  
4 document speaks for itself.

5           **58.**     Answering Paragraph 58 of the Complaint, Defendants admit that the referenced  
6 document speaks for itself.

7           **59.**     Defendants do not possess enough information to admit or deny the allegations  
8 in paragraph 59 of the Complaint; therefore, Defendants deny said allegations.

9           **60.**     Answering Paragraph 60 of the Complaint, Defendants admit that the referenced  
10 document speaks for itself.

11          **61.**     Defendants do not possess enough information to admit or deny the allegations  
12 in paragraph 61 of the Complaint; therefore, Defendants deny said allegations.

13          **62.**     Defendants do not possess enough information to admit or deny the allegations  
14 in paragraph 62 of the Complaint; therefore, Defendants deny said allegations.

15          **63.**     Defendants do not possess enough information to admit or deny the allegations  
16 in paragraph 63 of the Complaint; therefore, Defendants deny said allegations.

17          **64.**     Answering Paragraph 64 of the Complaint, Borrowers admit the allegations  
18 therein.

19          **65.**     Answering Paragraph 65 of the Complaint, Borrowers admit the allegations  
20 therein.

21          **66.**     Answering Paragraph 66 of the Complaint, Borrowers deny the allegations  
22 therein.

23          **67.**     Answering Paragraph 67 of the Complaint, Borrowers admit the allegations  
24 therein.

25          **68.**     Answering Paragraph 68 of the Complaint, Defendants admit that the referenced  
26 document speaks for itself.

27     /./

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**FIRST CAUSE OF ACTION**

**(Injunctive Relief)**

69. Answering paragraph 69 of the Complaint, Defendants hereby repeat, reallege, and incorporate each of their admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

70. Paragraph 70 of the Complaint contains legal conclusions and allegations against other parties to which no response is required. As to those other parties, Defendants do not possess enough information to admit or deny; therefore, Defendants deny said allegations. To the extent the allegations reference Defendants, Defendants deny said allegations.

71. Paragraph 71 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Defendants do not possess enough information to admit or deny the allegations; therefore, Defendants deny said allegations.

72. Paragraph 72 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny said allegations.

73. Paragraph 73 of the Complaint contains legal conclusions and allegations against other parties to which no response is required. As to those other parties, Defendants do not possess enough information to admit or deny; therefore, Defendants deny said allegations. To the extent the allegations reference Defendants, Defendants deny said allegations.

74. Paragraph 74 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny said allegations.

75. Paragraph 75 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Defendants do not possess enough information to admit or deny the allegations; therefore, Defendants deny said allegations.

76. Answering Paragraph 76 of the Complaint, Borrowers deny the allegations therein.

77. Paragraph 77 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny said allegations.

78. Paragraph 78 of the Complaint contains legal conclusions and allegations against



1 other parties to which no response is required. As to those other parties, Defendants do not  
2 possess enough information to admit or deny; therefore, Defendants deny said allegations. To  
3 the extent the allegations reference Defendants, Defendants deny said allegations.

4 79. Answering Paragraph 79 of the Complaint, Borrowers deny the allegations  
5 therein.

## 6 SECOND CAUSE OF ACTION

### 7 (Breach of Contract—Bank of America)

8 80. Answering paragraph 80 of the Complaint, Defendants hereby repeat, reallege,  
9 and incorporate each of their admissions, denials, or other responses to all the paragraphs  
10 referenced hereinabove as if set forth at length and in full.

11 81. Defendants do not possess enough information to admit or deny the allegations  
12 in paragraph 81 of the Complaint; therefore, Defendants deny said allegations.

13 82. Defendants do not possess enough information to admit or deny the allegations  
14 in paragraph 82 of the Complaint; therefore, Defendants deny said allegations.

15 83. Defendants do not possess enough information to admit or deny the allegations  
16 in paragraph 83 of the Complaint; therefore, Defendants deny said allegations.

17 84. Defendants do not possess enough information to admit or deny the allegations  
18 in paragraph 84 of the Complaint; therefore, Defendants deny said allegations.

19 85. Defendants do not possess enough information to admit or deny the allegations  
20 in paragraph 85 of the Complaint; therefore, Defendants deny said allegations.

21 86. Defendants do not possess enough information to admit or deny the allegations  
22 in paragraph 86 of the Complaint; therefore, Defendants deny said allegations.

23 87. Defendants do not possess enough information to admit or deny the allegations  
24 in paragraph 87 of the Complaint; therefore, Defendants deny said allegations.

25 88. Defendants do not possess enough information to admit or deny the allegations  
26 in paragraph 88 of the Complaint; therefore, Defendants deny said allegations.

27 89. Defendants do not possess enough information to admit or deny the allegations  
28 in paragraph 89 of the Complaint; therefore, Defendants deny said allegations.

90. Defendants do not possess enough information to admit or deny the allegations in paragraph 90 of the Complaint; therefore, Defendants deny said allegations.

91. Defendants do not possess enough information to admit or deny the allegations in paragraph 91 of the Complaint; therefore, Defendants deny said allegations.

92. Defendants do not possess enough information to admit or deny the allegations in paragraph 92 of the Complaint; therefore, Defendants deny said allegations.

93. Defendants do not possess enough information to admit or deny the allegations in paragraph 93 of the Complaint; therefore, Defendants deny said allegations.

94. Defendants do not possess enough information to admit or deny the allegations in paragraph 94 of the Complaint; therefore, Defendants deny said allegations.

### THIRD CAUSE OF ACTION

**(Breach of Duty to Act in Good Faith and Fair Dealing – Bank of America)**

95. Answering paragraph 95 of the Complaint, Defendants hereby repeat, reallege, and incorporate each of their admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

96. Defendants do not possess enough information to admit or deny the allegations in paragraph 96 of the Complaint; therefore, Defendants deny said allegations.

97. Defendants do not possess enough information to admit or deny the allegations in paragraph 97 of the Complaint; therefore, Defendants deny said allegations.

98. Defendants do not possess enough information to admit or deny the allegations in paragraph 98 of the Complaint; therefore, Defendants deny said allegations.

#### FOURTH CAUSE OF ACTION

**(Declaratory Relief—NRS 30.010 *et. seq.*)**

99. Answering paragraph 99 of the Complaint, Defendants hereby repeat, reallege, and incorporate each of their admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

100. Paragraph 100 of the Complaint contains legal conclusions and allegations against other parties to which no response is required. As to those other parties, Defendants do

1 not possess enough information to admit or deny; therefore, Defendants deny said allegations.

2 To the extent the allegations reference Defendants, Defendants deny said allegations.

3       **101.** Paragraph 101 of the Complaint contains legal conclusions and allegations  
4 against other parties to which no response is required. As to those other parties, Defendants do  
5 not possess enough information to admit or deny; therefore, Defendants deny said allegations.  
6 To the extent the allegations reference Defendants, Defendants deny said allegations.

7       **102.** Answering paragraph 102 of the Complaint, Defendants admit that they seek to  
8 foreclosure on Plaintiff's home and real property by of nonjudicial foreclosure. As to all other  
9 allegations, Defendants deny said allegations.

10       **103.** Paragraph 103 of the Complaint contains legal conclusions and allegations  
11 against other parties to which no response is required. As to those other parties, Defendants do  
12 not possess enough information to admit or deny; therefore, Defendants deny said allegations.  
13 To the extent the allegations reference Defendants, Defendants deny said allegations.

14       **104.** Paragraph 104 of the Complaint contains Plaintiffs' request relief so no response  
15 is required. To the extent a response is required, Defendants deny said allegations.

#### 16                                   **FIFTH CAUSE OF ACTION**

#### 17                                   **(Special Damages—NRS 107.560(6) Attorney's Fees.)**

18       **105.** Answering paragraph 105 of the Complaint, Defendants hereby repeat, reallege,  
19 and incorporate each of their admissions, denials, or other responses to all the paragraphs  
20 referenced hereinabove as if set forth at length and in full.

21       **106.** Paragraph 106 of the Complaint contains legal conclusions and allegations  
22 against other parties to which no response is required. As to those other parties, Defendants do  
23 not possess enough information to admit or deny; therefore, Defendants deny said allegations.  
24 To the extent the allegations reference Defendants, Defendants deny said allegations.

25       **107.** Paragraph 107 of the Complaint contains legal conclusions and allegations  
26 against other parties to which no response is required. As to those other parties, Defendants do  
27 not possess enough information to admit or deny; therefore, Defendants deny said allegations.  
28 To the extent the allegations reference Defendants, Defendants deny said allegations.

1       **108.** Paragraph 108 of the Complaint contains legal conclusions and allegations  
2 against other parties to which no response is required. As to those other parties, Defendants do  
3 not possess enough information to admit or deny; therefore, Defendants deny said allegations.  
4 To the extent the allegations reference Defendants, Defendants deny said allegations.

5       **DEFENDANTS ASSERT THE FOLLOWING AFFIRMATIVE DEFENSES:**

6                   **FIRST AFFIRMATIVE DEFENSE**

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

8       Plaintiffs' Complaint fails to state a claim against Defendants upon which relief can be  
9 granted.

10                   **SECOND AFFIRMATIVE DEFENSE**

11                   **(Equitable Doctrines)**

12       Defendants allege that the Plaintiffs' claims are barred by the equitable doctrines of  
13 laches, unclean hands, and failure to do equity.

14                   **THIRD AFFIRMATIVE DEFENSE**

15                   **(Waiver and Estoppel)**

16       Defendant allege that by reason of Plaintiffs' acts and omissions, Plaintiffs have waived  
17 their rights and are estopped from asserting the claims against Defendants.

18                   **FOURTH AFFIRMATIVE DEFENSE**

19                   **(Statute of Limitations)**

20       Defendants allege that the Plaintiffs' Complaint, and each cause of action therein, is  
21 barred by the statute of limitations.

22                   **FIFTH AFFIRMATIVE DEFENSE**

23                   **(Conditions Precedent)**

24       Defendants allege that Plaintiff's' claims for damages are barred as a result of the failure  
25 of Plaintiff to satisfy conditions precedent.

26                   **SIXTH AFFIRMATIVE DEFENSE**

27                   **(Additional Affirmative Defenses)**

28       Defendants reserve the right to assert additional affirmative defenses in the event

1 discovery and/or investigation indicates that additional affirmative defenses are applicable.

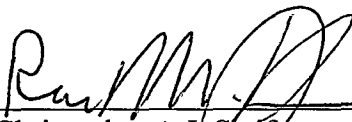
2 PRAYER

3 WHEREFORE, Defendant prays for judgment as follows:

- 4 1. That Plaintiffs take nothing by way of the Complaint;
- 5 2. For reasonable attorney's fees and costs; and
- 6 3. For any such other and further relief as the Court may deem just and proper in the case..

7 DATED this 27th day of November, 2018.

8 WRIGHT, FINLAY & ZAK, LLP

9 

10 Christopher A.J. Swift

11 Nevada Bar No. 11291

12 Ramir M. Hernandez, Esq.

13 Nevada Bar No. 13146

14 *Attorney for Defendants, Prof-2013 M4-Legal Title*  
15 *Trust, by U.S. Bank, National Association, as*  
16 *Legal Title Trustee and Fay Servicing LLC*

**AFFIRMATION**

**Pursuant to NRS 239B.03/603A.040**

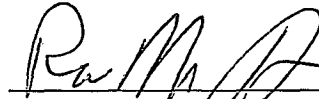
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 27th day of November, 2018.

WRIGHT, FINLAY & ZAK, LLP



Christopher A.J. Swift

Nevada Bar No. 11291

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 28th day of November, 2018, I did cause a true copy of the foregoing  
4 **ANSWER TO COMPLAINT** to be served by placing a copy in the mail, addressed as follows:

5  
6 Michael G. Millward, Esq.  
7 MILLWARD LAW, LTD.  
8 1591 Mono Ave.  
9 Minden, NV 89423

10   
11 An Employee of WRIGHT, FINLAY & ZAK, LLP  
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ON RETURN  
FILED

Case No: 18-CV-01332

2018 DEC 10 AM 11:20

Dept.: II

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

TANYA SCEIRINE

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**SUMMONS**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

**TO THE DEFENDANTS:** A civil Complaint has been filed by the Plaintiffs against you for the  
relief set forth in the Complaint.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is  
served on you, exclusive of the day of service, do the following:
  - a. File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court; and





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**AFFIDAVIT OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant)

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.

I, RONNY DEL CID, being first duly sworn, depose and say:

1. That I am not a party to this action and I am over 18 years of age;
2. That I personally served a copy of the Summons and Complaint, and the following documents:

Upon DEFENDANT BANK OF AMERICA  
at the following location: 818 W. SEVENTH ST STE 930 LOS ANGELES, CA. 90017

on the 14 day of NOVEMBER, 2018.

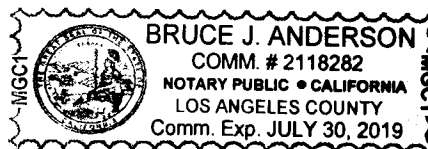
Signature: [Signature]

Print Name: RONNY DEL CID

SUBSCRIBED and SWORN before me

This 14<sup>th</sup> day of NOV., 2018.

[Signature]  
NOTARY PUBLIC



SUMMONS

PAGE 3 OF 3

00296

ON-RETURN  
FILED

2018 DEC 11 AM 10:35

TANYA SCORINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
DeAnn Peeples  
CLERK

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

**TO THE DEFENDANTS:** A civil Complaint has been filed by the Plaintiffs against you for the  
relief set forth in the Complaint.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is  
served on you, exclusive of the day of service, do the following:
  - a. File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court; and

MILLWARD LAW, LTD  
1591 Mono Ave., Minden NV 89423  
(775) 600-2776



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b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiffs, and this Court may enter a judgment against you for the relief demanded in the Complaint\*, which could result in the taking of money or property or the relief requested in the Complaint.

3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Tanya Sceirine  
CLERK OF THE COURT

By: Victoria Torar 11/8/18  
DEPUTY CLERK Date  
Lyon County District Court  
911 Harvey Way  
Yerington, Nevada 89447

Issued at direction of:

  
Michael G. Millward, Esq.  
NSB# 11212  
1591 Mono Ave  
Minden, NV 89423  
(775) 600-2776  
Attorney for Plaintiffs

**MILLWARD LAW, LTD**  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776



**AFFIDAVIT OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant)

STATE OF Nevada  
COUNTY OF Clark } ss.

I, Andy Palatto, being first duly sworn, depose and say:

1. That I am not a party to this action and I am over 18 years of age;
2. That I personally served a copy of the Summons and Complaint, and the following documents:

Upon DEFENDANT Sablos LLC c/o Registered Agent Shadd A. Wade  
at the following location: 9435 W. Russell Rd #100  
Las Vegas NV 89148

on the 19 day of November, 2018.

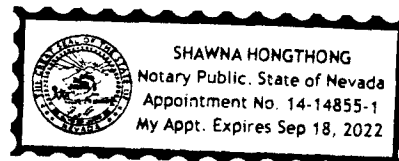
Signature: [Signature]

Print Name: Andy Palatto  
R # 092486

SUBSCRIBED and SWORN before me

This 21<sup>st</sup> day of November, 2018.

[Signature]  
NOTARY PUBLIC



FILED

2018 DEC 21 AM 10:45

TANYA SODERF  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

**DEFAULT**

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

Defendants. )

It appearing from the files and records in the above-entitled action that Defendant  
SABLES, LLC, herein, being duly served with a copy of the Summons and Complaint, on  
November 19, 2018; that more than 20 days, exclusive of the day of service, having expired  
since service upon the Defendants; that no answer or other appearance having been filed and  
no further time having been granted, the default of Defendant SABLES, LLC, for failing to  
answer or otherwise plead to Plaintiffs' Complaint is hereby entered.

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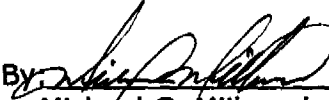
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The undersigned hereby requests and directs the entry of default.

**TANYA SCEIRINE**  
**CLERK OF THE COURT**

By:  12/19/18  
Michael G. Millward, Esq. Date  
NSB#11212  
Attorney for Plaintiffs

By: Victoria Tovar 12/21/18  
DEPUTY CLERK Date  
Lyon County District Court  
911 Harvey Way  
Yerington, Nevada 89447

**MILLWARD LAW, LTD**  
1591 Mono Ave. Minden NV 89423  
(775) 600-2776



DEFAULT

PAGE 2 OF 2

00301

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

FILED

2018 DEC 21 AM 10:45

TANYA SOLANGE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

DEFAULT

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

It appearing from the files and records in the above-entitled action that Defendant  
BANK OF AMERICA, N.A, herein, being duly served with a copy of the Summons and  
Complaint, on November 14, 2018; that more than 20 days, exclusive of the day of service,  
having expired since service upon the Defendants; that no answer or other appearance  
having been filed and no further time having been granted, the default of Defendant BANK OF  
AMERICA, N.A., for failing to answer or otherwise plead to Plaintiffs' Complaint is hereby  
entered.

//

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DEFAULT

PAGE 1 OF 2

MILLWARD LAW, LTD  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776






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The undersigned hereby requests and directs the entry of default.

**TANYA SCEIRINE**  
CLERK OF THE COURT

By:  12/19/18  
Michael G. Millward, Esq. Date  
NSB#11212  
Attorney for Plaintiffs

By: Victoria Tovar 12/21/18  
DEPUTY CLERK Date  
Lyon County District Court  
911 Harvey Way  
Yerington, Nevada 89447

1 ZIEVE, BRODNAX & STEELE, LLP  
2 Shadd A. Wade, Esq.  
3 Nevada Bar No. 11310  
4 9435 West Russell Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 Tel: (702) 948-8565  
7 Fax: (702) 446-9898  
8 swade@zbslaw.com  
9 Attorney for Defendant, Sables, LLC

FILED

2018 DEC 24 PM 12:09

TANYA SCHEIDT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Kathy Thomas*

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and  
VINCENTA LINCICOME,

Plaintiffs,

vs.

SABLES, LLC, a Nevada limited liability  
company; FAY SERVICING, LLC, a Delaware  
limited liability company; PROF-2013-M4  
LEGAL TITLE TRUST by U.S. BANK, N.A.,  
as Legal Title Trustee; BANK OF AMERICA,  
N.A.; and DOES 1-50;;

Defendants.

CASE NO.: 18-CV-01332

DEPT. NO.: 2

**SABLES, LLC'S  
DECLARATION OF NON-  
MONETARY STATUS**

**DECLARATION OF NON-MONETARY STATUS**

I, Shadd A. Wade, declare under the penalty of perjury under the laws of the State of Nevada, as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of Nevada, and I am employed by Zieve, Brodnax & Steele, LLP, attorneys for defendant Sables, LLC. I have personal knowledge of the facts set forth herein, and if called upon to do so, I would and could competently testify thereto.

2. Sables, LLC, does business in the State of Nevada as trustee under deeds of trust for the purposes of conducting non-judicial foreclosure sales.

3. Sables, LLC is named as a defendant in this action.

4. The subject of this action is the foreclosure of a Deed of Trust, of which Sables, LLC is the appointed trustee.


1           5.       Sables, LLC is the trustee of record pursuant to a substitution of trustee which  
2 recorded in the Official Records of the Lyon County Recorder's Office.

3           6.       Based on my review of the complaint, it is my reasonable belief that Sables, LLC  
4 was named solely in its capacity as trustee conducting non-judicial foreclosure, and not as a  
5 result of any wrongful act or omission made on the performance of Sables' duties as trustee  
6 under the deed of trust.

7           7.       The basis for my reasonable belief set forth above is that Sables, LLC has no  
8 interest in, and was not involved in any way with the property which is the subject of this action  
9 outside of its capacity as trustee under the Deed of Trust.

10           EXECUTED THIS 18th day of December, 2018

11                               ZIEVE, BRODNAX & STEELE, LLP

12                               By: 

13                               Shadd A. Wade, Esq.

14                               Nevada Bar No. 11310

15                               9435 West Russell Road, Suite 120

16                               Las Vegas, Nevada 89148

17                               Tel: (702) 948-8565

18                               Fax: (702) 446-9898

19                               swade@zbslaw.com

20                               Attorney for Defendant, Sables, LLC  
21  
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**AFFIRMATION**

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DECLARATION OF NON-MONETARY STATUS** filed in the above-captioned case **does not** contain the social security number of any person.

DATED this 2 day of December, 2018

ZIEVE, BRODNAX & STEELE, LLP



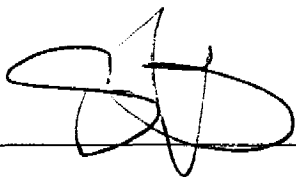
Shadd A. Wade, Esq.  
Nevada Bar No. 11310  
9435 West Russell Road, Suite 120  
Las Vegas, Nevada 89148  
Tel: (702) 948-8565  
Fax: (702) 446-9898  
swade@zbslaw.com  
*Attorney for Defendant, Sables, LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ZIEVE, BRODNAX &  
3 STEELE, LLP, and that on this 21 day of December, 2018, I did cause a true copy of  
4 **DECLARATION OF NON-MONETARY STATUS** to be served by depositing a true copy of  
5 same in the United States Mail, at Las Vegas, Nevada, addressed as follows:  
6

7  
8 Millward Law, LTD  
9 Michael G. Millward, Esq.  
10 1591 Mono Ave  
11 Minden, NV 89423  
12 Attorney for Plaintiff

13 Wright, Finlay & Zak, LLP  
14 Christopher A. J. Swift, Esq.  
15 Ramir Hernandez, Esq.  
16 7785 W. Sahara Ave, Suite 200  
17 Las Vegas, NV 89117  
18 Attorneys for Defendants, Fay Servicing, LLC & US BANK PROF-2013-M4 LEGAL TITLE  
19 TRUST  
20

21  
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28  
  
An Employee of ZIEVE, BRODNAX & STEELE, LLP

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANIA GILBERT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
ANDREA ANDERSEN

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

**ORDER**

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

Defendants. )

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

00308

1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,  
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay  
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*  
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their  
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to  
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are  
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.  
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,  
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of  
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of  
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,  
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the  
15 Application and Response previously filed before the Court as well as documents presented  
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the  
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the  
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments  
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located  
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")  
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter  
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred  
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan  
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date  
28

1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate  
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable  
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified  
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the  
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to  
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was  
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the  
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the  
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified  
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of  
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection  
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case  
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter  
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the  
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of  
27 the LMA until 2017;

28 //



1        14. That on November 26, 2014, Bank of America appeared in the Lincicomes'  
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the  
3 automatic stay, pursuant to 11 U.S.C. § 362;

4        15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes  
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6        16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a  
7 discharge of all of their scheduled debts;

8        17. That on August 1, 2015, Bank of America transferred the servicing of the 2007  
9 DOT as modified by the LMA to Fay Servicing;

10       18. That all statements provided by Fay Servicing to the Lincicomes between  
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had  
12 been modified by the LMA.

13       19. All statements between August 10, 2015 and October 10, 2018, reported the  
14 principal balance owed, the applicable interest rate, the payment amount, the total  
15 arrearage owed, as well as the total number of payments remaining due;

16       20. That on November 10, 2015, Bank of America assigned its interest in the Deed  
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
18 Trustee (hereinafter "US Bank");

19       21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007  
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property  
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.  
22 572258;

23       22. That the NOD provides that the "subject Deed of Trust was modified by Loan  
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25       23. That the NOD provides that all monthly installments from "9/1/2008" forward  
26 are due, instead of 9/1/2009 as required by the LMA;

27       24. That the NOD provides that the principal balance owed is \$381,150.00, instead  
28 of \$417,196.58 as provided in the LMA;

1           25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of  
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the  
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon  
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5           26. That under the circumstances the foreclosure of the Lincicome's residence  
6 would cause them irreparable injury;

7           27. The LMA appears to be a valid modification of the 2007 DOT;

8           28. That based on the record before the Court at the hearing neither Fay Servicing  
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007  
10 DOT as modified by the LMA;

11           29. That based on the record before the Court at the hearing neither Fay Servicing  
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under  
13 the 2007 DOT as modified under the LMA;

14           30. That based on the record before the Court at the hearing neither Fay Servicing  
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA  
16 is paid; and

17           31. That based on the record before the Court at the hearing neither Fay Servicing  
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as  
19 modified under the LMA.

20           The Court hereby enters the following Conclusions of Law:

21           1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS  
22 107.560 is applicable to this foreclosure matter;

23           2. That Plaintiffs established that irreparable injury would result if Defendant  
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real  
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
26 Number 29-401-17;

27       //

28       //

ORDER

PAGE 5 OF 8

00312

1           3.     That Plaintiffs have established that they will succeed on their claim that  
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information  
3 required to be provided prior to the initiation of a foreclosure; and

4           4.     That Plaintiffs have established to the Court's satisfaction that they were likely  
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's  
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7           THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8           1.     That Sables, LLC, is hereby enjoined from selling at public auction the real  
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the  
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document  
11 No. 587470, until further order of the Court;

12           2.     That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by  
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of  
14 Bond filing;

15           3.     That the injunction shall be effective against Defendants so long as bond is  
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,  
17 and on the 20<sup>th</sup> day of each month thereafter with the Third Judicial District Court Clerk's  
18 office;

19           4.     Plaintiffs shall file a notice of compliance with the requirement to pay additional  
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the  
21 same upon Defendants after making payment of additional security as set forth above;

22           5.     That failure of Plaintiffs to timely post a bond and provide notice of bond by  
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction  
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice  
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post  
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter  
27 served upon Defendants; and

28     //

6. That the Court's orders entered in the Court's November 8, 2018 Order and the Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of Sale, are hereby set aside.

**IT IS SO ORDERED.**

Dated this 31<sup>st</sup> day of December, 2018

DISTRICT JUDGE

## AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Reviewed, approved and submitted this 18 day of December, 2018

**Michael G. Millward, Esq.**  
**Nevada Bar No. 11212**  
**Millward Law, Ltd.**  
**1591 Mono Ave.**  
**Minden, NV 89423**

1 Reviewed, approved and submitted this 18<sup>th</sup> day of December, 2018.

2  
3 

4 Ramir M. Hernandez, Esq.  
5 Nevada Bar No. 13146  
6 Wright, Finlay & Zak  
7 7785 W. Sahara Ave., Suite 200  
8 Las Vegas, NV 89117  
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TANYA BOOTH  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN, CLERK

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and )  
VICENTA LINCICOME, )  
Plaintiffs, )  
v. )  
SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )  
Defendants. )

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 31, 2018, the Court entered the attached Order.

Dated this 4<sup>th</sup> day of January, 2019

MILLWARD LAW, LTD

By

Michael G. Millward, Esq.

NSB# 11212

Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

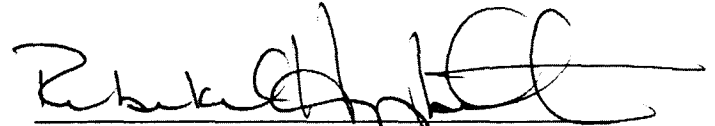
Pursuant to NRCP5(b), I hereby certify that on January 4<sup>th</sup>, 2019, service of the *Notice of Entry of Order* concerning entry of the *Order* entered on December 31, 2018, was made by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following:

SABLES, LLC  
c/o Shadd A. Wade, Esq.  
Zieve, Brodnax & Steel  
9435 W. Russel Rd., Suite 120  
Las Vegas, NV 89148

FAY SERVICING, LLC  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

US BANK  
PROF-2013-M4 LEGAL TITLE TRUST  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

BANK OF AMERICA  
Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
Ackerman, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134

  
Rebekah Higginbotham, Paralegal



FILED

2018 DEC 31 AM 10:48

TANYA DEE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
ANDREA ANDERSEN

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

**ORDER**

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

Defendants. )

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

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ORDER

PAGE 1 OF 8

00318



1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,  
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay  
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*  
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their  
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to  
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are  
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.  
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,  
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of  
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of  
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,  
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the  
15 Application and Response previously filed before the Court as well as documents presented  
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the  
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the  
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments  
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located  
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")  
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter  
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred  
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan  
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date  
28

1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate  
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable  
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified  
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the  
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to  
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was  
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the  
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the  
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified  
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of  
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection  
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case  
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter  
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the  
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of  
27 the LMA until 2017;

28 //

1        14. That on November 26, 2014, Bank of America appeared in the Lincicomes'  
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the  
3 automatic stay, pursuant to 11 U.S.C. § 362;

4        15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes  
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6        16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a  
7 discharge of all of their scheduled debts;

8        17. That on August 1, 2015, Bank of America transferred the servicing of the 2007  
9 DOT as modified by the LMA to Fay Servicing;

10       18. That all statements provided by Fay Servicing to the Lincicomes between  
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had  
12 been modified by the LMA.

13       19. All statements between August 10, 2015 and October 10, 2018, reported the  
14 principal balance owed, the applicable interest rate, the payment amount, the total  
15 arrearage owed, as well as the total number of payments remaining due;

16       20. That on November 10, 2015, Bank of America assigned its interest in the Deed  
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
18 Trustee (hereinafter "US Bank");

19       21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007  
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property  
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.  
22 572258;

23       22. That the NOD provides that the "subject Deed of Trust was modified by Loan  
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25       23. That the NOD provides that all monthly installments from "9/1/2008" forward  
26 are due, instead of 9/1/2009 as required by the LMA;

27       24. That the NOD provides that the principal balance owed is \$381,150.00, instead  
28 of \$417,196.58 as provided in the LMA;

1           25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of  
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the  
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon  
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5           26. That under the circumstances the foreclosure of the Lincicome's residence  
6 would cause them irreparable injury;

7           27. The LMA appears to be a valid modification of the 2007 DOT;

8           28. That based on the record before the Court at the hearing neither Fay Servicing  
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007  
10 DOT as modified by the LMA;

11           29. That based on the record before the Court at the hearing neither Fay Servicing  
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under  
13 the 2007 DOT as modified under the LMA;

14           30. That based on the record before the Court at the hearing neither Fay Servicing  
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA  
16 is paid; and

17           31. That based on the record before the Court at the hearing neither Fay Servicing  
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as  
19 modified under the LMA.

20           The Court hereby enters the following Conclusions of Law:

21           1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS  
22 107.560 is applicable to this foreclosure matter;

23           2. That Plaintiffs established that irreparable injury would result if Defendant  
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real  
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
26 Number 29-401-17;

27       //

28       //

ORDER

PAGE 5 OF 8

00322

1           3.     That Plaintiffs have established that they will succeed on their claim that  
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information  
3 required to be provided prior to the initiation of a foreclosure; and

4           4.     That Plaintiffs have established to the Court's satisfaction that they were likely  
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's  
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7           THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8           1.     That Sables, LLC, is hereby enjoined from selling at public auction the real  
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the  
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document  
11 No. 587470, until further order of the Court;

12           2.     That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by  
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of  
14 Bond filing;

15           3.     That the injunction shall be effective against Defendants so long as bond is  
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,  
17 and on the 20<sup>th</sup> day of each month thereafter with the Third Judicial District Court Clerk's  
18 office;

19           4.     Plaintiffs shall file a notice of compliance with the requirement to pay additional  
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the  
21 same upon Defendants after making payment of additional security as set forth above;

22           5.     That failure of Plaintiffs to timely post a bond and provide notice of bond by  
23 December 20, 2018, shall relieve Defendants of their duty to comply with this Injunction  
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice  
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post  
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter  
27 served upon Defendants; and

28     //

ORDER

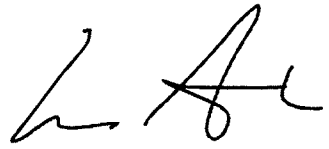
PAGE 6 OF 8

00323

1           6.       That the Court's orders entered in the Court's November 8, 2018 Order and the  
2 Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of  
3 Sale, are hereby set aside.

4           IT IS SO ORDERED.

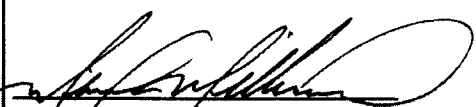
5           Dated this 31<sup>st</sup> day of December, 2018

6   
7 \_\_\_\_\_  
8 DISTRICT JUDGE

9  
10                           **AFFIRMATION**

11           The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not  
12 contain the social security number of any person, or other personal information as defined  
13 by NRS 603A.040.

14           Reviewed, approved and submitted this 18 day of December, 2018

15   
16 Michael G. Millward, Esq.  
17 Nevada Bar No. 11212  
18 Millward Law, Ltd.  
19 1591 Mono Ave.  
20 Minden, NV 89423

1 Reviewed, approved and submitted this 18<sup>th</sup> day of December, 2018.

2  
3 

4 Ramir M. Hernandez, Esq.  
5 Nevada Bar No. 13146  
6 Wright, Finlay & Zak  
7 7785 W. Sahara Ave., Suite 200  
8 Las Vegas, NV 89117  
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TANYA SCOTT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**OBJECTION TO DECLARATION OF  
NON-MONETARY STATUS**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Plaintiffs"), by and through their attorney of record, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby submit their Objection to the *Declaration of Non-Monetary Status* filed herein by Defendant Sables, LLC, on December 24, 2018. Plaintiffs object to the Declaration of Non-Monetary Status upon the following facts and relevant law:

1. On November 7, 2018, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Plaintiffs") filed their *Complaint*, naming Sables, LLC (hereinafter "Sables"), as a Defendant therein, as Trustee of record.

//

OBJECTION TO DECLARATION OF NON-MONETARY  
STATUS

PAGE | OF 4

00326

MILLWARD LAW, LTD  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776







2. On November 19, 2018, Sables was personally served with a copy of the Summons and Complaint.

3. On December 21, 2018, the Third Judicial District Court Clerk took Sables' Default.

4. On December 24, 2018, Sables filed its *Declaration of Non-Monetary Status* stating its belief that Sables was named solely in its capacity as Trustee under the Deed of Trust upon which the foreclosure which is the subject of this action, and not a result of any wrongful act or omission. The basis given for such belief was that Sables has no interest in, and was not involved in any way with, the property which is the subject to the action outside its capacity as Trustee under the Deed of Trust.

5. NRS 107.029 states in pertinent part:

1. If the trustee under a deed of trust is named in an action in which the deed of trust is the subject and the trustee has a reasonable belief that he or she has been named in the action solely in his or her capacity as trustee and not as a result of any wrongful act or omission made in the performance of his or her duties as trustee, the trustee may, at any time, file a declaration of nonmonetary status. The declaration must be served on the parties in the manner prescribed by Rule 5 of the Nevada Rules of Civil Procedure and must include:

(a) The status of the trustee as trustee under the deed of trust; and

(b) The basis for the trustee's reasonable belief that he or she has been named as a defendant in the action solely in his or her capacity as trustee and not as a result of any wrongful act or omission made in the performance of his or her duties as trustee.

...

3. Any party that has appeared in an action described in subsection 1 has 15 days after the date of service of the declaration of nonmonetary status to file an objection. Any objection filed pursuant to this subsection must set forth the factual basis on which the objection is based and must be served on the trustee.

4. If a timely objection is made pursuant to subsection 3, the court shall promptly examine the declaration of nonmonetary status and the objection and shall issue an order as to the validity

of the objection. If the court determines the objection is valid, the trustee is required to participate in the action.

6. In their Complaint, Plaintiffs allege that Sables materially violated the Homeowners Bill of Rights, codified as NRS 107.400 to NRS 107.560, by causing to be recorded a Notice of Default with an Affidavit that does not comply with NRS 107.0805 in violation of NRS 107.510(1). See Pl. Compl. pp.10-12.

7. NRS 107.560 provides in relevant part as follows:

1. If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of NRS 107.400 to 107.560, inclusive . . .

. . .

6. A court may award a prevailing borrower costs and reasonable attorney's fees in an action brought pursuant to this section.

Therefore, because it is alleged that Sables, as Trustee under the Deed of Trust, violated the Homeowners Bill of Rights pursuant to NRS 107.400-560 and thereon may be liable for monetary damages, non-monetary status should be not given to Sables.

Furthermore, on December 21, 2018, the Third Judicial District Court Clerk took Sables default in this matter and its Declaration of Non-Monetary Status is moot.

Dated this 7<sup>th</sup> day of January, 2019.

**MILLWARD LAW, LTD**

By: 

Michael G. Millward, Esq.

NSB# 11212

Attorney for Plaintiffs

**MILLWARD LAW, LTD**  
1591 Mono Ave, Minden NV 89423  
(775) 600-2776



1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP5(b), I hereby certify that service of the *Objection to Declaration*  
3 *of Non-Monetary Status* was made on the 7<sup>th</sup> day of January 2019, by depositing a  
4 true copy of the same for mailing with the United States Postal Service, addressed to the  
5 following:

6  
7 SABLES, LLC  
8 c/o Shadd A. Wade, Esq.  
9 Zieve, Brodnax & Steel  
10 9435 W. Russel Rd., Suite 120  
11 Las Vegas, NV 89148

FAY SERVICING, LLC  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

12 US BANK  
13 PROF-2013-M4 LEGAL TITLE TRUST  
14 Christopher A. J. Swift, Esq.  
15 Ramir M. Hernandez, Esq.  
16 Wright, Finlay & Zak, LLP  
17 7785 W. Sahara Ave., Suite 200  
18 Las Vegas, NV 89117

BANK OF AMERICA  
Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
Ackerman, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134

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Rebekah Higginbotham, Paralegal



FILED

2019 JAN 22 AM 11:19

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN DEPUTY

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

**APPLICATION FOR ENTRY OF  
DEFAULT JUDGMENT**

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

Defendants. )

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter  
"Plaintiffs"), by and through their attorney of record, Michael G. Millward, Esq., of Millward  
Law, Ltd., and hereby request that the Court enter Judgment by Default against Defendant  
SABLES, LLC, pursuant to NRCP 55(b)(2). This Application is further made and based upon  
the attached Declaration of Michael G. Millward, as well as all papers, pleadings, and  
documents on file herein.

NRCP 55(b)(2) provides in relevant part that following entry of default by the Clerk,  
"the party entitled to a judgment by default shall apply to the Court therefor.. ."



1 Pursuant to NRCP 8(d) averments in a complaint are deemed admitted when not  
2 denied in a responsive pleading.

3 Plaintiffs' Summons and Complaint were personally served on SABLES, LLC, on  
4 November 19, 2018. Thereafter, upon Plaintiffs' *Application for Entry of Default*, the Clerk of  
5 the Court took SABLES, LLC's, Default on December 21, 2018. Defendant SABLES, LLC, is  
6 not an infant, incompetent person or member of the United States armed forces. The  
7 Affidavit of Michael G. Millward is attached hereto.

8 The relief sought in this Motion applicable to SABLES, LLC, is a permanent injunction.

9 Accordingly, the Court should find that because SABLES, LLC, failed to timely file a  
10 responsive pleading in this matter, Plaintiffs Albert Ellis Lincicome and Vicenta Lincicome are  
11 entitled to a permanent injunction from the foreclosure sale of their residence *nunc pro tunc*  
12 as of December 21, 2018, the date the Court Clerk took SABLES, LLC's, Default.

13 Dated this 18<sup>th</sup> day of January, 2019.

14 **MILLWARD LAW, LTD**

15 By: 

16 Michael G. Millward, Esq.

17 NSB# 11212

18 Attorney for Plaintiffs

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**CERTIFICATE OF MAILING**

Pursuant to NRCPS(b), I hereby certify that service of the foregoing *Application for Entry of Default Judgment* and proposed *Default Judgment* was made on the 18<sup>th</sup> day of January 2019, by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following:

US BANK  
PROF-2013-M4 LEGAL TITLE TRUST  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

FAY SERVICING, LLC  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

  
\_\_\_\_\_  
Sarah McComb, Legal Assistant



1 ZIEVE, BRODNAX & STEELE, LLP  
2 Shadd A. Wade, Esq.  
3 Nevada Bar No. 11310  
4 9435 West Russell Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 Tel: (702) 948-8565  
7 Fax: (702) 446-9898  
8 swade@zbslaw.com  
9 Attorney for Defendant, Sables, LLC

**FILED**

2019 JAN 28 PM 12:13

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Anderson* DEPUTY

**THIRD JUDICIAL DISTRICT COURT**

**LYON COUNTY, NEVADA**

9 ALBERT ELLIS LINCICOME, JR., and  
10 VINCENTA LINCICOME,

11 Plaintiffs,

12 vs.

13 SABLES, LLC, a Nevada limited liability  
14 company; FAY SERVICING, LLC, a Delaware  
15 limited liability company; PROF-2013-M4  
LEGAL TITLE TRUST by U.S. BANK, N.A.,  
as Legal Title Trustee; BANK OF AMERICA,  
N.A.; and DOES 1-50;;

16 Defendants.

CASE NO.: 18-CV-01332

DEPT. NO.: 2

**SABLES, LLC'S RESPONSE TO  
OBJECTION TO ITS  
DECLARATION OF NON-  
MONETARY STATUS**

17  
18 Comes now, Sables, LLC ("Sables"), which hereby submits its Response to Objection to  
19 Its Declaration of Non-Monetary Status ("DNMS"). Sables' DNMS should stand for the  
following reasons:

20 **1. No causes of action are plead against Sables.**

21 Plaintiff's Complaint alleges five causes of action: 1) Injunctive Relief, 2) Breach of  
22 Contract, 3) Breach of Duty of Good Faith and Fair Dealing, 4) Declaratory Relief, and 5)  
23 Special Damages arising under NRS 107.560(6) for Attorney's Fees.

24 Plaintiff has not plead any viable claim against Sables, nor any claim arising from Sables'  
25 duties as trustee. First, Injunctive relief is a remedy, not a case of action. Accordingly, Sables is  
26 not subject to any liability under cause of action 1.



1 Next, causes of action 2 and 3 are specifically plead against defendant Bank of America,  
2 and are time-barred by the applicable statutes of limitations of 6 years for contract actions (NRS  
3 11.190(1)). Accordingly, Sables is not subject to any liability under causes of action 2 and 3.

4 The fourth cause of action for declaratory relief concerns a dispute about the debt amount  
5 between plaintiffs and the lender defendants. As trustee, Sables has no dog in the fight, and does  
6 not create, provide, nor store the information concerning the other parties' loan balance. Further,  
7 cause of action 4 does not include any request for monetary damages. Accordingly, Sables is not  
8 subject to any liability under cause of action 4.

9 Finally, cause of action 5 is not a cause of action, but a requested remedy of attorney's  
10 fees related to alleged violation of NRS 107.560. This statute does not once reference liability of  
11 a trustee. It routinely references "mortgage servicer, mortgagee, beneficiary of the deed of trust  
12 or an authorized agent," which arguably pertains to the other defendants in this action. "Trustee"  
13 is defined in NRS Chapter 107, and is routinely referred to as "trustee" throughout. This lends  
14 the inference that the legislature intentionally left "Trustee" out of NRS 107.560, rather than  
15 include it by its role as defined by the statute. NRS Chapter 107 provides instances where a  
trustee may be liable (see NRS 107.028, NRS 107.080).

16 **2. The DNMS statute is meant to shield trustees, such as Sables, and Plaintiff**  
17 **has not established grounds for liability of trustee Sables.**

18 In 2015, the legislature passed the DNMS statute, NRS 107.029, to address the exact  
19 situation we have here: a dispute between a borrower and lender, where the trustee is named  
20 simply due to its role as trustee conducting the foreclosure. The legislature's intent in passing the  
21 statute was to shield trustee's from liability and from litigation costs where the trustee has no  
22 interest in the property, the loan, or the outcome of the dispute. The trustee is merely an  
23 appointed third-party, authorized under the deed of trust contract to conduct a non-judicial  
24 foreclosure pursuant to Nevada law.

25 Plaintiffs' sole assertion as to Sables is that it caused to be recorded an affidavit with the  
26 Notice of Default that Plaintiffs allege is not compliant with the statute. However, recording of  
27 an affidavit as part of Sables' duties as trustee is exactly what NRS 107.029 encompasses: "the  
28 trustee's reasonable belief that he or she has been named as a defendant in the action solely in his

1 or her capacity as trustee and not as a result of any wrongful act or omission made in the  
2 performance of his or her duties as trustee." NRS 107.029(1)(a). Plaintiff does not and cannot  
3 allege, nor point to a statute imposing a duty on the trustee to verify the accuracy of the lender's  
4 loan information, as that would be impractical. Notably, the affidavit is executed by Fay  
5 Servicing, LLC, and is based on review of its business records. Sables does not provide the  
6 information in the affidavit, verify it, nor execute it. Sables merely records the affidavit along  
7 with the Notice of Default as required by the statute. Recording of a document is merely a  
8 ministerial duty of the trustee, and is not a basis for liability.

9 Accordingly, Sables' DNMS pursuant to NRS 107.029 should stand, and it should not be  
10 required to participate in this action.

11 EXECUTED THIS 24<sup>th</sup> day of January, 2019

12 ZIEVE, BRODNAX & STEELE, LLP

13 By: 

14 Shadd A. Wade, Esq.

15 Nevada Bar No. 11310

16 9435 West Russell Road, Suite 120

17 Las Vegas, Nevada 89148

18 Tel: (702) 948-8565

19 Fax: (702) 446-9898

20 swade@zbslaw.com

21 *Attorney for Defendant, Sables, LLC*

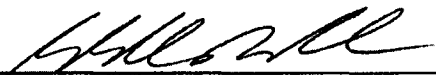
1  
2 **AFFIRMATION**

3 Pursuant to N.R.S. 239B.030

4 The undersigned does hereby affirm that the preceding SABLES, LLC's RESPONSE  
5 TO OBJECTION TO ITS DECLARATION OF NON-MONETARY STATUS filed in the  
6 above-captioned case does not contain the social security number of any person.

7 DATED this 24 day of January, 2019

8  
9 ZIEVE, BRODNAX & STEELE, LLP

10 

11 Shadd A. Wade, Esq.  
12 Nevada Bar No. 11310  
13 9435 West Russell Road, Suite 120  
14 Las Vegas, Nevada 89148  
15 Tel: (702) 948-8565  
16 Fax: (702) 446-9898  
17 swade@zbslaw.com  
18 Attorney for Defendant, Sables, LLC

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SABLES, LLC'S RESPONSE TO OBJECTION TO ITS DECLARATION OF NON-  
MONETARY STATUS

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3  
4 **CERTIFICATE OF SERVICE**

5 Pursuant to NRCP 5(b), I certify that I am an employee of ZIEVE, BRODNAX &  
6 STEELE, LLP, and that on this 24<sup>th</sup> day of January, 2019, I did cause a true copy of SABLES,  
7 LLC's RESPONSE TO OBJECTION TO ITS DECLARATION OF NON-MONETARY  
8 STATUS to be served by depositing a true copy of same in the United States Mail, at Las Vegas,  
9 Nevada, addressed as follows:

10 Millward Law, LTD  
11 Michael G. Millward, Esq.  
12 1591 Mono Ave  
Minden, NV 89423  
Attorney for Plaintiff

13  
14 

15 An Employee of ZIEVE, BRODNAX & STEELE, LLP  
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SABLES, LLC'S RESPONSE TO OBJECTION TO ITS DECLARATION OF NON-MONETARY STATUS

FILED

2019 JAN 28 PM 12:12

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen* DEPUTY

1 ZIEVE, BRODNAX & STEELE, LLP  
2 Shadd A. Wade, Esq.  
3 Nevada Bar No. 11310  
4 9435 West Russell Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 Tel: (702) 948-8565  
7 Fax: (702) 446-9898  
8 [swade@zbslaw.com](mailto:swade@zbslaw.com)  
9 Attorney for Defendant, Sables, LLC

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

9 ALBERT ELLIS LINCICOME, JR., and  
10 VINCENTA LINCICOME,

11 Plaintiffs,

12 vs.

13 SABLES, LLC, a Nevada limited liability  
14 company; FAY SERVICING, LLC, a Delaware  
15 limited liability company; PROF-2013-M4  
LEGAL TITLE TRUST by U.S. BANK, N.A.,  
as Legal Title Trustee; BANK OF AMERICA,  
N.A.; and DOES 1-50;;

16 Defendants.

CASE NO.: 18-CV-01332

DEPT. NO.: 2

SABLES, LLC's MOTION TO SET  
ASIDE DEFAULT

17 Defendant, Sables, LLC (hereinafter "Sables") hereby submits its Motion to Set Aside  
18 Default entered on December 21, 2018.

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I. INTRODUCTION

21 On November 7, 2018, Plaintiffs Albert Lincicome and Vicenta Lincicome (the  
22 Lincicomies and their counsel are collectively "Plaintiff") filed a Complaint alleging statutory  
23 violations relating to foreclosure of the property located at 70 Riverside Drive, Dayton, Nevada  
24 89403 (hereinafter "Property"). Sables was served with the Complaint on November 19, 2018.  
25 On December 18, 2018, Sables' office received via mail a "Three Day Notice of Intent to Take  
26 Default." In order to file its responsive pleading, Sables needed to obtain a check to mail to the  
27

1 Court, which it obtained on December 21, 2018. That same day, Sables contacted Plaintiff via  
2 telephone and email to indicate it was filing a response and to request no Default be entered.  
3 Without any further communication from Plaintiff, Plaintiff entered a Default of Sables on  
4 December 21, 2018. That same day, Sables mailed its responsive pleading to this Court, namely  
5 a Declaration of Non-Monetary Status ("DNMS"), as Sables is merely the trustee, and no facts  
6 plead in the Complaint giving rise to liability apply to Sables, and no causes of action have been  
7 plead against Sables.<sup>1</sup> On or about January 15, 2019, Sables received in the mail Plaintiff's  
8 "Objection to Non-Monetary Status," wherein Sables first learned that a Default had been  
9 entered against it. Upon learning of the Default, counsel for Sables contacted Plaintiff and  
10 requested a meet and confer regarding the Default and Objection to DNMS. To date, Sables has  
11 not been able to meet and confer with Plaintiff.<sup>2</sup> This Motion follows.

12 **A. THE DEFAULT SHOULD BE SET ASIDE FOR GOOD CAUSE.**

13 The Default entered on December 21, 2018 should be set aside for good cause shown as  
14 provided by Nevada Rules of Civil Procedure Rule 55(c). Specifically, Rule 55(c), "Setting  
15 Aside Default," provides, "For good cause shown the court may set aside an entry of default  
16 and, if a judgment by default has been entered, may likewise set it aside in accordance with  
17 Rule 60." The standard for setting aside a default and default judgment is very similar and both  
18 are routinely granted. See, e.g. *Howe v. Coldren*, 4 Nev. 171; *State of Nevada v. Consolidated*  
19 *V. & C. M. Co.*, 13 Nev. 194; *Bowman v. Bowman*, 47 Nev. 207, 217 P. 1102; *Cicerchia v.*  
20 *Cicerchia*, 77 Nev. 158, 360 P.2d 839; *Blakeney v. Fremont Hotel, Inc.*, 77 Nev. 191, 360 P.2d  
21 1039; *Anderson v. Havas*, 77 Nev. 223, 361 P.2d 536. The basic underlying policy is to have  
22 each case decided upon the merits. See *Hotel Last Frontier Corp. v. Frontier Properties, Inc.*,  
23 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

24 The phrase "good cause shown" includes mistake, inadvertence, surprise, and excusable  
25 neglect. *Hotel Last Frontier v. Frontier Properties*, 79 Nev. 150, 154, 380 P.2d 293 (1963);

26 <sup>1</sup> Injunction is a remedy, not a cause of action.

27 <sup>2</sup> See Declaration of Shadd A. Wade, attached hereto as Exhibit 1

1 *Nahas v. Nahas*, 59 Nev. 227, 92 P.2d 718 (1939); and *Blundin v. Blundin*, 38 Nev. 212, 147, p.  
2 1083 (1915). To determine “good cause”, a court must “consider three factors: (1) whether [the  
3 party seeking to set aside the default engaged in culpable conduct that led to the default; (2)  
4 whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would  
5 prejudice” the other party. *U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d  
6 1085, 1091 (9th Cir. 2010); citing *Franchise Holding II v. Huntington Rests, Group, Inc.*, 375  
7 F.3d 922, 925-26 (9th Cir. 2004). Crucially, “judgment by default is a drastic step appropriate  
8 only in extreme circumstances; a case should, whenever possible, be decided on the merits.”  
9 *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984); see also, *Latshaw v. Trainer Wortham & Co.*,  
10 *Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006); *Speiser, Krause & Madole P.C. v. Ortiz*, 271 F.3d  
11 884, 890 (9th Cir. 2001); *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691 (9th Cir.  
12 1984).

13 **1. Sables’ Conduct Was Not Culpable with Regards to the Default.**

14 “[A] Defendant’s conduct is culpable if he has received actual or constructive notice of  
15 the filing of the action and *intentionally* failed to answer.” *TCI Group*, 244 F.3d at 697  
16 (emphasis in original) (quoting *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388,  
17 1392 (9th Cir.1988)); see also *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th  
18 Cir.1987) (defendant “intentionally declined” service).

19 The term “intentionally” means that a movant cannot be treated as culpable simply for  
20 having made a conscious choice not to answer; rather, to treat a failure to answer as culpable,  
21 the movant must have acted with bad faith, such as an “intention to take advantage of the  
22 opposing party, interfere with judicial decision-making, or otherwise manipulate the legal  
23 process.” *TCI Group*, 244 F.3d at 697. “[D]efendant’s conduct was culpable for purposes of the  
24 [good cause] factors where there is no explanation of the default inconsistent with a devious,  
25 deliberate, willful, or bad faith failure to respond.” *Id.*, at 698. “[S]imple carelessness is not  
26 sufficient to treat a negligent failure to reply as inexcusable, at least without a demonstration  
27

1 that other equitable factors, such as prejudice, weigh heavily in favor of denial of the motion to  
2 set aside a default." *Id.*, at 696–97; see also *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th  
3 Cir. 2009). To infer bad faith, the Courts should look to "intention to take advantage of the  
4 opposing party, interfere with judicial decision-making, or otherwise manipulate the legal  
5 process." *TCI Group*, 244 F.3d at 697.

6 Sables can demonstrate good cause of excusable neglect and mistake because it did not  
7 intentionally fail to respond to Plaintiff's Complaint. Sables was inquiring with the other  
8 defendants regarding defending and indemnifying Sables, as trustee in this dispute between  
9 borrowers and their lender. This inquiry, in conjunction with the timing of the response period  
10 overlapping with the holidays, caused the delay in responding. Indeed, Sables contacted  
11 Plaintiff to indicate it would file a responsive pleading as soon as it received the Three Day  
12 Notice. Had Plaintiff contacted counsel for Sables, rather than rushing to enter a Default, this  
13 Motion would not have been necessary. Therefore, Sables requests the Court to set aside the  
14 Default because its delay is excusable, and it intends to defend against the Complaint without  
15 further delay in this case, and has filed its responsive pleading.

## 16 2. Sables Has A Meritorious Defense.

17 "A Defendant seeking to vacate a default judgment must present specific facts that  
18 would constitute a defense. But the burden on a party seeking to vacate a default judgment is  
19 not extraordinarily heavy." *TCI Group*, 244 F.3d at 700 (citations omitted); See also, *Sealed*  
20 *Unit Parts Company, Inc. v. Alpha Gamma Chapter of Gamma Phi Beta Sorority Inc.*, 99 Nev.  
21 641, 642, 668 P.2d 288, 289 (1983); *Jenkins v. Goldwater*, 84 Nev. 422, 424, 442 P.2d 897, 899  
22 (1971) (the tendering of a responsive pleading which, if true, would tend to establish such a  
23 defense is sufficient to satisfy this requirement). All that is necessary to satisfy the "meritorious  
24 defense" requirement is to allege sufficient facts that, if true, would constitute a defense: "the  
25 question whether the factual allegation [i]s true" is not to be determined by the court when it  
26 decides the motion to set aside the default. *TCI Group*, 244 F.3d at 700. Rather, that question



1 "would be the subject of the later litigation." *Id.*

2 Sables has demonstrated its intent to respond and plead its meritorious defense, as it did  
3 file a responsive pleading on the same day Default was entered, which raises the meritorious  
4 defense of non-monetary status due to being a trustee, and not an interested party to this dispute.  
5 Therefore, Sables has a meritorious defense and requests the Court set aside the Default and  
6 allow Sables to properly defend against Plaintiff's Complaint.

7 **3. Plaintiff Will Not Be Prejudiced If the Default Is Set Aside In The Case.**

8 The actions of Sables qualify as "good cause" to set aside the default and the Default  
9 Judgment, for the delay in response was based on excusable neglect and Plaintiff will not suffer  
10 any additional prejudice if the Court sets aside the Default. As the Court in *U.S. v. Signed*  
11 *Personal Check No. 730 of Yubran S. Mesle*, stated "[s]imple carelessness is not sufficient to  
12 treat a negligent failure to reply as inexcusable, at least without a demonstration that other  
13 equitable factors, such as prejudice, weigh heavily in favor of denial of the motion to set aside a  
14 default." 615 F.3d at 1092-93. "To be prejudicial, the setting aside of a judgment must result in  
15 greater harm than simply delaying resolution of the case." *TCI Group*, 244 F.3d at 701.

16 Here, Plaintiff will not be prejudiced if the Default is set aside, and the Plaintiff would  
17 only endure a minimal delay in the resolution of the case if this motion is granted. Nevada has  
18 long followed the rule that it is better to determine a matter on the merits than to decide a case  
19 on a technical error of the opponent. In the case of *Howe v. Coldren*, 4 Nev. 171, 174 (1868),  
20 the Nevada Supreme Court explained the logic behind setting aside a default where good cause  
21 is shown. The Court said:

22 If there is a refusal to set aside a default, a ruinous judgment may be sustained against a  
23 party who, upon hearing, might have interposed a perfectly good defense. By sustaining  
24 the default, he would forever be debarred the right of a hearing. If, then, a nisi prius  
25 court refuses to set aside a default when a party shows with reasonable certainty that he  
26 has a good defense, then he has only been guilty of carelessness and inattention to his  
27 business, but no willful or fraudulent delay, it would be highly proper even for an  
appellate Court to come to his relief if the lower Court refused it.

26 *Id.*

1 Other Nevada courts have followed this same thinking. In the case of *Hotel Last Frontier v.*  
2 *Frontier Property*, 79 Nev. 150, 380 P.2d 293 (1963), the Nevada Supreme Court said, "Finally,  
3 we mention, as a proper guide to the exercise of discretion, the basic underlying policy to have  
4 each case decided on its merits. In the normal course of events, justice is best served by such a  
5 policy." For example, in *Scrimmer v. Dist. Ct.*, 116 Nev. 507, 998 P.2d 1190 (2000), discussing  
6 NRCP 4(i), the Supreme Court noted,

7 when making a determination under NRCP 4(i), the District Court should recognize that  
8 "good public policy dictates that cases be adjudicated on their merits." *Kahn v. Orme*,  
9 108 Nev. 510, 516, 835 P.2d 790, 794 (1992) (citing *Hotel Last Frontier v. Frontier*  
10 *Properties*, 79 Nev. 150, 155-56, 380 P.2d 293, 295 (1963)).

11 Sables has demonstrated good cause to set aside the Default. Sables did not intentionally  
12 delay in seeking relief from the Default. Sables did at all times intend to defend this action and  
13 a final adjudication of the Complaint has not been entered by the Court. This matter should be  
14 heard on the merits, for Sables denies any and all liability and intends to defend against this  
15 action without further delay in the case. Finally, this case is in its early stages and no party  
16 involved in litigation will be prejudiced by allowing Sables to enter into this case and to defend  
17 its position on the merits. Therefore, Sables' Motion to Set Aside Default should be granted.

### 18 CONCLUSION

19 Based upon the foregoing, Sables respectfully requests that the Court enter an Order  
20 setting aside the Clerk's Entry of Default against Sables because there was excusable neglect  
21 and Sables has meritorious defenses. Sables has already filed a responsive pleading, and asks  
22 this Court to accept the DNMS as Sables' response to the Complaint.

23 DATED this 22<sup>nd</sup> day of January, 2019

24 ZIEVE, BRODNAX & STEELE, LLP

25 /s/ 

26 Shadd A. Wade, Esq.

27 Nevada Bar No. 11310

Attorneys for Defendant Sables

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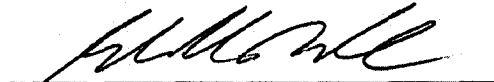
**AFFIRMATION**

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding SABLES, LLC's MOTION TO SET ASIDE DEFAULT filed in the above-captioned case does not contain the social security number of any person.

DATED this 24 day of January, 2019

ZIEVE, BRODNAX & STEELE, LLP



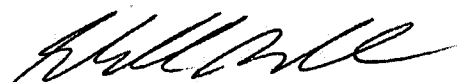
Shadd A. Wade, Esq.  
Nevada Bar No. 11310  
9435 West Russell Road, Suite 120  
Las Vegas, Nevada 89148  
Tel: (702) 948-8565  
Fax: (702) 446-9898  
swade@zbslaw.com  
*Attorney for Defendant, Sables, LLC*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of ZIEVE, BRODNAX & STEELE, LLP, and that on this 24<sup>th</sup> day of January, 2019, I did cause a true copy of **SABLES, LLC's MOTION TO SET ASIDE DEFAULT** to be served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Millward Law, LTD  
Michael G. Millward, Esq.  
1591 Mono Ave  
Minden, NV 89423  
Attorney for Plaintiff

  
An Employee of ZIEVE, BRODNAX & STEELE, LLP

**EXHIBIT 1**

**DECLARATION OF SHADD A. WADE**

I, Shadd A. Wade, do hereby swear under penalty of perjury under the laws of the State of Nevada that the following assertions are true to the best of my knowledge and belief:

1. Declarant is the attorney of record for Sables, LLC. I am employed by Zieve Brodnax & Steele, LLP.

2. If called as a witness in this action, I am competent to testify of my own personal knowledge, to the best of my recollection, as to the matters set forth in this declaration.

3. On December 18, 2018, Sables' office received via mail Plaintiffs' "Three Day Notice of Intent to Take Default."

4. In order to file its responsive pleading, Sables needed to obtain a check to mail to the Court, which obtained on December 21, 2018.

5. That same day, Sables contacted Plaintiff via telephone and email to indicate it was filing a response and to request no Default be entered.

6. On January 15, 2019, Sables received Plaintiffs' "Objection to Declaration of Non-Monetary Status," wherein it first learned that a default had been entered against.

7. Upon learning of the default, I immediately contacted Plaintiffs' counsel and requested to meet and confer regarding setting aside the default, and the role of a trustee in foreclosure.

8. Despite numerous attempts, I have not yet been able to speak with Plaintiffs' counsel due to his unavailability.

9. Sables did not delay its response to the Complaint for any improper purpose or delay, and no prejudice has been alleged by the delay.

10. Accordingly, I request the default of Sables be set aside to allow Sables' responsive pleading to be considered by the Court.

DATED this 24<sup>th</sup> day of January, 2019.

A handwritten signature in black ink, appearing to read "Shadd A. Wade", is written over a horizontal line.

By: Shadd A. Wade

FILED

2019 FEB -8 PM 1:07

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Anderson*

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

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9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

Case No.: 18-cv-01332

Dept. No.: II

16 Plaintiffs,

17 vs.

**JOINDER TO SABLES, LLC'S MOTION  
TO SET ASIDE DEFAULT**

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust given  
20 by Vicenta Lincicome and dated 5/23/2007;  
21 FAY SERVICING, LLC, a Delaware limited  
22 liability company and subsidiary of Fay  
23 Financial, LLC; PROF-2013 M4 LEGAL  
24 TITLE TRUST by U.S. BANK, N.A., as Legal  
25 Title Trustee; for BANK OF AMERICA, N.A.  
26 and DOES 1-50.

27 Defendants.

28 Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as  
Legal Title Trustee ("U.S. Bank Trust") and Fay Servicing LLC ("Fay")(collectively  
"Defendants"), by and through their attorneys of record, the law firm of Wright, Finlay & Zak,  
LLP, hereby joins in all arguments as asserted by Sables, LLC in its Motion to Set Aside

///

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///

///

1 Default.

2 DATED this 7th day of February, 2018.

3  
4 WRIGHT, FINLAY & ZAK, LLP

5 

6 Christopher A.J. Swift

7 Nevada Bar No. 11291

8 Ramir M. Hernandez, Esq.

9 Nevada Bar No. 13146

10 *Attorney for Defendants, Prof-2013 M4-Legal Title*  
11 *Trust, by U.S. Bank, National Association, as*  
12 *Legal Title Trustee and Fay Servicing LLC*  
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**AFFIRMATION**

**Pursuant to NRS 239B.03/603A.040**

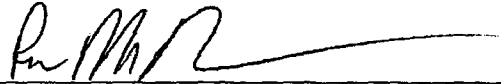
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 7th day of February, 2019.

WRIGHT, FINLAY & ZAK, LLP



Christopher A.J. Swift

Nevada Bar No. 11291

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 7th day of February, 2019, I did cause a true copy of the foregoing  
4 **JOINDER TO SABLES, LLC'S MOTION TO SET ASIDE DEFAULT** to be served by  
5 placing a copy in the mail, addressed as follows:

6  
7 Michael G. Millward, Esq.  
8 MILLWARD LAW, LTD.  
9 1591 Mono Ave.  
10 Minden, NV 89423

11 Shadd A. Wade, Esq.  
12 ZIEVE, BRODNAX & STEELE, LLP  
13 9435 West Russell Road, Suite 120  
14 Las Vegas, NV 89148

15 Darren T. Brenner, Esq.  
16 Scott R. Lachman, Esq.  
17 AKERMAN LLP  
18 1635 Village Center Circle, Ste. 200  
19 Las Vegas, NV 89134

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An Employee of WRIGHT, FINLAY & ZAK, LLP

FILED

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TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Ramir M. Hernandez, Esq.

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9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust given  
20 by Vicenta Lincicome and dated 5/23/2007;  
21 FAY SERVICING, LLC, a Delaware limited  
22 liability company and subsidiary of Fay  
23 Financial, LLC; PROF-2013 M4 LEGAL  
24 TITLE TRUST by U.S. BANK, N.A., as Legal  
25 Title Trustee; for BANK OF AMERICA, N.A.  
26 and DOES 1-50.

27 Defendants.

Case No.: 18-cv-01332

Dept. No.: II

**RESPONSE TO PLAINTIFF'S  
APPLICATION FOR ENTRY OF  
DEFAULT JUDGMENT AGAINST  
SABLES, LLC**

28 Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as  
Legal Title Trustee ("U.S. Bank Trust") and Fay Servicing LLC ("Fay")(collectively  
"Defendants"), by and through their attorneys of record, the law firm of Wright, Finlay & Zak,  
LLP, hereby files this Response to Plaintiffs' Application for Entry of Default Judgment against  
Sables, LLC (the "Application").

This Response is based on the papers and pleadings on file, the following Memorandum  
of Points and Authorities, any judicially noticed facts or documents, and any oral argument

1 presented at hearing.<sup>1</sup>

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 The Application is frivolous and an attempt to circumvent prior Court orders. This  
5 Court allowed U.S. Bank and Fay to proceed with the foreclosure sale when Plaintiffs failed to  
6 post the required bond Ordered by this Court, but now Plaintiffs seek to unwind the foreclosure  
7 sale that took place on January 4, 2019 only because Sables, the foreclosure trustee, filed a  
8 Notice of Non-monetary Judgment instead of an answer. Quite frankly, this is not how the law  
9 operates. A default judgment cannot be made retroactive when it affects a non-defaulting  
10 party's rights from a previous order. Nor can a party's rights in the litigation be circumscribed  
11 because of another party's default. On top of that, Sables is participating in this case and filed a  
12 Notice of Non-Monetary Status, which by operation tolls the time it has to file a response to the  
13 Complaint. Plaintiffs present the Application for an improper purpose, and this Court should  
14 deny the requested relief in its entirety.

15 **II. STATEMENT OF FACTS**

16 1. On November 7, 2018, Plaintiffs filed a Complaint for injunctive relief,  
17 contractual claims, and declaratory relief regarding the Property located at 70 Riverside Drive,  
18 Dayton, Nevada 89403 (the "Property").

19 2. On the same day, Plaintiffs filed an Application for Ex Parte Restraining Order,  
20 Preliminary Injunction and Permanent Injunction.

21 3. On December 31, 2018, the Court entered an Order from a hearing held on  
22 November 20, 2018, enjoining the foreclosure on the subject property of the litigation for 30  
23 days pending Plaintiffs posting of a bond by December 20, 2018. Plaintiffs failed to post the  
24 bond and the property lawfully went to foreclosure sale on or about January 4, 2019.

25 4. Sables, LLC ("Sables") is the foreclosure Trustee that took the Property to sale.  
26

27 <sup>1</sup> The U.S. Bank Trust and Fay reserve all rights for sanctions under NRCP 11 and have sent  
28 Plaintiff's counsel a safe harbor letter requesting that he withdraw the Application. If he does  
not, the U.S. Bank and Fay will file a separate Motion for Rule 11 sanctions.

1           5.       On or about December 18, 2018, Sables filed a Declaration of Non-Monetary  
2 Status pursuant to NRS 107.029 where it disclaimed any interest in the lawsuit based on its  
3 capacity as the trustee to the foreclosure sale.

4           6.       On or about December 19, 2018, Plaintiffs filed an Application for Entry of  
5 Default against Sables even though Sables had appeared in the litigation and filed a Declaration  
6 of Non-Monetary status pursuant to NRS 107.029.

7           7.       On or about January 7, 2019, Plaintiffs filed an Objection to Sables' Declaration  
8 of Non-Monetary Status and whereby they claimed Sables violated the Homeowners Bill of  
9 Rights by recording a Notice of Default that did not comply with NRS 107.400 to NRS 107.560  
10 and that the Declaration was moot because of the Default Plaintiffs entered against Sables on  
11 December 21, 2018.

12           8.       On or about January 18, 2019, Plaintiffs, despite the Court's prior Order, filed an  
13 Application for Entry of Default Judgment whereby they requested a permanent injunction *nunc*  
14 *pro tunc* against Sables from conducting the foreclosure sale. Thus, in essence, the Plaintiffs  
15 attempt to retroactively invalidate the foreclosure sale without posting a bond, as required by  
16 this Court, and despite Sables filing its Declaration of Non-Monetary Status.

17           9.       On or about January 24, 2019, Sables filed a response to the Objection of  
18 Declaration of non-monetary status.

19           10.      On or about January 24, 2019, Sables also filed its Motion to Set Aside Default.

### 20                               **III. LEGAL STANDARD**

21           Nevada has long espoused the rule that it is better to determine a matter on the merits  
22 than to decide a case on a technical error of the opponent. In the case of *Howe v. Coldren*, the  
23 Nevada Supreme Court explained the logic behind setting aside a default where good cause is  
24 shown and when the result may be ruinous to a party and there is no willful or fraudulent delay:

25                       If there is a refusal to set aside a default, a ruinous judgment may  
26 be sustained against a party who, upon hearing, might have  
27 interposed a perfectly good defense. By sustaining the default, he  
28 would forever be debarred the right of a hearing. If, then, a *nisi prius* court refuses to set aside a default when a party shows with  
reasonable certainty that he has a good defense, then he has only

1           been guilty of carelessness and inattention to his business, but no  
2           willful or fraudulent delay, it would be highly proper even for an  
3           appellate Court to come to his relief if the lower Court refused it.<sup>2</sup>

4           Other Nevada courts have followed this same thinking. In *Hotel Last Frontier v.*  
5           *Frontier Property*, the Nevada Supreme Court said:

6                       Finally, we mention, as a proper guide to the exercise of  
7                       discretion, the basic underlying policy to have each case decided  
8                       on its merits. In the normal course of events, justice is best served  
9                       by such a policy.<sup>3</sup>

10           More recently in the case of *Scrimmer v. Dist. Ct.*, the Supreme Court in discussing NRCP  
11           4(i) noted:

12                       [W]hen making a determination under NRCP 4(i), the District  
13                       Court should recognize that "good public policy dictates that  
14                       cases be adjudicated on their merits." *Kahn v. Orme*, 108 Nev.  
15                       510, 516, 835 P.2d 790, 794 (1992) (citing *Hotel Last Frontier v.*  
16                       *Frontier Properties*, 79 Nev. 150, 155-56, 380 P.2d 293, 295  
17                       (1963)).<sup>4</sup>

#### 18                                       IV.    LEGAL ARGUMENT

##### 19           A.   The Court should not enter the default judgment because Sables has appeared in 20           this case and the case should be heard on the merits.

21           As noted in the case law cited above, cases in Nevada are to be decided on the merits,  
22           not procedural gamesmanship. In this instance, Sables has both appeared in this matter, has  
23           filed a Declaration of non-monetary status, and has filed a motion to set aside the default.  
24           NRCP 55(c) provides that the Court may for good cause set aside a default. The standard for  
25           setting aside a default is much lower than the standard of setting aside a default judgment.<sup>5</sup> As  
26           such, there is no reason for this Court to grant to enter a default judgment and especially one  
27           that is *nunc pro tunc* because Sables has appeared, is participating in this case, and is seeking to  
28           set aside the default. It is obvious that the Plaintiffs' reason for seeking such default relief in a

29                       <sup>2</sup> 4 Nev. 171, 174 (1868).

30                       <sup>3</sup> 79 Nev. 150, 380 P.2d 293 (1963).

31                       <sup>4</sup> 116 Nev. 507, 998 P.2d 1190 (2000).

32                       <sup>5</sup> *Sealed Unit Parts Co. v. Alpha Gamma Chapter of Gamma Phi Beta Sorority, Inc. of Reno*, 99  
33                       Nev. 641, 668 P.2d 288 (1983), *overruled on other grounds*; *Epstein v. Epstein*, 113 Nev. 1401,  
34                       950 P.2d 771 (1977); and *Rae v. All Am. Life and Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979).

1 quick fashion is to retroactively annul the foreclosure sale that took place on January 4, 2019.  
2 As will be detailed below, this is an improper use of default judgments and constitutes an abuse  
3 of process. Nevada public policy is clear: cases are to be decided on the merits, not through  
4 legal trickery. Here, all the elements are in place to set aside the default, and this Court should  
5 not enter a default judgment.

6 **B. This Court should deny Plaintiffs' procedurally improper request for entry of a**  
7 **retroactive default judgment against Sables.**

8 **1. There is no legal mechanism for entering a *nunc pro tunc* default order.**

9 Plaintiffs are requesting that this Court enter a retroactive default in order to set void the  
10 foreclosure sale that took place on January 4. In so doing, Plaintiffs are asking for equitable  
11 relief similar to setting aside the automatic stay. However, Plaintiffs have provided no legal  
12 authority that this Court has the authority to enter a default *nunc pro tunc*. As a matter of fact,  
13 in *Finley v. Finley*, the Nevada Supreme Court held that even though a court may enter an order  
14 *nunc pro tunc*, "the court would not have power to modify its decree so as to affect the  
15 substantial rights of the parties as they existed under the original order and make such an entry  
16 *nunc pro tunc*."<sup>6</sup> Based on this prohibition, Plaintiff request for a *nunc pro tunc* order should be  
17 denied because it would substantially, and retroactively, affect the U.S. Bank's Trust to  
18 foreclose on the Property at the time the foreclosure sale took place. That is not the purpose of  
19 a *nunc pro tunc* order. Indeed, "the object and purpose of a *nunc pro tunc* order is to make a  
20 record speak the truth concerning acts already done."<sup>7</sup> Entering the order Plaintiffs seek would  
21 do the exact opposite because it would make a prior truth, the Court's allowing the foreclosure  
22 sale to move forward, untrue. As such, a *nunc pro tunc* order is an impossibility in this  
23 instance, and this Court should deny the Application in its entirety.

24 **2. The defaulting actions of Sables cannot be imputed on the U.S. Bank Trust or**  
25 **Fay.**

26  
27 <sup>6</sup> 65 Nev. 113, 120, 189 P.2d 334, 337, opinion supplemented on denial of reh'g, 65 Nev. 113,  
28 196 P.2d 766 (1948), and *overruled in part by Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964).

<sup>7</sup> *Talbot v. Mack*, 41 Nev. 245, 169 P. 25, 27 (1917).

1 In *Doyle v. Jorgensen*, the Nevada Supreme Court has held that that the default of one  
2 party cannot be held against another party who has acted in good faith and behaved properly in  
3 the litigation.<sup>8</sup> Here, Plaintiffs are seeking to prejudice the U.S. Bank's Trust right to foreclose  
4 based on the actions that the Trustee took on its behalf. That simply is not how the law works.  
5 As noted in *Doyle*, a default only applies to the affected parties and does not have a spillover  
6 effect to other parties in the case. Both the U.S. Bank Trust and Fay have appeared and  
7 participated in this litigation. They have also litigated the issue of whether they can proceed  
8 with the foreclosure. As a result, it would be wholly improper and highly prejudicial to impute  
9 the actions of Sables on them, especially when Plaintiffs can still seek the same remedy, voiding  
10 the foreclosure sale, if it were to obtain judgment against both the U.S. Bank Trust and Fay.  
11 Based on this factor alone, the Court should deny the request for entry of default judgment.

12 **3. Sables cannot be defaulted, let alone have a judgment against it entered, until**  
13 **the Court rules on the Objection to its Declaration of Non-Monetary Status.**

14 NRS 107.029(1) allows a trustee to a deed of trust to claim non-monetary status and thus  
15 shield itself from liability in an action involving a foreclosure sale of the deed of trust.  
16 Moreover, section 2 of the same statute provides tolling provisions once the declaration is filed:  
17 "[u]pon the filing of a declaration of nonmonetary status pursuant to subsection 1, the time in  
18 which the trustee is required to file an answer or any other responsive pleading is tolled until  
19 notice is given of an order granting an objection to the declaration of nonmonetary status, from  
20 which date the trustee has 30 days to file an answer or any other responsive pleading to the  
21 complaint."

22 In this instance, Sables filed a Declaration of Non-Monetary Status to which Plaintiffs  
23 filed an Objection. To date, the Court has not ruled on the Objection. As such, Sables is  
24 currently under no obligation to file an Answer or otherwise responsive pleading. And NRC  
25 55(a) only allows for entry of default when a party fails to plead or otherwise defend itself  
26 pursuant to the rules. Thus, there is no mechanism for an entry of default, let alone a default  
27

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28 <sup>8</sup> See, *Doyle v. Jorgensen*, 82 Nev. 196, 203, 414 P.2d 707, 711 (1966), *overruled* on other  
grounds by *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 906 P.2d 258 (1995).



1 judgement, against Sables. As a result, the Court should deny the Application.

2           **4. This court already ruled on the validity of the foreclosure sale at the**  
3           **preliminary injunction hearing and Plaintiffs did not seek any relief to that**  
4           **judgment.**

5           Even more problematic is that this Court has already ruled that the sale could move  
6 forward in its Order Granting Preliminary Injunction. Specifically, the Order states the  
7 injunction is effective provided Plaintiffs post the required bond by December 20, 2018. That  
8 date passed with no bond posted. As such, the U.S. Bank was allowed to proceed with the  
9 foreclosure sale through its Trustee, Sables. In Nevada, an order of the court is enforceable  
10 unless relief is sought under NRCP 59 or 60.<sup>9</sup> Alternatively, Plaintiffs could have sought relief  
11 by filing a Writ of Mandamus through to the Supreme Court.<sup>10</sup> Plaintiff did none of these.  
12 Instead, they seek relief through a proverbial back-door method that is not proper. Ultimately,  
13 Plaintiffs' Default is nothing more than a last-ditch attempt to unwind the foreclosure sale. This  
14 is yet another reason the Court should deny the Application.

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26 <sup>9</sup> See generally, *Bonnell v. Lawrence*, 128 Nev. 394, 398, 282 P.3d 712, 714 (2012)(provides for  
mechanism to obtain relief from judgment.).

27 <sup>10</sup> See, *Smith v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 107 Nev. 674, 677, 818 P.2d  
28 849, 851 (1991)("Mandamus is a proper remedy to compel performance of a judicial act when  
there is no plain, speedy, and adequate remedy at law in order to compel the performance of an  
act which the law requires as a duty resulting from office.").

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V. CONCLUSION

Plaintiffs Application for Entry of Default Judgment against Sables is improper for a myriad of reasons and would be highly prejudicial to the U.S. Bank Trust and Fay. The Application has no basis in law and is solely being sought to frustrate this Court's prior orders. This Court should deny the Application in its entirety.

DATED this 7th day of February, 2018.

WRIGHT, FINLAY & ZAK, LLP



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Christopher A.J. Swift

Nevada Bar No. 11291

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC*

**AFFIRMATION**

**Pursuant to NRS 239B.03/603A.040**


The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 7th day of February, 2019.

WRIGHT, FINLAY & ZAK, LLP



---

Christopher A.J. Swift  
Nevada Bar No. 11291  
Ramir M. Hernandez, Esq.  
Nevada Bar No. 13146  
*Attorney for Defendants, Prof-2013 M4-Legal Title  
Trust, by U.S. Bank, National Association, as  
Legal Title Trustee and Fay Servicing LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 7th day of February, 2019, I did cause a true copy of the foregoing  
4 **RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT**  
5 **JUDGMENT AGAINST SABLES, LLC** to be served by placing a copy in the mail, addressed  
6 as follows:

7  
8 Michael G. Millward, Esq.  
MILLWARD LAW, LTD.  
9 1591 Mono Ave.  
Minden, NV 89423

10  
11 Shadd A. Wade, Esq.  
ZIEVE, BRODNAX & STEELE, LLP  
12 9435 West Russell Road, Suite 120  
Las Vegas, NV 89148

13  
14 Darren T. Brenner, Esq.  
Scott R. Lachman, Esq.  
15 AKERMAN LLP  
16 1635 Village Center Circle, Ste. 200  
Las Vegas, NV 89134

17  
18   
19 An Employee of WRIGHT, FINLAY & ZAK, LLP  
20  
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FILED

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TANYA SCORPINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
ANDREA ANDERSEN  
DEPUTY

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and )  
VICENTA LINCICOME, )

Plaintiffs, )

v. )

SABLES, LLC, a Nevada limited liability )  
company, as Trustee of the Deed of Trust )  
given by Vicenta Lincicome and dated )  
5/23/2007; FAY SERVICING, LLC, a )  
Delaware limited liability company and )  
subsidiary of Fay Financial, LLC; PROF- )  
2013-M4 LEGAL TITLE TRUST by U.S. )  
BANK, N.A., as Legal Title Trustee; for )  
BANK OF AMERICA, N.A.; and DOES 1-50. )

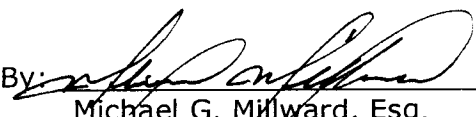
Defendants. )

**OPPOSITION TO DEFENDANT  
SABLES, LLC'S MOTION TO SET  
ASIDE DEFAULT**

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter  
"Plaintiffs"), by and through their attorney of record, Michael G. Millward, Esq., of Millward  
Law, Ltd., and hereby submit their Opposition to *Sables, LLC's Motion to Set Aside Default*  
served upon Plaintiffs by mail on January 24, 2019. This Opposition is supported by the  
Memorandum of Points and Authorities set forth below, and the pleadings and papers on file.

Dated this 8<sup>th</sup> day of February, 2019.

**MILLWARD LAW, LTD**

By:   
Michael G. Millward, Esq.  
Attorney for Plaintiffs



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 SABLES, LLC (hereinafter "Sables"), seeks to set aside the Clerk's Default entered  
4 against Sables in this matter on December 21, 2018, upon the ground that "good cause  
5 exists." Sables, however, does not provide any good cause. Sables does not establish that  
6 its failure to timely file a responsive pleading within 20 days of service of the Complaint was  
7 because of "mistake, inadvertence, surprise, or excusable neglect."

8 Sables alleges that excusable neglect prevented the filing from being timely made,  
9 but then it fails to provide any factual information excusing its neglect. Sables does not  
10 provide any meritorious defense to Plaintiffs' factual allegations, but rather insists that it is a  
11 noninterested party. Sables argues that Plaintiffs will bear no prejudice if the default is set  
12 aside, even though it chose not to participate in the action and then foreclosed upon  
13 Plaintiffs' home in violation of the Court's December 31, 2018 Order.

14 Because Sables has violated this Court's Order as well as failed to timely appear,  
15 Plaintiffs would be prejudiced if the Court chose to set aside the Default in this matter and  
16 condone Sables' inexcusable behavior.

17 Therefore, Plaintiffs respectfully request this Court deny Sables' *Motion to Set Aside*  
18 *Default*, and enter Judgment in favor of Plaintiffs.

19 **II. FACTUAL BACKGROUND**

20 On November 7, 2018, Plaintiffs filed a *Complaint for Declaratory Relief* (hereinafter  
21 "Complaint") and an *Application for Ex Parte Restraining Order, Preliminary Injunction and*  
22 *Permanent Injunction* before the Third Judicial District Court of the State of Nevada, as Case  
23 No. 18-CV-01332.

24 On November 7, 2018, a *Notice of Lis Pendens* was filed in the Third Judicial District  
25 Court Case No. 18-CV-01332 against 70 Riverside Drive, Dayton, Nevada (hereinafter the  
26 "Premises") and was recorded on November 8, 2018, with the Lyon County Recorder as  
27 Document No. 588549.

28 //



1 On November 8, 2018, the Third Judicial District Court entered an *Order* providing  
2 "[t]hat Sables, LLC, is hereby restrained and temporarily enjoined from selling at public  
3 auction the real property identified in the Notice of Trustee's Sale recorded with the Office of  
4 the Lyon County Recorder as Document No. 587470, at public auction until further order of  
5 the Court."

6 On November 8, 2018, a *Notice of Entry of Order* concerning entry of the Court's  
7 November 8, 2018 *Order* was served on all interested parties by mail.

8 On November 14, 2018, the Third Judicial District Court entered a *Corrected Order*  
9 which also restrained and enjoined Sables from selling the Premises.

10 On November 19, 2018, Sables' counsel, Shadd Wade, was served with the *Summons*  
11 and Complaint. See the *Affidavit of Personal Service* on page three of the *Summons* filed on  
12 December 11, 2018, and attached hereto as **Exhibit 1**.

13 On November 20, 2018, a *Notice of Entry of Order* concerning entry of the Court's  
14 November 14, 2018 *Corrected Order* was served on all interested parties.

15 On November 20, 2018, the Court held a hearing on Plaintiffs' *Application for Ex Parte*  
16 *Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "TRO  
17 *Application*").

18 On December 9, 2018, Sables' responsive pleading to the Complaint became due.

19 On December 13, 2018, Plaintiffs served their *Three Day Notice of Intent to Take*  
20 *Default* (hereinafter "Three Day Notice"), and thereafter filed the same on December 14,  
21 2018.

22 On December 21, 2018, the Third Judicial District Court took Sables' default.

23 On December 31, 2018, the Third Judicial District Court entered its *Order* providing,  
24 "[t]hat Sables, LLC, is hereby enjoined from selling at public auction the real property  
25 located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the Notice of  
26 Trustee's Sale recorded with the Office of the Lyon County Recorder as Document No.  
27 587470, until further order of the Court." A copy of the December 31, 2018 *Order* is  
28 attached as **Exhibit 2**.

1 On January 4, 2019, a *Notice of Entry of Order* concerning entry of the Court's  
2 December 31, 2018 *Order* was served on all interested parties.

3 On January 4, 2019, Sables, sold the Premises at foreclosure to buyer Breckenridge  
4 Property Fund 2016, LLC, a Utah limited liability company.

## 5 **II. LEGAL AUTHORITIES**

6 Pursuant to NRCP 12(a)(1), a defendant must serve its answer or responsive pleading  
7 within 20 days after being served with the summons and complaint.

8 Where a defendant has failed to "appear and defend" . . . [its] failure to do so will  
9 result in a judgment by default against the defendant for the relief demanded in the  
10 complaint." NRCP 4(b).

11 NRCP 55(a) permits the Court Clerk to enter a default against the defendant where it  
12 appears that the defendant has failed to timely appear and defend the matter.

13 NRCP 55(b)(2) permits a court to take a default judgment upon three days' notice if  
14 the party has previously appeared.

15 NRCP 55(c) provides that a court may, in its discretion, set aside a default "for good  
16 cause shown." The concept of good cause requires a showing of some excuse for failure to  
17 answer or defend. *Tahoe Village Realty v. Desmet*, 95 Nev. 131, 133-34 (1979) (*overturned*  
18 *on other grounds*).

19 NRCP 60(b) allows for a Clerk's Default to be set aside where there exists a mistake,  
20 inadvertence, surprise, or excusable neglect. *Intermountain Lumber & Builders Supply, Inc.*  
21 *v. Glen Falls Ins. Co.*, 83 Nev. 126, 129- 30, 424 P.2d 884 (1967).

22 Inexcusable neglect does not constitute good cause, and is an insufficient ground to  
23 set aside a default. *Id.*

## 24 **III. ARGUMENT**

### 25 **I. No "Good Cause" Exists Supporting the Set Aside of Sables' Default**

26 Sables seeks to set aside the Clerk's Default upon an argument that it has "good  
27 cause" exists for its failure to file its pleading timely.

28 //





1 Sables supports its argument by citing to *US. v. Signed Personal Check No. 730 of*  
2 *Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010), and *Franchise Holding II v.*  
3 *Huntington Rests, Group, Inc.*, 375 F.3d 922, 925-26 (9th Cir. 2004).

4 In the case *US v. Signed Personal Check No. 730 of Yubran S. Mesle*, the Ninth Circuit  
5 Federal Court of Appeals declared that in determining whether "good cause" exists a Court  
6 must consider the following: (1) whether the defendant "engage in culpable conduct that led  
7 to the default"; (2) whether defendant has no "meritorious defense"; and (3) whether  
8 reopening the matter would "prejudice the other party." *Id.*

9 Notably, the standard is "disjunctive" meaning that if the Court finds that "any one of  
10 these factors is true, [it] is sufficient reason for the district court to refuse to set aside the  
11 default." *See id.*

12 All three factors are true and support the denial of Sables' Motion.

13 **1. Sables is Culpable When No Cause is Given**

14 Under the "culpability" factor, Sables argues that it "can demonstrate good cause of  
15 excusable neglect and mistake because it did not intentionally fail to respond . . ." Def. Mot.  
16 p.4.

17 However, Sables provides no information (that is supported by affidavit or other  
18 evidence) that explains why it failed to file a responsive pleading within 20 days.<sup>1</sup> The only  
19 information provided pertains to why it did not respond after December 18, 2018. Sables'  
20 deadline for filing a responsive pleading was due on December 9, 2018. Ex.1.

21 The Affidavit of Shadd Wade informs the Court that he received the Three Day Notice  
22 on December 18, 2018, which was nine days after Sables' deadline to have filed a responsive  
23 pleading. Def. Mot. Ex. 1. Mr. Wade asserts that he could not file a "responsive pleading  
24 [after December 18, but before December 21] . . . [because] Sables needed to obtain a  
25 check to mail to the Court..." *Id.* However, no explanation is given for why Mr. Wade as  
26  
27

28 <sup>1</sup> DCR requires that factual contentions presented by motion shall be heard upon  
affidavits. Mr. Wade's Affidavit does not attest to any facts that predate  
December 18, 2018.

1 counsel did not file on behalf of Sables within 20 days after he was personally served with  
2 the Complaint.

3 It is important to note that Sables was not entitled to the Three Day Notice because it  
4 had not appeared in the matter, and was not entitled to three days' notice pursuant to NRCP  
5 55(b). See NRCP 55(b). Consequently, "good cause" cannot exist solely because Plaintiffs'  
6 counsel gave notice when not otherwise required to do so. Had the three day notice not  
7 been given, Sables would have defaulted and the factual argument that Sables relies upon  
8 would be irrelevant.

9 Sables' "good cause" is not an explanation as to why it had failed to file its responsive  
10 pleading by December 9, 2018. The clock had already struck midnight as of December 10,  
11 2018, long before Sables' factual argument for "good cause" arose. Thus, Sables  
12 explanation is not "good cause" at all. Otherwise, no cause would be "good cause."

13 Therefore, under the first factor, the Court should find that it has no other alternative  
14 but to find that Sables was "culpable" of failing to file its responsive pleading by December 9,  
15 2018. Sables' statement as to why it did not file after the Three Day Notice does not  
16 establish "good cause" as to why it missed its 20 day window to file in the first place.

## 17 **2. Sables Does not have a Meritorious Defense**

18 Sables does not offer a factual defense to Plaintiffs' allegations and claims. The  
19 allegations establishing liability against Sables for violations of provisions of NRS 107 and the  
20 Homeowners Bill of Rights therein, are a matter of public record and are set forth in  
21 Plaintiffs' Complaint and TRO Application which were filed on November 7, 2018.

22 The Notice of Default (hereinafter "NOD") recorded October 31, 2017, as Document  
23 No. 0572258, was improperly recorded by Sables because it contains false information. A  
24 copy of the Notice of Default recorded November 3, 2017, as Document No. 0572258 is  
25 attached hereto as **Exhibit 3**. The NOD does not reflect any of the terms of the Loan  
26 Modification Agreement which Sables acknowledges in the NOD was recorded as Document  
27 No. 475808 on May 4, 2011. A copy of the Loan Modification Agreement is attached hereto  
28 as **Exhibit 4**.

1 Furthermore, as Trustee, Sables failed to "act impartially and in good faith with  
2 respect to the deed of trust" and act in accordance with the laws of Nevada as required by  
3 NRS 107.028 by failing to correct the NOD within 20 days of learning of errors pertaining to  
4 the terms of the same. NRS 107.23(7).

5 The errors pertaining to the NOD were pointed out to Sables in Plaintiffs' Complaint,  
6 and TRO Application and Sables did nothing to correct the recorded documents within the 20  
7 day time frame for it to avoid liability.

8 Sables also recorded its Notice of Trustee's Sale on October 12, 2018, as Document  
9 No. 587470, and proceeded to give notice of the sale as if it had authority under NRS 107.  
10 However, the beneficiary was not entitled to have Sables foreclose on Plaintiffs' interests in  
11 the real property because all evidence provided by the beneficiary to Sables established that  
12 Sables and all prior interest holders had not adopted the terms of the 2011 Loan Modification  
13 Agreement, and that all interest holders were in breach of that agreement.

14 Sables makes no argument as to the merits of Plaintiffs' Complaint and its liability  
15 thereunder. Instead, Sables asserts it is "not an interested party" and that "nonmonetary  
16 status" should apply. Def. Mot. p.4.

17 Sables' defense is an inaccurate recitation of NRS 107.029, which is only applicable  
18 where "the trustee has a reasonable belief that he or she has been named in the action  
19 solely in his or her capacity as trustee and not as a result of any wrongful act or omission  
20 made in the performance of his or her duties as trustee." NRS 107.029(1).

21 Based upon Plaintiffs' Complaint and TRO Application, no such reasonable belief  
22 should have existed. The Complaint and TRO Application clearly identify errors and  
23 corrections that would establish liability in Sables under NRS 107.023.

24 Furthermore, the Court found in its December 31, 2018 Order that Sables has not  
25 "accurately reported the total balance owed . . . [,] the principal obligation . . . [,] the date  
26 through which the [loan] . . . is paid owed . . . [, or] the correct interest rate effective under  
27 the [loan] . . . *Id.*

28 //

1 Sables' claim of being a noninterested party is insufficient and not a meritorious  
2 defense and not supported by any factual assertion justifying or excusing its improper and  
3 uncorrected recordings of the NOD and Notice of Sale.

4 Therefore, Sables has failed to establish that it has a meritorious defense to the  
5 claims made in the Complaint.

6 **3. Plaintiffs Would Be Prejudiced if the Default is Set Aside**

7 Beyond Sables' lack of meritorious defense, Sables has not participated in this matter.  
8 Sables' choice to avoid participation would negatively prejudice Plaintiffs' especially where  
9 the Court has made findings of facts pertaining to Sables' actions as Trustee in recording of  
10 overtly incorrect information in documents. See Ct. Ord. dt. 12/31/18.

11 Furthermore, the Court's December 31, 2018 Order provided that "Sables, LLC, is  
12 hereby enjoined from selling at public auction the real property located at 70 Riverside  
13 Drive, Dayton, Lyon County, Nevada, ... until further order of the Court." Ct. Ord. dt.  
14 12/31/19.

15 However, Sables violated the Court's Order by proceeding to foreclose on Plaintiffs'  
16 home on January 4, 2019, without first obtaining an order from the Court. Sables' violation  
17 of NRS 107 and the facts supporting liability thereunder should not now be at issue given the  
18 Court's findings by way of a set aside of the default. See Ct. Ord. dt. 12/31/19. Plaintiffs  
19 would be prejudiced if Sables is given the opportunity to re-litigate issues for which the  
20 Court has already made findings when Sables chose not to participate or comply with the  
21 Court's Order.

22 Under the factors set forth in *US v. Signed Personal Check No. 730 of Yubran S.*  
23 *Mesle*, the Court should find that Sables has failed to establish that "good cause" exists.  
24 Sables has given the Court no reason to believe it is not culpable for its failure to plead  
25 timely, nor has it given any facts or other basis for the Court to find that Sables has a  
26 meritorious defense specific to Plaintiffs' allegations.

27 Lastly, because Sables has heretofore failed to participate in this matter, going so far  
28 as to violate this Court's December 31, 2018 Order, setting aside the default would cause

1 prejudice to Plaintiffs when Plaintiffs were entitled to the relief sought against Sables as of  
2 the day its default was taken and when Sables' actions have jeopardized Plaintiffs' home.

3 **B. Nevada Case Law Supports a Finding of Inexcusable Neglect**

4 The cases heard by the Nevada Supreme Court reviewing the issues at hand are few  
5 and far between. However, as demonstrated below, Nevada Case law would easily justify a  
6 finding of inexcusable neglect.

7 In the case of *Tahoe Village Realty v. Desmet*, 95 Nev. 131, the Nevada Supreme  
8 Court reviewed a district court's refusal to set aside a default even though Appellants had  
9 mistakenly believed that a responsive pleading had been filed. *Id.*

10 The Nevada Supreme Court held that the district court's refusal was not an abuse of  
11 discretion because the appellants showing did not "establish that the failure to file an answer  
12 resulted from mistake, inadvertence, surprise or excusable neglect on the part of counsel. . .  
13 . [but] may suggest neglect . . ." *Id.* at 134.

14 In so holding, the Nevada Supreme Court quoted the case *Guardia v. Guardia*, 48  
15 Nev. 230, 233-34, 229 P. 386, 387 (1924) in stating that "[i]t is a general rule that the  
16 negligence of an attorney is imputable to his client, and that the latter cannot be relieved  
17 from a judgment taken." *Id.*

18 In the case *Intermountain Lumber & Builders Supply, Inc. v. Glen Falls Ins. Co.* 83  
19 Nev. 126, the Nevada Supreme Court reviewed a district court's refusal to set aside a clerk's  
20 default taken on the failure of Appellant's counsel to timely respond to a counterclaim. *Id.* at  
21 128-29. Appellant's counsel's affidavit alleged that he had dictated a reply, but that his  
22 secretarial staff had failed to transcribe the reply. *Id.* at 130. The Supreme Court found  
23 that Appellant's counsel's "showing does not necessarily establish mistake, surprise or  
24 inadvertence. . . [but] does suggest neglect." *Id.*

25 The Nevada Supreme Court held it was not an abuse of discretion for the district court  
26 to conclude that counsel's failure to timely file was inexcusable neglect outside the broad  
27 scope of 'good cause.' *Id.* In so holding, the Supreme Court stated that it will not overrule  
28

1 the district court's discretion, even though it is the preference of the Court that matters be  
2 heard upon the merits. *Id.*

3 Here, Sables' counsel received the Summons and Complaint on November 19, 2018,  
4 yet provides this Court no explanation why 32 days instead of 20 were needed to file a  
5 responsive pleading in this case. The above cases are not cited to establish any liability in  
6 Sables' counsel as to the default taken in this matter, but rather to show the circumstances  
7 where the Nevada Supreme Court has upheld determinations by district courts in the past.

8 However, on that point, in the context of duty and liability, the calculation for timely  
9 filing of a responsive pleading should always be approached with caution and diligence by  
10 counsel. For example, failing to adequately supervise and review the work of secretarial  
11 staff resulting in a default taken by the Court can lead to sanctions for violating an attorney's  
12 duty to "act with reasonable diligence and promptness" as required by Rule 1.3 of the Rules  
13 of Professional Conduct. See *e.g. People v. Milner* 35 P.3d 670, 678 (Colo. 2001) (sanctions  
14 issued against attorney under RPC 1.3 for failing to supervise non-lawyer staff in regard to  
15 failure to timely file an answer).

16 Thus, if counsel for Sables were to argue that the Court should set aside the default  
17 upon grounds that would constitute an ethics violation, good cause should not be found to  
18 exist. Otherwise, the Court would be condoning ethics violations in the name of "excusable  
19 neglect."

20 Therefore, the Court should find that Sables' conduct, without more explanation and  
21 evidence, is inexcusable and supports the Court's denial of Defendant's Motion.

22 **B. Award of Attorney's Fees is Appropriate if Default is Set Aside.**

23 It is well settled that in the exercise of its discretion, a trial court setting aside a  
24 default may impose as a condition the requirement that the defaulting party shall pay costs  
25 and attorney's fees to the opposing party. *Nilson. Robbins. Dalgarn, Berliner, Carson &*  
26 *Wurst v. Louisiana Hydrolec*, 858 F.2d 1538, 1546 (9th Cir.1988) (*upholding condition*  
27 *requiring payment of attorneys' fees for setting aside default*); see also *Tupper v. Kroc*, 88  
28

1 Nev. 483, 500 P.2d 5714 (1972)(*upholding condition in order granting motion to set aside*  
2 *judgment*).

3 By conditioning the setting aside of a default in this way, "any prejudice suffered by  
4 the non-defaulting party as a result of the default and the subsequent reopening of the  
5 litigation can be rectified." *Louisiana Hydrolec*, 858 F.2d at 1546 (*citing* 10 C. Wright, A.  
6 Miller & M. Kane, Federal Practice & Procedure§ 2700, p. 583 (1983)).

7 Here, Plaintiffs are prejudiced if Defendant is not ordered to pay Plaintiffs' attorney's  
8 fees and costs as a condition of setting aside Defendant's default. Plaintiffs' counsel  
9 correctly and timely prepared the default, began preparation for submission of a default  
10 judgment, and has had to oppose Defendant's instant Motion. Attorney's fees and costs  
11 have been incurred by Plaintiffs for which equity under the circumstances demands payment.

12 Therefore, Plaintiffs respectfully request that if this Court is so inclined to set aside  
13 Sables' Default, that the Court require Sables to pay the reasonable attorney's fees and  
14 expenses pertaining the preparation of the Default, Application for Default Judgment and this  
15 Opposition.

16 **IV. CONCLUSION**

17 For the reasons and argument set forth above, Plaintiff respectfully request that the  
18 Court deny Sables' Motion to Set Aside Default.

19 **AFFIRMATION**

20 The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not  
21 contain the social security number of any person, or other personal information as defined by  
22 NRS 603A.040.

23 Dated this 8<sup>th</sup> day of February, 2019

24 MILLWARD LAW, LTD.

25  
26 By:   
27 Michael G. Millward, Esq.  
28

## INDEX TO EXHIBITS

Exhibit 1	<i>Summons with Affidavit of Personal Service</i>	3 pages
Exhibit 2	<i>December 31, 2018 Order</i>	8 pages
Exhibit 3	<i>Notice of Default</i> recorded November 3, 2017, as Document No. 0572258	3 pages
Exhibit 4	<i>Loan Modification Agreement</i>	6 pages





**CERTIFICATE OF MAILING**

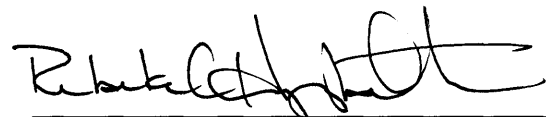
Pursuant to NRC5(b), I hereby certify that service of the *Opposition to Defendant Sables, LLC's, Motion to Set Aside Default* was made on the 8<sup>th</sup> day of February 2019, by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following:

SABLES, LLC  
c/o Shadd A. Wade, Esq.  
Zieve, Brodnax & Steel  
9435 W. Russel Rd., Suite 120  
Las Vegas, NV 89148

FAY SERVICING, LLC  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

US BANK  
PROF-2013-M4 LEGAL TITLE TRUST  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

BANK OF AMERICA  
Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
Ackerman, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134



Rebekah Higginbotham, Paralegal



# Exhibit 1

**ON RETURN  
FILED**

2018 DEC 11 AM 10:35

TANYA SCORINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
DeAnn Peeples  
CLERK

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**SUMMONS**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

**TO THE DEFENDANTS:** A civil Complaint has been filed by the Plaintiffs against you for the  
relief set forth in the Complaint.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is  
served on you, exclusive of the day of service, do the following:
  - a. File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court; and

SUMMONS

PAGE 1 OF 3

00377

**MILLWARD LAW, LTD**  
1591 Mono Ave. Minden NV 89423  
(775) 600-2776



1 b. Serve a copy of your response upon the attorney whose name and address is  
2 shown below.

3 2. Unless you respond, your default will be entered upon application of the plaintiffs, and  
4 this Court may enter a judgment against you for the relief demanded in the Complaint\*,  
5 which could result in the taking of money or property or the relief requested in the Complaint.

6 3. If you wish to seek the advice of an attorney in this matter, you should do so promptly  
7 so that your response may be filed on time.

8  
9 Tanya Sceirine  
10 CLERK OF THE COURT

11 By: Victoria Torar 11/8/18  
12 DEPUTY CLERK Date  
13 Lyon County District Court  
14 911 Harvey Way  
15 Yerington, Nevada 89447

16 Issued at direction of:

17   
18 Michael G. Millward, Esq.

19 NSB# 11212

20 1591 Mono Ave

21 Minden, NV 89423

22 (775) 600-2776

23 Attorney for Plaintiffs



**AFFIDAVIT OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant)

STATE OF Nevada  
COUNTY OF Clark } ss.

I, Andy Palatto, being first duly sworn, depose and say:

1. That I am not a party to this action and I am over 18 years of age;
2. That I personally served a copy of the Summons and Complaint, and the following

documents:

Upon DEFENDANT Sablos LLC c/o Registered Agent Shadd A. Wade  
at the following location: 9435 W. Russell Rd #120  
Las Vegas NV 89148  
on the 19 day of November, 2018.

Signature: [Signature]

Print Name: Andy Palatto  
R#092486

SUBSCRIBED and SWORN before me

This 21<sup>st</sup> day of November, 2018.

[Signature]  
NOTARY PUBLIC



**MILLWARD LAW, LTD**  
1591 Mono Ave., Minden NV 89423  
(775) 600-2776



# Exhibit 2

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANNA SELLER  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
ANDREA ANDERSEN

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

ORDER

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

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1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,  
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay  
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*  
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their  
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to  
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are  
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.  
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,  
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of  
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of  
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,  
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the  
15 Application and Response previously filed before the Court as well as documents presented  
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the  
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the  
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments  
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located  
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")  
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter  
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred  
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan  
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date  
28

ORDER

PAGE 2 OF 8



1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate  
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable  
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified  
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the  
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to  
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was  
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the  
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the  
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified  
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of  
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection  
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case  
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter  
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the  
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of  
27 the LMA until 2017;

28 //

ORDER

PAGE 3 OF 8

1           14. That on November 26, 2014, Bank of America appeared in the Lincicomes'  
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the  
3 automatic stay, pursuant to 11 U.S.C. § 362;

4           15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes  
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6           16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a  
7 discharge of all of their scheduled debts;

8           17. That on August 1, 2015, Bank of America transferred the servicing of the 2007  
9 DOT as modified by the LMA to Fay Servicing;

10           18. That all statements provided by Fay Servicing to the Lincicomes between  
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had  
12 been modified by the LMA.

13           19. All statements between August 10, 2015 and October 10, 2018, reported the  
14 principal balance owed, the applicable interest rate, the payment amount, the total  
15 arrearage owed, as well as the total number of payments remaining due;

16           20. That on November 10, 2015, Bank of America assigned its interest in the Deed  
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
18 Trustee (hereinafter "US Bank");

19           21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007  
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property  
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.  
22 572258;

23           22. That the NOD provides that the "subject Deed of Trust was modified by Loan  
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25           23. That the NOD provides that all monthly installments from "9/1/2008" forward  
26 are due, instead of 9/1/2009 as required by the LMA;

27           24. That the NOD provides that the principal balance owed is \$381,150.00, instead  
28 of \$417,196.58 as provided in the LMA;

ORDER

PAGE 4 OF 8

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1           25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of  
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the  
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon  
4 County Court House on 31 S. Main Street, Yerlington, Nevada 89447;

5           26. That under the circumstances the foreclosure of the Lincicome's residence  
6 would cause them irreparable injury;

7           27. The LMA appears to be a valid modification of the 2007 DOT;

8           28. That based on the record before the Court at the hearing neither Fay Servicing  
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007  
10 DOT as modified by the LMA;

11           29. That based on the record before the Court at the hearing neither Fay Servicing  
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under  
13 the 2007 DOT as modified under the LMA;

14           30. That based on the record before the Court at the hearing neither Fay Servicing  
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA  
16 is paid; and

17           31. That based on the record before the Court at the hearing neither Fay Servicing  
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as  
19 modified under the LMA.

20           The Court hereby enters the following Conclusions of Law:

21           1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS  
22 107.560 is applicable to this foreclosure matter;

23           2. That Plaintiffs established that irreparable Injury would result if Defendant  
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real  
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
26 Number 29-401-17;

27 //

28 //

ORDER

PAGE 5 OF 8

1           3.     That Plaintiffs have established that they will succeed on their claim that  
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information  
3 required to be provided prior to the initiation of a foreclosure; and

4           4.     That Plaintiffs have established to the Court's satisfaction that they were likely  
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's  
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7           THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8           1.     That Sables, LLC, is hereby enjoined from selling at public auction the real  
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the  
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document  
11 No. 587470, until further order of the Court;

12           2.     That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by  
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of  
14 Bond filing;

15           3.     That the injunction shall be effective against Defendants so long as bond is  
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,  
17 and on the 20<sup>th</sup> day of each month thereafter with the Third Judicial District Court Clerk's  
18 office;

19           4.     Plaintiffs shall file a notice of compliance with the requirement to pay additional  
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the  
21 same upon Defendants after making payment of additional security as set forth above;

22           5.     That failure of Plaintiffs to timely post a bond and provide notice of bond by  
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction  
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice  
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post  
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter  
27 served upon Defendants; and

28     //

ORDER

PAGE 6 OF 8

1           6.     That the Court's orders entered in the Court's November 8, 2018 Order and the  
2 Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of  
3 Sale, are hereby set aside.

4           IT IS SO ORDERED.

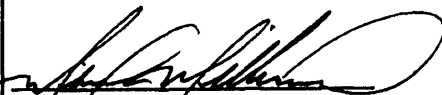
5           Dated this 31<sup>st</sup> day of December, 2018

6   
7 \_\_\_\_\_  
8 DISTRICT JUDGE

9  
10                   **AFFIRMATION**

11           The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not  
12 contain the social security number of any person, or other personal information as defined  
13 by NRS 603A.040.

14           Reviewed, approved and submitted this 18 day of December, 2018

15   
16 Michael G. Millward, Esq.  
17 Nevada Bar No. 11212  
18 Millward Law, Ltd.  
19 1591 Mono Ave.  
20 Minden, NV 89423

21  
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28  
  
ORDER

PAGE 7 OF 8

1 Reviewed, approved and submitted this 18<sup>th</sup> day of December, 2018.

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5

Ramir M. Hernandez, Esq.  
Nevada Bar No. 13146  
Wright, Finlay & Zak  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

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ORDER

PAGE 8 OF 8

# Exhibit 3

DOC# 572258

11/03/2017

10:29AM

**Official Record**

Requested By  
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 6

Fee: \$288.00

Recorded By BKC

RPTT: \$0.00

APN: 029-401-17

WHEN RECORDED MAIL TO:

Sables, LLC

c/o Zieve Brodnax & Steele

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169



0572258

TS No. : 16-42397

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO  
SELL THE REAL PROPERTY UNDER DEED OF TRUST**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is **\$265,572.39** as of **10/31/2017** and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated **5/23/2007**, executed by **VICENTA LINCICOME, A MARRIED WOMAN**, as trustor to secure obligations in favor of **Mortgage Electronic Registration Systems, Inc.**, as nominee for **SIERRA PACIFIC MORTGAGE COMPANY, INC.** its successors and assigns, as Beneficiary, recorded **5/25/2007**, instrument no. **407150** The subject Deed of Trust was modified by **Loan Modification Agreement** recorded as Instrument **475808** and recorded on **5/4/2011** of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of **\$381,150.00**, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on **9/1/2008**, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.





**T.S. No.: 16-42397**

**Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.**

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

### **NOTICE**

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

**To determine if reinstatement is possible and the amount, if any, to cure the default, contact:**

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
c/o Fay Servicing, LLC  
c/o SABLES, LLC, a Nevada limited liability company  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Beneficiary Phone: 800-495-7166  
Trustee Phone: (702) 664-1774

**To reach a person with authority to negotiate a loan modification on behalf of the lender:**

Lauren Jowers  
800-495-7166

**Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.



572258

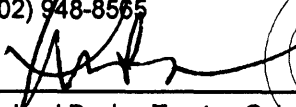
11/03/2017  
3 of 6

T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: <http://portal.hud.gov>.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee  
Sables, LLC  
c/o Zieve Brodnax & Steele  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
(702) 948-8565

  
\_\_\_\_\_  
Michael Busby, Trustee Sale Officer

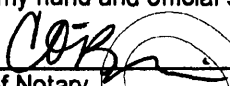
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA  
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary



**Affidavit of Authority**

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397

Borrower Name: VICENTA LINCICOME

Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist at Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

- 1(a). The full name and business address of the current trustee of record for the Deed of Trust is **Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169**
- 1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is **PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF**
- 1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is **PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF**
- 1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is **Fay Servicing, LLC, 440 S. LaSalle St., Suite 2000, Chicago, IL 60605**
2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.
- 2(a). Assignee Name: **PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee**  
Instrument and Recording Information: **Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042**
- 2(b). Assignee Name: **Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP**  
Instrument and Recording Information: **Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360**
- 2(c). Assignee Name: **Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP**  
Instrument and Recording Information: **Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719**
3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.
4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property



572258

11/03/2017  
5 of 6

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: **Fay Servicing, LLC, its attorney in fact**

**Veronica Talley**

(Print Name)

(Signature)

**Foreclosure Specialist IV**

(Title)

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

State of Texas

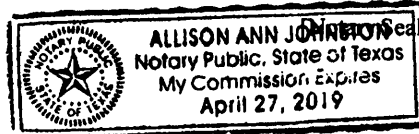
County of Denton

On October 5th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





572258

11/03/2017  
6 of 6

## Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number: 16-42397  
Borrower(s): VICENTA LINCICOME  
Mortgage Servicer: Fay Servicing, LLC  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.
4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.
5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 4-5-2016By. 

# Exhibit 4

APN# 029-401-17

**Recording Requested by:**

Name Michael Camarata

Address 107 Beecham Dr

City/State/Zip Pittsburg PA 15205

**Mail Tax Statements to:**

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

**DOC # 475808**

05/04/2011

01 19 PM

**Official Record**

Requested By  
BAC HOME LOANS SERVICING

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 6 Fee \$44.00

Recorded By MFK RPTT



0475808

Loan Modification Agreement

**Title of Document**  
(Required Field)

**FILL IN ALL THAT APPLY**

**The Undersigned Hereby Affirms That This Document Submitted For Recording Contains Personal Information As Required By Law\***

Specify Law\* \_\_\_\_\_

Signature \_\_\_\_\_

Specify Law\* \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

\*If there is no applicable State or Federal Law, Personal Information must be removed prior to recording

**If this document is a re-record or correction, fill out below**

Correcting Document# \_\_\_\_\_ Amending \_\_\_\_\_

Reason for re-record \_\_\_\_\_

(For Re-records, all pages from original document must be included, \$25 Non-conforming Fee Applies)

**If legal description is in metes & bounds, indicate where it was obtained:**

\_\_\_\_\_ (Document Title), Book \_\_\_\_\_ Page \_\_\_\_\_ or

Document # \_\_\_\_\_ recorded \_\_\_\_\_ (date) in the

Lyon County Recorder's Office

**-OR-**

If prepared by a surveyor, provide name and address

\_\_\_\_\_

\_\_\_\_\_

\*Personal Information\* means a natural person's first name or first initial and last name in combination with any one or more of the following data elements

1. Social security number
2. Driver's license number or identification card number
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password

This page added to provide additional information required by NRS 111.312 Sections 1-4  
(\$1.00 Additional Recording Fee Applies)

**IN MODIFICATION AGREEMENT**  
(Fixed Interest Rate)

273412

This Loan Modification Agreement ("Agreement"), made this 11th day of July, 2009, between VICENTA LINCICOME (the "Borrower(s)") and BAC Home Loans Servicing, LP (the "Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument"), dated the 23rd day of May, 2007 in the amount of \$381,150.00, and (2) the Note secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as the "Property", located at 70 RIVERSIDE DRIVE, DAYTON, NV 89403

The real property described being set forth as follows

**SAME AS IN SAID SECURITY INSTRUMENT**

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (Notwithstanding anything to the contrary contained in the Note or Security Instrument)

- 1 As of the 1st day of September, 2009, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U.S. \$417,198.58, consisting of the amount(s) loaned to the Borrower by the Lender which may include, but not limited to, any past due principal payments, interest, fees and/or costs capitalized to date
- 2 The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of 4.875% from the 1st day of August, 2009. The Borrower promises to make monthly payments of principal and interest of U.S. \$4,977.29 beginning on the 1st day of September, 2009, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full. If on the 1st day of August, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Maturity Date
- 3 The Borrower will make such payments at Payment Processing PO Box 10219 Van Nuys, CA 91410 or at such other place as the Lender may require
- 4 Nothing in this agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument. Except as otherwise specifically provided in this Agreement, the Note and Security Instrument will remain unchanged, and the Borrower and Lender will be bound by, and comply with, all terms and provisions thereof, as amended by this Agreement
- 5 In consideration of this Modification, Borrower agrees that if any document related to the Security Instrument, Note and/or Modification is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan as modified, or is otherwise missing, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary. If the original promissory note is replaced the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as "Documents". Borrower agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement

Previous mortgage recorded  
5/25/07 doc 407150 Assigned  
11/10/2010 doc 467719

05/04/2011  
002 of 6

475888



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team  
CHL Loan # 162304785

WDGFIXNR 8124 July 11, 2009





475808

05/04/2011  
003 of 6

STEP RATE LOAN MODIFICATION  
ADDENDUM TO LOAN MODIFICATION AGREEMENT

The Step Rate Loan Modification Agreement Addendum (the "Addendum") is made this July 11, 2009, and is incorporated into and shall be deemed a part of that certain Loan Modification Agreement of even date herewith (the "Agreement") between VICENTA LINCICOME (the "Borrowers") and BAC Home Loans Servicing, LP ("the Lender"), which agreement amends and supplements that certain Mortgage Deed of Trust or Deed to Secure Debt (the "Security Instrument") executed by Borrower in favor of Lender

THIS ADDENDUM CONTAINS PROVISIONS PROVIDING FOR  
SCHEDULED INTEREST RATE CHANGES

In consideration of the mutual promises and agreements exchanged and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Agreement, Security Instrument or the promissory note (the "Note"), except as specifically provided for herein )

1 Scheduled Interest Rate Changes

The Agreement provides for an initial interest rate of 4.875% which will be charged from the 1st day of August, 2009

The Interest Rate shall then change on the 1st day of August, 2014 at which time it shall be 5.375%

Thereafter, the interest rate and monthly principal and interest payment shall adjust in accordance with the Note, Adjustable Rate Rider and/or any other loan document that is affixed to or incorporated into the Note and Rider and provides for, implements or relates to any change or adjustment in the interest rate and monthly payment amount under the Note until such time as the principal and interest due under the Note are paid in full. If on August 1, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by the Agreement and this Addendum, the Borrower shall pay these amounts in full on the Maturity Date.

BORROWER

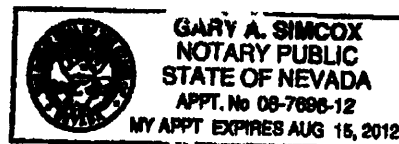
*Vicenta Lincicome*  
VICENTA LINCICOME

Dated *July 31, 2009*

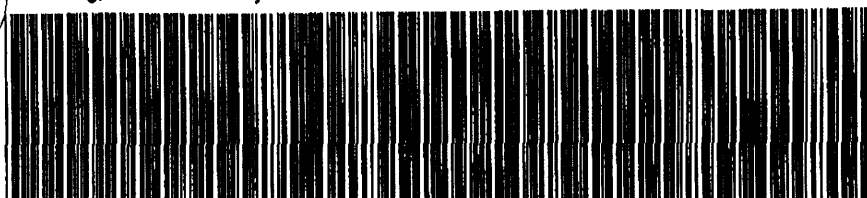
Lender

BAC Home Loans Servicing, LP

Dated *July 31, 2009*



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team  
CHL Loan # 162304785

July 11, 2009

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05/04/2011  
004 of 6

As evidenced by their signatures below, the Borrower and the Lender agree to the foregoing

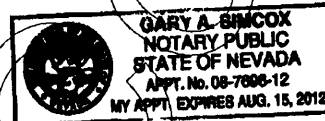
Vicenta Lincrome Dated July 31, 2009  
VICENTA LINCROME

STATE OF NevadaCOUNTY OF ClarkOn July 31, 2009 before me, Gary Sincor Notary Public, personally appearedVicenta Lincrome

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature

08-15-2012  
leg. atty

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

The HOPE Team  
CHL Loan # 162304785

WDGFIXNR 8124 July 11, 2009

00400



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05/04/2011  
005 of 6

DO NOT WRITE BELOW THIS LINE

THIS SECTION IS FOR INTERNAL BANK OF AMERICA HOME LOANS SERVICING, LP USE ONLY

BAC Home Loans Servicing, LP  
7105 Corporate Drive  
(PTX-B-36)  
Plano, TX 75024

By

Dated

James I SmithMAR 22 2011

STATE OF

On MAR 22 2011

before me,

COUNTY OF

Broomfield

Notary Public, personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Amy L Bogan

Signature

AMY L BOGAN

NOTARY PUBLIC, STATE OF COLORADO

My Comm. Expires September 8, 2014



475808

05/04/2011  
006 of 6

LEGAL DESCRIPTION

ALL THAT CERTAIN LOT OR PARCEL OF LAND BEING SITUATE IN GOLD CANYON EST SUBDIVISION, PH 2  
LOT 42 BEING 482 ACRES

PARCEL # 029-401-17

Unofficial Copy

Case No.: 18-CV-01332

Dept. No.: II

FILED

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TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Andrea Andersen

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and VICENTA  
LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as  
Trustee of the Deed of Trust given by Vicenta Lincicome and  
dated 5/23/2007; FAY SERVICING, LLC; PROF-2013-M4  
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title  
Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50.

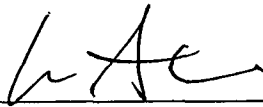
Defendants.

**ORDER SETTING HEARING**

On December 24, 2018, in the above-entitled matter, Defendant, SABLES, LLC, filed a Declaration of Non-Monetary Status. An Objection was filed on January 9, 2019. The Court's file also indicates that the Plaintiffs have filed multiple requests for entry of default.

Based on the foregoing, and good cause appearing, **IT IS ORDERED** that a Hearing on all outstanding Motions is set for the 15<sup>th</sup> day of April, 2019, at 1:30 a.m. / p.m., two (2) hours being allowed.

DATED this 11<sup>th</sup> day of ~~January~~ <sup>February</sup>, 2019.

  
Hon. LEON ABERASTURI  
DISTRICT JUDGE

**Certificate of Mailing**

I hereby certify that I, Debbie Gilmore, am an employee of the Honorable LEON ABERASTURI, District Judge, and that on this date pursuant to NRCP 5(b), I deposited for mailing at Yerington, Nevada, a true copy of the foregoing document addressed to:

Michael G. Millward, Esq  
1591 Mono Ave  
Minden NV 89423

Ramir Hernandez, Esq.  
7785 W Sahara Ave, Ste 200  
Las Vegas, NV 89117

Scott R. Lackman, Esq.  
Darren T. Brenner, Esq.  
1635 Village Center Circle, Ste 200  
Las Vegas NV 89134

Shadd A. Wade, Esq.  
9435 W Russell Rd, Ste 120  
Las Vegas, NV 89148

DATED: This 11<sup>th</sup> day of February, 2019.

  
Debbie Gilmore

1 ZIEVE, BRODNAX & STEELE, LLP  
2 Shadd A. Wade, Esq.  
3 Nevada Bar No. 11310  
4 9435 West Russell Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 Tel: (702) 948-8565  
7 Fax: (702) 446-9898  
8 swade@zbslaw.com  
9 Attorney for Defendant, Sables, LLC

FILED

2019 FEB 21 AM 11:12

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Kathy Thomas* DEPUTY

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

9 ALBERT ELLIS LINCICOME, JR., and  
10 VINCENTA LINCICOME,

11 Plaintiffs,

12 vs.

13 SABLES, LLC, a Nevada limited liability  
14 company, as Trustee of the Deed of Trust given  
15 by Vicenta Lincicome and dated 05/23/2007;  
16 FAY SERVICING, LLC, a Delaware limited  
17 liability company and subsidiary of Fay  
18 Financial, LLC; PROF-2013-M4 LEGAL  
19 TITLE TRUST by U.S. BANK, N.A., as Legal  
20 Title Trustee; BANK OF AMERICA, N.A.; and  
21 DOES 1-50;

22 Defendants.

CASE NO.: 18-CV-01332

DEPT. NO.: 2

SABLES, LLC'S  
JOINDER TO RESPONSE TO  
PLAINTIFF'S APPLICATION FOR  
ENTRY OF DEFAULT JUDGMENT  
AGAINST SABLES, LLC

23 Defendant, Sables, LLC, by and through its attorney of record, the law office of Zieve,  
24 Brodnax & Steele, LLP, hereby joins in all arguments asserted by PROF-2013-M4 LEGAL  
25 TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee and Fay Servicing, LLC in its  
26 Response to Plaintiff's Application for Entry of Default Judgment against Sables, LLC.

27 Sables also opposes the Application for Default Judgment ("ADJ") on the following  
28 grounds.

1. SABLES WAS NOT SERVED WITH NOTICE OF THE ADJ.

Plaintiff is attempting to sneak in a judgment against Sables, without notice to Sables as  
required by N.R.C.P. 55(b)(2), which provides in relevant part: "If the party against whom  
judgment by default is sought has appeared in the action, the party shall be served with written  
notice of the application for judgment at least 3 days prior to the hearing on such application."

1 Sables appeared in this action by filing its Declaration of Non-Monetary Status on  
2 December 21, 2018. Sables provided notice to Plaintiff of its appearance via telephone and e-  
3 mail correspondence and by mail service of same. Despite this, Plaintiff filed the ADJ on  
4 January 18, 2019, without serving Sables with any notice whatsoever (*See Certificate of Mailing*  
5 *attached to Plaintiff's Application for Default Judgment*). Sables was only made aware of  
6 Plaintiff's ADJ by other attorneys in the case. In light of Plaintiff's prior conduct in this case,  
7 Plaintiff's attempt to obtain judgment against Sables without notice is bad faith and is grounds  
8 for sanctions.  
9

10 As argued in Sables' Motion to Set Aside Default, Sables has no interest in this Property,  
11 nor the dispute between Plaintiff and the lender defendants. Sables is merely acting as trustee  
12 under the deed of trust.

13 Sables respectfully requests the ADJ be denied, and that Plaintiff be sanctioned for its  
14 conduct in seeking the injunction without notice to Sables, and despite the Court having already  
15 heard and decided the matter of injunction with the real parties in interest.  
16


17 **AFFIRMATION**

18 Pursuant to N.R.S. 239B.030

19 The undersigned does hereby affirm that the preceding **SABLES, LLC'S JOINDER TO**  
20 **RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT**  
21 **JUDGMENT AGAINST SABLES, LLC** filed in the above-captioned case **does not** contain  
22 the social security number of any person.

23 DATED this 15 day of February, 2019.

24 ZIEVE, BRODNAX & STEELE, LLP

25 

26 Shadd A. Wade, Esq.  
27 Nevada Bar No. 11310

28 [swade@zbslaw.com](mailto:swade@zbslaw.com)

*Attorney for Defendant, Sables, LLC*



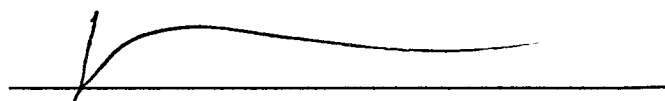
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of ZIEVE, BRODNAX & STEELE, LLP, and that on this 15<sup>th</sup> day of February, 2019, I did cause a true copy of **SABLES, LLC'S JOINDER TO RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST SABLES, LLC** to be served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Millward Law, LTD  
Michael G. Millward, Esq.  
1591 Mono Ave  
Minden, NV 89423  
Attorney for Plaintiff

Wright, Finlay & Zak, LLP  
Christopher A. J. Swift, Esq.  
Ramir Hernandez, Esq.  
7785 W. Sahara Ave, Suite 200  
Las Vegas, NV 89117  
Attorneys for Defendants, Fay Servicing, LLC & US BANK PROF-2013-M4 LEGAL TITLE TRUST



An Employee of ZIEVE, BRODNAX & STEELE, LLP

1 ZIEVE, BRODNAX & STEELE, LLP  
2 Shadd A. Wade, Esq.  
3 Nevada Bar No. 11310  
4 9435 West Russell Road, Suite 120  
5 Las Vegas, Nevada 89148  
6 Tel: (702) 948-8565  
7 Fax: (702) 446-9898  
8 swade@zbslaw.com  
9 Attorney for Defendant, Sables, LLC

FILED

2019 MAR -1 PM 1:20

TANYA SOEBRING  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

9 ALBERT ELLIS LINCICOME, JR., and  
10 VINCENTA LINCICOME,

11 Plaintiffs,

12 vs.

13 SABLES, LLC, a Nevada limited liability  
14 company, as Trustee of the Deed of Trust given  
15 by Vicenta Lincicome and dated 05/23/2007;  
16 FAY SERVICING, LLC, a Delaware limited  
17 liability company and subsidiary of Fay  
18 Financial, LLC; PROF-2013-M4 LEGAL  
19 TITLE TRUST by U.S. BANK, N.A., as Legal  
20 Title Trustee; BANK OF AMERICA, N.A.; and  
21 DOES 1-50;

22 Defendants.

CASE NO.: 18-CV-01332

DEPT. NO.: 2

SUPPLEMENTAL DECLARATION OF  
SHADD A. WADE IN SUPPORT OF  
MOTION TO SET ASIDE DEFAULT

19 I, Shadd A. Wade, do hereby swear under penalty of perjury under the laws of the State  
20 of Nevada that the following assertions are true to the best of my knowledge and belief:

21 1. Declarant is the attorney of record for Sables, LLC. I am employed by Zieve, Brodnax &  
22 Steele, LLP.

23 2. If called as a witness in this action, I am competent to testify of my own personal  
24 knowledge, to the best of my recollection, as to the matters set forth in this declaration.

25 3. On December 18, 2018, Sables' office received via mail Plaintiffs' "Three Day Notice of  
26 Intent to Take Default."

27 4. On December 18, 2018, Sables contacted Plaintiff via telephone and email to indicate it  
28 was filing a response no later than Friday of the same week, and to request no Default be entered.

See Exhibit 1, a copy of the email correspondence.

1       5. On December 18, 2018, Sables contacted the court and requested a status of any default  
2 against Sables. Sables obtained a copy of the docket. The docket shows no default entered as of  
3 this date. See **Exhibit 2**, copy of docket dated December 12, 2018.

4       6. On Friday, December 21, 2018, Sables emailed a copy of its' response to the complaint,  
5 it's Declaration of Non-Monetary Status, to Plaintiff. See **Exhibit 3**, a copy of the email  
6 communication with attachment.

7       7. On January 15, 2019, Sables received Plaintiffs' "Objection to Declaration of Non-  
8 Monetary Status," wherein it first learned that a default had been entered against.

9       8. On January 16, 2019, Sables contacted the court again to request an updated docket  
10 reflecting all filing in the instant case. See **Exhibit 4**, copy of docket dated January 16, 2019.

11       9. In reviewing the docket and filings into the instant case, Sables learned that on Friday,  
12 December 21, 2018, despite Sables correspondence with Plaintiff, Plaintiff filed an Application  
13 for Entry of Default against Sables, LLC with no service to Sables' counsel of record. See  
14 **Exhibit 4**, copy of filed Application for Entry of Default.

15       10. The court entered said Default against Sables on the same day, December 21, 2018.

16       11. Upon learning of the default, I immediately contacted Plaintiffs' counsel and requested to  
17 meet and confer regarding setting aside the default, and the role of a trustee in foreclosure.

18       12. On Monday, January 21, 2019, I emailed Plaintiffs' counsel and spoke with Plaintiffs'  
19 counsel's assistant by telephone, and scheduled a meet and confer, with confirmation that  
20 Plaintiff's counsel would call me at 3:30 pm that day.

21       13. Plaintiffs' counsel did not call as scheduled.

22       14. With notice of Sables' counsel's contact information and its communicated intent to file  
23 a responsive pleading, Plaintiff's counsel proceeded in bad faith to enter a default without notice  
24 or service of same, and continues to seek judgment against Sables, also without notice or service  
25 of same.

26       15. Despite numerous attempts, I have not yet been able to speak with Plaintiffs' counsel due  
27 to his unavailability.

28       16. Sables did not delay its response to the Complaint for any improper purpose or delay,  
and no prejudice has been alleged by the delay.

1 17. Accordingly, I request the default of Sables be set aside to allow Sables' responsive  
2 pleading to be considered by the Court.

3 18. I further request Plaintiff's request for fees and costs be denied, and that Sables be  
4 awarded its attorney's fees and costs for having to file the Motion to Set Aside due to Plaintiff's  
5 bad faith conduct as set forth herein.

6 DATED this 28<sup>th</sup> day of February, 2019.

7 

8 By: Shadd A. Wade, Esq.

9  
10  
11  
12  
13  
14 **AFFIRMATION**

15 Pursuant to N.R.S. 239B.030

16 The undersigned does hereby affirm that the preceding **SUPPLEMENTAL**  
17 **DECLARATION OF SHADD A. WADE IN SUPPORT OF MOTION TO SET ASIDE**  
18 **DEFAULT** filed in the above-captioned case **does not** contain the social security number of any  
19 person.

20 DATED this 28th day of February, 2019.

21 ZIEVE, BRODNAX & STEELE, LLP

22 

23 Shadd A. Wade, Esq.

24 Nevada Bar No. 11310

25 [swade@zbslaw.com](mailto:swade@zbslaw.com)

26 *Attorney for Defendant, Sables, LLC*  
27  
28

**Exhibit Log**

<b><u>EXHIBIT NO.</u></b>	<b><u>DESCRIPTION</u></b>
1.	Email Communication dated December 18, 2018
2.	Docket dated December 12, 2018
3.	Email Communication dated December 21, 2018
4.	Docket dated January 16, 2019

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of ZIEVE, BRODNAX & STEELE, LLP, and that on this 28th day of February, 2019, I did cause a true copy of **SUPPLEMENTAL DECLARATION OF SHADD A. WADE IN SUPPORT OF MOTION TO SET ASIDE DEFAULT** to be served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Millward Law, LTD  
Michael G. Millward, Esq.  
1591 Mono Ave  
Minden, NV 89423  
Attorney for Plaintiff

Wright, Finlay & Zak, LLP  
Christopher A. J. Swift, Esq.  
Ramir Hernandez, Esq.  
7785 W. Sahara Ave, Suite 200  
Las Vegas, NV 89117  
Attorneys for Defendants, Fay Servicing, LLC & US BANK PROF-2013-M4 LEGAL TITLE TRUST

Darren T. Brenner, Esq.  
Scott R. Lachman, Esq.  
AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134  
Attorneys for Defendant, Bank of America, N.A.

/s/Sara Hunsaker

An Employee of ZIEVE, BRODNAX & STEELE, LLP

**EXHIBIT 1**

**EMAIL COMMUNICATION DATED**  
**DECEMBER 18, 2018**

**EXHIBIT 1**

**EMAIL COMMUNICATION DATED**  
**DECEMBER 18, 2018**

**EXHIBIT 1**

## Sara Hunsaker

---

**From:** Sara Hunsaker  
**Sent:** Tuesday, December 18, 2018 1:00 PM  
**To:** michael@millwardlaw.com; becky@millwardlaw.com  
**Cc:** Shadd Wade  
**Subject:** Lincicome v. Sables, et al (18-CV-01332) / Notice of Intent to Default Sables  
**Attachments:** 3 Day Notice of Intent to Take Default Sables.pdf

Hi Becky,

Thank you for taking my call a few minutes ago. As explained we represent Sables, LLC in the referenced matter. We are finalizing our response and are just waiting on our filing fee from our corporate office in California. Please make note that we will email you a copy of our response to the complaint as soon as we prepare the package to be mailed out for filing to the court. If you could please hold off on taking any adverse action against Sables, we would appreciate it. Our response should be sent out no later than Friday of this week.

Thanks,

**Sara (Aslinger) Hunsaker**

*Litigation Paralegal*

Zieve, Brodnax & Steele, LLP

9435 West Russell Road, Suite 120

Las Vegas, NV 89148

**P:** 702-948-8565 EXT 605

mailto: [shunsaker@zbslaw.com](mailto:shunsaker@zbslaw.com)

*Not licensed to practice law*

**Representation in: CA | AZ | NV | WA | OR**



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**EXHIBIT 2**

**DOCKET DATED DECEMBER 12, 2018**

**EXHIBIT 2**

**DOCKET DATED DECEMBER 12, 2018**

**EXHIBIT 2**

## Case Summary

### FAY SERVICING LLC, ALBERT ELLIS LINCICOME JR., VICENTA LINCICOME, SABLES, LLC, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. ~ COMPLAINT

Case Number: 18-CV-01332

Agency: Third Judicial District Court

Type: Other Title to Property Case

Received Date: 11/7/2018

Status: Open

Status Date: 11/7/2018

#### Involvements

##### Primary Involvements

SABLES, LLC Defendant

FAY SERVICING LLC Defendant

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A.

Defendant

LINCICOME, ALBERT ELLIS JR. Plaintiff

LINCICOME, VICENTA Plaintiff

##### Other Involvements

Hernandez, Ramir Esq. Defendant's Attorney

Millward, Michael G. Esq. Plaintiff's Attorney

Third Judicial District Court (18-CV-01332)

Aberasturi, Leon A. - LAA Dept II - TJDC

#### Other Title to Property Case

##### 1. NRCP 3 - COMPLAINT

LINCICOME, ALBERT ELLIS JR. Plaintiff

Lead/Active: True

##### 2. NRCP 3 - COMPLAINT

LINCICOME, VICENTA Plaintiff

Lead/Active: False

##### 3. NRCP 5 - ANSWER

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. Defendant

Lead/Active: False

##### 4. NRCP 5 - ANSWER

FAY SERVICING LLC Defendant

Lead/Active: False

#### Case Status History

11/7/2018 4:49:00 PM | Open

#### Documents

11/7/2018 Complaint (Arbitration Exempt- Declaratory Relief).pdf - Filed

11/7/2018 Civil Cover Sheet.pdf - Filed

11/7/2018 Notice of Lis Pendens APN 29-401-17.pdf - Filed

11/7/2018 Affidavit of Counsel.pdf - Filed

11/7/2018 Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction.pdf - Filed

11/8/2018 Certificate of Service (Complaint, Application, & Notice).pdf - Filed

11/8/2018 Certificate of Service.pdf - Filed

11/8/2018 Summons- Issued.pdf - Issued

Notes: 4 Originals Issued

11/8/2018 Order.pdf - Filed

11/14/2018 Certificate of Service (2).pdf - Filed

11/14/2018 Request for Submission (Corrected Order).pdf - Filed

11/14/2018 Corrected Order.pdf - Filed

11/15/2018 Notice of Appearance.pdf - Filed

11/15/2018 Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.pdf - Filed

00416

## Case Summary

---

11/15/2018 Declaration of Fay Servicing, LLC in Response to Application for Ex Parte Restraining Order.pdf - Filed

Notes: Preliminary Injunction and Permanent Injunction

11/20/2018 Notice of Entry of Order.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 1.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 2.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 3.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 4.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 5.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 6.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 7.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 8.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 9.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 10.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 11.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 12.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 13.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 14.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 15.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 16.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 17.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 18.pdf - Filed

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit List.pdf - For Court Use Only

11/29/2018 Answer to Complaint.pdf - Filed

12/6/2018 SR. Judge Request 18-CV-01332.pdf - For Court Use Only

12/10/2018 Summon on Return - Served 11-14-18.pdf - Filed on Return

12/10/2018 Memorandum of Temporary Assignment.pdf - Filed

Notes: Assignment of Judge McGee

12/11/2018 Summons-On Return-Sables LLC's Agent Svd 11-19-18.pdf - Filed on Return

### Events

11/20/2018 2:30:00 PM | TPO Hearing | Dept II, Crtrm A 18-CV-01332 | Court Room A

Andersen, Andrea Deputy Clerk -

AANDERSEN

Geurts, Patrick

Staff - STAFF

lawclerk2 - LAW2

John Kilgore

Lachman, Scott Esq.

Telephonic, obo Bank of America

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

obo Defendant, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. and FAY SERVICING LLC

LINCICOME, ALBERT ELLIS JR. (Plaintiff)

Plaintiff

LINCICOME, VICENTA (Plaintiff)

Plaintiff

Millward, Michael G. Esq. (Plaintiff's Attorney)

with Plaintiffs

Notes: Counsel does not feel there is a chance of settlement. Court proceeded with the hearing. Mr. Lachman advised the court he was just retained on behalf of Bank of America and it does not appear that Bank of America has an interest, but requested to stay on the phone. Court allowed requested. Plaintiff's Exhibits 1-18 were marked. Counsel stipulated to the admission of Plaintiff's Exhibits 1-18. Plaintiffs Exhibits 1-18 were admitted. All the exhibits as attached to Defendants Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction were admitted. No objections to the facts within the Affidavit. Counsel argued the Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction. Court ruled in favor of the Plaintiff to extend due to the likelihood of success. Court ordered bond in the amount of the payments due, which is the monthly mortgage payment times twelve (12) times seven (7.) Bond is due within thirty (30) days. Payments are to be made each month starting December 20, 2018. Mediation is requested to be done by Washoe County Judge Hardy. Court will contact Judge Hardy and see if he is willing to preside over mediation. Court finds no statute of fraud. Mr. Millward to prepare Order and submit to opposing counsel. If counsel cannot agree on the Order in one (1) or two (2) emails, counsel is to submit their own orders. Order to be submitted December 10, 2018.

**EXHIBIT 3**

**EMAIL COMMUNICATION DATED**  
**DECEMBER 21, 2018**

**EXHIBIT 3**

**EMAIL COMMUNICATION DATED**  
**DECEMBER 21, 2018**

**EXHIBIT 3**

## Sara Hunsaker

---

**From:** Sara Hunsaker  
**Sent:** Friday, December 21, 2018 12:21 PM  
**To:** 'michael@millwardlaw.com'; 'becky@millwardlaw.com'  
**Cc:** Shadd Wade  
**Subject:** RE: Lincicome v. Sables, et al (18-CV-01332) / Notice of Intent to Default Sables  
**Attachments:** DOC122118-12212018121021.pdf

Counsel,

Please find attached copy of our client, Sables, LLC's response to the complaint. We are sending this out to the court today. Please feel free to contact us should you have any further questions.

Thanks,

**Sara (Aslinger) Hunsaker**

*Litigation Paralegal*

Zieve, Brodnax & Steele, LLP

9435 West Russell Road, Suite 120

Las Vegas, NV 89148

P: 702-948-8565 EXT 605

mailto: [shunsaker@zbslaw.com](mailto:shunsaker@zbslaw.com)

*Not licensed to practice law*

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---

**From:** Sara Hunsaker  
**Sent:** Tuesday, December 18, 2018 1:01 PM  
**To:** 'michael@millwardlaw.com'; 'becky@millwardlaw.com'  
**Cc:** Shadd Wade  
**Subject:** Lincicome v. Sables, et al (18-CV-01332) / Notice of Intent to Default Sables

Hi Becky,

Thank you for taking my call a few minutes ago. As explained we represent Sables, LLC in the referenced matter. We are finalizing our response and are just waiting on our filing fee from our corporate office in California. Please make note that we will email you a copy of our response to the complaint as soon as we prepare the package to be mailed out for

filing to the court. If you could please hold off on taking any adverse action against Sables, we would appreciate it. Our response should be sent out no later than Friday of this week.

Thanks,

***Sara (Aslinger) Hunsaker***

*Litigation Paralegal*

Zieve, Brodnax & Steele, LLP

9435 West Russell Road, Suite 120


Las Vegas, NV 89148

P: 702-948-8565 EXT 605

mailto: [shunsaker@zbslaw.com](mailto:shunsaker@zbslaw.com)

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**EXHIBIT 4**

**DOCKET DATED JANUARY 16, 2019**

**EXHIBIT 4**

**DOCKET DATED JANUARY 16, 2019**

**EXHIBIT 4**

## Case Summary

**FAY SERVICING LLC, BANK OF AMERICA, N.A., ALBERT ELLIS LINCICOME JR., VICENTA LINCICOME, SABLES, LLC, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. - COMPLAINT**

Case Number: 18-CV-01332

Agency: Third Judicial District Court

Type: Other Title to Property Case

Received Date: 11/7/2018

Status: Open

Status Date: 11/7/2018

### Involvements

#### Primary Involvements

BANK OF AMERICA, N.A. Defendant

SABLES, LLC Defendant

FAY SERVICING LLC Defendant

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A.

Defendant

LINCICOME, ALBERT ELLIS JR. Plaintiff

LINCICOME, VICENTA Plaintiff

#### Other Involvements

Brenner, Darren T. Esq. Defendant's Attorney

Lachman, Scott Esq. Defendant's Attorney

Hernandez, Ramir Esq. Defendant's Attorney

Millward, Michael G. Esq. Plaintiff's Attorney

Third Judicial District Court (18-CV-01332)

Aberasturi, Leon A. - LAA Dept II - TJDC

### 5. NRCP 5 - ANSWER

BANK OF AMERICA, N.A. Defendant

Lead/Active: False

### Other Title to Property Case

#### 1. NRCP 3 - COMPLAINT

LINCICOME, ALBERT ELLIS JR. Plaintiff

Lead/Active: True

#### 2. NRCP 3 - COMPLAINT

LINCICOME, VICENTA Plaintiff

Lead/Active: False

#### 3. NRCP 5 - ANSWER

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. Defendant

Lead/Active: False

#### 4. NRCP 5 - ANSWER

FAY SERVICING LLC Defendant

Lead/Active: False

#### 6. NRCP 5 - ANSWER

SABLES, LLC Defendant

Notes: Sables, LLC First Appearance

Lead/Active: False

### Case Status History

11/7/2018 4:49:00 PM | Open

### Documents

11/7/2018 Complaint (Arbitration Exempt- Declaratory Relief).pdf - Filed

00422



## Case Summary

---

11/7/2018 Civil Cover Sheet.pdf - Filed  
11/7/2018 Notice of Lis Pendens APN 29-401-17.pdf - Filed  
11/7/2018 Affidavit of Counsel.pdf - Filed  
11/7/2018 Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction.pdf - Filed  
11/8/2018 Certificate of Service (Complaint, Application, & Notice).pdf - Filed  
11/8/2018 Certificate of Service.pdf - Filed  
11/8/2018 Summons- Issued.pdf - Issued  
Notes: 4 Originals Issued  
11/8/2018 Order.pdf - Filed  
11/14/2018 Certificate of Service (2).pdf - Filed  
11/14/2018 Request for Submission (Corrected Order).pdf - Filed  
11/14/2018 Corrected Order.pdf - Filed  
11/15/2018 Notice of Appearance.pdf - Filed  
11/15/2018 Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.pdf - Filed  
11/15/2018 Declaration of Fay Servicing, LLC in Response to Application for Ex Parte Restraining Order.pdf - Filed  
Notes: Preliminary Injunction and Permanent Injunction  
11/20/2018 Notice of Entry of Order.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 1.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 2.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 3.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 4.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 5.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 6.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 7.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 8.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 9.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 10.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 11.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 12.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 13.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 14.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 15.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 16.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 17.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 18.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit List.pdf - For Court Use Only  
11/29/2018 Answer to Complaint.pdf - Filed  
12/6/2018 SR. Judge Request 18-CV-01332.pdf - For Court Use Only  
12/10/2018 Summon on Return - Served 11-14-18.pdf - Filed on Return  
12/10/2018 Memorandum of Temporary Assignment.pdf - Filed  
Notes: Assignment of Judge McGee  
12/11/2018 Summons-On Return-Sables LLC's Agent Svd 11-19-18.pdf - Filed on Return  
12/14/2018 Three Day Notice of Intent to Take Default.pdf - Filed  
Notes: SABLES, LLC  
12/14/2018 Three Day Notice of Intent to Take Default .pdf - Filed  
Notes: Bank of America  
12/21/2018 Application for Entry of Default- Bank of America, N.A..pdf - Filed  
12/21/2018 Application for Entry of Default- Sables, LLC.pdf - Filed  
12/21/2018 Default- Sables, LLC.pdf - Filed  
12/21/2018 Default- Bank of America, N.A..pdf - Filed  
12/21/2018 Defendant Bank of America, N.A.'s Notice of Motion and Motion to Dismiss Plaintiffs' Complaint.pdf - Filed  
12/21/2018 Notice of Appearance - Darren Brenner, Esq. and Scott Lachman, Esq. for BoA.pdf - Filed  
12/24/2018 Declaration of Non-monetary Status.pdf - Filed  
12/24/2018 Initial Appearance Fee Disclosure - Sables, LLC.pdf - Filed  
12/31/2018 Order (2).pdf - Filed  
1/8/2019 Notice of Entry of Order (Order filed 12-31-18).pdf - Filed  
1/9/2019 Objection to Declaration of Non-Monetary Status.pdf - Filed

### Events

11/20/2018 2:30:00 PM | TPO Hearing | Dept II, Ctrrm A 18-CV-01332 | Court Room A  
Andersen, Andrea Deputy Clerk -  
AANDERSEN  
Geurts, Patrick  
Staff - STAFF  
lawclerk2 - LAW2  
John Kilgore

00423

## Case Summary

---

Lachman, Scott Esq.

Telephonic, obo Bank of America

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

obo Defendant, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. and FAY SERVICING LLC

LINCICOME, ALBERT ELLIS JR. (Plaintiff)

Plaintiff

LINCICOME, VICENTA (Plaintiff)

Plaintiff

Millward, Michael G. Esq. (Plaintiff's Attorney)

with Plaintiffs

Notes: Counsel does not feel there is a chance of settlement. Court proceeded with the hearing. Mr. Lachman advised the court he was just retained on behalf of Bank of America and it does not appear that Bank of America has an interest, but requested to stay on the phone. Court allowed requested. Plaintiff's Exhibits 1-18 were marked. Counsel stipulated to the admission of Plaintiff's Exhibits 1-18. Plaintiff's Exhibits 1-18 were admitted. All the exhibits as attached to Defendants Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction were admitted. No objections to the facts within the Affidavit. Counsel argued the Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction. Court ruled in favor of the Plaintiff to extend due to the likelihood of success. Court ordered bond in the amount of the payments due, which is the monthly mortgage payment times twelve (12) times seven (7.) Bond is due within thirty (30) days. Payments are to be made each month starting December 20, 2018. Mediation is requested to be done by Washoe County Judge Hardy. Court will contact Judge Hardy and see if he is willing to preside over mediation. Court finds no statute of fraud. Mr. Millward to prepare Order and submit to opposing counsel. If counsel cannot agree on the Order in one (1) or two (2) emails, counsel is to submit their own orders. Order to be submitted December 10, 2018.

FILED

2019 MAR -4 AM 11:29

THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
CLERK OF COURT

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

KATHY THOMAS

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ELLIS LINCICOME and VICENTA  
LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO  
FILE AMENDED COMPLAINT TO  
SUBSTITUTE PARTIES AND ADD  
ADDITIONAL CLAIMS FOR RELIEF**

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME (hereinafter  
together as "Plaintiffs" or "Lincicomes"), by and through their attorney, Michael G. Millward,  
Esq., of Millward Law, Ltd., and hereby move this Honorable Court for leave to file their First  
Amended Complaint. Plaintiffs' Motion is based upon the pleadings and papers on file herein,  
and the attached Memorandum of Points and Authorities.

Dated this 20th day of February, 2019

MILLWARD LAW, LTD.

By: 

Michael G. Millward, Esq.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 7, 2018, Plaintiffs filed their Complaint in this action seeking an  
4 injunction enjoining Defendants Fay Servicing, LLC (hereinafter "Fay Servicing"), Sables, LLC  
5 (hereinafter "Sables"), and US Bank as Trustee of the PROF-2013-M4 Legal Title Trust  
6 (hereinafter "US Bank") from foreclosing against the Lincicomes' home and real property.  
7 Additionally, Plaintiffs sought a determination of Plaintiffs' rights under the 2007 Deed of  
8 Trust as modified by the 2009 Loan Modification Agreement and a determination of  
9 Defendants' rights to proceed with a foreclosure pursuant to NRS 107.080 under the Deed of  
10 Trust. Plaintiff also sought recovery upon a claim of breach of contract against Bank of  
11 America for breach of the Loan Modification Agreement.

12 After the filing of Plaintiffs' Complaint and a hearing held upon Plaintiffs' Application  
13 for Ex Parte Restraining Order and Preliminary Injunction, the Deed of Trust was assigned to  
14 MCM 2018-NPL2, an investment Trust administered by MCM Capital, LLC as Trustee, and  
15 Shellpoint Mortgage Servicing was engaged as the servicer of the loan.

16 On December 31, 2018, the Court entered its *Order After Hearing*, therein enjoining  
17 Sables from foreclosing upon Plaintiff's property until further order of the Court. Then, on  
18 January 4, 2019, Plaintiffs' real property was sold by foreclosure by Sables to Breckenridge  
19 Property Fund 2016, LLC (hereinafter "Breckenridge").

20 Breckenridge, Shellpoint Mortgage Servicing, and MCM 2018-NPL2, are necessary  
21 parties to this action and must be substituted in this matter for Plaintiffs to fully recover  
22 upon their claims. Additionally, because of the actions taken since entry of the Court's  
23 December 31, 2018 Order After Hearing, additional causes of action have arisen making it  
24 necessary for Plaintiffs to amend their Complaint to seek full relief for the actions taken  
25 against them.

26 Accordingly, Plaintiffs must amend their Complaint to substitute additional parties to  
27 fully resolve their asserted claims, as well as the additional claims that have arisen since the  
28 filing of Plaintiffs' initial Complaint. Therefore, for reasons provided herein, Plaintiffs'

1 respectfully request that this Court grant Plaintiffs' Motion for Leave to File First Amended  
2 Complaint.

## 3 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

4 In May of 2007, Ellis and Vicenta Lincicome purchased a home located at 70 Riverside  
5 Drive, Dayton, Nevada, 89403 (hereinafter "Residence"). On May 23, 2007, Vicenta  
6 Lincicome executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust to  
7 secure the mortgage loan.

8 On or about July 11, 2009, Bank of America sent Vicenta a Loan Modification  
9 Agreement (hereinafter "LMA") which provided that the first payment of \$2,272.62 was to be  
10 made September 1, 2009. A copy of the LMA is attached hereto as **Exhibit 1**.

11 The LMA extended the maturity date of the loan to August 1, 2049, and, as of August  
12 1, 2009, the interest rate applicable to their loan would be reduced from the current rate of  
13 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would  
14 increase to 5.375%. Under the Agreement all arrears were to be capitalized as of  
15 September 1, 2009. A copy of the "Important Message About Your Loan" notice is attached  
16 as **Exhibit 2**.

17 On July 31, 2009, Vicenta signed the LMA and sent it to Bank of America by Federal  
18 Express in the reusable Fed-Ex envelope that was provided with the loan modification  
19 package.

20 On September 1, 2009, the Lincicomes made their first payment upon the LMA. The  
21 banker, Crystal was not able to find any record of the LMA in Bank of America's system.  
22 Crystal accepted the payment and told the Lincicomes to contact Bank of America Customer  
23 Service to obtain reference number for the modified loan.

24 Vicenta contacted Bank of America Customer Service and she was told to go to the  
25 Customer Assistance Center on Rose Drive in Reno. The Lincicomes met with Ms. Keady and  
26 showed her a signed copy of the LMA. Ms. Keady was unable to find a reference number for  
27 the loan and informed the Lincicomes that she would have Bank of America investigate the  
28 status of the LMA.

1 On October 1, 2009, Vicenta travelled to the Carson City Bank of America branch to  
2 make the second payment on the LMA. This time the banker refused payment upon the  
3 modified loan because Bank of America showed no record that the Lincicomes' loan had been  
4 modified by the LMA.

5 On October 29, 2009, Bank of America sent Vicenta a statement contradicting the  
6 terms of the LMA. A copy of the October 29, 2009 statement is attached as **Exhibit 3**. The  
7 October 29, 2009 statement incorrectly reported the interest rate, total payment amount,  
8 principal balance, and listed the Lincicomes September 1, 2009 payment as a partial  
9 payment instead acknowledging payment for the full amount due under the LMA. *See id.*

10 From October 1, 2009, to December of 2011, the Lincicomes continued to contact  
11 Bank of America by phone to check on the status of the LMA so that they could begin making  
12 payments and get their loan on track. Each time, Bank of America informed the Lincicomes  
13 that the matter was being investigated.

14 On May 4, 2011, unbeknownst to the Lincicomes at the time, Bank of America  
15 recorded a fully executed copy of the July 11, 2009 LMA with the office of the Lyon County  
16 Recorder, as Document No. 475808. Ex.1. The Lincicomes remained unaware of the fact  
17 that the LMA had been found and executed until 2017.

18 On August 1, 2015, Bank of America informed the Lincicomes that their loan had been  
19 transferred to Fay Servicing. On or about August 10, 2015, Fay Servicing sent the  
20 Lincicomes a mortgage statement. A copy of the August 10, 2015 statement is attached  
21 hereto as **Exhibit 4**. Fay's statement reflects only the terms of the 2007 Note and Deed of  
22 Trust and not the terms reflected in the LMA.

23 Fay's statement incorrectly reflects the interest rate, total payment amount, principal  
24 balance, and the number of payments that remain outstanding had the terms of the LMA  
25 been applied. (See Ex.4).

26 On November 10, 2015, Bank of America assigned its interest in the Deed of Trust to  
27 PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
28 (hereinafter "US Bank").

1 On November 3, 2017, Sables, LLC (hereinafter "Sables"), as Trustee under the Deed  
2 of Trust, recorded its *Notice of Breach and Default and of Election to Sell the Real Property*  
3 *under Deed of Trust* (hereinafter "NOD"). A copy of the NOD is attached hereto as **Exhibit**  
4 **5**.

5 The NOD provides that as of October 31, 2017, \$265,572.39 is owed in arrears.  
6 Even though the NOD acknowledges that the "subject Deed of Trust was modified by Loan  
7 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011," it provides that  
8 all monthly installments from "9/1/2008" forward are due instead of 9/1/2009 as provided in  
9 the Loan Modification Agreement. Ex.1.

10 The NOD also misstates the date of the recording of the November 25, 2015,  
11 Assignment from Bank of America to US Bank as having been recorded "November 25,  
12 2016." Ex.5.

13 The NOD includes an Affidavit of Authority signed on October 5, 2016, by Veronica  
14 Talley, as a "Foreclosure Specialist IV" (hereinafter "Talley Affidavit") stating that Fay  
15 Servicing has complied with the requirements of NRS 107.080. Ex.5, pp.4-5.

16 On October 12, 2018, Sables recorded its *Notice of Trustee's Sale* with the Lyon  
17 County Recorder as Document No. 587470, providing that the Property will be sold by public  
18 auction on November 9, 2018, at 11:00 AM, at the Lyon County Court House on 31 S. Main  
19 Street, Yerington, Nevada 89447. A copy of the *Notice of Trustee's Sale* is attached hereto  
20 as **Exhibit 6**.

21 On November 7, 2018, the Lincicomes filed a *Complaint* for Declaratory Relief and an  
22 *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction*  
23 in the Third Judicial District Court of the State of Nevada, as Case No. 18-CV-01332.

24 On November 7, 2018, a *Notice of Lis Pendens* was filed in the Third Judicial District  
25 Court Case No. 18-CV-01332 against the Premises and was recorded on November 8, 2018,  
26 with the Lyon County Recorder as Document No. 588549.

27 On November 8, 2018, the Third Judicial District Court entered an *Order* providing,  
28 "That Sables, LLC, is hereby restrained and temporarily enjoined from selling at public

1 auction the real property identified in the Notice of Trustee's Sale recorded with the Office of  
2 the Lyon County Recorder as Document No. 587470, "at public auction until further order of  
3 the Court." A copy of the November 8, 2018 *Order* is attached as **Exhibit 7**.

4 On November 14, 2018, the Third Judicial District Court entered a *Corrected Order*  
5 restraining and enjoining SABLES, from selling the Premises until further order of the Court.

6 On November 20, 2018, the Court held a hearing on the *Application for Ex Parte*  
7 *Restraining Order, Preliminary Injunction and Permanent Injunction*.

8 On December 21, 2018, the Third Judicial District Court took SABLES' default.

9 On December 21, 2018, the Third Judicial District Court took BofA's default.

10 On December 31, 2018, the Third Judicial District Court entered an *Order* providing  
11 "[t]hat Sables, LLC, is hereby enjoined from selling at public auction the real property  
12 located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the Notice of  
13 Trustee's Sale recorded with the Office of the Lyon County Recorder as Document No.  
14 587470, until further order of the Court." A copy of the December 31, 2018 *Order* is  
15 attached as **Exhibit 8**.

16 On January 4, 2019, a *Notice of Entry of Order* concerning entry of the Court's  
17 December 31, 2018 *Order* was served on all interested parties.

18 On January 4, 2019, Sables sold the Premises at foreclosure to Breckenridge Property  
19 Fund 2016, LLC, a Utah limited liability company (hereinafter "Breckenridge").

20 On January 25, 2019, a *Trustee's Deed Upon Sale* was recorded in the office of the  
21 Lyon County Recorder as Document No. 591393. A copy of the Trustee's Deed Upon Sale  
22 recorded as Document No. 591393 is attached hereto as **Exhibit 9**.

### 23 **III. ARGUMENT**

24 The Court should grant Plaintiffs leave to file their First Amended Complaint to  
25 substitute additional parties necessary for the Plaintiffs' to obtain relief sought by their  
26 Complaint, as well as to assert additional claims pertaining to wrongful foreclosure upon  
27 Plaintiffs' real property.

28 //



NRCP 15(d) permits an amended pleading to be filed upon leave of Court. NRCP 15(a). NRCP 15(d) provides that a court may permit a party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. *See id.*

Pursuant to NRCP 15(a), leave to amend pleadings "shall be freely given when justice so requires."

"In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant - the leave sought should, as the rules require, be 'freely given.'" *Forman v. Davis*, 371 U.S. 178, 182 (1962); *see also Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138 (1973).

In making determinations to grant leave to amend a pleading, trial courts "must be guided by the underlying purpose of Rule 15 to facilitate a decision on the merits rather than on the pleadings or technicalities." *US. v. Webb*, 655 F.2d 977 979 (9th Cir. 1981).

A party opposing a motion for leave to amend upon the argument that the party would be prejudiced, that party bears the burden of showing that the amendment would cause prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 193, 187 (9th Cir. 1987).

In this instance, Plaintiffs should be granted leave to file their First Amended Complaint pursuant to NRCP 15 so that this matter can be fully adjudicated upon the merits. Plaintiffs seek leave to amend the pleadings in this action rather than to initiate a new action against the same and additional parties.

Plaintiffs believe that the filing of an additional action would result in consolidation with this matter, and would, therefore, undermine judicial economy and unnecessarily delay the resolution of both matters. Accordingly, Plaintiffs do not seek leave to delay this matter, but rather to expedite the resolution of all Plaintiffs' claims. Additionally, Plaintiff's do not believe that the filing of the amended Complaint would cause prejudice that would exceed the filing of a separate matter to adjudicate Plaintiffs' additional claims.

Defendants also seek to amend to substitute other previously unknown parties.

//

NRCP 10(a) states as follows:

Every pleading shall contain a caption setting forth the name of the court and county, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. A party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly.

NRCP 10(a).

Since the filing of this action, the Deed of Trust concerning Plaintiffs' real property was assigned to a new entity, and a new servicer was engaged to administer the loan. Thereafter the Premises was sold at foreclosure.

Plaintiffs' have been informed that MCM 2018-NPL2, an investment Trust administered by MCM Capital, LLC as Trustee (hereinafter "MCM") became the assignee and beneficiary of the Deed of Trust prior to foreclosure on January 4, 2019. A Notice of Sale of Ownership of Mortgage Loan dated December 28, 2018, is attached hereto as **Exhibit 10**. MCM is a Delaware limited liability company and provides services as a mortgage investor, manager, advisor and technology provider. Ex.10. Plaintiffs are also informed that NEWREZ, LLC, d/b/a Shellpoint Mortgage Servicing, LLC (hereinafter "SHELLPOINT"), a Delaware limited liability company, became the new loan servicing company concerning the Deed of Trust. See Ex.10.

On January 17, 2019, Plaintiffs received a Validation of Debt Notice from SHELLPOINT advising that the creditor to whom their debt was owed was 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, (hereinafter referred to as "CAPITAL TRUST"), as legal title trustee. A copy of the Validation of Debt Notice dated January 17, 2019, is attached hereto as **Exhibit 11**.

Because of the involvement of these new entities concerning the ownership of the Residence, and with regard to the interests of the Deed of Trust, it is necessary that Plaintiffs be permitted to substitute SHELLPOINT, MCM and CAPITAL TRUST, and BRECKENRIDGE for Defendants DOES I through IV.

1 Therefore, Plaintiffs requests that this honorable Court grant them leave to file their  
2 First Amended Complaint attached hereto as **Exhibit 12** (exhibits omitted).

3 **I. CONCLUSION**

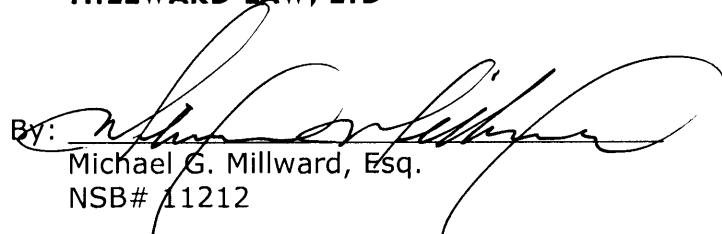
4 Therefore, upon the foregoing basis, Plaintiffs request that the Court grant them leave  
5 to file an amended complaint.

6 **AFFIRMATION**

7 The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not  
8 contain the social security number of any person or other personal information as defined by  
9 NRS 603A.040.

10 Dated this 28<sup>th</sup> day of February, 2019.

11 **MILLWARD LAW, LTD**

12  
13  
14 By:   
15 Michael G. Millward, Esq.  
16 NSB# 11212  
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## INDEX TO EXHIBITS

Exhibit 1	<i>Loan Modification Agreement</i>	6 page
Exhibit	<i>"Important Message About Your Loan"</i>	1 page
Exhibit 3	October 29, 2009 Bank of America Statement	1 page
Exhibit 4	August 10, 2015 Fay Servicing Statement	1 page
Exhibit 5	<i>Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust</i>	6 pages
Exhibit 6	<i>Notice of Trustee's Sale</i>	2 pages
Exhibit 7	November 8, 2018 <i>Order</i>	3 pages
Exhibit 8	December 31, 2018 <i>Order</i>	8 pages
Exhibit 9	<i>Trustee's Deed Upon Sale</i>	2 pages
Exhibit 10	<i>Notice of Sale of Ownership of Mortgage Loan</i> dated December 28, 2018	3 pages
Exhibit 11	Validation of Debt Notice dated January 17, 2019	2 pages
Exhibit 12	First Amended Complaint	24 pages

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing *Motion for Leave to File First Amended Complaint* was made on the 25<sup>th</sup> day of February, by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following:

SABLES, LLC  
c/o Shadd A. Wade, Esq.  
Zieve, Brodnax & Steel  
9435 W. Russel Rd., Suite 120  
Las Vegas, NV 89148

FAY SERVICING, LLC  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

US BANK  
PROF-2013-M4 LEGAL TITLE TRUST  
Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117

BANK OF AMERICA  
Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
Ackerman, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134

BRECKENRIDGE PROPERTY FUND 2016  
2320 Potosi Street, Ste. 130  
Las Vegas, NV 89146

MCM-2018-NPL2  
7101 Wisconsin Avenue, Suite 1012  
Bethesda MD 20814

1900 CAPITAL TRUST II  
BY U.S. BANK TRUST NATIONAL ASSOC.  
300 Delaware Avenue 9<sup>th</sup> Floor  
Wilmington DE 19801

SHELLPOINT MORTGAGE SERVICING  
Post Office Box 10826  
Greenville, SC 29603-0826



Rebekah Higginbotham, Paralegal

# Exhibit 1

APN# 029-401-17

**Recording Requested by:**

Name Michael Camarata

Address 100 Beecham Dr

City/State/Zip Pittsburg PA 15205

**Mail Tax Statements to:**

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

**DOC # 475808**

05/04/2011

01 19 PM

**Official Record**

Requested By  
BAC HOME LOANS SERVICING

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 6 Fee \$44.00

Recorded By MFK RPTT



0475808

Loan Modification Agreement

**Title of Document**  
(Required Field)

**FILL IN ALL THAT APPLY**

The Undersigned Hereby Affirms That This Document Submitted For Recording Contains Personal Information As Required By Law\*

Specify Law\* \_\_\_\_\_

Signature \_\_\_\_\_

Specify Law\* \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

\*If there is no applicable State or Federal Law, Personal Information must be removed prior to recording

If this document is a re-record or correction, fill out below

Correcting Document# \_\_\_\_\_ Amending \_\_\_\_\_

Reason for re-record \_\_\_\_\_

(For Re-records, all pages from original document must be included, \$25 Non-conforming Fee Applies)

If legal description is in metes & bounds, indicate where it was obtained:

\_\_\_\_\_ (Document Title), Book \_\_\_\_\_ Page \_\_\_\_\_ or

Document # \_\_\_\_\_ recorded \_\_\_\_\_ (date) in the

Lyon County Recorder's Office

-OR-

If prepared by a surveyor, provide name and address

\_\_\_\_\_

\_\_\_\_\_

\*Personal Information\* means a natural person's first name or first initial and last name in combination with any one or more of the following data elements

- 1 Social security number
- 2 Driver's license number or identification card number
- 3 Account number, credit card number or debit card number, in combination with any required security code, access code or password

This page added to provide additional information required by NRS 111.312 Sections 1-4  
(\$1.00 Additional Recording Fee Applies)

**IN MODIFICATION AGREEMENT  
(Fixed Interest Rate)**

This Loan Modification Agreement ("Agreement"), made this 11th day of July, 2009, between VICENTA LINCICOME (the "Borrower(s)") and BAC Home Loans Servicing, LP (the "Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument"), dated the 23rd day of May, 2007 in the amount of \$381,150.00, and (2) the Note secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as the "Property", located at 70 RIVERSIDE DRIVE, DAYTON, NV 89403

The real property described being set forth as follows

Previous mortgage recorded  
5/25/07 doc-407150 Assigned  
11/10/2010 doc 467719

**SAME AS IN SAID SECURITY INSTRUMENT**

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows  
(Notwithstanding anything to the contrary contained in the Note or Security Instrument)

- 1 As of the 1st day of September, 2009, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U.S. \$417,198.58, consisting of the amount(s) loaned to the Borrower by the Lender which may include, but not limited to, any past due principal payments, interest, fees and/or costs capitalized to date
- 2 The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of 4.875% from the 1st day of August, 2009. The Borrower promises to make monthly payments of principal and interest of U.S. \$1,977.29 beginning on the 1st day of September, 2009, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full. If on the 1st day of August, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Maturity Date
- 3 The Borrower will make such payments at Payment Processing PO Box 10219 Van Nuys, CA 91410 or at such other place as the Lender may require
- 4 Nothing in this agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument. Except as otherwise specifically provided in this Agreement, the Note and Security Instrument will remain unchanged, and the Borrower and Lender will be bound by, and comply with, all terms and provisions thereof, as amended by this Agreement
- 5 In consideration of this Modification, Borrower agrees that if any document related to the Security Instrument, Note and/or Modification is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan as modified, or is otherwise missing, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary. If the original promissory note is replaced the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as "Documents". Borrower agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement

05/04/2011  
002 of 6

475808



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team  
CHL Loan # 162304785

WDGFIXNR 8124 July 11, 2009

00438





475808

05/04/2011  
003 of 6

STEP RATE LOAN MODIFICATION  
ADDENDUM TO LOAN MODIFICATION AGREEMENT

The Step Rate Loan Modification Agreement Addendum (the "Addendum") is made this July 11, 2009, and is incorporated into and shall be deemed a part of that certain Loan Modification Agreement of even date herewith (the "Agreement") between VICENTA LINCICOME (the "Borrowers") and BAC Home Loans Servicing, LP ("the Lender"), which agreement amends and supplements that certain Mortgage Deed of Trust or Deed to Secure Debt (the "Security Instrument") executed by Borrower in favor of Lender

THIS ADDENDUM CONTAINS PROVISIONS PROVIDING FOR  
SCHEDULED INTEREST RATE CHANGES

In consideration of the mutual promises and agreements exchanged and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Agreement, Security Instrument or the promissory note (the "Note"), except as specifically provided for herein )

1 Scheduled Interest Rate Changes

The Agreement provides for an initial interest rate of 4 875% which will be charged from the 1st day of August, 2009

The Interest Rate shall then change on the 1st day of August, 2014 at which time it shall be 5 375%

Thereafter, the interest rate and monthly principal and interest payment shall adjust in accordance with the Note, Adjustable Rate Rider and/or any other loan document that is affixed to or incorporated into the Note and Rider and provides for, implements or relates to any change or adjustment in the interest rate and monthly payment amount under the Note until such time as the principal and interest due under the Note are paid in full. If on August 1, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by the Agreement and this Addendum, the Borrower shall pay these amounts in full on the Maturity Date

BORROWER

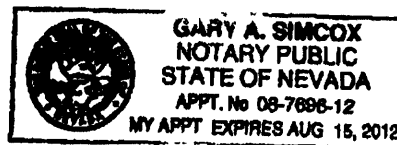
*Vicenta Lincicome*  
VICENTA LINCICOME

Dated *July 31, 2009*

Lender

BAC Home Loans Servicing, LP

Dated *July 31, 2009*



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N A



The HOPE Team  
CHL Loan # 162304785

July 11, 2009

00439



475808

05/04/2011  
004 of 6

As evidenced by their signatures below, the Borrower and the Lender agree to the foregoing

Vicenta Lincicome Dated July 31, 2009  
VICENTA LINCICOME

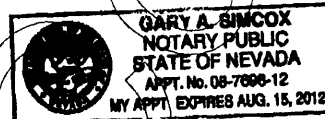
STATE OF NevadaCOUNTY OF ClarkOn July 31, 2009 before me, Gary Simcox Notary Public, personally appearedVicenta Lincicome

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature

08-15-2012  
Lgo cur



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team  
CHL Loan # 162304785

WDGFIXNR 8124 July 11, 2009

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05/04/2011  
005 of 6

DO NOT WRITE BELOW THIS LINE

THIS SECTION IS FOR INTERNAL BANK OF AMERICA HOME LOANS SERVICING, LP USE ONLY

BAC Home Loans Servicing, LP  
7105 Corporate Drive  
(PTX-B-36)  
Plano, TX 75024

By

Dated

James I SmithMAR 22 2011

STATE OF

On MAR 22 2011

COUNTY OF

Boonfield  
Amy L Bogan before me, James I Smith Notary Public, personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Amy L Bogan

Signature

AMY L BOGAN

NOTARY PUBLIC, STATE OF COLORADO

My Comm. Expires September 8, 2014

BAC Home Loans Servicing LP is a subsidiary of Bank of America N A

8093 06/09

00441



475808

05/04/2011  
006 of 6

LEGAL DESCRIPTION

ALL THAT CERTAIN LOT OR PARCEL OF LAND BEING SITUATE IN GOLD CANYON EST SUBDIVISION, PH 2  
LOT 42 BEING 482 ACRES

PARCEL # 029-401-17

Unofficial Copy

# Exhibit 2



**Home Loans**

Attn: Home Retention Division  
BAC Home Loans Servicing, LP  
100 Beecham Drive Suite 104  
Pittsburgh, PA 15205

**Notice Date: July 11, 2009**

**Account No.: 162304785**

VICENTA LINCICOME  
70 Riverside Dr  
Dayton, NV 89403

**Property Address:**  
70 RIVERSIDE DRIVE  
DAYTON, NV 89403

**IMPORTANT MESSAGE ABOUT YOUR LOAN**

We are pleased to advise you that your loan modification has been approved. In order for the modification to be valid, the enclosed documents need to be signed and returned.

The following amounts will be added to your current principal balance, resulting in a modified principal balance of \$417,196.58 prior to your first payment date. The amount added to your loan is:

Interest :	\$32,755.05
Fees:	\$55.00
Escrow:	<u>\$3,236.53</u>
Total:	\$36,046.58

Your new modified monthly payment will be \$2,272.62, effective with your September 1, 2009 payment. This payment is subject to change if your escrow account is reanalyzed due to new annual premiums. Your current interest rate is 6.875%. Your new reduced rate of 4.875% will be effective as of the September 1, 2009 payment. As of September 1, 2014 your interest rate will be 5.375% for the remaining term of your loan. Your new maturity date is August 1, 2049, which may have changed from your current maturity date as a result of the modification terms. This agreement will bring the loan current; however, you are still required to pay back the entire unpaid principal by the maturity date for your loan.

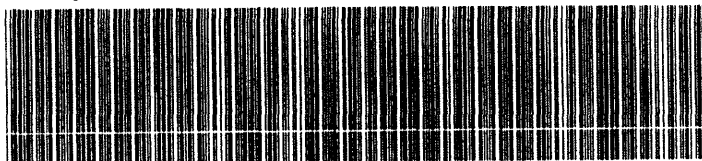
A breakdown of the scheduled interest rate changes is as follows:

Statement Due Date	Interest Rate	Principal & Interest
September 1, 2009	4.875%	\$1,977.29
September 1, 2014	5.375%	\$2,105.10

A breakdown of your payment is as follows:

P&I Payment:	\$1,977.29
Escrow:	<u>\$295.33</u>
Total Payment:	\$2,272.62

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team  
CHL Loan #: 162304785

WDGCSCOV LMS 8120 July 11, 2009

# Exhibit 3

**Home Loans**
 0149104 01 AT 0 357 \*\*AUTO T5 0 2288 89403-9055  
 PD A4 AG 0401-----G-2-7- C0000068 IN 1 P49254

 VICENTA LINCICOME  
 70 Riverside Dr  
 Dayton NV 89403-9055

**INTEREST-ONLY LOAN  
 MONTHLY STATEMENT  
 (During the Interest-Only  
 Period)**
**IMPORTANT NOTICE**

If you and BAC Home Loans Servicing, LP have entered into an agreement to address your monthly payments, please make payments in accordance with this agreement.

If you have qualified for an interest rate reduction based upon current active military service, subsequent statements may not reflect the reduced payment amount. Please refer to the notice previously sent to you for the reduced payment amount.

**Your Payment Choices This Month**

The amounts listed below are total payments, including amounts collected for escrow items such as taxes and insurance premiums. You can also pay additional Principal any month in any amount, by specifying "Additional Principal" in the payment coupon.

Payment Information	Total Payment Amount**	Principal/and or Interest Payment	Outstanding Late Charges	Optional Products*
Interest Only Payment ***	<b>\$2,435.43</b>	<b>\$2,183.67</b>	<b>\$218.36</b>	<b>\$0.00</b>

15-Year Amortized Payment Choice This Payment Choice is not available this month.

Amortized Payment Choice This Payment Choice is not available this month.

Please note: Amounts above may change based on payments made, received or returned before or after this statement was created.

\*\*Outstanding late charges up to \$400.00 are reflected in the payment choice amount

\*\*\* The **Amortized & 15-year Amortized Payment Choice** (Amortized Payment Choices) amounts are based on the assumption that these payments will always be received on the scheduled due date. You are not required to pay these amounts. The extra amount of Principal included with each of these alternative Amortized Payment Choices will be applied as a partial Prepayment of Principal on the date the payment is received. The interest portion of your payment will be applied as of the scheduled due date. The Amortized Payment is similar to, but not identical to the interest and Principal payment that you will be required to make after the Interest-Only Period ends. When that happens, your interest and Principal payments will be applied to your loan as of the scheduled due date. The Amortized Payment Choices will reduce your principal balance and the amount of interest you will pay over the life of this loan. These Amortized Payment Choices are provided to you as an additional service, but by no means are you limited to these choices when it comes to the amount of partial prepayments of principal that you may select on your own. **IMPORTANT NOTE:** Be sure you review any prepayment penalty provision you may have in your loan. Depending on the amount of any partial Prepayments and when you make them, you may owe a prepayment charge at the time you payoff your loan.

**Your Home Loan Snapshot as of October 29, 2009**

Loan type	30 Yr Conv Jumbo ARM
Principal balance	\$381,150.00
Escrow balance	-\$2,961.30
Interest rate	6.875%

Payment Due Date:	11/01/2009
Past Due Payment Amount	\$42,143.00
Fees Due	\$1,746.40
Partial Payment Balance	\$2,272.62
Late Charge if payment is received after 11/16/2009 (see next page for account activity details)	\$109.18

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.



# Exhibit 4

If you have questions or concerns about your statement, please contact us at 1-800-495-7166 between the hours of 9 a.m. - 9 p.m. CT Monday through Thursday, 9 a.m. - 5 p.m. CT Friday, and 10 a.m. - 4 p.m. CT Saturday.



3-775-02666-0025084-006-1-000-100-000-000

VICENTA LINCICOME  
70 RIVERSIDE DR  
DAYTON NV 89403-9055

**Account Number** 114477  
**Payment Due Date** 09/01/2015  
**Amount Due** **\$207,599.70**

*If payment is received after 09/16/2015, \$109.18 late fee will be charged.*

**Property Address:**  
70 RIVERSIDE DR  
DAYTON NV 89403

Account Information		Explanation of Amount Due	
Outstanding Principal	\$381,150.00	Principal	\$0.00
Deferred Balance	\$0.00	Interest	\$2,183.67
Current Interest Rate	6.875%	Escrow (for Taxes & Insurance)	\$230.28
Next Interest Rate Change	06/01/2017	<b>Regular Monthly Payment</b>	<b>\$2,413.95</b>
Prepayment Penalty	No	Overdue Payments	\$205,185.75
Escrow Balance	(\$20,204.11)	Total Fees Charged	\$0.00
<p>Partial Payments are not applied to your mortgage, but instead are held in a separate unapplied account. If you pay the balance of a partial payment, the unapplied funds will then be added to your mortgage. Adverse credit reporting, late charges and property inspections may occur as a result of the delinquency.</p>		<b>Total Amount Due</b>	<b>\$207,599.70</b>

Past Payments Breakdown		
		Paid Year to Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (for Taxes & Insurance)	\$0.00	\$0.00
Suspense (Unapplied Funds)	\$446.28	\$0.00
Fees	\$0.00	\$0.00
<b>Total</b>	<b>\$446.28</b>	<b>\$0.00</b>

Delinquency Notice	
<p><b>You are late on your monthly payments.</b> Failure to bring the account current may result in additional fees or expenses, and in certain instances, you may risk foreclosure. The amount needed to cure the delinquency is \$207,599.70. If you are unable to pay this amount, please call your account manager to explore your options.</p> <p>As of August 10, 2015, you are 2565 days delinquent on your mortgage loan.</p> <ul style="list-style-type: none"> <li>• Payment Due: 03/01/2015 Unpaid balance of \$2,413.95</li> <li>• Payment Due: 04/01/2015 Unpaid balance of \$2,413.95</li> <li>• Payment Due: 05/01/2015 Unpaid balance of \$2,413.95</li> <li>• Payment Due: 06/01/2015 Unpaid balance of \$2,413.95</li> <li>• Payment Due: 07/01/2015 Unpaid balance of \$2,413.95</li> <li>• Payment Due: 08/01/2015 Unpaid balance of \$2,413.95</li> </ul> <p><b>Total \$207,599.70 - You must pay this amount to bring your loan current.</b></p> <p>If you are experiencing financial difficulty, see back for information about home ownership counseling.</p>	

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

FAY  
SERVICING  
VICENTA LINCICOME

Account Number	Due Date	Regular Payment	Past Due	Payments Due	Other Amounts
114477	09/01/2015	\$2,413.95	\$205,185.75	85	\$0.00

FAY  
SERVICING

P.O. Box 3187  
Carol Stream, IL 60132-3187

Amount Due	
<b>Due By 09/01/2015:</b>	<b>\$207,599.70</b>
<i>If payment is received after 09/16/2015, \$109.18 late fee will be charged.</i>	
Additional Principal	\$
Additional Escrow	\$
<b>Total Amount Enclosed</b>	<b>\$</b>

# Exhibit 5

DOC# 572258

11/03/2017

10:29AM

**Official Record**

Requested By  
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 6

Fee: \$288.00

Recorded By BKC

RPTT: \$0.00

APN: 029-401-17

WHEN RECORDED MAIL TO:

Sables, LLC

c/o Zieve Brodnax & Steele

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169



0572258

TS No. : 16-42397

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO  
SELL THE REAL PROPERTY UNDER DEED OF TRUST**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is \$265,572.39 as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 5/23/2007, executed by VICENTA LINCICOME, A MARRIED WOMAN, as trustor to secure obligations in favor of Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and assigns, as Beneficiary, recorded 5/25/2007, instrument no. 407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of \$381,150.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.



**T.S. No.: 16-42397**

**Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.**

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

### **NOTICE**

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

**To determine if reinstatement is possible and the amount, if any, to cure the default, contact:**

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
c/o Fay Servicing, LLC  
c/o SABLES, LLC, a Nevada limited liability company  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Beneficiary Phone: 800-495-7166  
Trustee Phone: (702) 664-1774

**To reach a person with authority to negotiate a loan modification on behalf of the lender:**

Lauren Jowers  
800-495-7166

**Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.



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11/03/2017  
3 of 6**T.S. No.: 16-42397**

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: <http://portal.hud.gov>.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee  
Sables, LLC  
c/o Zieve Brodnax & Steele  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
(702) 948-8565

  
\_\_\_\_\_  
Michael Busby, Trustee Sale Officer

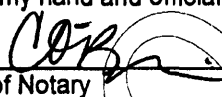
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA  
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary

**Affidavit of Authority**

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397  
Borrower Name: VICENTA LINCICOME  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist at Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF

1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF

1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St., Suite 2000, Chicago, IL 60605

2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.

2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042

2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP  
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360

2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP  
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719

3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.

4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property



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11/03/2017  
5 of 6

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: **Fay Servicing, LLC, its attorney in fact**

**Veronica Talley**

(Print Name)

(Signature)

**Foreclosure Specialist IV**

(Title)

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

State of Texas

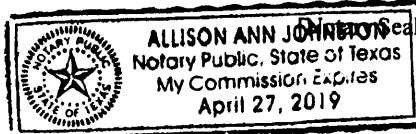
County of Denton

On October 5th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature







572258

11/03/2017  
6 of 6

## Declaration of Mortgage Servicer Pursuant to NR 107.510

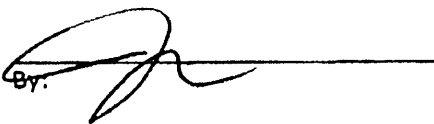
T.S. Number: 16-42397  
Borrower(s): VICENTA LINCICOME  
Mortgage Servicer: Fay Servicing, LLC  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3. ☐ No contact was required by the mortgage servicer because the Individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.
4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.
5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 4-5-2016

By: 

# Exhibit 6

**Doc #: 587470**

10/12/2018 02:27 PM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV**

**Dawna L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]

**Sables LLC**

**c/o Zieve Brodnax & Steele**

**9435 West Russell Road, Suite 120**

**Las Vegas, Nevada 89148**

T.S. No. 16-42397

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## **NOTICE OF TRUSTEE'S SALE**

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

**TRUSTOR: VICENTA LINCICOME, A MARRIED WOMAN**

**Duly Appointed Trustee: Sables LLC, a Nevada Limited Liability Company**

**Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:**

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:**

**All that certain real property situate in the County of Lyon, State of Nevada, described as follows:**

**Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.**

**EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.**

**Date of Sale: 11/9/2018 at 11:00 AM**

Place of Sale: 31 S. Main Street Yerington, Nevada 89447  
Lyon County Courthouse  
Estimated Sale Amount: \$666,632.22  
Street Address or other common designation of real property: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company  
c/o Zieve Brodnax & Steele  
9435 West Russell Road, Suite 120  
Las Vegas, NV 89148  
Phone: (702) 948-8565  
Sale Information: (714) 848-9272 [www.elitepostandpub.com](http://www.elitepostandpub.com)  
For Non-Automated Sale Information, call: (702) 664-1774

  
Michael Busby, Trustee Sale Officer

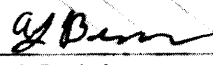
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

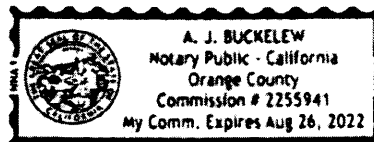
State of CALIFORNIA  
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

  
A.J. Buckelew  
Signature of Notary



THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND  
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

# Exhibit 7

FILED

2018 NOV -8 PM 1:51

TANYA SOLIMANE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar CLERK

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*\*\*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

ORDER

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER comes before the Court upon the Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted therewith, and the representations of counsel, hereby makes the following FINDINGS OF FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007, as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

ORDER

PAGE 1 OF 3

00460

MILLWARD LAW, LTD

1591 Mono Ave., Minden NV 89423  
(775) 600-2776





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**AFFIRMATION**

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 7<sup>th</sup> day of November, 2018

  
Michael G. Millward, Esq.



# Exhibit 8

FILED

2018 DEC 31 AM 10:48

JANUARY 1, 2019  
THIRD JUDICIAL DISTRICT COURT  
ANDREA ANDERSEN

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**ORDER**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,  
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay  
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*  
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their  
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to  
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are  
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.  
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,  
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of  
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of  
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,  
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the  
15 Application and Response previously filed before the Court as well as documents presented  
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the  
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the  
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments  
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located  
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")  
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter  
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred  
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan  
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date  
28

ORDER

PAGE 2 OF 8

1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate  
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable  
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified  
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the  
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to  
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was  
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the  
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the  
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified  
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of  
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection  
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case  
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter  
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the  
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of  
27 the LMA until 2017;

28 //

ORDER

PAGE 3 OF 8

1           14. That on November 26, 2014, Bank of America appeared in the Lincicomes'  
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the  
3 automatic stay, pursuant to 11 U.S.C. § 362;

4           15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes  
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6           16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a  
7 discharge of all of their scheduled debts;

8           17. That on August 1, 2015, Bank of America transferred the servicing of the 2007  
9 DOT as modified by the LMA to Fay Servicing;

10           18. That all statements provided by Fay Servicing to the Lincicomes between  
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had  
12 been modified by the LMA.

13           19. All statements between August 10, 2015 and October 10, 2018, reported the  
14 principal balance owed, the applicable interest rate, the payment amount, the total  
15 arrearage owed, as well as the total number of payments remaining due;

16           20. That on November 10, 2015, Bank of America assigned its interest in the Deed  
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
18 Trustee (hereinafter "US Bank");

19           21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007  
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property  
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.  
22 572258;

23           22. That the NOD provides that the "subject Deed of Trust was modified by Loan  
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25           23. That the NOD provides that all monthly installments from "9/1/2008" forward  
26 are due, instead of 9/1/2009 as required by the LMA;

27           24. That the NOD provides that the principal balance owed is \$381,150.00, instead  
28 of \$417,196.58 as provided in the LMA;

ORDER

PAGE 4 OF 8

00467

1           25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of  
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the  
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon  
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5           26. That under the circumstances the foreclosure of the Lincicome's residence  
6 would cause them irreparable injury;

7           27. The LMA appears to be a valid modification of the 2007 DOT;

8           28. That based on the record before the Court at the hearing neither Fay Servicing  
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007  
10 DOT as modified by the LMA;

11           29. That based on the record before the Court at the hearing neither Fay Servicing  
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under  
13 the 2007 DOT as modified under the LMA;

14           30. That based on the record before the Court at the hearing neither Fay Servicing  
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA  
16 is paid; and

17           31. That based on the record before the Court at the hearing neither Fay Servicing  
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as  
19 modified under the LMA.

20           The Court hereby enters the following Conclusions of Law:

21           1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS  
22 107.560 is applicable to this foreclosure matter;

23           2. That Plaintiffs established that irreparable injury would result if Defendant  
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real  
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
26 Number 29-401-17;

27 //

28 //

ORDER

PAGE 5 OF 8

1           3.     That Plaintiffs have established that they will succeed on their claim that  
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information  
3 required to be provided prior to the initiation of a foreclosure; and

4           4.     That Plaintiffs have established to the Court's satisfaction that they were likely  
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's  
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7           THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8           1.     That Sables, LLC, is hereby enjoined from selling at public auction the real  
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the  
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document  
11 No. 587470, until further order of the Court;

12           2.     That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by  
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of  
14 Bond filing;

15           3.     That the injunction shall be effective against Defendants so long as bond is  
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,  
17 and on the 20<sup>th</sup> day of each month thereafter with the Third Judicial District Court Clerk's  
18 office;

19           4.     Plaintiffs shall file a notice of compliance with the requirement to pay additional  
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the  
21 same upon Defendants after making payment of additional security as set forth above;

22           5.     That failure of Plaintiffs to timely post a bond and provide notice of bond by  
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction  
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice  
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post  
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter  
27 served upon Defendants; and

28     //

ORDER

PAGE 6 OF 8

1           6.     That the Court's orders entered in the Court's November 8, 2018 Order and the  
2 Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of  
3 Sale, are hereby set aside.

4           IT IS SO ORDERED.

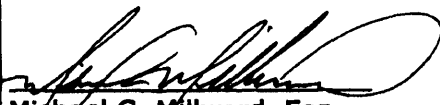
5           Dated this 31<sup>st</sup> day of December, 2018

6   
7 \_\_\_\_\_  
8 DISTRICT JUDGE

9  
10                           **AFFIRMATION**

11           The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not  
12 contain the social security number of any person, or other personal information as defined  
13 by NRS 603A.040.

14           Reviewed, approved and submitted this 18 day of December, 2018

15   
16 Michael G. Millward, Esq.  
17 Nevada Bar No. 11212  
18 Millward Law, Ltd.  
19 1591 Mono Ave.  
20 Minden, NV 89423  
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ORDER

PAGE 7 OF 8



1 Reviewed, approved and submitted this 18<sup>th</sup> day of December, 2018.

2  
3 

4 Ramir M. Hernandez, Esq.  
5 Nevada Bar No. 13146  
6 Wright, Finlay & Zak  
7 7785 W. Sahara Ave., Suite 200  
8 Las Vegas, NV 89117

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# Exhibit 9

70 RIVERSIDE DR

**Doc #: 591393**

01/26/2019 08:21 AM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: FIRST AMERICAN TITLE INSURANCE C

**Lyon County, NV**

**Margie Kassebaum, Recorder**

Fee: \$38.00 RPTT: \$1,148.55

Recorded By: Inhumildad

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:

Breckenridge Property Fund, 2016, LLC

2320 Potosi St. Ste 130

Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to  
the address given above

Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

### TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein WAS NOT the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

**Breckenridge Property Fund, 2016, LLC**

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:**

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

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

## TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey  
Neal

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

State of CALIFORNIA  
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco



# Exhibit 10



## Mortgage Servicing

**Sat: 8:00AM-3:00PM**



VICENTA LINCICOME  
1591 MONO AVE  
MINDEN NV 89423-4012

**Loan Number:** 0578622530

P 1000001 A-0578622530 000910102J0400

00476

**If this loan is sold, your new lender may have a different policy.**

The transfer of the lien associated with your loan is currently recorded, or in the future may be recorded, in the public records of the local County Recorder's office for the county where your property is located. If checked ☒, ownership of your loan is also recorded on the registry of the Mortgage Electronic Registrations System at 1818 Library Street, Suite 300, Reston, VA 20190.

Si usted no entiende el contenido de esta carta, por favor contacte a uno de nuestros representantes que hablan español al número 800-365-7107.

**Shellpoint Mortgage Servicing  
800-365-7107**

**Please read the following important notices as they may affect your rights.**

New Penn Financial LLC dba Shellpoint Mortgage Servicing is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.



If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy.

**Attention Servicemembers and Dependents:** The federal Servicemembers Civil Relief Act and certain state laws provide important protections for you, including interest rate protections and prohibiting foreclosure under most circumstances during and twelve months after the servicemember's military or other service. Counseling for covered servicemembers is available from Military OneSource (800-342-9647) and the United States Armed Forces Legal Assistance or other similar agencies. For more information, please visit the Military OneSource website [www.militaryonesource.mil/](http://www.militaryonesource.mil/).

**Notice of Error or Information Request Address:** You have certain rights under Federal law related to resolving errors in the servicing of your loan and requesting information about your loan. If you want to request information about your loan or if you believe an error has occurred in the servicing of your loan and would like to submit an Error Resolution or Informational Request, please write to us at the following address: Shellpoint Mortgage Servicing P.O. Box 10826 Greenville, SC 29603-0826

A successor in interest is someone who acquires an ownership interest in a property secured by a mortgage loan by transfer upon the death of a relative, as a result of a divorce or legal separation, through certain trusts, between spouses, from a parent to a child, or when a borrower who is a joint tenant or tenant by the entirety dies. If you are a successor in interest, or you think you might be, please contact by phone, mail or email to start the confirmation process.

If you prefer to receive communication in a language other than English, please contact us at 800-365-7107 to speak with a translator in your preferred language about the servicing of your loan or a document you received.

Si prefiere recibir las comunicaciones en otro idioma que no sea el inglés, por favor, contáctenos en el 800-365-7107 para hablar con un traductor en el idioma de su preferencia sobre la gestión de su préstamo o cualquier documento que haya recibido.

如果您要使用英语以外的其他语言进行交流, 请致电 800-365-7107, 我们将根据您的首选的语言安排相应的译员, 与您就贷款服务事项或您所接收的文件进行商讨。



# Exhibit 11



**Sat: 8:00AM-3:00PM**

Loan Number:	0578622530
Principal Balance:	\$381,150.00
Deferred Balance:	\$0.00
Property:	70 RIVERSIDE DR DAYTON, NV 89403

## VALIDATION OF DEBT NOTICE

Current principal balance (includes any deferred principal balance)	\$ 381,150.00
Current accrued unpaid interest (includes any deferred interest balance)	\$ 253,569.80
Escrow advances	\$ 29,434.72
Unpaid late fees and other charges	\$ 7,631.11
Unapplied balance	\$ -791.01
<b>Total amount of your debt</b>	<b>\$ 670,994.62</b>

Shellpoint Mortgage Servicing is attempting to collect a debt, and any information obtained will be used for that purpose.

Si usted no entiende el contenido de esta carta, por favor contacte a uno de nuestros representantes que hablan español al numero 800-365-7107.

Sincerely,

Shellpoint Mortgage Servicing  
P.O. Box 10826  
Greenville, SC 29603-0826  
800-365-7107

# Exhibit 12

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; NEWREZ, LLC,  
d/b/a SHELLPOINT MORTGAGE  
SERVICING, LLC; 1900 CAPITAL TRUST II,  
BY U.S. BANK TRUST NATIONAL  
ASSOCIATION; MCM-2018-NPL2;  
BRECKENRIDGE PROPERTY FUND 2016,  
LLC, a Utah limited liability company; and  
DOES 1-10.

Defendants.

**FIRST AMENDED COMPLAINT  
(ARBITRATION EXEMPT-  
DECLARATORY RELIEF)**

COME NOW, ELLIS LINCICOME and VICENTA LINCICOME, by and through their  
attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby allege and aver against  
the Defendants named in this matter as follows:

**PARTIES**

1. At all times relevant herein, Plaintiff ELLIS LINCICOME is and was a resident of  
the State of Nevada, residing at 70 Riverside Drive, Dayton, Nevada 89403.

//

2. At all times relevant herein, Plaintiff VICENTA LINCICOME is and was a resident of the State of Nevada, residing at 70 Riverside Drive, Dayton, Nevada 89403.

3. At all times relevant herein, Defendant SABLES, LLC (hereinafter referred to as "Sables"), is and was a Nevada limited liability company, providing deed of trust trustee services to servicers and financial institutions.

4. At all times relevant herein, Defendant FAY SERVICING, LLC (hereinafter referred to as "Fay Servicing"), is and was a Delaware limited liability company. Fay Servicing provides loan servicing for financial institutions and is the servicer for the beneficiary of the deed of trust and mortgage loan that is the subject of this Complaint.

5. Upon information and belief, at all times relevant herein, Defendant PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK NATIONAL ASSOCIATION (hereinafter referred to as "US Bank"), as legal title trustee, was a mortgage investment trust. At all times relevant herein, US Bank, was a non-title 7 business entity, registered to do business in the State of Nevada, conducting business in the State of Nevada as a national bank, and providing commercial banking services for individuals, businesses, and institutions in the State of Nevada.

6. At all times relevant herein, Defendant BANK OF AMERICA, N.A., successor by merger to BAC Home Loans Servicing, LP, formerly Countrywide Home Loans Servicing, LP, (hereinafter referred to as "Bank of America") was a non-title seven business entity, registered to do business in the State of Nevada, conducting business in the State of Nevada as a national bank, and providing commercial banking services for individuals, businesses, and institutions in the State of Nevada.

7. At all times relevant herein, Defendant NEWREZ, LLC d/b/a Shellpoint Mortgage Servicing, LLC (hereinafter "Shellpoint") is and was a Delaware limited liability company. Shellpoint provides loan servicing services for the beneficiary of the deed of trust and mortgage loan that is the subject of this Complaint.

8. Upon information and belief, at all times relevant herein, Defendant 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, (hereinafter referred to

1 as "Capital Trust"), as legal title trustee, was a mortgage investment trust. At all times  
2 relevant herein, Capital Trust, was a non-title 7 business entity, registered to do business in  
3 the State of Nevada, conducting business in the State of Nevada as a national bank, and  
4 providing commercial banking services for individuals, businesses, and institutions in the  
5 State of Nevada.

6 9. Upon information and belief, Defendant MCM-2018-NPL2, is an investment  
7 Trust administered by MCM Capital, LLC (hereinafter "MCM") as Trustee. MCM is a Delaware  
8 limited liability company and provides services as a mortgage investor, manager, advisor  
9 and technology provider.

10 10. At all times relevant herein, Defendant BRECKENRIDGE PROPERTY FUND 2016,  
11 LLC, a Utah limited liability company (hereinafter "Breckenridge"), is and was the grantee of  
12 a Trustee's Deed recorded with the Lyon County Recorder on January 25, 2019, as  
13 Document No. 591393.

14 11. The true names, capacities, and/or involvement of the DOE Defendants named  
15 herein are unknown to Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME (together  
16 hereinafter referred to as "the Lincicomes"), who therefore sue said Defendants by fictitious  
17 names. The Lincicomes are informed and believe, and thereon allege, that those persons or  
18 entities are the partners, owners, shareholders, agents, employees, or alter egos of the  
19 Defendants named herein, or those persons have an interest in the deed of trust or  
20 mortgage loan, or are otherwise affected by the relief sought herein. The Lincicomes pray  
21 leave to amend this Complaint to show their true names and capacities when the same have  
22 been determined. The Lincicomes are informed and believe, and thereon allege, that each of  
23 the Defendants named herein as a DOE is legally responsible in some manner for the events  
24 and happenings herein referred to in this lawsuit.

#### 25 **JURISDICTION**

26 12. The Third Judicial District Court in and for the County of Lyon has personal  
27 jurisdiction over all parties pursuant to NRS 14.065 and subject matter jurisdiction over all  
28 claims asserted in this Complaint pursuant to Article VI of the Nevada Constitution.

**VENUE**

13. The Third Judicial District Court in and for the County of Lyon is the proper venue for this action pursuant to NRS 13.010 because the actions arose out of contracts executed and to be performed in Lyon County, Nevada, and the real property at issue and affected by the relief sought is located in Lyon County, Nevada.

**GENERAL ALLEGATIONS**

14. In May of 2007, the Lincicomes agreed to enter into a residential mortgage loan with Sierra Pacific for the purchase of a home located at 70 Riverside Drive, Dayton, Nevada 89403 (hereinafter "Residence" or "Premises").

15. Sierra Pacific requested that Plaintiff Ellis Lincicome (hereinafter individually referred to as "Ellis") make a withdrawal of \$80,000 from his 401K retirement plan to be contributed as part of the down payment of the home purchase.

16. On May 23, 2007, Vicenta Lincicome (hereinafter individually referred to as "Vicenta") executed a Promissory Note in favor of Sierra Pacific as part of an interest only residential mortgage loan.

17. On that same day, May 23, 2007, Vicenta executed a Deed of Trust (hereinafter "Deed of Trust") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS"), a Delaware Corporation that tracks ownership interests and servicing rights in mortgage loans and holds title to mortgages solely as nominee for its member-lenders, as the nominee for Sierra Pacific to secure the mortgage loan. The Promissory Note and Deed of Trust are attached hereto as **Exhibit 1**.

18. In or about March of 2008, the Lincicomes learned that they had incurred a tax bill of nearly \$20,000 for having taken the \$80,000 distribution from Ellis's 401k.

19. The Lincicomes were unable to make their June 1, 2008, mortgage payment and were unable to later catch up on past due payments.

20. Also on April 27, 2009, Bank of America, N.A., and Countrywide Bank, N.A., merged. See Ex. C to *Motion for Relief of Stay* attached as **Exhibit 2**.

//



1           21. After receiving a Notice of Default and Notice of Sale, the Lincicomes began the  
2 process of applying for a mortgage workout with Bank of America.

3           22. On July 31, 2009, Vicenta executed a Loan Modification Agreement (hereinafter  
4 "LMA") with BAC Home Loans Servicing, LP, which provided that the first payment of  
5 \$2,272.62 was to be made September 1<sup>st</sup>, 2009. A copy of the 2009 Loan Modification  
6 Agreement is attached hereto as **Exhibit 3**.

7           23. The LMA extended the maturity date to August 1, 2049, and, as of August 1,  
8 2009, the interest rate applicable to their loan would be reduced from the current rate of  
9 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would  
10 increase to 5.375%. Under the LMA all arrears were to be capitalized as of September 1,  
11 2009, and the new principal balance owed would be \$417,196.58. A copy of the "Important  
12 Message About Your Loan" notice is attached as **Exhibit 4**.

13           24. On July 31, 2009, the LMA, which was fully executed by Vicenta, was sent by  
14 Federal Express in the reusable Fed-Ex envelope provided with the loan modification package  
15 to BAC Home Loans Servicing, LP Modification, 100 Beecham Drive, Suite 104, Pittsburgh, PA  
16 15205.

17           25. On September 1, 2009, the Lincicomes travelled to the Bank of America branch  
18 located in Carson City to make their first payment under the LMA. The banker assisting the  
19 Lincicomes was a young woman named Crystal. After searching for information concerning  
20 the Lincicomes' loan, Crystal could not find any record of the LMA in their system. Crystal  
21 accepted payment under the understanding that it was to be credited against the Lincicomes'  
22 loan as modified by the LMA, once the LMA had been entered into their system. Crystal told  
23 the Lincicomes to contact Bank of America customer service and request a coupon book for  
24 the LMA to make payments easier.

25           26. On or about September 1, 2009, Vicenta contacted Bank of America Customer  
26 Service and was told to go to the Customer Assistance Center on Rose Drive in Reno. The  
27 Lincicomes were assisted by Manager Barbara Keady. The Lincicomes showed Ms. Keady a  
28

1 signed copy of the LMA. Ms. Keady informed the Lincicomes that Bank of America would  
2 investigate the status of the LMA.

3 27. On or about October 1, 2009, Vicenta travelled to the Carson City Bank of  
4 America branch to make the second payment on the LMA. This time the banker, a middle-  
5 aged woman, refused the payment and indicated that there was no record of the existence  
6 of the LMA in Bank of America's computer system.

7 28. Bank of America provided a Home Loan Statement dated October 29, 2009,  
8 which establishes that Bank of America had not applied the terms of the LMA to the  
9 Lincicomes' mortgage loan. The October 29, 2009 statement is attached as **Exhibit 5**. The  
10 statement reflects an incorrect payment amount, an incorrect interest rate and an incorrect  
11 past due amount. Ex. 5.

12 29. From October 1, 2009, to December of 2011, the Lincicomes continued to  
13 contact Bank of America by phone to inquire as to the status of the LMA and make payment.  
14 On each phone call, the Bank of America customer service representative would inform the  
15 Lincicomes that the matter was being investigated. Copies of correspondence from Bank of  
16 America dated December 15, 2009, February 23, 2010, March 12, 2010, October 19, 2011  
17 and December 23, 2011, are attached hereto as **Exhibit 6**.

18 30. On March 12, 2010, the Lincicomes again contacted Bank of America by phone  
19 and again were informed that the status of the LMA was still being investigated. However,  
20 during this call the Lincicomes were advised to seek help from the Department of Housing  
21 and Urban Development's (HUD) Financial Guidance Center.

22 31. In April, the Lincicomes met with HUD Counselor Lucy Powell. Ms. Powell  
23 assisted the Lincicomes with the design of an action plan, which included the filing of a  
24 Chapter 13 Bankruptcy petition to cure the arrearage with Bank of America that would have  
25 accrued since the LMA was signed, and to force Bank of America to find and recognize the  
26 LMA.

27 //

28 //

1           32.    The Lincicomes filed a petition for Chapter 13 Bankruptcy protection before the  
2 United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-  
3 51219, and therein listed Bank of America as a secured creditor.

4           33.    The deadline for Bank of America to file a claim was set by the Bankruptcy  
5 Court Clerk to expire on August 12, 2010. A copy of the *Notice of Chapter 13 Bankruptcy*  
6 *Case, Meeting of Creditors, & Deadlines* is attached as **Exhibit 7**.

7           34.    Neither Bank of America nor BAC Home Loan Servicing filed a claim in the  
8 Lincicomes' Bankruptcy case.

9           35.    Without a claim filing or information regarding the validity of the LMA and the  
10 current arrears to go off of, the Lincicomes were unable to include payment of arrears as  
11 part of their Chapter 13 plan.

12           36.    Upon information and belief, in early 2011, Bank of America found the LMA.

13           37.    Senior Vice President of Bank of America, James S. Smith, executed the LMA  
14 on March 22, 2011.

15           38.    A fully executed copy of the LMA was recorded with the office of the Lyon  
16 County Recorder on May 4, 2011, as Document No. 475808.

17           39.    Bank of America did not give the Lincicomes notice that the LMA had been  
18 signed and recorded.

19           40.    The Lincicomes remained unaware of the fact that the LMA had been found, or  
20 that it had been agreed to and fully executed by Bank of America, until 2017.

21           41.    On November 26, 2014, Bank of America appeared in the Lincicomes'  
22 Bankruptcy case and filed a *Motion for Relief of Stay* seeking relief from the automatic stay,  
23 pursuant to 11 U.S.C. § 362.

24           42.    In the *Motion for Relief of Stay*, Bank of America did not inform the Bankruptcy  
25 Court of the 2009 LMA, nor did it provide the Court with a copy of the LMA recorded on May  
26 4, 2011.

27           //

28           //

1           43. On June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes  
2 discharge of all of their scheduled debts. A copy of the June 15, 2015 Discharge Order is  
3 attached as **Exhibit 8**.

4           44. Prior to discharge, but after the Court had entered an order granting Bank of  
5 America's *Motion for Relief of Stay*, the Lincicomes again applied for a loan modification.

6           45. On or about April 24, 2015, Bank of America accepted the loan modification  
7 application and required the Lincicomes to complete three trial modification payments before  
8 they could move forward with modifying their mortgage loan. A copy of April 24, 2015 loan  
9 modification notice is attached as **Exhibit 9**.

10           46. The April 24, 2015 loan modification notice provided that upon completion of  
11 the trial payments, the Lincicomes' mortgage would be extended to May 1, 2055, that the  
12 interest rate would be reduced to 4.125%, and that if it is determined that the unpaid  
13 balance of the Lincicomes mortgage exceeds 115% of the current value of their home, the  
14 Lincicomes would be eligible to have up to 30% of their principal balance deferred and not  
15 be subject to interest. Ex.9.

16           47. The Lincicomes made the first trial payment of \$2,013.78 on May 28, 2015.  
17 The second trial payment was made on July 1, 2015.

18           48. Then on August 1, 2015, while attempting to make the third trial payment,  
19 Bank of America informed the Lincicomes that their loan had been transferred to Fay  
20 Servicing, LLC. A copy of the check which the Lincicomes attempted to tender on August 1,  
21 2015, payable to Bank of America, is attached hereto as **Exhibit 10**.

22           49. The Lincicomes called Fay Servicing that same day, August 1, 2015, to make  
23 payment and spoke with account manager Rosalind Jackson. Ms. Jackson informed the  
24 Lincicomes that Fay Servicing does not honor Bank of America modifications.

25           50. On August 10, 2015, Fay Servicing generated a Mortgage Statement indicating  
26 the amount due on the Lincicomes' account on September 1, 2015, was \$207,599.70, and  
27 reflecting an interest rate of 6.875 percent and indicating there were 85 payments that  
28

1 remain due on the account. A copy of Fay Servicing's Mortgage Statement generated August  
2 10, 2015, is attached hereto as **Exhibit 11**.

3 51. On August 11, 2015, Fay Servicing, LLC, sent a letter to the Lincicomes that  
4 Bank of America was no longer their loan servicer and that beginning August 1, 2015, all  
5 payment should be sent to Fay Servicing.

6 52. The Lincicomes were devastated when neither Bank of America nor Fay  
7 Servicing would accept their payment and that Fay Servicing would not honor the April 24,  
8 2015 loan modification offer.

9 53. On November 10, 2015, Bank of America assigned its interest in the Deed of  
10 Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
11 Trustee (hereinafter "US Bank"). A copy of the November 10, 2015 Assignment is attached  
12 as **Exhibit 12**.

13 54. The November 10, 2015, Assignment to US Bank was recorded with the Lyon  
14 County Recorder as Document No. 544042. Ex.12.

15 55. In 2016, the Lincicomes applied for the Home Affordable Modification Program  
16 (HAMP) modification through Fay Servicing. Fay Servicing informed the Lincicomes that they  
17 only qualified for a Home Affordable Foreclose Alternatives (HAFA) Short Sale. The  
18 Lincicomes appealed Fay Servicing's denial of their qualification for HAMP.

19 56. On September 7, 2016, Fay Servicing sent the Lincicomes a response to their  
20 appeal of their denial therein indicating that the Lincicomes did not have sufficient income to  
21 qualify for a modification, and also that they were not qualified for the HAMP Unemployment  
22 Program (HAMP UP) "because the property is not your primary residence."

23 57. The Lincicomes have continuously used and claimed their home located at 70  
24 Riverside Dr., Dayton, Nevada, as their residence.

25 58. After being denied, the Lincicomes reached out to Senator Harry Reid's office  
26 for help. Shortly thereafter Fay Servicing offered the Lincicomes a trial modification at  
27 \$2,528.86 per month.  
28

1           59. The Lincicomes completed the three trial payments by December 1, 2016.  
2 Then on December 15, 2016, Fay Servicing sent the Lincicomes the final modification  
3 agreement. After reviewing the agreement, the Lincicomes knew that entering into the  
4 modification under the proposed terms would leave them in a terrible financial position, and  
5 would likely result in another default upon the modified terms. The Lincicomes decided not  
6 to enter into the agreement.

7           60. On December 20, 2016, the Lincicomes then elected to enter the State of  
8 Nevada Foreclosure Mediation Program.

9           61. Anita Conboy was appointed mediator and mediation was scheduled and held  
10 on April 17, 2017. The mediation was terminated when no agreement between the parties  
11 was reached. No certificate of mediation was issued because Fay Servicing did not bring any  
12 certifications for any of the documents as required by law.

13           62. On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust,  
14 recorded its *Notice of Breach and Default and Election to Sell the Real Property under Deed*  
15 *of Trust* (hereinafter "NOD"). A copy of the NOD is attached hereto as **Exhibit 13**.

16           63. The NOD provides that as of October 31, 2017, \$265,572.39 is owed in  
17 arrears. Even though the NOD acknowledges that the "subject Deed of Trust was modified  
18 by Loan Modification Agreement recorded as Instrument 475808 . . . recorded on 5/4/2011  
19 . . . in the office of the County recorder of Lyon County," it also provides that all monthly  
20 installments from "9/1/2008" forward are due.

21           64. The NOD is incorrect because the LMA was effective July 31, 2009, with the  
22 first installment to be made on 9/1/2009 instead of 8/1/2008. Ex.3.

23           65. The NOD includes an Affidavit of Authority signed on October 5, 2016, by  
24 Veronica Talley, as a "Foreclosure Specialist IV" (hereinafter "Talley Affidavit") stating that  
25 Fay Servicing has complied with the requirements of NRS 107.080.

26           66. The Talley Affidavit misstates the date of recording of the November 10, 2015  
27 Assignment from Bank of America to PROF-2013-M4 Legal Title Trust, by U.S. Bank National  
28

1 Association, as Legal Title Trustee, as having been recorded November 25, 2016, instead of  
2 the actual date of recording November 25, 2015. Ex.13; Ex.12.

3 67. The Talley Affidavit was signed nearly 13 months prior to the recording of the  
4 NOD.

5 68. The Declaration of the Mortgage Service attached to the NOD indicates that  
6 pursuant to the requirements of NRS 107.510 the mortgage servicer contacted the borrower  
7 to assess the borrower's financial situation and to explore options for the borrower to avoid a  
8 foreclosure sale. The Declaration was signed and dated April 5, 2016, nearly 19 months  
9 prior to the signing of the NOD to which it is attached. Ex.13, p.6.

10 69. The Lincicomes attended a second mediation on April 3, 2018, and a Certificate  
11 of Mediation was issued on October 4, 2018.

12 70. The Certificate of Mediation provides that the Lincicomes will voluntarily  
13 relinquish the property.

14 71. Even though a deed in lieu of foreclosure was discussed as the Lincicomes' only  
15 option at the mediation, and recommended by their attorney Geoffrey Giles, they did not  
16 agree to relinquish their property.

17 72. On October 12, 2018, Sables, LLC, recorded its *Notice of Trustee's Sale* with  
18 the Lyon County Recorder as Document No. 587470.

19 73. The October 12, 2018 *Notice of Trustee's Sale* provides that the date of sale is  
20 November 9, 2018, at 11:00 AM, at the Lyon County Court House on 31 S. Main Street  
21 Yerington, Nevada 89447.

22 74. On November 7, 2018, the Lincicomes filed a *Complaint* for Declaratory Relief  
23 and an *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent*  
24 *Injunction* in the Third Judicial District Court of the State of Nevada, as Case No. 18-CV-  
25 01332.

26 75. On November 7, 2018, a *Notice of Lis Pendens* was filed in the Third Judicial  
27 District Court Case No. 18-CV-01332 against the Premises and was recorded on November  
28 8, 2018, with the Lyon County Recorder as Document No. 588549.

1           76. On November 8, 2018, the Third Judicial District Court entered an *Order*  
2       restraining and enjoining Defendants from foreclosing on the Property. A copy of the  
3       November 8, 2018 Order is attached as **Exhibit 14**.

4           77. On November 8, 2018, a *Notice of Entry of Order* concerning entry of the  
5       Court's November 8, 2018 *Order* was served on all interested parties by mail.

6           78. On November 14, 2018, the Third Judicial District Court entered a *Corrected*  
7       *Order* restraining and enjoining Defendants from foreclosing on the Property.

8           79. On November 20, 2018, a *Notice of Entry of Order* concerning entry of the  
9       Court's November 14, 2018 *Corrected Order* was served on all interested parties.

10          80. On November 20, 2018, the Court held a hearing on the *Application for Ex*  
11       *Parte Restraining Order, Preliminary Injunction and Permanent Injunction*.

12          81. On December 21, the Third Judicial District Court took Sable's default.

13          82. On December 31, 2018, the Third Judicial District Court entered its *Order*  
14       therein enjoining Sables from selling the Premises at public auction until further order of the  
15       Court.

16          83. On December 28, 2018, the Lincicomes received a notice from Shellpoint  
17       Mortgage Servicing, LLC, indicating that MCM 2018-NPL2 is the new beneficiary of the Deed  
18       of Trust.

19          84. On January 4, 2019, a *Notice of Entry of Order* concerning entry of the Court's  
20       December 31, 2018 *Order* was served on all interested parties.

21          85. On January 4, 2019, Sables, sold the Premises at foreclosure to Breckenridge.

22          86. On January 17, 2019, the Lincicomes received a notice from Shellpoint that  
23       1900 Capital Trust II, by U.S. Bank Trust National Association, is the new beneficiary of the  
24       Deed of Trust.

25          87. On January 25, 2019, a *Trustee's Deed Upon Sale* was recorded in the office of  
26       the Lyon County Recorder as Document No. 591393. A copy of the Trustee's Deed Upon  
27       Sale recorded as Document No. 591393 is attached hereto as **Exhibit 15**.

28       //



1           88.    The Trustee's Deed was issued in violation of the Court's December 31, 2018  
2 Order enjoining Sables from conducting the sale of the Premises.

3                                   **FIRST CAUSE OF ACTION**

4                                   **(Wrongful Foreclosure)**

5           89.    Plaintiffs re-allege and incorporate by this reference each and every allegation  
6 contained in paragraphs 1 through 88, hereinabove, as though fully set forth herein.

7           90.    By acquiring the benefits of the Deed of Trust, US Bank, MCM, Capital Trust,  
8 and their respective agents, including Fay Servicing, assumed the duties imposed by law on  
9 a beneficiary of a deed of trust including the express obligations contained in the Deed of  
10 Trust, and subjected themselves to the statutory duties prerequisite to conducting a  
11 foreclosure sale.

12           91.    By accepting appointment and acting as Trustee under the Deed of Trust,  
13 Sables and its agents assumed the duties imposed by law on a trustee and the obligations  
14 contained in the Deed of Trust.

15           92.    US Bank, Fay Serving, and Sables had a duty to comply with the provisions of  
16 Chapter 107 of the Nevada Revised Statutes, including sections NRS 107.400 through NRS  
17 107.560, which sections are also known as the "Homeowners Bill of Rights Act."

18           93.    US Bank, Fay Servicing, and Sables were given actual notice that the LMA had  
19 modified the Deed of Trust pertaining to Plaintiffs' Residence prior to the foreclosure sale  
20 that occurred January 4, 2019.

21           94.    US Bank, Fay Servicing, and Sables were given actual notice that the terms  
22 Deed of Trust as modified by the LMA had not been enforced by Bank of America or US  
23 Bank, or their respective agents.

24           95.    Upon information and belief, US Bank and Fay Servicing requested that Sables  
25 conduct a foreclosure sale, even though doing so would be in violation its legal duties under  
26 NRS 107.

27           96.    Sables conducted a foreclosure sale of the Premises in violation of its legal  
28 duties under the Deed of Trust and under NRS 107.



1           107. Upon information and belief, Defendant Sables, Fay Servicing, US Bank, MCM,  
2 and Capital Trust have materially violated the Homeowners Bill of Rights, codified as NRS  
3 107.400 to NRS 107.560.

4           108. Pursuant to NRS 107.560, "a borrower may bring an action for injunctive relief  
5 to enjoin a material violation of NRS 107.400 to NRS 107.560, inclusive."

6           109. Defendants Fay Servicing or US Bank did not provide the Lincicomes with a  
7 notice that complies with NRS 107.500(1), at least 30 calendar days before recording the  
8 NOD.

9           110. NRS 107.0805(1)(b)(3) requires the Affidavit to verify that Fay Servicing sent a  
10 written statement to the Lincicomes which provided as follows in relevant part:

11           (I) The amount of payment required to make good the deficiency in performance or  
12 payment . . . ;

13           (II) The amount in default;

14           . . .

15           (IV) The amount of accrued interest and late charges;

16           (V) A good faith estimate of all fees imposed in connection with the exercise of the  
17 power of sale . . . .

18           NRS 107.0805(1)(b)(3).

19           111. The Lincicomes have not received a statement by any financial institution  
20 concerning their home loan from September 2009 forward that accurately reflects the  
21 interest rate, principal balance, or last payment date.

22           112. The failure to provide the Lincicomes with accurate information is a material  
23 violation of the Homeowner's Bill of Rights.

24           113. As a result of Defendants' violations of NRS 107.400 through NRS 107.560,  
25 and NRS 107.0805, the Lincicomes are entitled to injunctive relief permanently enjoining the  
26 Trustee's sale of the property pursuant to NRS 107.560.

27           //

28           //

114. The Lincicomes respectfully pray for a permanent injunction to enjoin Sables, Fay Servicing, US Bank, MCM, Capital Trust, and Shellpoint from foreclosing upon their Residence.

115. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

#### **FOURTH CAUSE OF ACTION**

##### **(Breach of Contract – Bank of America)**

116. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 115, hereinabove, as though fully set forth herein.

117. On July 11, 2009, Defendant Bank of America offered Plaintiff Vicenta Lincicome a permanent loan modification.

118. On July 31, 2009, following receipt of the offer, Plaintiff Vicenta Lincicome accepted and executed the LMA provided by Defendant Bank of America.

119. Following Vicenta Lincicome's execution of the LMA, she immediately sent the agreement via Federal Express in the envelope that had been provided by Bank of America.

120. Upon information and belief, Defendant Bank of America failed to process the LMA in its system.

121. On March 22, 2011, James Smith executed the LMA on behalf of Bank of America. Ex.3.

122. Bank of America caused the LMA to be recorded with the Lyon County Recorder on May 4, 2011. Ex.3.

123. At no time, other than being provided a copy of the recorded LMA in 2017, did the Lincicomes receive notice, written or otherwise, that Bank of America had located and signed the 2009 LMA.

124. On September 1, 2009, Bank of America accepted Plaintiff Vicenta Lincicome's payment of \$2,276.72.

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125. On October 1, 2009, Bank of America rejected Plaintiff Vicenta Lincicome's payment of \$2,276.72 and informed her that they could not process a payment for less than the current payment amount.

126. From October 1, 2009, through December of 2011, Bank of America refused to accept all offers to tender payment of \$2,276.72 under the LMA.

127. All verbal and written communications between October 1, 2009, through March of 2010, that were received from Bank of America requesting the status of the LMA were responded to by Bank of America with the indication that it was continuing to research or investigate the matter.

128. By failing to process the LMA, and payments according to the LMA's terms, Bank of America materially breached the LMA.

129. But for Defendant Bank of America's material breach of the LMA, the Lincicomes' property would not be at risk to sale by foreclosure.

130. As a proximate cause of Defendant Bank of America's material breach of the LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen Thousand Dollars (\$15,000) to be proved at trial.

131. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

### FIFTH CAUSE OF ACTION

**(Breach of Duty to Act in Good Faith and Fair Dealing – Bank of America)**

132. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 131, hereinabove, as though fully set forth herein.

133. At all times material hereto, Defendant Bank of America owed to Plaintiff Vicenta Lincicome a duty to deal fairly and in good faith with respect to their contractual relationship.

134. Defendant Bank of America violated its duty of good faith and fair dealing by refusing to perform under the provisions of the LMA by not accepting Vicenta's timely

1 payments from October 1, 2009, forward so that the Lincicomes could keep current on their  
2 loan under the LMA.

3 135. That as a direct and proximate result of Defendant Bank of America's breach of  
4 its duty to Plaintiff Vicenta Lincicome, Plaintiffs have suffered economic losses and general  
5 damages in excess of Fifteen Thousand Dollars (\$15,000) to be proved at trial.

6 136. Plaintiffs have had to retain the services of an attorney to prosecute this action  
7 and are entitled to reasonable attorney's fees and costs of suit incurred herein.

8 **SIXTH CAUSE OF ACTION**

9 **(Breach of Contract – US BANK)**

10 137. Plaintiffs re-allege and incorporate by this reference each and every allegation  
11 contained in paragraphs 1 through 136, hereinabove, as though fully set forth herein.

12 138. On November 10, 2015, Bank of America assigned its interest in the Deed of  
13 Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
14 Trustee (hereinafter "US Bank"). Ex.12.

15 139. The November 10, 2015, Assignment to US Bank was recorded with the Lyon  
16 County Recorder as Document No. 544042. Ex.12.

17 140. US Bank through its agent Fay Servicing has at all times relevant continually  
18 disregarded the LMA or failed to honor and apply the terms of the LMA to Plaintiffs' loan.

19 141. By failing to honor and apply the terms of the LMA to the loan, US Bank has  
20 materially breached the terms of the LMA.

21 142. As a proximate cause of Defendant US Bank's continued material breach of the  
22 LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen  
23 Thousand Dollars (\$15,000) to be proved at trial.

24 143. Plaintiffs have had to retain the services of an attorney to prosecute this action  
25 and are entitled to reasonable attorney's fees and costs of suit incurred herein.

26 //

27 //

28 //

