

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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District Court Case No.: 18-CV-
01332

PETITIONERS' APPENDIX TO
PETITION FOR WRIT OF MANDAMUS

VOLUME III

INDEX OF APPENDIX

VOLUME I

#	<u>Document</u>	<u>Filed Date</u>	<u>Pages</u>
001	Complaint	11-07-2018	1-125
002	Notice of Lis Pendens APN 29-401-17	11-07-2018	126-127
003	Affidavit of Counsel	11-07-2018	128-129
004	Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction -Continued to Volume II	11-07-2018	130-250

VOLUME II

004	Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction -Continued from Volume I	11-07-2018	251-255
005	Order	11-08-2018	256-258
006	Notice of Entry of Order	11-09-2018	259-263
007	Corrected Order	11-14-2018	264-266
008	Notice of Appearance	11-15-2018	267-270
009	Declaration of Fay Services, LLC in Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction	11-15-2018	271-274
010	Notice of Entry of Order	11-20-2018	275-279
011	US Bank Trust's Answer to Complaint	11-29-2018	280-293
012	Summons on Return (Bank of America)	12-10-2018	294-296
013	Summons on Return (Sables)	12-11-2018	297-299
014	Default (Sables)	12-21-2018	300-301
015	Default (Bank of America)	12-21-2018	302-303
016	Declaration of Non-Monetary Status (Sables)	12-24-2018	304-307
017	Order (Dated 12-31-18)	12-31-2018	308-315
018	Notice of Entry of Order	01-08-2019	316-325
019	Objection to Declaration of Non-Monetary Status	01-09-2019	326-329

VOLUME II - CONTINUED

#	<u>Document</u>	<u>Filed Date</u>	<u>Pages</u>
020	Application for Entry of Default Judgment	01-22-2019	330-333
021	Sables, LLC's Response to Objection to Its Declaration of Non-Monetary Status	01-28-2019	334-338
022	Sables, LLC's Motion to Set Aside Default	01-28-2019	339-348
023	Joinder to Sables, LLC's Motion to Set Aside Default	02-08-2019	349-352
024	Response to Plaintiff's Application for Entry of Default Judgment Against Sables, LLC	02-08-2019	353-362
025	Opposition to Sables, LLC's Motion to Set Aside Default	02-08-2019	363-402
026	Order Setting Hearing	02-11-2019	403-404
027	Sables, LLC's Joinder to Response to Plaintiff's Application for Entry of Default Judgment	02-21-2019	405-407
028	Supplemental Declaration of Shadd A. Wade in Support of Motion to Set Aside Default	03-01-2019	408-424
029	Plaintiffs' Motion for Leave to File Amended Complaint to Substitute Parties -Continued to Volume III	03-04-2019	425-500

VOLUME III

030	Plaintiffs' Motion for Leave to File Amended Complaint to Substitute Parties -Continued from Volume II	03-04-2019	501-506
031	Stipulation and Order to Set Aside and Vacate Default of Defendant Bank of America, N.A. and to Permit Bank of America, N.A. to File a Response	03-04-2019	507-510
032	Motion for Rule 11 Sanctions Against Plaintiffs	03-15-2019	511-523
033	Declaration of Ramir M. Hernandez, Esq. in Support of Motion for Rule 11 Sanctions Against Plaintiffs	03-15-2019	524-527

VOLUME III - CONTINUED

#	<u>Document</u>	<u>Filed Date</u>	<u>Pages</u>
034	Notice of Entry of Stipulation and Order to Set Aside and Vacate Default of Defendant Bank of America, N.A. and to Permit Bank of America, N.A. to File a Response	03-15-2019	528-536
035	Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiffs' Complaint	03-22-2019	537-545
036	Opposition to US Bank's Motion for Rule 11 Sanctions	03-28-2019	546-576
037	Opposition to Bank of America's Motion to Dismiss Plaintiff's Complaint	04-4-2019	577-679
038	Response to Declaration of Shadd A. Wade	04-11-2019	680-695
039	Defendant Bank of America N.A.'s Reply to Opposition on Motion to Dismiss Plaintiffs' Complaint	04-12-2019	696-704
040	Reply in Support of Motion for Rule 11 Sanctions Against Plaintiffs	04-12-2019	705-712
041	Order	05-30-2019	713-717
042	Notice of Entry of Order	06-21-2019	718-726

1 **SEVENTH CAUSE OF ACTION**

2 **(Breach of Duty to Act in Good Faith and Fair Dealing – US BANK)**

3 144. Plaintiffs re-allege and incorporate by this reference each and every allegation
4 contained in paragraphs 1 through 143, hereinabove, as though fully set forth herein.

5 145. At all times material hereto, Defendant US Bank owed to Plaintiff Vicenta
6 Lincicome a duty to deal fairly and in good faith with respect to their contractual relationship.

7 146. Defendant US Bank violated its duty of good faith and fair dealing by refusing
8 to honor and apply the terms of the LMA to Vicenta Lincicome's loan.

9 147. That as a direct and proximate result of Defendant US Bank's breach of its duty
10 to Plaintiff Vicenta Lincicome, Plaintiffs have suffered economic losses and general damages
11 in excess of Fifteen Thousand Dollars (\$15,000) to be proved at trial.

12 148. Plaintiffs have had to retain the services of an attorney to prosecute this action
13 and are entitled to reasonable attorney's fees and costs of suit incurred herein.

14 **EIGHTH CAUSE OF ACTION**

15 **(Slander of Title)**

16 149. Plaintiffs re-allege and incorporate by this reference each and every allegation
17 contained in paragraphs 1 through 148, hereinabove, as though fully set forth herein.

18 150. US Bank slandered Plaintiffs' title by its conduct including seeking the recording
19 of an inaccurate and unwarranted Notice of Default with the Lyon County Recorder.

20 151. Fay Servicing slandered Plaintiffs' title by its conduct including seeking the
21 recording of an inaccurate and unwarranted a Notice of Default with the Lyon County
22 Recorder.

23 152. Sables slandered Plaintiffs' title by recording an inaccurate and unwarranted
24 Notice of Default.

25 153. Sables slandered Plaintiffs' title by recording an inaccurate and unwarranted
26 Notice of Sale.

27 154. Sables slandered Plaintiffs' title by its conduct including the administering of a
28 foreclosure sale and recording a Trustee's Deed when it was on notice of the defects of the

1 Notice of Default, Notice of Sale, and that US Bank's right to enforce the Deed of Trust was
2 in question.

3 155. Wherefore, as a proximate result of Defendants' slander of title, Plaintiffs have
4 suffered general damages in excess of Fifteen Thousand Dollars (\$15,000) to be proved at
5 trial.

6 156. 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 **NINTH CAUSE OF ACTION**

9 **(Special Damages –NRS 107.560(6) Attorney's Fees)**

10 157. Plaintiffs re-allege and incorporate by this reference each and every allegation
11 contained in paragraphs 1 through 156, hereinabove, as though fully set forth herein.

12 158. Plaintiffs have brought this action in part pursuant to NRS 107.560, which
13 permits recovery of reasonable attorney's fees and costs to a prevailing borrower.

14 159. Additionally, as natural and proximate consequence of Defendants' conduct
15 alleged herein, Plaintiffs have suffered damages, including special damages in the form of
16 attorney's fees.

17 160. As a proximate result of Defendants' conduct Plaintiffs have suffered attorney's
18 fees in excess of Fifteen Thousand Dollars (\$15,000) to be proved at trial.

19 161. Plaintiffs are entitled to the recovery of reasonable attorney's fees and costs
20 from Defendants in an amount and sum to be proven at trial.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiffs pray for the following relief:

23 1. That the Court issue a permanent injunction enjoining Defendants Fay
24 Servicing, Sables, US Bank, MCM, Capital Trust, and Shellpoint from foreclosing against the
25 Lincicomes' home and real property;

26 2. That the Court make an award of general damages in excess of \$15,000;

27 3. That the Court determine Plaintiffs and Defendants' rights under the Deed of
28 Trust as modified by the 2009 Loan Modification Agreement;

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4. That the Court award reasonable attorney's fees and costs;
5. That the Court provide such other relief as the Court deems proper in the premises.

Dated this ____ day of February, 2019.

MILLWARD LAW, LTD

By: _____
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



INDEX TO EXHIBITS

Exhibit 1	<i>May 23 2007 Promissory Note and Deed of Trust</i>	26 pages
Exhibit 2	<i>Motion for Relief of Stay</i>	38 pages
Exhibit 3	Loan Modification Agreement	6 pages
Exhibit 4	"Important Message About Your Loan" Notice	1 page
Exhibit 5	Bank of America Home Loan Statement dated October 29, 2009	1 page
Exhibit 6	Correspondence from Bank of America dated December 15, 2009, February 23, 2010, March 12, 2010, October 19, 2011 and December 23, 2011	pages
Exhibit 7	<i>Notice of Chapter 13, Bankruptcy Case, Meeting of Creditors, & Deadlines</i>	3 pages
Exhibit 8	<i>Discharge of Debtor After Completion of Chapter 13 Plan</i>	1 page
Exhibit 9	April 24, 2015 Loan Modification Notice	1 page
Exhibit 10	Lincicomes' check dated August 1, 2015, payable to Bank of America	1 page
Exhibit 11	Fay Servicing's Mortgage Statement generated August 10, 2015	2 pages
Exhibit 12	November 10, 2015 Assignment	2 pages
Exhibit 13	<i>Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust</i>	6 pages
Exhibit 14	November 8, 2018 Order	3 pages
Exhibit 15	Trustee's Deed Upon Sale recorded as Document No. 591393	2 pages

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I, Vicenta Lincicome, under the penalty of perjury, being duly sworn, depose and state as follows:

1. That I am one of the Plaintiffs in this matter; and
2. That I have read the First Amended Complaint and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true;

Dated this _____ day of February, 2019

VICENTA LINCICOME

On this ____ day of February, 2019, before me personally appeared Vicenta Lincicome, known to be the person described in and who executed the foregoing instrument, and who subscribed and swore to before me that she executed it as her free act and deed.

Witness my hand and official seal this ____ day of February, 2019.

Notary Public

1
2 **VERIFICATION OF ALBERT ELLIS LINCICOME, JR.**

3 **STATE OF NEVADA)**
4 **) ss.**
5 **COUNTY OF DOUGLAS)**

6 I, Albert Ellis Lincicome, Jr., under the penalty of perjury, being duly sworn,
7 depose and state as follows:

- 8 1. That I am one of the Plaintiffs in this matter; and
9 2. That I have read the First Amended Complaint and know the contents
10 thereof; that the same is true of my own knowledge, except for those matters therein
11 stated upon information and belief, and as to those matters, I believe them to be true;

12 Dated this _____ day of February, 2019

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15 _____
16 ALBERT ELLIS LINCICOME, JR.

17 On this _____ day of February, 2019, before me personally appeared Albert Ellis
18 Lincicome, Jr., known to be the person described in and who executed the foregoing
19 instrument, and who subscribed and swore to before me that he executed it as his free
20 act and deed.

21 Witness my hand and official seal this _____ day of February, 2019.

22
23 _____
24 Notary Public

FILED

2019 MAR -4 PM 3:26

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran DEPUTY

1 DARREN T. BRENNER, ESQ.
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7 *Attorneys for Defendant Bank of America, N.A.*

8
9 **THIRD JUDICIAL DISTRICT COURT**

10 **LYON COUNTY, NEVADA**

11 ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

12 Plaintiffs,

13 v.

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

19 Defendants.
20
21

Case No. 18-cv-01332
Dept. No.: II

**STIPULATION AND ORDER TO SET
ASIDE AND VACATE DEFAULT OF
DEFENDANT BANK OF AMERICA,
N.A. AND TO PERMIT BANK OF
AMERICA, N.A. TO FILE A RESPONSE**

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...

47639994;1

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, STE. 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 Plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome (Plaintiffs) and Defendant
2 Bank of America, N. A. (BANA) submit this stipulation to set aside and vacate the default of
3 defendant BANA and to permit BANA to file a response as follows, subject to court approval:

4 1. Plaintiffs filed the operative complaint on November 7, 2018, and BANA was
5 served shortly thereafter;

6 2. Plaintiffs served a notice of intent to take default by mail on December 13, 2018;

7 3. Plaintiffs filed their Application for Entry of Default on December 21, 2018, and
8 thereafter, that same day the Court Clerk entered BANA's Default;

9 4. BANA mailed its responsive pleading on December 20, 2018, prior to entry of
10 default, however, according to the court's records, default had been entered shortly before
11 BANA's response was received and filed;

12 5. In the interests of justice and to avoid unnecessary law and motion practice,
13 Plaintiffs and BANA have agreed and stipulate that BANA's default be set aside and vacated and
14 that BANA be permitted to file a responsive pleading within 10 days of the date of the filing of
15 notice of entry of the Court's Order vacating and setting aside BANA's default; and

16 6. The parties agree that neither party will be prejudiced by the entry of this
17 stipulation.


18 **IT IS SO STIPULATED.**


19 Dated: February 26, 2019

Dated: February 12, 2019

20 **AKERMAN LLP**

MILLWARD LAW, LTD

21 
22 _____
23 DARREN T. BRENNER, ESQ.
24 Nevada Bar No. 8386
25 SCOTT R. LACHMAN, ESQ.
26 Nevada Bar No. 12016
27 1635 Village Center Circle, Ste. 200
28 Las Vegas, Nevada 89134



MICHAEL G. MILLWARD, ESQ.
Nevada Bar No. 11212
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Minden, NV 89423

Attorneys for Plaintiffs

Attorneys for Bank of America, N.A.

AFFIRMATION
(Pursuant to NRS 239B.030)

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

DATED this 26 day of February, 2019.

AKERMAN LLP

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ORDER

IT IS HEREBY ORDERED default is set aside and defendant Bank of America, N.A. is to file its responsive pleading to plaintiffs' complaint within 10 days of notice of entry of this order.

IT IS SO ORDERED.



DISTRICT COURT JUDGE
18-cv-01332

Respectfully submitted by:

AKERMAN LLP



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Attorneys for Bank of America, N.A.

FILED

2019 MAR 15 PM 1:34

TANYA SCOTCHNE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Daleen Peoples
DEPUTY

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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

**MOTION FOR RULE 11 SANCTIONS
AGAINST PLAINTIFFS**

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 Motion for Rule 11 Sanctions for Plaintiffs' Counsel filing of the
Application of Default Judgment Against Sables, LLC (the "Motion").

This Motion is based on the papers and pleadings on file, the following Memorandum of
Points and Authorities, the Declaration of Ramir M. Hernandez, and any judicially noticed facts
or documents, and any oral argument presented at hearing.

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1 Default against Sables even though Sables had appeared in the litigation and filed a declaration
2 of non-monetary status pursuant to NRS 107.029.

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

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

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

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

16 11. On or about February 7, 2019, the U.S. Bank Trust and Fay filed its Response to
17 Plaintiffs' Application for Entry Default Judgment against Sables.

18 12. On or about February 7, 2019, the U.S. Bank Trust and Fay its Joinder to Sables'
19 Motion to Set Aside Default.

20 13. On February 8, 2019, the U.S. Bank Trust's counsel sent Plaintiffs' counsel a
21 safe harbor letter pursuant to NRCP 11. Counsel failed to respond by the safe harbor deadline
22 of March 1.¹

23 III. LEGAL STANDARD

24 NRCP 7(b)(3) states, "All motions shall be signed in accordance with Rule 11." Rule
25 11 places an affirmative duty on litigants and their attorneys to conduct a reasonable
26 investigation of the law and the facts underlying a claim before signing and submitting to the
27

28 ¹ See **Exhibit A**, Rule 11 Letter; *also* Decl. of Ramir M. Hernandez, Esq.

1 Court any pleading, motion, or other paper.² When an attorney signs a pleading, the signature
2 serves as a certification that the investigation conducted showed that the factual contentions
3 have evidentiary support or, if specifically so identified, will likely have evidentiary support
4 after further investigation or discovery, and that the claims are warranted by existing law or by a
5 non-frivolous argument for a deviation or extension from existing law.³ The standard governing
6 both the “improper purpose” and “frivolous” inquiries is objective.⁴

7 If the Court determines that an attorney has violated the mandates of N.R.C.P. 11(b), the
8 Court may sanction the attorney or law firm for his/her/its false certification. Rule 11 sanctions
9 apply to “a filing that is both baseless and made without a reasonable and competent inquiry.”⁵
10 Appropriate sanctions include, but are not limited to, an order awarding an order “directing
11 payment to the movant of some or all of the reasonable attorney’s fees and other expenses
12 incurred as a direct result of the violation.”⁶

13 IV. LEGAL ARGUMENT

14 A. Pursuant to NRCP 11, the Court should sanction Plaintiffs’ counsel for filing the 15 Application for Default Judgment for an improper purpose.

16 As noted in the U.S. Bank Trust and Fay’s Response to the Application for Default,
17 Plaintiffs’ filed the Application for Default as a backdoor attempt to unwind the January 4
18 foreclosure sale by requesting a retroactive permanent injunction prohibiting Sables from
19 conducting a sale that it already conducted. Specifically, U.S. Bank and Fay’s Response notes
20 such a request is improper for various reasons: 1) Sables has appeared in the case and therefore
21 is participating; as a result, the case should be heard on the merits; 2) a *nunc pro tunc* order
22 cannot be used to modify its prior order to the detriment of the parties; 3) Sables’ default cannot
23 be imputed to the U.S. Bank Trust or Fay; 4) Sables cannot be defaulted pursuant to NRS
24 107.029(1) because it has filed a declaration of monetary status; and 5) the Court previously

25 ² NRCP 11(b); *see also* MOORE’S FEDERAL PRACTICE, § 11.11 [1][2][a] (3d ed. 1999).

26 ³ *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003); citing N.R.C.P.
27 11(b)(2)-(3); *Townsend v. Holman Consulting*, 929 F.2d 1358, 1362 (9th Cir. 1990).

28 ⁴ *Id.*

⁵ *In re Keegan Mgt. Co. Sec. Lit.*, 78 F.3d 431,434 (9th Cir.1995).

⁶ N.R.C.P. 11(c)(2).

1 ruled that the foreclosure sale could moved forward if Plaintiffs failed to post the injunction
2 bond.⁷

3 Based on the above, the filing of the Application of Default Judgment is not an instance
4 where there is an arguable issue of law. Instead, Plaintiffs' counsel filing and signing of the
5 Application was an instance of trying to abuse the rules in order to undo something that this
6 Court already previously allowed, the foreclosure of the Property, in a way that the U.S. Bank
7 and Fay could not possibly defend itself against. Indeed, it constitutes an abuse of process,
8 especially because Plaintiffs' counsel 1) had an ulterior motive in filing the Application for
9 Default Judgment; and 2) defaulted a party that has appeared and is participating in the case,
10 especially to the detriment of other parties, which by itself is not a regular process in a judicial
11 proceeding.⁸ In fact, the Nevada Supreme Court has clearly stated Plaintiffs' counsel cannot
12 use the default process for the purpose he is attempting to use it here.⁹ Opposing counsel has
13 had an opportunity to correct his error by withdrawing his Motion. He has failed to do so.

14 As such, this Court is well within its rights to sanction opposing counsel for his filing of
15 the Application for Entry of Default Judgment. Pursuant to Rule 11, this Court should award
16 the U.S. Bank Trust and Fay's attorney's fees and costs for having to file a Response to the
17 Application and this Rule 11 Motion as well as having to appear for any hearings. Moreover,
18 the Court should impose a separate monetary sanction against Plaintiffs' as a deterrent to him
19 from ever filing a similar motion in the future.

22 ⁷ See generally, Response to Application for Default Judgment against Sables, LLC.

23 ⁸ See, *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002)("This court has also
24 previously explained that the elements of an abuse of process claim are: '(1) an ulterior purpose
25 by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal
process not proper in the regular conduct of the proceeding.' Abuse of process can arise from
both civil and criminal proceedings.").

26 ⁹ See, *Doyle v. Jorgensen*, 82 Nev. 196, 203, 414 P.2d 707, 711 (1966), overruled on other
27 grounds by *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 906 P.2d 258 (1995)(holding that a
28 party cannot be held liable for the defaulted actions of another party); *Scrimmer v. Dist. Ct.*, 116
Nev. 507, 998 P.2d 1190 (2000)(" [W]hen making a determination under NRCP 4(i), the
District Court should recognize that "good public policy dictates that cases be adjudicated on
their merits.")(internal citations omitted).

B. Plaintiffs' counsel failure to withdraw the Application for Default Judgment constitutes a violation of his ethical duties for which the Court may sanction him.

This Court is well within its rights to sanction Plaintiffs' counsel for violating his ethical duties, including the imposition of monetary sanctions.¹⁰ In this instance, Plaintiffs' counsel's filing of the Application for Default violates several of the Nevada Rules of Professional Conduct. First, counsel violated Rule 3.1 which states, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." In presenting the Application for Default Judgment for the sole purpose of frustrating this Court's prior order regarding the foreclosure sale, counsel has presented a frivolous pleading that has no basis in law and is open contempt of this Court's prior orders.

Moreover, counsel in filing the Application of Default Judgment has violated his duty of candor to the tribunal. NRPC 3.3(a) states "[a] lawyer shall not knowingly: Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." In this instance, counsel has made a false statement of law by attempting to unwind the January 4, 2019, foreclosure sale through procedural gamesmanship. There is no basis to default a party *nunc pro tunc*, especially, as noted in the Response to Application for Default, to the detriment of another party's rights.

Finally, Plaintiffs' counsel has failed his duty regarding his relations with opposing counsel. NRPC 3.5A states, "[w]hen a lawyer knows or reasonably should know the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed." Here, counsel has defaulted Sables even though Sables filed a

¹⁰ See, *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 96, 127 P.3d 1057, 1067 (2006) ("Zealous advocacy is the cornerstone of good lawyering and the bedrock of a just legal system. However, zeal cannot give way to unprofessionalism, noncompliance with court rules, or, most importantly, to violations of the ethical duties of candor to the courts and to opposing counsel."); also, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1063 (9th Cir. 2007) ("Violations of ethics rules can also serve as a ground for imposing sanctions.")(internal citations omitted).

1 Declaration of Non-Monetary Status, which tolled Sables' duty to file an Answer or otherwise
2 responsive pleading to the Complaint. Moreover, he seeks to permanently enjoin Sables'
3 foreclosure of the property on January 4, 2019, retroactively to the detriment of the U.S. Bank
4 Trust and Fay right to foreclose. An application seeking monetary damages would have been
5 more than sufficient and would not have required either the U.S. Bank Trust or Fay to take any
6 further action. Instead, opposing counsel took it a step further, which has forced the U.S. Bank
7 Trust and Fay to file a response to the Application, even though the default was not directed at
8 them.

9 Overall, opposing counsel's conduct warrants monetary sanctions for counsel's failure
10 to adhere to the ethical rules. Pursuant to the cited case law, the U.S. Bank Trust and Fay
11 respectfully ask that this Court enter a monetary sanctions order as well as an award of
12 attorney's fees and costs its having to file a response to the Application for Default.

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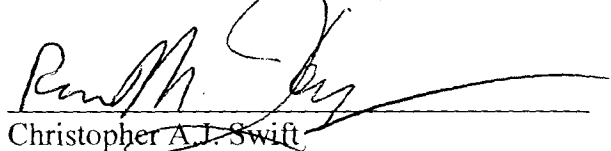
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1 V. CONCLUSION

2 Plaintiffs' counsel's filing of the Application of Default Judgment is nothing more than
3 a surreptitious attempt to get a prior ruling of this Court reversed. This has forced the U.S.
4 Bank and Fay to take actions to protect its rights through the filing of its Response to the
5 Application for Default Judgment. All signs point to the Application for Default Judgment
6 being made for an improper purpose. Further, it constitutes a violation of Plaintiffs' counsel's
7 ethical duties under the Nevada Rules of Professional Conduct. Thus, the Court should grant
8 the Motion for Rule 11 Sanction in its entirety and award the U.S. Bank Trust's fees and costs
9 for having to respond to the Application for Default Judgment as well as sanction Plaintiff's
10 counsel for his improper conduct.

11 DATED this 14th day of March, 2018.

12
13 WRIGHT, FINLAY & ZAK, LLP

14 

15 Christopher A.J. Swift

16 Nevada Bar No. 11291

17 Ramir M. Hernandez, Esq.

18 Nevada Bar No. 13146

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

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

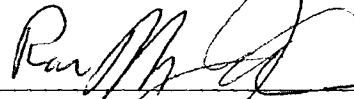
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

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 14th day of March, 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

<u>Exhibit Index</u>	
Exhibit A	Rule 11 Letter

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 4th day of March, 2019, I did cause a true copy of the foregoing **MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFFS** to be served by placing a copy in the mail, addressed as follows:

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

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

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


An Employee of WRIGHT, FINLAY & ZAK, LLP

Exhibit A

Rule 11 Letter

ROBIN P. WRIGHT
T. ROBERT FINLAY
JONATHAN M. ZAK
GWEN H. RIBAR
JONATHAN D. FINK
CHARLES C. MCKENNA
DANA JONATHONNITZ
MICHELLE A. MIERZWA
BRADLEY T. WIBICKI
BRIAN J. WAGNER
PATRICIA L. PENNY
JAMES J. RAMOS
MAGDALENA D. KOZINSKA
NICHOLE L. GLOWIN
NICOLE S. DUNN
JOSHUA R. HERNANDEZ
KATHRYN A. MOORER
TODD E. CHVAT
LUKASZ J. WOZNIAK

MICHAEL J. GILIGAN
JOY B. THOMAS
KRISTINA M. PELLETIER
JENNIFER A. BRADY
R. SAMUEL EHLERS
ROBERT A. OLSON
SCOTT S. POLLARD
OLIVIER J. LABARRE
JOAN C. SPAEYER-YOUNKIN
TALINE M. KESHISHIAN
PATERNO C. JURANI
CORI B. JONES
JAMIN S. NEJL
SARAH GREENBERG
VICTORIA L. HIGHTOWER
EDGAR C. SMITH
REGINA A. HABERMAS
CHRISTOPHER A.J. SWIFT
RYAN M. CARSON



WRIGHT FINLAY & ZAK

ATTORNEYS AT LAW

Main Office
4665 MacArthur Court, Suite 200
Newport Beach, CA 92660
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KAELEE M. GIFFORD
CHRISTINA V. MILLER
ROCK K. JUNG
AARON D. LANCASTER
MICHAEL S. KELLEY
JOHN J. DALLER
YANXIONG LI
ROBERT A. RIETHER
LAURA N. COUGHLIN
LINDSAY D. ROBBINS
ROBERT J. MATTHEWS
MATTHEW S. CARTER
JOSEPH A. DRAGON
SONIA PLESSET EDWARDS
RAMIR M. HERNANDEZ
KRISTA J. NIELSON
STEVEN K. LINKON
CHERI L. SHLAINE
TONY KULLEN

MARK S. BLACKMAN
TAYLOR E. HUBBARD
JOSEPH T. MCCORMICK III
NICHOLAS G. HOOO
POOJA KUMAR
AMY J. SMITH
Also Admitted in Nevada
Admitted only in Nevada
Also Admitted in Arizona
Also Admitted in Washington
Admitted in Oregon & Washington
Also Admitted in Hawaii
Also Admitted in Utah
Also Admitted in Oregon
Admitted only in Arizona
Also Admitted in New Mexico
Admitted only in Washington
Admitted in Washington & Oregon
Admitted in Nevada & Illinois
Of Counsel

Direct Dial: 702-983-5142

Email: rhernandez@wrightlegal.net

February 8, 2019

Michael Millward, Esq.
Michael Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423

Sent via return receipt mail—Tracking No. 70180680000078803532

Sent via email: michael@millwardlaw.com

Re: Case Name : Lincicome, Vicenta
Property Address : 70 Riverside Dr, Dayton, Nevada, 89403
Client Reference No. : 114477 Lincicome, Vincenta
WFZ Case No. : 688-2018429

RE: SAFE HARBOR LETTER—MOTION FOR RULE 11 SANCTIONS

Dear Mr. Millward:

Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, I am sending you this letter to withdraw your Application for Default Judgment against Sables, LLC filed on or about January 18, 2019. As outlined in the Response to the Application filed on or about February 7, 2019, the Application is wholly improper because it seeks to retroactively annul the foreclosure sale this court allowed to take place on January 4, 2019, which would forever prejudice the rights of my clients, the U.S. Bank Trust and Fay.

When we spoke about this on the phone, you refused to withdraw your Application and then attempted to explain to me why your filing was proper. Unfortunately, there is no basis for *nunc pro tunc* default relief. Nor is there any basis for default relief that would affect the rights of parties that have appeared in the case. On top of that, Sables has now appeared and is participating in the case. Despite Sables having filed a Declaration of Non-Monetary status, which pursuant to NRS 107.029(1) tolls the time of their having to file a response to the Complaint, you continue to pursue the default against Sables. What trouble me is that you claim to have experience in foreclosures and bankruptcy law. If that is the case,

Nevada Office
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Main Phone: (702) 475-7964
Main Fax: (702) 946-1345

Arizona Office
16427 N. Scottsdale Road, Suite 300
Scottsdale, AZ 85254
Main Phone: (949) 477-5050

Washington Office
3600 15th Ave W., Suite 202
Seattle, WA 98119
Main Phone: (425) 296-3116

Utah Office
2975 W. Executive Pkwy, Suite 125
Mailbox 155
Lehi, UT 84043
Main Phone: (801) 893-4901
Main Fax: (702) 946-1345

Oregon Office
121 SW Morrison, Suite 1100
Portland, OR 97204
Main Phone: (503) 479-6871
Main Fax: (949) 608-9142

Michael Millward, Esq.
February 8, 2019
Page 2

then you know that you cannot apply for the type of default judgment you have applied for here. It would be one thing if you were seeking a monetary judgment against Sables, but to seek retroactive relief to undo the foreclosure sale is nothing short of abusive and has necessitated our having to file a response to the Application. Thus, you filed your Application for Default Judgment for an improper purpose and therefore are subject to Rule 11 sanctions.

I would also add, and as described in our Motion for Sanctions, that your Application for Default Judgment violates several of your ethical duties under the Nevada Rules of Professional Conduct. Importantly, you have not been fair to opposing counsel or the tribunal in this matter. In fact, it has come to my attention that 1) you have not served all of the filings you have made in this case to all counsel; and 2) you have entered defaults before the three-day period to file defaults have expired. While this has not necessarily happened to my client, I believe that once presented to the Court, it will show that you have acted in an unfair manner strictly for the purposes of having your claims adjudicated on technicalities rather than the merits. That is not how the law in Nevada works.

Pursuant to Rule 11, I have attached a copy of the Motion I intend to file with the Court should you not withdraw your Motion within the twenty-one day safe harbor period as provided for in Rule 11. As you are aware, a Rule 11 motion allows for the imposition of monetary sanctions against the offending party. These include attorney's fees and costs. If the Rule 11 Motion is filed, I will also ask the court to impose a monetary sanction against you personally to deter this type of conduct in the future.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.
Enclosures

Cc: Shadd A. Wade, Esq., ZIEVE, BRODNAX & STEELE, LLP
Darren T. Brenner, Esq., Scott R. Lachman, Esq., AKERMAN LLP

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

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

**DECLARATION OF RAMIR M.
HERNANDEZ, ESQ. IN SUPPORT OF
MOTION FOR RULE 11 SANCTIONS
AGAINST PLAINTIFFS**

28 I, RAMIR M. HERNANDEZ, declare as follows:

1. I am an associate attorney for Wright, Finlay & Zak, LLP, and I am duly admitted to practice before this Court.

2. I am also counsel of record for 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").

3. I have personal knowledge of the facts set forth in this declaration, unless otherwise stated, and I could and would testify competently to them if called as a witness.

FILED

2019 MAR 15 PM 1:34

TANYA GOODE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Debra Peoples

1 4. I submit this declaration in support of Defendants' Motion for Rule 11 Sanctions
2 against Plaintiffs.

3 5. On February 8, 2019, our office served Plaintiffs' counsel a safe harbor letter
4 pursuant to NRCP 11. Plaintiff's counsel failed to respond by the safe harbor deadline
5 prescribed NRCP 11. The safe harbor letter contained a copy of the Motion for Rule 11
6 Sanctions.

7 I declare under penalty of perjury and the law of the State of Nevada that the foregoing is
8 true and correct.

9 Executed this 14th day of March, 2019.

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12 _____
13 Ramir M. Hernandez, Esq.
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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 March, 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*

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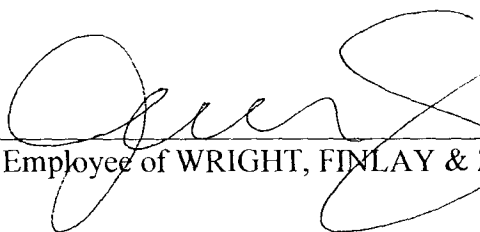
CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 14th day of March, 2019, I did cause a true copy of the foregoing **DECLARATION OF RAMIR M. HERNANDEZ, ESQ. IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFFS** to be served by placing a copy in the mail, addressed as follows:

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

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

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


An Employee of WRIGHT, FINLAY & ZAK, LLP

DARREN T. BRENNER, ESQ.
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SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
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1635 Village Center Circle, Ste. 200
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Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant Bank of America, N.A.

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

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.

Case No. 18-cv-01332
Dept. No.: II

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO SET ASIDE AND
VACATE DEFAULT OF DEFENDANT
BANK OF AMERICA, N.A. AND TO
PERMIT BANK OF AMERICA, N.A. TO
FILE A RESPONSE**

FILED

2019 MAR 15 AM 10:15

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT


Kathy Thomas

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO SET ASIDE AND**
3 **VACATE DEFAULT OF DEFENDANT BANK OF AMERICA, N.A. AND TO PERMIT**
4 **BANK OF AMERICA, N.A. TO FILE A RESPONSE** has been entered by this Court on the 4th
5 day of March, 2019, in the above-captioned matter. A copy of said Order is attached hereto as
6 **Exhibit 1.**

7 DATED this 13th day of March, 2019.

8 **AKERMAN LLP**

9 

10 **DARREN T. BRENNER, ESQ.**

11 Nevada Bar No. 8386

12 **SCOTT R. LACHMAN, ESQ.**

13 Nevada Bar No. 12016

14 1635 Village Center Circle, Ste. 200

15 Las Vegas, Nevada 89134

16 *Attorneys for Bank of America, N.A.*

17 **AFFIRMATION**

18 (Pursuant to NRS 239B.030)

19 The undersigned does hereby affirms that the foregoing does not contain the social security
20 number of any person or other personal information as defined by NRS 603A.040.

21 DATED this 13th day of March, 2019.

22 **AKERMAN LLP**

23 

24 **DARREN T. BRENNER, ESQ.**

25 Nevada Bar No. 8386

26 **SCOTT R. LACHMAN, ESQ.**

27 Nevada Bar No. 12016

28 1635 Village Center Circle, Ste. 200

Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

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Christopher A.J. Swift, Esq.
Rarnir M. Hernandez, Esq.
WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117

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


An employee of AKERMAN LLP

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, STE. 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

EXHIBIT LIST

Exhibit 1 Stipulation and Order to Set Aside and Vacate Default of Defendant Bank of America, N.A. and to Permit Bank of America, N.A. to File a Response

EXHIBIT 1

EXHIBIT 1

FILED

2016 MAR -4 PM 3:26

CANYA ESTERNE
CLERK, ADMIN. SERVICES
THIRD JUDICIAL DISTRICT

Victoria Tovar

DARREN T. BRENNER, ESQ.
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Attorneys for Defendant Bank of America, N.A.

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

ALBERT ELIAS 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.

Case No. 18-cv-01332
Dept. No.: II

STIPULATION AND ORDER TO SET
ASIDE AND VACATE DEFAULT OF
DEFENDANT BANK OF AMERICA,
N.A. AND TO PERMIT BANK OF
AMERICA, N.A. TO FILE A RESPONSE

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, STE. 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 Plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome (Plaintiffs) and Defendant
2 Bank of America, N. A. (BANA) submit this stipulation to set aside and vacate the default of
3 defendant BANA and to permit BANA to file a response as follows, subject to court approval:

4 1. Plaintiffs filed the operative complaint on November 7, 2018, and BANA was
5 served shortly thereafter;

6 2. Plaintiffs served a notice of intent to take default by mail on December 13, 2018;

7 3. Plaintiffs filed their Application for Entry of Default on December 21, 2018, and
8 thereafter, that same day the Court Clerk entered BANA's Default;

9 4. BANA mailed its responsive pleading on December 20, 2018, prior to entry of
10 default, however, according to the court's records, default had been entered shortly before
11 BANA's response was received and filed;

12 5. In the interests of justice and to avoid unnecessary law and motion practice,
13 Plaintiffs and BANA have agreed and stipulate that BANA's default be set aside and vacated and
14 that BANA be permitted to file a responsive pleading within 10 days of the date of the filing of
15 notice of entry of the Court's Order vacating and setting aside BANA's default; and

16 6. The parties agree that neither party will be prejudiced by the entry of this
17 stipulation.

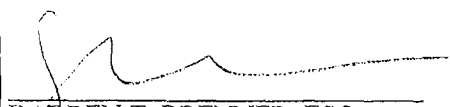
18 **IT IS SO STIPULATED.**


19 Dated: February 26, 2019

Dated: February 12, 2019

20 AKERMAN LLP

MILLWARD LAW, LTD

21 
22 _____
23 DARREN T. BRENNER, ESQ.
24 Nevada Bar No. 8386
25 SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134

21 
22 _____
23 MICHAEL G. MILLWARD, ESQ.
24 Nevada Bar No. 11212
25 1591 Mono Avenue
Minden, NV 89423

Attorneys for Plaintiffs

26 *Attorneys for Bank of America, N.A.*
27
28

AKERMAN LLP

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LAS VEGAS, NEVADA 89134
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ORDER

IT IS HEREBY ORDERED default is set aside and defendant Bank of America, N.A. is to file its responsive pleading to plaintiffs' complaint within 10 days of notice of entry of this order.

IT IS SO ORDERED.


DISTRICT COURT JUDGE
18-cv-01332

Respectfully submitted by:

AKERMAN LLP



DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

AKERMAN LLP

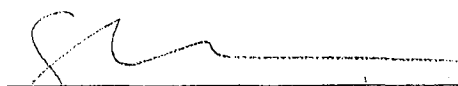
1635 VILLAGE CENTER CIRCLE, STE. 200
LAS VEGAS, NEVADA 89134
TEL: (702) 634-5000 - FAX: (702) 380-8572

AFFIRMATION
(Pursuant to NRS 239B.030)

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

DATED this 26 day of February, 2019.

AKERMAN LLP



DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
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FILED

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TANYA SCHEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Scheirine

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Attorneys for Defendant Bank of America, N.A.

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

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.


Case No. 18-cv-01332
Dept. No.: II

**DEFENDANT BANK OF AMERICA,
N.A.'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

1 Defendant Bank of America, N.A. (**BANA**) moves to dismiss Plaintiffs Albert Ellis
2 Lincicome, Jr. and Vicenta Lincicome complaint, pursuant to Nevada Rules of Civil Procedure
3 Rule 12(b)(5), for failure to state a claim upon which relief can be granted.¹

4 DATED this 21st day of March, 2019.

5 AKERMAN LLP

6 
7 DARREN T. BRENNER, ESQ.
8 Nevada Bar No. 8386
9 SCOTT R. LACHMAN, ESQ.
10 Nevada Bar No. 12016
11 1635 Village Center Circle, Ste. 200
12 Las Vegas, Nevada 89134

13 *Attorneys for Bank of America, N.A.*

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27 ¹ BANA previously filed a motion to dismiss on December 21, 2018. BANA agreed to re-file its
28 motion to dismiss after entry of the stipulation and order setting aside and vacating default against
BANA. This motion to dismiss is substantially similar to the prior motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' claims against BANA are barred by the six-year statute of limitations. NRS 11.190(1)(b). This case arises from the pending foreclosure of real property in Lyon County that BANA has no interest in. Plaintiffs seek to stop foreclosure by alleging wrongdoing in the foreclosure process by the current servicer (**Fay Servicing**) and beneficiary (**US Bank**). Plaintiffs also seek damages and declaratory relief against BANA for its purported October 2009 breach of a 2009 Loan Modification Agreement (**LMA**).

There are no actionable claims against BANA in this matter. Plaintiffs concede BANA has no role in the foreclosure, thus BANA cannot be held responsible for any purported statutory violation, even if valid. The claims concerning the alleged breach of the 2009 LMA are long time barred. Plaintiffs concede they knew in October 2009 that BANA had purportedly breached the 2009 LMA. At the latest, they knew in December 2011, when they allege BANA refused to accept purportedly tendered modification payments. The action should have been brought by October 2015 or December 2017 at the latest. This action was filed November 7, 2018. Because the claims cannot survive against BANA, the court should grant BANA's motion to dismiss.

II. STATEMENT OF ALLEGATIONS

A. The Deed of Trust and Assignments

On or about May 23, 2007, Vicenta Lincicome financed the property known as 70 Riverside Drive, Dayton, Nevada 89403 with a loan in the amount of \$381,150.00, secured by deed of trust recorded on May 25, 2007. Exhibit 1 to Complaint, Complaint. ¶¶10, 12, 13. The deed of trust identifies Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. (**MERS**) as the beneficiary and nominee for the lender.

On November 10, 2010, MERS recorded an assignment of the deed of trust, transferring its interest to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP (**BAC**). On August 15, 2011, MERS recorded a second assignment of the deed of trust, transferring its interest in the deed of trust to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, L.P. (**BANA**). On

1 November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to
2 the U.S. Bank Trust. Complaint ¶48, Exhibit 12.

3 **B. Default and Modification Efforts**

4 Plaintiffs allege borrower Vincenta Lincicome defaulted on the loan in June 2008.
5 Complaint ¶15. According to the pleadings, she applied for and was offered a LMA from BANA
6 in July 2009. Complaint ¶¶18, 81-82, Exhibit 3. According to the LMA, the payments were to
7 commence in September 2009 once Plaintiffs signed the LMA and returned the agreement as
8 instructed. ¶18, Exhibit 3. Plaintiffs allege they complied with the instructions. ¶¶20, 83.
9 Plaintiffs allege they made a payment towards the modification in September 2009, but were
10 informed by a BANA representative that there was no record of a modification. ¶¶21, 88.
11 According to Plaintiffs, the representative, Crystal, accepted the payment to credit it to the account
12 once the LMA was entered. ¶¶21, 89. They were allegedly informed by a different representative
13 that BANA would investigate the status of the LMA. ¶23.

14 Plaintiffs allege the following month Vicenta Lincicome attempted to make a payment at
15 a BANA branch. Complaint ¶23. According to Plaintiffs, the BANA representative could not find
16 a record of the modification and refused to accept the payment. ¶23. Plaintiffs also allege they
17 received a statement in October 2009 that established that the loan had not been modified as
18 agreed. ¶24. In March 2011, the modification was signed and recorded. ¶¶85-86. Plaintiffs
19 allege they continued to inquire about the status of the LMA, and attempted to make modification
20 payments, until December 2011. According to Plaintiffs, the Bank continued to state it was
21 investigating (¶25²) and refused to accept the payments (¶¶90, 97). Plaintiffs allege BANA
22 breached the LMA by failing to process it and the payments according to the LMA's terms. ¶92.

23 **C. Foreclosure**

24 Plaintiffs allege Sables, as trustee under the deed of trust, recorded a notice of default on
25 November 3, 2017. Complaint. ¶57, Exhibit 13. They dispute information in the notice of default
26

27 ² Plaintiffs' allegations are inconsistent. In paragraph 91, they allege the verbal and written
28 communications from BANA, wherein BANA indicated it was continuing to research or investigate
the status of the LMA, occurred between October 1, 2009 through March 2010.

1 and allege improprieties in the recording of it. ¶¶59, 61. In October 12, 2018, Sables recorded a
2 notice of trustee sale. No foreclosure sale has occurred. BANA has no interest in the foreclosure.

3 **III. LEGAL STANDARD**

4 A defendant is entitled to dismissal under Rule 12(b)(5) when a plaintiff fails to state a
5 claim upon which relief can be granted. NRCP 12(b)(5). The Nevada Supreme Court historically
6 interpreted NRCP 12(b)(5) as allowing dismissal if a plaintiff could prove no set of facts which
7 could entitle her to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d
8 670, 672 (2008); *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993). The court is
9 "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*,
10 478 U.S. 265, 286 (1986). The court should dismiss all claims against BANA because Plaintiffs
11 cannot prove any set of facts which, if accepted by the trier of fact as true, would entitle it to relief.
12 These claims include: breach of contract, breach of duty to act in good faith and fair dealing,
13 declaratory relief.

14 Without conceding any fact, BANA accepts Plaintiffs' allegations as true for purposes of
15 this motion only. *See Stockmeier v. Nev. Dep't of Corrections*, 124 Nev. 313, 316, 183 P.3d 133,
16 135 (2008) (accepting allegations of complaint as true to determine a motion to dismiss).

17 **IV. LEGAL ARGUMENT**

18 **A. All Claims Premised On Breach or Enforcement of the 2009 LMA Are Time** 19 **Barred by the Six Year Statute of Limitations**

20 Plaintiffs' breach of contract claim is premised on the allegation BANA breached the LMA
21 by failing to process payments tendered as late as December 2011. Complaint ¶¶90, 92. The
22 breach of covenant of good faith and fair dealing claim alleges that BANA violated its duty by not
23 accepting payments from October 1, 2009 forward. ¶97. The declaratory relief claim seeks a
24 declaration regarding the extent of the debt secured by the deed of trust, as modified by the LMA,
25 in essence, seeking to enforce the LMA. ¶100. Plaintiffs' causes of action regarding breach or
26 enforcement of the LMA are fatally time-barred.

27 NRS 11.190 provides that a statute of limitations for "[a]n action upon a contract,
28 obligation or liability founded upon an instrument in writing" is six years. NRS 11.190(1)(b). This

1 statute would thus encompass the causes of action for breach of contract, breach of the covenant
2 of good faith and fair dealing, and declaratory relief as they are all premised upon the written
3 LMA. *See also Bank of New York v. Foothills at MacDonald Ranch Master Ass'n*, 329 F. Supp.
4 3d 1221, 1230 (D. Nev. 2018) ("Where a claim for declaratory relief could have been resolved
5 through another form of action which has a specific limitations period, the specific period of time
6 will govern.") (citing *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993)
7 (internal quotation marks omitted)).

8 A cause of action for breach of contract "accrues as soon as the plaintiff *knows or should*
9 *know* of facts constituting a breach." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025-26, 967 P.2d
10 437, 440-41 (1998) (citing *Soper v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 224 (1995));
11 *Taylor Bean & Whitaker Mortg. Corp. v. Vargas*, No. 70363, 2017 WL 6597161, at *1 (Nev. Dec.
12 22, 2017) (unpublished disposition). Plaintiffs are expected to exercise due diligence in
13 determining whether they have a cause of action. *See Sierra Pacific Power Co. v. Nye*, 80 Nev.
14 88, 389 P.2d 387 (1964). Where evidence demonstrates that a plaintiff discovered, or should have
15 discovered, facts giving rise to a cause of action, dismissal on statute of limitations grounds is
16 appropriate. *Bemis*, 114 Nev. at 1025, 967 P.2d at 440; *Taylor Bean & Whitaker Mortg. Corp.*,
17 2017 WL 6597161, at *1 (complaint alleged date defendant failed to make required payment; thus
18 plaintiff knew or should have known date cause of action accrued).

19 Plaintiffs attach a signed and recorded copy of a written LMA. Complaint ¶18, Exhibit 3.
20 Plaintiffs allege the complied with the terms of the agreement – they signed it and returned it to
21 BANA as instructed. ¶¶20, 83. They concede they tendered a payment pursuant to the LMA in
22 September 2009. ¶¶21, 88. However, immediately thereafter, Plaintiffs became aware BANA
23 would not accept the terms of the LMA. ¶¶23, 24. BANA refused to accept the October 2009
24 payment, informed Plaintiffs there was no record of a modification, and sent Plaintiffs a loan
25 statement that did not include the terms of the modification. ¶¶23, 24. Plaintiffs further concede
26 they were aware BANA would not accept payments from October 2009 through December 2011
27 (¶¶90, 97), even though the modification had been recorded in March 2011 (¶¶85-86).

28 ...

1 Given the foregoing, Plaintiffs knew, or should have known, they had a cause of action
2 against BANA as early as October 2009. They certainly were aware they had a cause of action
3 against BANA by December 2011, the last date they allege BANA refused to accept their tendered
4 payment. Based on the facts alleged by Plaintiffs and the evidence attached to the complaint,
5 Plaintiffs cannot overcome the statute of limitations for their claims.

6 **B. The Declaratory Relief Cause of Action Fails**

7 Plaintiffs allege there is a dispute between Plaintiffs and Defendants as to the extent of the
8 debt secured by the Deed of Trust, as modified in July 2009. Complaint ¶100. Plaintiffs allege
9 their performance is excused due to BANA's purported breach of the LMA. ¶101. Plaintiffs fail
10 to state a cause of action.

11 Generally, declaratory relief is a remedy rather than an independent claim for relief. *See,*
12 *e.g., Hymas v. Deutsche Bank Nat. Trust Co.*, No. 2:13-cv-1869-RCJ-GWF, 2013 WL 6795731,
13 at *5 (D. Nev. Dec. 19, 2013) (holding that neither injunctive relief nor declaratory relief constitute
14 an independent cause of action), *Contreras v. Master Fin., Inc.*, 3:10-cv-0477-LRH-VPC, 2011
15 WL 32513, *4 (D. Nev. Jan. 4, 2011) (finding that claims for injunctive or declaratory relief are
16 remedies that may be afforded to a party after he has sufficiently established and proven his claims;
17 they are not a separate causes of action). As discussed above, Plaintiffs fail to state a cause of
18 action concerning enforcement of the LMA. Any such claim would be time-barred.

19 However, in some cases, declaratory relief is available where: "(1) a justiciable controversy
20 exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally
21 protectable interest in the controversy, and (3) the issue is ripe for judicial determination." *Cnty.*
22 *of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998). To
23 the extent the cause of action seeks a declaration concerning the obligations under the deed of trust
24 and the promissory note, BANA is not a party to any alleged controversy concerning those
25 instruments. BANA assigned the deed of trust to US Bank. Servicing of the loan was released to
26 Fay Servicing. Sables is the trustee under the deed of trust conducting the foreclosure. BANA
27 has no role in the foreclosure or any attempt to enforce the deed of trust. There is no justiciable
28 controversy between Plaintiffs and BANA in the enforcement of the deed or the note.

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V. CONCLUSION

The complaint fails to state a claim upon which relief may be granted and should be dismissed under Rule 12(b)(5). The court should dismiss all of Plaintiffs' causes of action against BANA with prejudice because amendment would be futile. Plaintiffs are not entitled to special damages or any fees for that matter against BANA under the circumstances described herein. *See* NRS 107.560. Rather BANA is entitled to fees under NRS 18.010 since the claims against it were brought without reasonable ground and to harass BANA.

Plaintiffs filed a motion for leave to amend its complaint. Plaintiffs' proposed amended complaint does not alter the allegations or claims against BANA. This court should strike all allegations and claims against BANA from the amended complaint should it grant leave.

DATED this 21st day of March, 2019.

AKERMAN LLP



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Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing does not contain the social security number of any person or other personal information as defined by NRS 603A.040.

DATED this 21st day of March, 2019.

AKERMAN LLP



DARREN T. BRENNER, ESQ.

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CERTIFICATE OF SERVICE

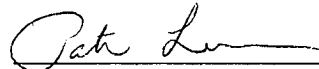
I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 21st day of March, 2019, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**, in the following manner:

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written as follows:

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MILLWARD LAW, LTD.
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Attorneys Defendants, Prof-2013 M4-Legal Title Trust. by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC

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Las Vegas, NV 89148
Attorneys for Sables, LLC



An employee of AKERMAN LLP

FILED

2019 MAR 28 AM 10:37

TANYA S. STEIN
CLERK OF COURT
THIRD JUDICIAL DISTRICT

Case No: 18-CV-01332

Dept.: II

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

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.

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 US BANK'S MOTION
FOR RULE 11 SANCTIONS**

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 this paper in opposition to the *Motion for Rule 11 Sanctions*
Against Plaintiffs filed by Defendant U.S. Bank National Association, Trustee of Prof-2013
M4-Legal Title Trust.

This Opposition is based upon the papers and pleadings on file, the following
Memorandum of Points and Authorities, the Declaration of Michael G. Millward, and the
Declaration of Rebekah Higginbotham.

//

OPPOSITION TO US BANK'S MOTION FOR RULE 11
SANCTIONS

PAGE 1 OF 11

MILLWARD LAW, LTD
1591 Mono Ave, Minden NV 89423
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant U.S. Bank National Association, Trustee of Prof-2013 M4-Legal Title Trust
4 (hereinafter "US Bank") in its Motion for Rule 11 Sanctions Against Plaintiffs (hereinafter
5 "Motion") seeks to improperly use Rule 11 of the Nevada Rules of Civil Procedure to
6 intimidate and sanction Plaintiffs for seeking relief for which they are entitled to pursuant to
7 NRCP 55. Plaintiffs' *Application for Entry of Default Judgment* is properly before this Court
8 and is not made for any improper purpose.

9 Therefore, for the reasons provided herein, US Bank's *Motion for Rule 11 Sanctions*
10 *Against Plaintiffs* (hereinafter "Motion") should be denied.

11 **II. FACTUAL & PROCEDURAL BACKGROUND**

12 1. On November 7, 2018, the Lincicomes filed a *Complaint* for Declaratory Relief
13 (hereinafter "Complaint") and an *Application for Ex Parte Restraining Order, Preliminary*
14 *Injunction and Permanent Injunction* (hereinafter "TRO Application") in the Third Judicial
15 District Court of the State of Nevada, as Case No. 18-CV-01332, therein seeking to restrain
16 and permanently enjoin Defendants from foreclosing on the Lincicomes' home located at 70
17 Riverside Drive, Dayton, Nevada 89403 (hereinafter "Premises" or "Lincicomes' Home") as
18 well as other relief upon other claims.

19 2. Additionally, on November 7, 2018, a *Notice of Lis Pendens* was filed in the
20 Third Judicial District Court Case No. 18-CV-01332 pertaining to the Premises and was
21 recorded on November 8, 2018, with the Lyon County Recorder as Document No. 588549.

22 3. On November 8, 2018, the Third Judicial District Court entered an *Order*
23 providing that Sables, LLC, is restrained and temporarily enjoined from selling the
24 Lincicomes' Home at public auction "until further order of the Court." A copy of the
25 November 8, 2018 *Order* is attached as **Exhibit 1**.

26 4. On November 14, 2018, the Third Judicial District Court entered a *Corrected*
27 *Order* also restraining and enjoining SABLES, from selling the Premises "until further order of
28 the Court." See Ct. 11/14/18 Ord.



1 5. Sables was served with a copy of the Complaint and TRO Application by regular
2 mail on November 7, 2018. See Plaintiffs' Certificate of Service filed November 8, 2018.

3 6. Sables was served with Plaintiffs' Summons and Complaint by personal service
4 on November 19, 2018.

5 7. On November 20, 2018, the Court held a hearing on the TRO Application.

6 8. Defendants US Bank and Fay Servicing, LLC (hereinafter "Fay") appeared at
7 the November 20, 2018 hearing through Ramir M. Hernandez, Esq., of Wright Finlay & Zak,
8 LLP. Defendant Sables, LLC, did not appear at the November 20, 2018 hearing and did not
9 file an opposition or other responsive paper to Plaintiff's TRO Application.

10 9. On December 21, 2018, the Third Judicial District Court took SABLES' default.

11 10. Also on December 21, 2018, Sables mailed its *Declaration of Non-Monetary*
12 *Status* (hereinafter "Sables' Notice") by U.S. Mail. US Bank incorrectly alleges in its Motion
13 that Sables' Notice was filed on December 18, 2018. See US Bank Mot., p.3, Ins. 25-27.
14 The Court Clerk reports that Sables' *Notice of Non-Monetary Status* was not filed with the
15 Court until December 24, 2018. See the Declaration of Rebekah Higginbotham attached
16 hereto as **Exhibit 2**.

17 11. On December 18, 2018, with written approval of US Bank's counsel, the
18 undersigned counsel submitted a proposed Order concerning the November 21, 2018
19 hearing to the Court for filing. See the Declaration of Michael G. Millward attached
20 hereto as **Exhibit 3**. On December 31, 2018, the Court signed the proposed Order. A copy
21 of the December 31, 2018 *Order* is attached as **Exhibit 4**.

22 12. On Page 6 of the December 31, 2018 Order the Court orders "[t]hat Sables,
23 LLC, is hereby enjoined from selling at public auction the real property located at 70
24 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the Notice of Trustee's Sale
25 recorded with the Office of the Lyon County Recorder as Document No. 587470, until further
26 order of the Court." Ex. 4.

27 13. On January 4, 2019, a *Notice of Entry of Order* concerning entry of the Court's
28 December 31, 2018 *Order* was served on all interested parties. See Plaintiffs' 1/8/19 Notice

1 of Entry of Order. The Notice of Entry of Order was received and filed by the Court Clerk on
2 January 8, 2019. Ex. 2.

3 14. On January 4, 2019, without seeking an order of the Court, Sables sold the
4 Premises by way of foreclosure auction to Breckenridge Property Fund 2016, LLC, a Utah
5 limited liability company. See recorded Trustee's Deed Upon Sale attached as **Exhibit 5**.

6 15. On January 9, 2018, the Lincicomes filed their *Objection to Declaration of Non-*
7 *Monetary Status*, therein objecting to Defendant Sables' claim that it was entitled to non-
8 monetary status when it was personally liable for violating the Homeowners Bill of Rights,
9 and when the Clerk had taken Sables' Default. See Pls 1/9/19 Obj.

10 16. On January 22, 2019, the Lincicomes filed their *Application for Entry of Default*
11 *Judgment*, seeking a permanent injunction against Sables to be effective December 21,
12 2018, the date of the Court Clerk took Sables' Default. Pls. 1/22/19 Appl. for Def. Judgmt.;
13 Clk 12/21/18 Def.

14 17. As of the date of this Opposition, pursuant to the Court's December 31, 2018
15 Order, Sables remains enjoined from foreclosing on the Lincicomes' Home. Ct. 12/31/18
16 Ord., p. 6.

17 **III. ARGUMENT**

18 **I. The Application For Default Judgment Does Not Violate NRCP 11(b)**

19 US Bank seeks sanctions for the filing of Plaintiffs' *Application for Default*
20 *Judgment* on grounds that it is "frivolous" pursuant to NRCP 11(b). On the contrary, it
21 is US Bank's Motion for sanctions that is a frivolous attempt to bully and intimidate the
22 Lincicomes from seeking relief to which they are entitled.

23 Neither Plaintiffs nor the undersigned counsel have violated NRCP 11(b). NRCP
24 11(b) provides as follows:

25 (b) Representations to the Court. By presenting to the court
26 a pleading, written motion, or other paper — whether by
27 signing, filing, submitting, or later advocating it — an attorney
28 or unrepresented party certifies that to the best of the person's
knowledge, information, and belief, formed after an inquiry
reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

In the case *Bergman v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993), the Nevada Supreme Court held that a claim is frivolous if it is "both baseless and made without reasonable and competent inquiry."

The Lincicomes' *Application for a Default Judgment* is not sought for an "improper purpose . . . to harass, cause unnecessary delay, or needlessly increase cost of litigation." NRCP 11(b)(1); Ex. 3. The relief sought, a Default Judgment made effective as of the date of Sables' Default, is not "baseless" or sought without "reasonable and competent inquiry." December 21, 2018, is the date Plaintiffs became "entitled" to default judgment against Sables. See NRCP 55 (effective prior to March 1, 2019).

a. Plaintiffs are entitled to Default Judgment

Sables did not oppose the Lincicomes' November 7, 2018 TRO Application seeking the issuance of a permanent injunction. Sables did not appear at the November 21, 2018 hearing regarding Plaintiffs' TRO Application. Sables also did not file an Answer or other responsive pleading to Plaintiff's Complaint which therein included a claim for injunctive relief. See Pl. Compl. pp. 10-12. Sables' failure to participate in this matter or otherwise timely respond to Plaintiffs' TRO Application and Complaint entitles Plaintiffs to the relief sought. See NRCP 55.

US Bank alleges that the *Application for Default Judgment* is a "backdoor attempt to unwind the January 4 foreclosure sale by requesting retroactive permanent injunction prohibiting Sables from conducting as sale it already conducted (sic)." US Bank Mot., p.4,



1 Ins.17-19. US Bank is wrong on the facts and in its characterization of Plaintiffs'
2 *Application for Entry of Default Judgment.*

3 Pertinent to the relief sought in Plaintiffs' *Application for Entry of Default*
4 *Judgment* are the conclusions of law made by the Court based upon its oral
5 pronouncements at the November 21, 2018 hearing. In the Court's December 31, 2018
6 Order the Court concluded:

7 2. That Plaintiffs established that irreparable injury would result
8 if Defendant Sables, LLC, was permitted to exercise the power
9 of sale and foreclose on the Plaintiffs' real property located at
10 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor
11 Parcel Number 29-401-17;

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

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

20 Ex. 4, pp.5-6.

21 The Court entered the following Order directed specifically as Sables:

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

27 Ex. 4, p.6.

28 The Court Order directed the Lincicomes to post a bond, and provided that their
failure to do so as well as provide Notice of Bond by the deadlines stated in the Order
would relieve Defendants of their duty to comply with the injunction. *Id.*

Contrary to US Bank's insinuation in its Motion, the Court's December 31, 2018
Order continued to enjoin Sables from foreclosing on the Lincicomes' Home until the
Court had entered an additional order. *Id.* However, based upon the terms of the
Order, Defendants would be able seek an order permitting foreclosure if the Lincicomes
had not filed a timely Notice of Bond. *See id.*

//

1 Accordingly, the Lincicomes cannot seek to "unwind the January 4 foreclosure
2 sale" by way of a permanent injunction when Sables was already enjoined from
3 foreclosing by way of the December 31, 2018 Order. *See id.*

4 **b. Plaintiffs' request that Default Judgment be effective Nunc Pro**
5 **Tunc is not improper or frivolous.**

6 The relief sought in Plaintiffs' *Application for Default Judgment* seeks the relief
7 sought in their Complaint and TRO Application as of the date Sables' Default was
8 entered.

9 A nunc pro tunc order is entered to "make a record speak the truth concerning
10 acts done." *Finley v. Finley*, 65 Nev. 113, 118, 189 P.2d 334, 336 (1948), overruled on
11 other grounds by *Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964) (*citing* *Talbot v. Mack*,
12 41 Nev. 245, 255, 169 P. 25, 27 (1917)).

13 Here, based upon the Court's pronouncements at the November 21, 2018
14 hearing, Plaintiffs were entitled to an injunction preventing the foreclosure of their
15 home. *See* Ex. 1. Thereafter, Plaintiffs became entitled to the entry of a default
16 judgment when the Court clerk entered Sables' default. *See* NRCP 55.

17 On this point, whether a default judgment can be entered and made effective
18 nunc pro tunc to the date the court clerk entered the parties' default remains an
19 unanswered question under Nevada law.

20 The only Nevada case that the undersigned was able to find considering the issue
21 is *Opaco Lumber & Realty Co. V. Phipps*, 75 Nev. 312, 340 P.2d 95 (1959). In that
22 case, the Nevada Supreme Court considered whether the trial court should have ordered
23 entry of default, nunc pro tunc, when the appellant was entitled to entry of default at
24 the time it was submitted. 75 Nev. at 315, 340 P.2d at 96.

25 The Nevada Supreme Court determined that "entry of default may well be one
26 approach to the problem of his right to have stricken a tardy answer . . . [but] [t]his
27 court has taken a different approach . . ." *Id.* The Nevada Supreme Court did not
28

1 condemn the appellants argument for entry of a default, nunc pro tunc, as frivolous,
2 improper, or as a means to harass. *See id.*

3 Plaintiffs' and their counsel do not believe that a request that judgment be
4 entered nunc pro tunc is improper when Plaintiffs were entitled to default judgment as of
5 the date Sables' default was entered by the Court Clerk. Ex. 3. At the November 20,
6 2018 hearing, the Court found that Plaintiffs' were likely to prevail on their claim and
7 were entitled to the injunctive relief sought. See Ct. 12/31/18 Ord. Furthermore,
8 because the Court's prior orders entered in this matter enjoined Sables from foreclosing
9 upon the Lincicomes' Home "until further order of the Court," the relief sought in the
10 form of a permanent injunction nunc pro tunc would not materially prejudice any party
11 to this matter. See Ex. 4.

12 **IV. CONCLUSION**

13 US Bank's decision to seek sanctions regarding Plaintiffs' Application for Entry of
14 Default is both offensive and improper. Plaintiffs are clearly entitled to a permanent
15 injunction against Sables when Sables failed to plead or otherwise oppose the relief
16 sought by Plaintiffs. It would appear that US Bank's argument is filed for the purpose of
17 distracting the Court from the fact that Sables January 4, 2019 foreclosure was
18 accomplished in violation of both the November 8, 2018 and the December 31, 2018
19 Orders.

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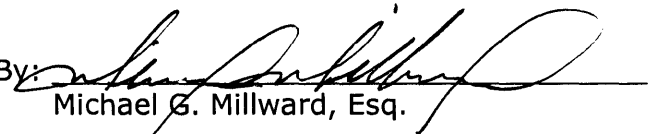
1 Therefore, for the reasons stated herein, Plaintiffs respectfully request that this
2 Court conclude that their *Application for Default Judgment* is not frivolous and was not
3 filed for an improper purpose, and that US Bank's *Motion for Rule 11 Sanctions Against*
4 *Plaintiffs* be denied in its entirety.

5 **AFFIRMATION**

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

9 Dated this 27th day of March, 2019

10 **MILLWARD LAW, LTD.**

11
12 By: 
13 Michael G. Millward, Esq.

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



INDEX TO EXHIBITS

Exhibit 1	November 8, 2018 Order	3 pages
Exhibit 2	<i>Declaration of Rebekah Higginbotham</i>	1 page
Exhibit 3	<i>Declaration of Michael G. Millward</i>	1 page
Exhibit 4	December 31, 2018 Order	8 pages
Exhibit 5	<i>Trustee's Deed Upon Sale</i>	2 pages



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CERTIFICATE OF MAILING

Pursuant to NRCP5(b), I hereby certify that service of the *Opposition to US Bank's Motion for Rule 11 Sanctions* was made on the 27th day of March 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

FILED

2018 NOV -8 PM 1:51

TANYA SCHEINE
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

00558



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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 7th day of November, 2018


Michael G. Millward, Esq.

Exhibit 2

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Exhibit 3

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Exhibit 4

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANVA SINGH
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

00566

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

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 Lincome'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 Lincome 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 Lincome 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

00570

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 20th 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

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 31st 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

ORDER

PAGE 7 OF 8

1 Reviewed, approved and submitted this 18th 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 5

70 RIVERSIDE DR

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

Forward Tax Statements to
the address given above

Recorded As An Accommodation
Only Without Liability

Doc #: 591393

01/25/2019 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: \$1,148.66
Recorded By: Inhumildad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.66

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.

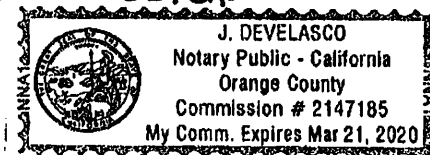
WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco



FILED

2019 APR -4 PM 4:40

TANYA SCEISINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Case No: 18-CV-01332

Dept.: II

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

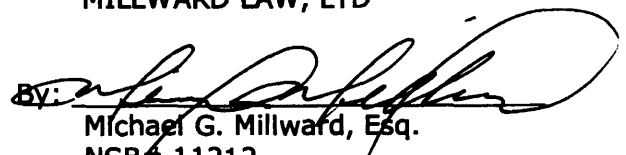
**OPPOSITION TO BANK OF AMERICA'S
MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome, by and
through their attorney of record, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby
submit their *Opposition to Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiffs'*
Complaint filed herein on December 21, 2018.

This Opposition is supported by applicable law, the Memorandum of Points and
Authorities set forth below, and the pleadings and papers on file herein.

Dated this 4th day of April, 2019.

MILLWARD LAW, LTD

By: 
Michael G. Millward, Esq.
NSB# 11212
Attorney for Plaintiffs

OPPOSITION TO DEFENDANT BANK OF AMERICA, N.A.'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT

PAGE 1 OF 17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Bank of America, N.A. (hereinafter "BOA"), seeks to dismiss Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. BOA argues in its Motion that Plaintiffs' claims against BOA are barred by the statute of limitations.

Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome's (hereinafter "Lincicomes" or "Plaintiffs") claims against BOA are not time barred. In 2009 the Lincicomes accepted an offer by BOA to modify their home loan.

After signing the Loan Modification Agreement offered by BOA and mailing it, while making their first payment, BOA claimed to have no record of the modification in its system. Thereafter, BOA rejected payments and failed to modify the terms of the loan. Plaintiffs, not knowing whether BOA ever received the agreement, reasonably had no reason to believe they could enforce the lost agreement.

Thereafter, in 2011, BOA apparently found the agreement and executed it and recorded it. However, BOA did not give Plaintiffs any notice that the agreement had been found, signed and recorded, nor did it update the terms of the loan to reflect the terms of the modification.

Instead, BOA continued to seek to enforce the Deed of Trust as if the modification did not exist. Thereafter, BOA assigned its loan to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee (hereinafter "US Bank"). In 2017, the Trustee of the Deed of Trust, Sables, LLC, recited in its Notice of Default that the Deed of Trust was modified by the modification agreement recorded in 2011. Delivery of the Notice of Default was the first time the Lincicomes had learned that BOA had received and accepted their loan modification.

Under the circumstances, BOA's acts of denying the existence of the modification, as well as their failure to otherwise provide any notice that it had executed and recorded the modification agreement, all the while accepting payments, tolled the statute of limitations in favor of the Lincicomes. From the evidence admitted in this matter, BOA misrepresented

1 and hid its acceptance of the modification agreement. Thus, pursuant to NRS 11.200 and
2 NRS 11.390, the "discovery rule" and "equitable tolling," the Court should conclude that the
3 statute of limitations was tolled by BOA's statements and actions including the acceptance of
4 payments as well as the assignment of the modified Deed of Trust to US Bank.

5 For the reasons argued herein, the Lincicomes respectfully request that the Court
6 deny BOA's Motion to dismiss their Complaint in its entirety.

7 **II. FACTUAL BACKGROUND**

8 In May of 2007, the Lincicomes purchased a home located at 70 Riverside
9 Drive, Dayton, Nevada 89403. Plaintiff Albert Ellis Lincicome, Jr., contributed \$80,000
10 taken from his 401K retirement to make the down payment on the home purchase.

11 On May 23, 2007, Vicenta Lincicome (hereinafter individually referred to as "Vicenta")
12 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter
13 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred
14 to as "MERS"), as the nominee for Sierra Pacific to secure the mortgage loan.

15 In 2008, the Lincicomes fell behind in making their mortgage payment. In 2009, after
16 receiving a Notice of Default, the Lincicomes began the process of applying for a mortgage
17 workout with BOA.

18 On July 11, 2009, BOA sent Vicenta a Loan Modification Agreement (hereinafter
19 "LMA") which provided that the first payment of \$2,272.62 was to be made September 1,
20 2009. A copy of the LMA is attached hereto as **Exhibit 1**.

21 The LMA extended the maturity date applicable to the loan to August 1, 2049, and, as
22 of August 1, 2009, the interest rate applicable to the loan would be reduced from the current
23 rate of 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate
24 would increase to 5.375%. Under the Agreement all arrears were to be capitalized as of
25 September 1, 2009. A copy of the "Important Message About Your Loan" notice is attached
26 as **Exhibit 2**.

27 On July 31, 2009, Vicenta signed the LMA and sent it to BOA via Federal Express in
28 the reusable Fed-Ex envelope that was provided with the loan modification package.

1 On September 1, 2009, the Lincicomes went to make their first payment under the
2 LMA and were informed by a BOA representative named Crystal that no record of the LMA
3 existed in BOA's system. Crystal, however, accepted the payment and informed the
4 Lincicomes it would be credited against their loan once the LMA was entered into the system.
5 Crystal told the Lincicomes to contact BOA customer service and request a coupon book that
6 would reference the modified loan.

7 Later on or about September 1, 2009, Vicenta contacted BOA Customer Service via
8 telephone and was told to go to the Customer Assistance Center on Rose Drive in Reno.
9 The Lincicomes thereafter travelled to BOA's Customer Service Center in Reno and were
10 assisted by Manager Barbara Keady. The Lincicomes showed Ms. Keady a copy of the LMA.
11 Thereafter, Ms. Keady informed the Lincicomes that BOA would investigate the status of the
12 LMA and get back to them.

13 On or about October 1, 2009, Vicenta travelled to the Carson City BOA branch to
14 make the second payment on the LMA. This time the banker, a middle-aged woman,
15 refused the Lincicome's payment and indicated that there was no record of the existence of
16 the LMA in BOA's computer system.

17 On October 29, 2009, BOA sent Vicenta a statement contradicting the terms of the
18 LMA. A copy of the October 29, 2009 statement is attached as **Exhibit 3**. The October 29,
19 2009 statement incorrectly reported the following:

- 20 1. That the loan is subject to an interest rate of 6.875% instead of 4.875% as
21 provided in the LMA (Ex. 3);
- 22 2. That the total payment amount is \$2,435.43 instead of a payment of \$2,272.62
23 under the LMA (Ex. 3);
- 24 3. That the principal balance owed is \$381,150.00 instead of \$417,196.58 as
25 provided in the LMA (Ex. 3); and
- 26 4. That the last payment of \$2,272.62, which was made September 1, 2009, was
27 only a partial payment instead of the payment amount stated due under the LMA.
28 (Ex. 3).

1 From October 1, 2009, to December of 2011, the Lincicomes would regularly contact
2 BOA by phone to check on the status of the LMA. Each time, BOA informed the Lincicomes
3 that the matter was being investigated and that BOA would get back to them.

4 During a phone call with BOA that occurred on March 12, 2010, the customer service
5 agent encouraged Vicenta to seek help from the Department of Housing and Urban
6 Development's (hereinafter "HUD") Financial Guidance Center.

7 In April, the Lincicomes met with HUD Counselor Lucy Powell, who assisted the
8 Lincicomes with the design of an action plan, which included the filing of a Chapter 13
9 Bankruptcy petition to cure the arrearage with BOA, and to force BOA to find and recognize
10 the LMA.

11 The Lincicomes filed a petition for Chapter 13 Bankruptcy protection before the United
12 States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-51219,
13 therein listing BOA as a secured creditor. However, BOA did not file a claim or appear in the
14 Lincicomes' bankruptcy case prior to the Bankruptcy Court's confirmation of the Lincicomes'
15 Chapter 13 Plan.

16 On May 4, 2011, unbeknownst to the Lincicomes at the time, BOA recorded a fully
17 executed copy of the July 11, 2009 LMA with the office of the Lyon County Recorder, as
18 Document No. 475808. Ex. 1. The Lincicomes remained unaware of the fact that the LMA
19 had been found and executed until receiving a Notice of Default in 2017 stating that the loan
20 had been modified.

21 On November 26, 2014, BOA finally appeared in the Lincicomes' Bankruptcy and filed
22 a *Motion for Relief of Stay* seeking relief from the automatic stay. The Motion provided that
23 the Lincicomes had been given credit for their September 1, 2009, payment of \$2,272.62,
24 but the filing did not otherwise inform or provide the Lincicomes or the Bankruptcy Court
25 with a copy of the LMA recorded in 2011. BOA's November 26, 2014, *Motion for Relief of*
26 *Stay* is attached as **Exhibit 4**.

27 On June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a discharge of
28 all of their scheduled debts. Prior to discharge, but after the Court had entered an order

1 granting BOA's *Motion for Relief of Stay*, the Lincicomes again applied for a loan modification
2 with BOA.

3 On or about April 24, 2015, BOA accepted the loan modification application and
4 required the Lincicomes to complete three-month trial modification payments before they
5 could move forward with modifying their mortgage loan.

6 The Lincicomes made the first two payments timely and BOA accepted the payments.
7 However, on August 1, 2015, while attempting to make the third trial payment, BOA
8 informed them that their loan had been transferred to Fay Servicing. A copy of the BOA
9 statements reflecting the June and July modification payments are attached hereto as
10 **Exhibit 5.**

11 The Lincicomes called Fay Servicing that same day, August 1, 2015, to make payment
12 and spoke with account manager Rosalind Jackson. Ms. Jackson informed them that Fay
13 Servicing does not honor BOA trial modifications, and would not accept a payment from the
14 Lincicomes. The Lincicomes were devastated when neither BOA nor Fay Servicing would
15 accept their payment, and they were very disturbed that Fay Servicing would not honor
16 BOA's April 24, 2015 loan modification agreement.

17 On August 10, 2015, Fay Servicing generated a Mortgage Statement which does not
18 reflect the terms of the LMA. A copy of the August 10, 2015 statement is attached hereto as
19 **Exhibit 6.** The statement incorrectly reflects the following:

- 20 1. That the loan is subject to an interest rate of 6.875% instead of 4.875% as
21 provided in the LMA (Ex. 6);
- 22 2. That the total payment amount is \$2,413.95 instead of a payment of \$2,272.62
23 under the LMA (Ex. 6);
- 24 3. That the principal balance owed is \$381,150.00 instead of \$417,196.58 as
25 provided in the LMA (Ex. 6); and
- 26 4. That 85 payments remain due, rather than 73 had the terms of the LMA been
27 applied. (See Ex. 6).

28 //

1 On November 10, 2015, BOA assigned its interest in the Deed of Trust to PROF-
2 2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
3 (hereinafter "US Bank"). A copy of the Assignment of Deed of Trust dated November 20,
4 2015, is attached hereto as **Exhibit 7**.

5 On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust, recorded its
6 *Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust*
7 (hereinafter "NOD"). A copy of the NOD is attached hereto as **Exhibit 8**.

8 The NOD acknowledged to the Lincicomes for the first time that the "subject Deed of
9 Trust was modified by Loan Modification Agreement recorded as Instrument 475808 . . . on
10 5/4/2011." Ex. 8. This was the first time that the Lincicomes were ever informed by anyone
11 that the LMA had been received by BOA, and was thereafter signed and recorded. *Id.* Prior
12 to November of 2017, the Lincicomes had no reason to believe that the LMA had ever been
13 accepted and executed by BOA.

14 Even though the NOD acknowledges existence of the LMA, the NOD provides that all
15 monthly installments from "9/1/2008" forward are due instead of 9/1/2009 as provided in
16 the Loan Modification Agreement. *Id.*

17 On October 12, 2018, Defendant Sables recorded its *Notice of Trustee's Sale* with the
18 Lyon County Recorder as Document No. 587470, providing that the Property will be sold by
19 public auction on November 9, 2018, at 11:00 AM, at the Lyon County Court House on 31 S.
20 Main Street, Yerington, Nevada 89447. A copy of the Notice of Trustee's Sale is attached
21 hereto as **Exhibit 9**.

22 On November 7, 2018, the Lincicomes filed a Complaint for Declaratory Relief
23 (hereinafter "Complaint") and an Application for Ex Parte Restraining Order, Preliminary
24 Injunction and Permanent Injunction (hereinafter "TRO Application") in the Third Judicial
25 District Court of the State of Nevada, as Case No. 18-CV-01332, therein seeking to restrain
26 and permanently enjoin Defendant Sables, LLC, from foreclosing on the Lincicomes' home
27 located at 70 Riverside Drive, Dayton, Nevada 89403 (hereinafter "Premises" or "Lincicomes'
28 Home") as well as other relief upon other claims.

1 On November 8, 2018, the Third Judicial District Court entered an Order providing
2 that Sables, LLC, is restrained and temporarily enjoined from selling the Lincicomes' Home at
3 public auction "until further order of the Court."

4 On November 20, 2018, the Court held a hearing on the TRO Application.

5 On December 31, 2018, the Court signed its Order enjoining Sables from foreclosing
6 and finding that Plaintiffs are likely to prevail upon the merits of their case. A copy of the
7 December 31, 2018 Order is attached as **Exhibit 10**.

8 On January 4, 2019, a Notice of Entry of Order concerning entry of the Court's
9 December 31, 2018 Order was served on all interested parties. See Plaintiffs' 1/8/19 Notice
10 of Entry of Order. The Notice of Entry of Order was received and filed by the Court Clerk on
11 January 8, 2019.

12 On January 4, 2019, without seeking an order of the Court, Sables sold the Premises
13 by way of foreclosure auction to Breckenridge Property Fund 2016, LLC, a Utah limited
14 liability company. See recorded Trustee's Deed Upon Sale attached as **Exhibit 11**.

15 As of the date of this Opposition, pursuant to the Court's December 31, 2018 Order,
16 Sables remains enjoined from foreclosing on the Lincicomes' Home. Ct. 12/31/18 Ord., p. 6.

17 **III. LEGAL STANDARD**

18 In reviewing a motion to dismiss pursuant to NRCP 12(b)(5), the Court is 'to
19 determine whether or not the challenged pleading sets forth allegations sufficient to make
20 out the elements of a right to relief.' *Edgar v. Wagner*, 101 Nev. 226,227, 699 P.2d 110,
21 111 (1985) (citations omitted). In making its determination, the Court is 'bound to accept
22 all the factual allegations in the complaint as true.' *Marcoz v. Summa Corporation*, 106 Nev.
23 737, 739, 801 P.2d 1346, 1347 (1990).

24 **IV. ARGUMENT**

25 **A. Plaintiffs' Breach of Contract Claim Is Not Time Barred**

26 BOA alleges that the Lincicomes' cause of action for breach of contract regarding the
27 2009 LMA should be dismissed because the Complaint was filed beyond the applicable six
28 year statute of limitations.

1 The Court should conclude that NRS 11.190 does not bar the Lincicomes' claim for
2 breach of contract where the Lincicomes' Complaint was filed within six years of BOA's
3 receipt of payments applied to the 2007 DOT as modified by the LMA as well as within six
4 years of BOA's assignment of the 2007 DOT. The Lincicomes also argue that the six year
5 statute of limitations would be tolled pursuant to the discovery rule and by way of equitable
6 tolling.

7
8 **1. Acceptance of Payments and BOA's Assignment to US Bank
Tolled the Statute of Limitations.**

9 The statute of limitations underlying BOA's argument for dismissal is NRS
10 11.190(1)(b) which provides that actions "can only be commenced . . . [w]ithin 6 years . . .
11 [where the action is based] upon a contract, obligation or liability founded upon an
12 instrument in writing . . ." NRS 11.190(1) - (1)(b).

13 Notably, NRS 11.200 extends the time frame of written contracts including an
14 "evidence of indebtedness." See NRS 11.200. NRS 11.200 provides as follows:

15 The time in NRS 11.190 shall be deemed to date from the last
16 transaction or the last item charged or last credit given; and
17 whenever any payment on principal or interest has been or shall be
18 made upon an existing contract, whether it be a bill or exchange,
promissory note or other evidence of indebtedness is such payment
be made after the same shall have become due, the limitation shall
comment from the time the last payment was made.

19 NRS 11.200.

20 Additionally NRS 11.390 provides that a signed acknowledgment is "sufficient
21 evidence of a continuing contract." NRS 11.390. NRS 11.390 provides as follows:

22 No acknowledgment or promise shall be sufficient evidence of a
23 new or continuing contract whereby to take the case out of the
24 operation of this chapter, unless the same be contained in some
writing signed by the party to be charged thereby, except as
provided in NRS 11.200.

25 NRS 11.390.

26 Thus, under NRS 11.190, NRS 11.200, and NRS 11.390 a six year statute of limitation
27 would begin to accrue as of the date of the last payment or as of the date of the of the last
28 signed acknowledgment.

1 Here, the last payment applied to the loan by BOA was made on July 2, 2015. Ex. 5.
2 Additionally the last signed acknowledgment that Deed of Trust remains enforceable, and
3 therefore enforceable by the Lincicomes was made by BOA on November 10, 2015, when it
4 assigned its interest in the 2007 DOT to US BANK. Ex. 7. Thus, the six year statute of
5 limitations would have begun to run November 11, 2015, when BOA executed its Assignment
6 to US Bank.

7
8 **2. The Statute of Limitations is Tolloed by the Application of the
Discovery Rule and Equitable Tolling**

9 Application of the "Discovery Rule" and "Equitable Tolling" tolls Plaintiffs' claim for
10 Breach of Contract. Plaintiffs were unable to discover that a cause of action existed in or
11 about October of 2009, because BOA's verbal and written statements caused the Lincicomes
12 to question whether an enforceable agreement existed. Additionally, BOA's failure to
13 acknowledge receipt of the LMA, its later execution of the LMA, and its failure to implement
14 the terms of the LMA prevented the Lincicomes from knowing that BOA had accepted the
15 LMA.

16 In the case *Bemis v. Estate of Bemis*, 967 P.2d 437, 114 Nev. 1021 (1998), the
17 Nevada Supreme Court stated that under the general rule concerning statutes of limitation,
18 "a cause of action accrues when the wrong occurs and a party sustains injuries for which
19 relief could be sought." *Id.*

20 The "discovery rule" is an exception to the general rule. *Id.* The discovery rule tolls
21 the statutory period of limitation "until the injured party discovers or reasonably should have
22 discovered facts supporting a cause of action." *Id.* The rationale supporting the rule "is that
23 the policies served by statutes of limitations do not outweigh the equities reflected in the
24 proposition that Plaintiffs should not be foreclosed from judicial remedies before they know
25 that they have been injured and discover the cause of their injuries." *Id.* (citing *Petersen v.*
26 *Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990)).

27 The discovery rule is applicable to actions for breach of contract, in which case the
28 cause of action would begin to accrue "as soon as the plaintiff knows or should know of facts

1 constituting a breach." *Id.* (citing *Soper v. Means*, 111 Nev. 1290 1294, 903 P.2d 222, 224
2 (1995)).

3 In regards to motions to dismiss, the Court in *Bemis* stated as follows:

4 Whether plaintiffs exercised reasonable diligence in discovering
5 their causes of action "is a question of fact to be determined by
6 the jury or trial court after a full hearing." Dismissal on statute of
7 limitations grounds is only appropriate "when uncontroverted
8 evidence irrefutably demonstrates plaintiff discovered or should
9 have discovered" the facts giving rise to the cause of action.

10 *Bemis*, 114 Nev. at 1025; (citations omitted).

11 Equitable tolling is another exception to the general rule. *Copeland v. Desert Inn*
12 *Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983). Equitable tolling excuses delay by the
13 plaintiff where "a reasonable plaintiff would not have known of the existence of a possible
14 claim within the limitations period." *Lukovsky v. City and County of San Francisco*, 535 F.3d
15 1044, 1051 (9th Cir.2008)(quoting *Johnson v. Henderson*, 314 F.3d 409, 414 (9th
16 Cir.2002)).

17 Notably, dismissal of a claim based upon the defense that the statute of limitations
18 has run is inappropriate where the complaint "adequately alleges facts showing the potential
19 applicability of the equitable tolling doctrine." *Cervantes v. City of San Diego*, 5 F.3d 1273,
20 1277 (9th Cir.1993).

21 Here, BOA's communications and statements prevented the Lincicomes from knowing
22 that it had received the LMA modifying the 2007 DOT. At no time between 2009 and the
23 date of this writing has BOA acknowledged to the Lincicomes that they had found the "lost"
24 LMA, accepted and signed it, and that it will be retroactively applying it to the 2007 DOT.

25 All written statements sent by BOA to the Lincicomes between October 2009 and July
26 of 2016 do not reflect the terms of the LMA, that would otherwise put the Lincicomes on
27 notice that the LMA had been signed on behalf of BOA and recorded. See e.g. Ex. 3; Ex. 5.
28 Additionally, BOA did not provide any notice to the Lincicomes when it chose to record the
LMA in March of 2011. The Affidavit of Albert Ellis Lincicome, Jr., is attached hereto as
Exhibit 12. The Affidavit of Vicenta Lincicome is attached hereto as **Exhibit 13.**

1 In fact, in 2014, when BOA filed its Motion for Relief from Stay in the Lincicomes'
2 Chapter 13, Bankruptcy case, BOA acknowledged and provided to the Court a copy of the
3 2007 DOT, but did not provide or even mention the existence of the LMA modifying the DOT.
4 Ex. 4.

5 Based upon the allegations of Plaintiffs' Complaint, BOA rejected payments because
6 the LMA was not in BOA's system, and that BOA was investigating the matter. Pl. Compl.
7 23, 24, 25, 90, 97. Plaintiffs were diligent in trying to track down what had occurred with
8 the lost modification agreement. However, Plaintiffs did not believe at the time that BOA
9 was committing fraud, withholding information, or intentionally refusing to honor the LMA for
10 any inappropriate purpose. Ex. 12; Ex. 13. Plaintiffs believed that the LMA may not be
11 enforceable at the time because BOA had reported that they did not have the LMA. *Id.*

12 Under both the discovery rule and equitable tolling, the statute of limitations for
13 Plaintiffs' claim of breach should be tolled. The Plaintiffs did not know that the LMA had been
14 received, signed, and recorded until they received the Notice of Default in 2017. It would be
15 inequitable to assert that the statute of limitations should apply as of October of 2009, when
16 BOA rejected the Lincicomes' payment, when BOA was alleging that the LMA did not exist at
17 the time.

18 In essence, in October of 2009, the Lincicomes did not know whether the LMA was
19 enforceable or not. BOA's silence and representations on the issue certainly do not weigh in
20 favor of Plaintiffs' ability to discover that the agreement had been received, accepted, and
21 signed, but not enforced.

22 Therefore, the Court should conclude that the "discovery rule" and "equitable tolling"
23 toll the statute of limitations, as to Plaintiffs right to seek recourse for BOA's breach of the
24 LMA.

25 \\
26 \\
27 \\
28 \\
29

B. A Justiciable Controversy Exists as to the Enforceability of the Deed of Trust

BOA claims that no justiciable controversy exists and that it "is not a party to any alleged controversy concerning [the] instruments." BOA Mot. p.7.

BOA is wrong; a justiciable controversy exists and, pursuant to NRCP 19(1)(a), BOA is a necessary party to this matter in order that "complete relief" can be accomplished. See NRCP 19(1)(a).

The Nevada Federal District Court, and the Ninth Circuit Court of appeals has determined that a party is a "necessary party" pursuant to FRCP 19 in the context of a claim that could result in the invalidation of a foreclosure sale a result in that party being liable to other parties in a case. See e.g. *Nationstar Mortg., LLC v. Maplewood Springs Homeowners Ass'n*, No. 2:15-CV-1683-JCM-CWH, 2017 WL 843177, at *6 (D. Nev. Mar. 1, 2017); see also *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004).

Thus, if a determination of Plaintiffs' claim for declaratory relief could result in a determination that the 2007 DOT was unenforceable by BOA after it breach of the LMA, BOA would be a necessary party to the action so as to provide the parties "meaningful relief." See *id.*; NRCP 19(a)(1).

BOA's conduct alleged in Plaintiffs' Complaint constitutes a material breach of contract. See Pl. Compl. ¶¶ 80-94. Thus, a determination of the effect of such a breach is necessary to determine the rights, interests, and liabilities of BOA and the other named defendants in this matter as well as the rights and interests of the Lincicomes.

The Nevada Supreme Court has held that a material breach of one party's promise discharges the non-breaching party's duty to perform. *Cain v. Price*, 415 P.3d 25 (Nev., 2018)(citing Restatement (Second) of Contracts § 237 (Am. Law Inst. 1981). As well, the Court has held that an affirmative tender of performance of one party is excused where the other party prevents performance. See *Cladianos v. Friedhoff*, 69. Nev. 41, 240 P.2d 208 (1952).

1 Likewise, a party in default of its obligations which must be performed prior to the
2 performance by the other party, "is not entitled to claim a default by the second." *Goldston*
3 *v. AMI Investments, Inc.*, 98 Nev. 567, 569, 655 P.2d 521, 523 (1982)(citing *Rubin v.*
4 *Fuchs*, 1 Cal.3d 50, 459 P.2d 925 (1969); *Shoreham Developers, Inc. v. Randolph Hills, Inc.*,
5 248 Md. 267, 235 A.2d 735 (App.1967)).

6 Thus, simply put, a breaching party cannot enforce the contract against the non-
7 breaching party. See e.g. *Bradley v. Nevada-California-Oregon Railway*, 42 Nev. 411, 178 P.
8 906, 908-09 (1919); *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 440 F.Supp.2d 1184
9 (D. Nev., 2006); *Coughlin v. Trans World Airlines, Inc.*, 847 F.2d 1432 (9th Cir., 1988);
10 *James v. Lifeline Mobile Medics*, 792 N.E.2d 461, 341 Ill. App.3d 451, 275 Ill.Dec. 230 (Ill.
11 App., 2003)(citing *Goldstein v. Lustig*, 154 Ill. App.3d 595, 599, 107 Ill.Dec. 500, 507 N.E.2d
12 164, 167-68 (1987)).

13 According to this rule, "a party cannot sue for breach of contract without alleging and
14 proving that he has himself substantially complied with all the material terms of the
15 agreement and where, following a breach by one party, the other party seeks to keep the
16 contract in force and recover thereon, he must allege and prove performance on his own
17 part or a legal excuse for nonperformance. *George F. Mueller & Sons, Inc. v. Northern*
18 *Illinois Gas Co.*, 336 N.E.2d 185, 32 Ill.App.3d 249 (Ill. App., 1975)(citing *Banik v. Bishop-*
19 *Stoddard Cafeteria Co.*, 288 Ill.App. 174, 5 N.E.2d 868; *Hutchison v. Bankers Life Co.*, 283
20 Ill.App. 77; 12 I.L.P., Contracts § 452).

21 In the case *Bradley v. Nevada-California-Oregon Railway*, the Nevada Supreme Court
22 stated as follows:

23 If there is anything well settled, it is that the party who commits
24 the first breach of the contract cannot maintain an action against
25 the other for a subsequent failure to perform. The defendant has
26 not kept its contract, and shows no excuse for its breach. It is
27 therefore in no position to demand that the plaintiff should go on
28 and perform or answer for its refusal to recognize the contract as in
force.

42 Nev. at 421, 178 P. 908-09 (*citations omitted*).

1 Accordingly, the "first breach" doctrine prevents a party guilty of the first breach from
2 enforcing or recovering upon an agreement. *Supra*.

3 Here, part of the subject matter of this lawsuit pertains to the enforceability of the
4 2007 DOT as modified by the LMA. On November 10, 2015, BOA assigned its interest in the
5 2007 DOT. Ex. 7. If the 2007 DOT was not enforceable because of a material breach by
6 BOA, it is likewise not unenforceable by BOA's successors and assigns.

7 Accordingly, because BOA's actions may affect the enforceability of the 2007 DOT, a
8 justiciable controversy exists as to whether the 2007 DOT remains enforceable by BOA's
9 successor in interest. Additionally, BOA is a necessary party as to a determination of the
10 effect of its actions on the instruments which pertain to this matter.

11 Therefore, the Court should deny BOA's request to dismiss Plaintiffs' claim for
12 declaratory relief.

13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court
15 deny Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiffs' Complaint in its
16 entirety.

17 **AFFIRMATION**

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

21 Dated this 4th day of April, 2019

22 MILLWARD LAW, LTD.

23
24 By: 

25 Michael G. Millward, Esq.
26
27
28

INDEX TO EXHIBITS

Exhibit 1	<i>2009 Loan Modification Agreement</i>	6 pages
Exhibit 2	"Important Message About Your Loan"	1 page
Exhibit 3	October 29, 2009 Bank of America Statement	1 page
Exhibit 4	<i>Motion for Relief of Stay</i>	38 pages
Exhibit 5	BOA Mortgage Statements dated June 2, 2015 and July 3, 2015	2 pages
Exhibit 6	August 10, 2015 Fay Servicing Mortgage Statement	2 pages
Exhibit 7	<i>Assignment of Deed of Trust</i> dated November 20, 2015	2 pages
Exhibit 8	<i>Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust</i>	6 pages
Exhibit 9	<i>Notice of Trustee's Sale</i> recorded October 12, 2018	3 pages
Exhibit 10	December 31, 2018 <i>Order</i>	8 pages
Exhibit 11	Recorded <i>Trustee's Deed Upon Sale</i>	pages
Exhibit 12	Affidavit of Albert Ellis Lincicome, Jr.	1 page
Exhibit 13	Affidavit of Vicenta Lincicome	1 page

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that service of the *Opposition to Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiffs' Complaint* was made on the 4th day of April 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

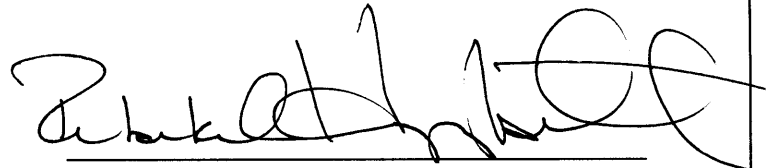

Rebekah Higginbotham, Paralegal

Exhibit I

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 _____

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)

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

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

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. \$417,196.58, 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

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

The HOPE Team
CHL Loan # 162304785

WDGFXNR 8124 July 11, 2009

00596



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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.

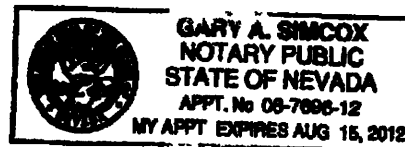
BORROWER

Vicenta Lincicome
Dated *July 31, 2009*
VICENTA LINCICOME

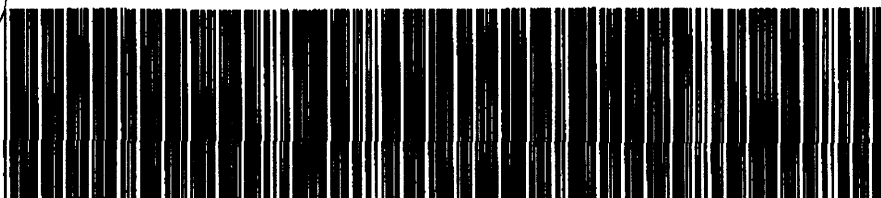
Lender

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

00597



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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

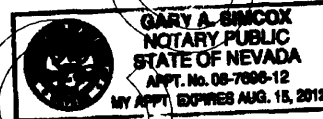
Vicenta Lincome Dated July 31, 2009
VICENTA LINCOME

STATE OF NevadaCOUNTY OF ClarkOn July 31, 2009 before me, Gary Simcox Notary Public, personally appearedVicenta Lincome

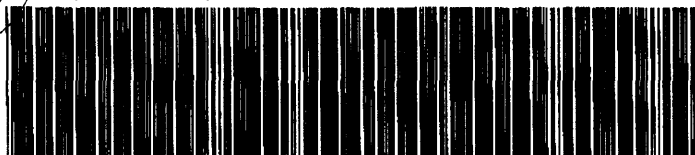
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures (s) on 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 [Signature]
08-15-2012
Lgr amr



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

The HOPE Team
CHL Loan # 162304785

WDGFIKXN 8124 July 11, 2009

00598



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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

MAR 22 2011

COUNTY OF

Broomfield

On

before me, Amy L Bogan

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 Commr 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

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.

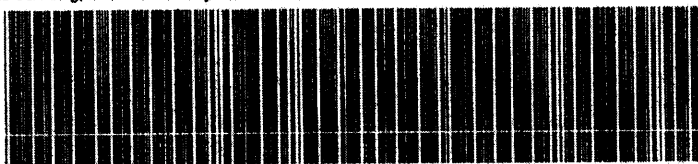
A breakdown of the scheduled interest rate changes is as follows:

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

Customer Service
P.O. Box 5170
Simi Valley, CA 93062-5170

Statement date 10/29/2009

Account Number 162304785

Property address
70 Riverside Drive



0149104 01 AT 0357 **AUTO TS 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 ***	\$2,435.43	\$2,183.67	\$218.36	\$0.00

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

**** § 362 INFORMATION COVER SHEET ****A. Ellis Lincicome, Jr. and Vicenta J. Lincicome
Debtor(s)10-51219-gwz
Case No:


Motion #:

Bank of America, N.A.
MOVANT

Chapter: 13

Certification of Attempt to Resolve the Matter without Court Action:

Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: November 24, 2014Signature: 

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: 70 Riverside Drive, Dayton, NV 89403

NOTICE SERVED ON: Debtor(s) ☒ ; Debtor (s) Counsel ☒ ; Trustee ☒DATE OF SERVICE: 11/10/14**MOVING PARTY'S CONTENTIONS:**

The EXTENT and PRIORITY of LIENS: *

1st Bank of America, N.A. \$567,234.69 †2nd _____

Other: _____

Total Encumbrances: \$567,234.69

APPRAISAL or OPINION as to VALUE:

Per attached Schedule "A" - \$476,000.00

TERMS OF MOVANT'S CONTRACT WITH THE DEBTOR:*

Amount of Note: \$381,150.00

Interest Rate: 6.875%

Duration: 30 Year

Payment Per Month: \$2,425.24

Date of Default: May 1, 2013

Amount of Arrearages: \$130,788.87 ‡

Date of Notice of Default: N/A

SPECIAL CIRCUMSTANCES: The undersigned hereby certifies that an attempt has been made to confer with debtor(s) counsel, or with debtor(s) and that more than three (3) business days have expired, and that after sincere effort to do so, counsel has been unable to resolve this matter without court action.

SUBMITTED BY: Greg WildeSIGNATURE:  #10235**DEBTOR'S CONTENTIONS:**

The EXTENT and PRIORITY of LIENS:

1st _____2nd _____3rd _____4th _____

Other: _____

Total Encumbrances: \$ _____

APPRAISAL or OPINION as to VALUE:

DEBTOR'S OFFER OF "ADEQUATE PROTECTION" FOR MOVANT:

SPECIAL CIRCUMSTANCES:

SUBMITTED BY: _____

SIGNATURE: _____

* All amounts due to Movant as of November 10, 2014

† The amount of Movant's liens and arrears above do not include \$1,026.00 for fees and costs that have also been incurred by Movant as of the date hereof in connection with seeking the relief requested in the Motion.

‡ Amounts listed are due for post-petition only.

1 **TIFFANY & BOSCO, P.A.**

2 Gregory L. Wilde, Esq.

3 Nevada Bar No. 004417

4 212 South Jones Boulevard

5 Las Vegas, Nevada 89107

6 Telephone: 702 258-8200

7 Fax: 702 258-8787

8 Attorney for Movant Bank of America, N.A.

9 14-70888

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In Re:

Bk Case No.: 10-51219-gwz

13 **A. Ellis Lincicome, Jr. and Vicenta J. Lincicome**

Date: December 30, 2014

Time: 10:00am

Chapter 13

14 Debtors.

15 **MOTION FOR RELIEF FROM AUTOMATIC STAY**

16 **(REAL PROPERTY)**

17 Bank of America, N.A., ("Movant") hereby moves this Court, pursuant to 11 U.S.C. § 362, for
18 relief from the automatic stay with respect to certain real property of the Debtor(s) having an address of
19 70 Riverside Drive, Dayton, NV 89403 (the "Property"). In further support of this Motion, Movant
20 respectfully states:

21 1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with
22 respect to the Debtor(s) on April 6, 2010.

23 2. A foreclosure notice of default has not been recorded.

24 3. A Chapter 13 Plan was confirmed on October 13, 2010.

25 4. The Debtor(s) have executed and delivered that certain promissory note in the
26 original principal amount of \$381,150.00 (the "Note"). A true and correct copy of the Note is attached
hereto as Exhibit "A". Movant, directly, or through an agent, has possession of the Note. Movant is an
entity entitled to enforce the Note.

1 5. Pursuant to that certain Deed of Trust (the "Deed of Trust"), all obligations (collectively,
2 the "Obligations") of the Debtor(s) under the Note and the Deed of Trust with respect to the Loan are
3 secured by the Property. A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

4 6. All rights and remedies under the Deed of Trust have been assigned to the Movant
5 pursuant to that certain assignment of deed of trust. Additionally, all rights and remedies under the Deed
6 of Trust have been assigned to the Movant pursuant to that certain Certificate of Merger. Bank of
7 America, N.A., is successor by Merger to BAC Home Loans Servicing, LP effective July 1, 2011. Prior
8 to that date, Countrywide Home Loans Servicing LP merged with BAC Home Loans Servicing, LP
9 effective April 27, 2009. Attached hereto as Exhibit "C" are the merger documents.

10 7. Bank of America, N.A. services the loan on the Property referenced in this Motion. In
11 the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor(s) obtain(s) a
12 discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be
13 conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note.
14 The Note is either made payable to Movant or has been duly endorsed.

15 8. As of November 10, 2014, the outstanding Obligations are:

Unpaid Principal Balance	\$381,150.00
Unpaid, Accrued Interest	\$170,972.39
Costs	\$17,384.92
<u>Less:</u> Partial Payments	(\$2,272.62)
Minimum Outstanding Obligations	\$567,234.69

21 9. In addition to the other amounts due to Movant reflected in this Motion, as of the date
22 hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred
23 \$850.00 in legal fees and \$176.00 in costs. Movant reserves all rights to seek an award or allowance of
24 such fees and costs in accordance with applicable loan documents and related agreements, the
25 Bankruptcy Code and otherwise applicable law.

26 ///

10. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the Debtor(s):

Number of Missed Payments	From	To	Monthly Payment Amount	Total Missed Payments
39	5/1/10	7/1/13	\$2,408.52	\$93,932.28
9	8/1/13	4/1/14	\$2,427.92	\$21,851.28
7	5/1/14	11/1/14	\$2,402.03	\$16,814.21
Less post-petition partial payments:				(\$1,808.90)
				Total: \$130,788.87

11. As of November 10, 2014, the total post-petition arrearage/delinquency is \$130,788.87. This is the amount necessary to cure any post-petition default on or about the date hereof.¹

12. The fair market value of the Property is \$476,000.00. The basis for such valuation is the Schedules of the Debtor(s). A true and correct copy of the Schedule "A" is attached hereto as Exhibit "D".

13. Upon information and belief, the aggregate amount of encumbrances on the Property listed in the Schedules or otherwise known, including but not limited to the encumbrances granted to Movant, is \$567,234.69.

14. Cause exists for relief from the automatic stay for the following reasons:

- (a) Movant's interest in the Property is not adequately protected and the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
- (b) Post confirmation payments required by the confirmed plan have not been made to Movant.

¹ The total of missed post-petition payments for this impounded loan include any missed escrow payments. Such missed escrow payments include amounts assessed for taxes and insurance and any previously assessed escrow shortage amount (if applicable). To avoid duplication, post-petition advances (if any) made for insurance, real estate taxes, or similar charges are not listed separately to the extent such advances would have been paid from the missed escrow payments. As part of the next annual RESPA analysis, the Bank will determine whether the escrow payments assessed to the debtor (including the missed escrow payments) result in a projected escrow shortage or overage. All rights are hereby reserved to assert or request any escrow amounts in accordance with RESPA and the total post-petition arrearage/delinquency is qualified accordingly. In addition, the amounts set forth herein do not include any legal fees or expenses of counsel incurred by Movant in connection with seeking the relief requested in the Motion.

(c) Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

3. That the 14-day stay described by Bankruptcy Rule 4001(a) (3) be waived.

4. For such other relief as the Court deems proper.

5. That the Movant shall give Debtors at least seven business days' notice of the time, place and date of sale.

6. Movant further requests that upon entry of an order granting relief from stay, it be exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case.

DATED this 26th day of November, 2014.

TIFFANY & BOSCO, P.A.

By:  #10235
/s/Gregory L. Wilde, Esq

GREGORY L. WILDE, ESQ.

Attorney for Movant

212 South Jones Boulevard

Las Vegas, Nevada 89107

TIFFANY & BOSCO, P.A
Gregory L. Wilde, Esq.
Nevada Bar No. 004417
212 South Jones Boulevard
Las Vegas, Nevada 89107
Telephone: 702 258-8200
Fax: 702 258-8787
nvbk@tblaw.com

Bank of America, N.A.
14-70888

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:	Bk Case No.: 10-51219-gwz
A. Ellis Lincicome, Jr. and Vicenta J. Lincicome	Date: December 30, 2014 Time: 10:00am
	Chapter 13
Debtors	

[PROPOSED] ORDER TERMINATING AUTOMATIC STAY

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Automatic Stay in the above-entitled bankruptcy proceedings is terminated as to the Debtor and the Trustee in favor of Secured Creditor Bank of America, N.A., its assignees and/or successors in interest, of the subject property, generally described as 70 Riverside Drive, Dayton, NV 89403.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Movant shall give Debtors at least seven business days' notice of the time, place and date of sale.

1
2 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Movant is exempt from
3 further compliance with Fed. Bankr. Rule P. 3002.1.

4 IT IS FURTHER ORDERED, ADJUDGED and DECREED That the Order be binding and
5 effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of
6 the United States Code.

7
8 Submitted by:

9 TIFFANY & BOSCO, P.A

10 By: /s/Gregory L. Wilde, Esq

11 Gregory L. Wilde, Esq.

12 Attorney for Movant

13 APPROVED / DISAPPROVED

14 By: _____

Robert G. Johnston

15 Attorney for Debtor(s)

16 APPROVED / DISAPPROVED

17 By: _____

William A. Van Meter

18 Chapter 13 Trustee

EXHIBIT "A"

ADJUSTABLE RATE NOTE

(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MAY 23, 2007
[Date]

FOLSOM, CALIFORNIA
[City] [State]

70 RIVERSIDE DRIVE
DAYTON, NV 89403
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 381,150.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.875 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on JULY 1, 2007.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE, 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than

TWO percentage points (**2.000** %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

(A) UNTIL MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT IS DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

PAY TO THE ORDER OF
Countrywide Bank, FSB
WITHOUT RECOURSE
SIERRA PROPERTIES, INC.
A CALIFORNIA CORPORATION
[Signature]

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS, INC.
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB
BY *Laurie Meder*
LAURIE MEDER
SENIOR VICE PRESIDENT

PAY TO THE ORDER OF
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC.
BY *Michele Sjlander*
MICHELE SJLANDER
EXECUTIVE VICE PRESIDENT

**INTEREST-ONLY ADDENDUM
TO ADJUSTABLE RATE PROMISSORY NOTE**

Loan Number:

Property Address: 10 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to
SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender").

THIS ADDENDUM supersedes Sections 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest-Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest-Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on JULY 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest during the Interest-Only Period. 5.000 % of my overdue payment of principal and interest thereafter. I will pay this late charge promptly, but only once on each late payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Addendum to Adjustable Rate Note.

Vicenta Lincicome
VICENTA LINCICOME

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

[Sign Original Only]

EXHIBIT "C"

ASSISTANT SECRETARY CERTIFICATE

OF

BANK OF AMERICA, NATIONAL ASSOCIATION

The undersigned, Devra Lindgren, an Assistant Secretary of Bank of America, National Association (the "Association"), a national banking association organized and existing under the laws of the United States of America and having its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina, does hereby certify that:

1. **Countrywide Document Custody Services** was a division of **Treasury Bank, National Association**.

Effective September 6, 2005, **Treasury Bank, National Association** changed its name to **Countrywide Bank, National Association**.

Effective March 12, 2007, **Countrywide Bank, National Association** converted to a federal savings bank under the title of **Countrywide Bank, FSB**.

Effective April 27, 2009, **Countrywide Bank, FSB** converted back to a national banking association under the title of **Countrywide Bank, National Association**, and immediately thereafter, merged with and into **Bank of America, National Association**.

2. Effective April 27, 2009, **Countrywide Home Loans Servicing LP** changed its name to **BAC Home Loans Servicing, LP**.

Effective July 1, 2011, **BAC Home Loans Servicing, LP** merged with and into **Bank of America, National Association**.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of said Association this 23rd day of May, 2012.

[SEAL]


Devra Lindgren
Assistant Secretary

DOC # 467719

11/18/2010

12 41 PM

Official Record

Requested By
ORION FINANCIAL GROUP

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 2 Fee \$15.00

Recorded By: NFK RPTT



467719



I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

PREPARED BY & RETURN TO:

M. E. Wileman
Orion Financial Group, Inc.
2860 Exchange Blvd. # 100
Southlake, TX 76092

Assignment of Mortgage

Send Any Notices To Assignee.

For Valuable Consideration, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC. G4318** Miller Road, Flint, MI 48507 (Assignor) by these presents does assign and set over, without recourse, to **BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP 1757 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** (Assignee) the described mortgage, together with certain note(s) described with all interest, all liens, any rights due or to become due thereon, executed by **VICENTA LINCIOCOME, A MARRIED WOMAN** to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC.** Said mortgage Dated: 5/23/2007 is recorded in the State of NV, County of Lyon on 5/25/2007, Record # 407150 AMOUNT: \$ 381,150.00 Property Address: 70 RIVERSIDE DRIVE, DAYTON, NV 89403

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed by its proper officer. Executed on: 10-22-2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC.

By:

Nichole Glavatscher
Certifying Officer

State of California, County of Ventura
On 10-22-2010, before me, the undersigned, Nichole Clavadetscher, who acknowledged that he/she
is Notary Public of for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC. and that he/she
executed the foregoing instrument and that such execution was done as the free act and deed of MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC
MORTGAGE COMPANY, INC. SIERRA PACIFIC MORTGAGE COMPANY, INC..



Jon Secrist
Notary public, Jon Secrist
My commission expires: 7-24-2014

MAIL TAX BILL TO:
VICENTA LINCIOCOME, A MARRIED WOMAN Property Address: 70 RIVERSIDE DRIVE, DAYTON, NV
89403

EXHIBIT "B"

I hereby affirm that this document submitted for recording does not contain a social security number.

/s/ LYNDIA KLEIN

FUNDER

Recording Requested By:
SIERRA PACIFIC MORTGAGE COMPANY, INC.
280 BRINKBY STREET, SUITE 100
RENO, NV 89509

DOC # 407150

06/25/2007

04:34 PM

Official Record

Requested By
STEWART TITLE OF NEVADA

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 20 Fee: \$58.00

Recorded By: DLW RPTT:



0407150

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN:

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 together with all Riders to this document.

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA
Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW.MERS.NV.CVL.DT.1.WFF (0101DOCS\DEEDS\CVL\NV_MERS.CVL)

Form 3029 1/01
(page 1 of 13 pages)

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P. O. Box 2028, Flint, Michigan 48501-2028, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **MAY 23, 2007**.

The Note states that Borrower owes Lender

THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100— Dollars
(U.S. \$ **381,150.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JUNE 1, 2037**.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input checked="" type="checkbox"/> Other(s) [specify]
<input type="checkbox"/> 1-4 Family Rider	<input type="checkbox"/> Biweekly Payment Rider	INTEREST ONLY RIDER
<input type="checkbox"/> V. A. Rider		

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of LYON :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A."

which currently has the address of 70 RIVERSIDE DRIVE [Street],
DAYTON (City), Nevada 89403 [Zip Code] ("Property Address"):

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

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

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

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has "if any" with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's

acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses

in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ **MAXIMUM ALLOWED BY LAW**.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)

STATE OF NEVADA,

Carson City

County ss.

This instrument was acknowledged before me on

May 23 2007

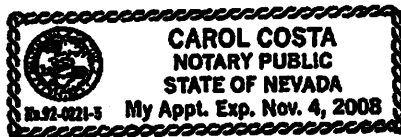
, by

Vicenta Lincicome

Carol Costa

My Commission Expires:

11-4-08



NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW.MERS.NV.CVL.DT.13.WPF (0101DOCS\DEEDS\CVL\NV_MERS.CVL)

Form 3029 1/01
(page 13 of 13 pages)

WHEN RECORDED MAIL TO:

MIP INSURING DEPARTMENT
SIERRA PACIFIC MORTGAGE COMPANY, INC.
50 IRON POINT CIRCLE, STE 200
FOLSOM, CA 95630

ADJUSTABLE RATE RIDER

**(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)**

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

70 RIVERSIDE DRIVE
DAYTON, NV 89403

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family- Freddie Mac Uniform Instrument

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Form 5131 3/04
(Page 1 of 4)

dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875 %** or less than **2.250 %**. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO** percentage points (**2.000 %**) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875 %**.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IF)-Single Family-Freddie Mac Uniform Instrument

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Form 5131 3/04
(Page 2 of 4)

Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.



VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address: 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed by this Addendum.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments.

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM - MULTISTATE
DRAW.MX.CVL.ARM.IO.ADNDM.RIDER.1.WPF (0101DOCSRIDERSCVLIMXIO_ADN.RID)

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.



VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM - MULTISTATE
DRAW.MX.CVL.ARM.IO.ADNDM.RIDER.2.WPF (0101DOCSRIDERS\CVL\MXIO_ADN.RID)

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(page 2 of 2 pages)

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada,
County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES,
PHASE 2, FILE 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.

EXHIBIT "D"In re A. ELLIS LINCICOME, JR. and VICENTA J. LINCICOME

Debtor(s)

Case No. _____

(if known)

SCHEDULE A-REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Current Value of Debtor's Interest, In Property Without Deducting any Secured Claim or Exemption	Amount of Secured Claim
	Husband-H Wife-W Joint-J Community-C		
Residence at 70 Riverside Drive, Dayton, NV	J	\$ 476,000.00	\$ 381,000.00
Rental House at 2763 Carriage Crest Drive, Carson City, NV 89706	J	\$ 280,000.00	\$ 280,000.00
Lot of 4315 Drake Way, Washoe Valley, NV	J	\$ 100,000.00	\$ 100,000.00
TOTAL \$		856,000.00	

No continuation sheets attached

(Report also on Summary of Schedules.)

Exhibit 5

Bank of America Home Loans

PO Box 5170
Simi Valley, CA 93062-5170

0008345 02 MB 0.436 **AUTO 6 0 0755 89403-905570 -C01-P08353-1 2 BLMWORKD
PO A2D00101 0414000000000070 - MLENVCRE
VICENTA LINCICOME
70 RIVERSIDE DR
DAYTON NV 89403-9055



Customer service information

Customer service: 1.800.669.6607

TDD/TTY users only: 1.800.300.6407

En Español: 1.800.295.0025

Monday-Friday 7a.m. to 7p.m. Local Time

bankofamerica.com

Account number	****04785
Payment due date	August 1, 2015
Total amount due	
Option 1 (Full)	\$205,761.52
Option 2 (15 yr)	\$208,735.76
Option 3 (Interest-only)	\$205,136.32
<i>If payment is received after 08/17/15, \$109.18 late fee will be charged.*</i>	

Your Home Loan Account

Statement date: July 3, 2015



If you and Bank of America, N.A. have entered into an agreement to address your monthly payments, please make payments in accordance with this agreement. If you have further questions regarding this matter, please contact your Customer Relationship Manager at 1.800.669.6650. You can also call this number if you haven't been assigned a Customer Relationship Manager yet.

Account information

Property address	70 RIVERSIDE DRIVE
Loan type	30 Yr Conv Jumbo ARM
Contractual remaining term	28 Years, 11 Months
Principal balance	\$381,150.00
Escrow balance	-\$19,741.36
Interest rate until 07/2017	6.875%
Prepayment penalty	No

Past payments breakdown

	Paid since last statement	Paid year to date*
Principal	\$0.00	\$0.00
Interest	\$2,183.67	\$4,367.34
Escrow (taxes and insurance)	\$230.28	\$460.56
Fees, charges, and advances	\$0.00	\$1,026.00
Unapplied funds*	-\$400.17	\$446.28
Total	\$2,013.78	\$6,300.18

Explanation of total amount due

	Option 1 (Full)	Option 2 (15 year)	Option 3 (Interest-only)
Principal	\$625.20	\$3,599.44	\$0.00
Interest	\$2,183.67	\$2,183.67	\$2,183.67
Escrow (taxes and insurance)	\$228.68	\$228.68	\$228.68
Regular monthly payment	\$3,037.55	\$6,011.79	\$2,412.35
Current period fees and charges	\$0.00	\$0.00	\$0.00
Overdue payments, fees, and charges*	\$203,170.25	\$203,170.25	\$203,170.25
Unapplied funds*	-\$446.28	-\$446.28	-\$446.28
Total amount due	\$205,761.52	\$208,735.76	\$205,136.32

If you make this regular monthly payment...
 ...your principal balance will decrease, and you will be closer to paying off your loan.
 ...your principal balance will decrease, and you will be closer to paying off your loan.
 ...your principal balance will stay the same, and you will not be closer to paying off your loan.

*Please see the "Other important information" section of this statement

Transaction activity (06/03/15 to 07/03/15)

Date	Description	Charges	Payments
07/01/15	Unapplied Funds Posted		2,013.78
07/02/15	Unapplied Funds Reversal		-2,413.95
07/02/15	Payment Posted - Thank you		2,413.95

Bank of America Home Loans

PO Box 5170
Simi Valley, CA 93062-5170

0011029 02 MB 0.436 **AUTO 6 0 0653 89403-905570 -C01-P110404 2 BLMMWORKD
PO A2D00101 041400000000070 -MLENVCFF
/ICENTA LINCICOME
70 RIVERSIDE DR
DAYTON NV 89403-9055



Customer service information
Customer service: 1.800.669.6607
TDD/TTY users only: 1.800.300.6407
En Español: 1.800.295.0022
Monday-Friday 7a.m. to 7p.m. Local Time
bankofamerica.com

Account number	****4785
Payment due date	July 1, 2015
Total amount due	
Option 1 (Full)	\$205,358.37
Option 2 (15 yr)	\$208,283.39
Option 3 (Interest-only)	\$204,737.75

Your Home Loan Account

Statement date: June 2, 2015



If you and Bank of America, N.A. have entered into an agreement to address your monthly payments, please make payments in accordance with this agreement. If you have further questions regarding this matter, please contact your Customer Relationship Manager at 1.800.669.6650. You can also call this number if you haven't been assigned a Customer Relationship Manager yet.

Account information

Property address	70 RIVERSIDE DRIVE
Loan type	30 Yr Conv Jumbo ARM
Contractual remaining term	29 Years, 00 Months
Principal balance	\$381,150.00
Escrow balance	-\$19,971.64
Interest rate until 07/2017	6.875%
Prepayment penalty	No

Past payments breakdown

	Paid since last statement	Paid year to date*
Principal	\$0.00	\$0.00
Interest	\$2,183.67	\$2,183.67
Escrow (taxes and insurance)	\$230.28	\$230.28
Fees, charges, and advances	\$0.00	\$1,026.00
Unapplied funds*	-\$400.17	\$846.45
Total	\$2,013.78	\$4,286.40

Explanation of total amount due

	Option 1 (Full)	Option 2 (15 year)	Option 3 (Interest-only)
Principal	\$620.62	\$3,545.64	\$0.00
Interest	\$2,183.67	\$2,183.67	\$2,183.67
Escrow (taxes and insurance)	\$228.68	\$228.68	\$228.68
Regular monthly payment	\$3,032.97	\$5,957.99	\$2,412.35
Current period fees and charges	\$0.00	\$0.00	\$0.00
Overdue payments, fees, and charges*	\$203,171.85	\$203,171.85	\$203,171.85
Unapplied funds*	-\$846.45	-\$846.45	-\$846.45
Total amount due	\$205,358.37	\$208,283.39	\$204,737.75

If you make this regular monthly payment...
 ...your principal balance will decrease, and you will be closer to paying off your loan.
 ...your principal balance will decrease, and you will be closer to paying off your loan.
 ...your principal balance will stay the same, and you will not be closer to paying off your loan.

*Please see the "Other important information" section of this statement

Transaction activity (05/19/15 to 06/02/15)

Date	Description	Charges	Payments
05/28/15	Unapplied Funds Posted		2,013.78
05/29/15	Unapplied Funds Reversal		-2,413.95
05/29/15	Payment Posted - Thank you		2,413.95

Exhibit 6

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.



3-775-02886-0025084-006-1-000-100-000-000

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	Regular Monthly Payment	\$2,413.95
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>		Total Amount Due	\$207,599.70
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	
Total	\$446.28	\$0.00	

Delinquency Notice

You are late on your monthly payments. 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.

As of August 10, 2015, you are 2585 days delinquent on your mortgage loan.

- Payment Due: 03/01/2015 Unpaid balance of \$2,413.95
- Payment Due: 04/01/2015 Unpaid balance of \$2,413.95
- Payment Due: 05/01/2015 Unpaid balance of \$2,413.95
- Payment Due: 06/01/2015 Unpaid balance of \$2,413.95
- Payment Due: 07/01/2015 Unpaid balance of \$2,413.95
- Payment Due: 08/01/2015 Unpaid balance of \$2,413.95

Total **\$207,599.70** - You must pay this amount to bring your loan current.

If you are experiencing financial difficulty, see back for information about home ownership counseling.

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	
Due By 09/01/2015:	\$207,599.70
<i>If payment is received after 09/16/2015, \$109.18 late fee will be charged.</i>	
Additional Principal	\$
Additional Escrow	\$
Total Amount Enclosed	\$

Important Information To Help Us Serve You Better**Payments Online**

www.fayservicing.com

Payments via Overnight or Express Mail

Fay Servicing
Attn: Payment Processing
440 S. LaSalle, Suite 2000
Chicago, IL 60605

Payments cannot be made in person at this location

Correspondence

Fay Servicing
P.O. Box 809441
Chicago, IL 60680-9441

*Remember to include your name and account number on all payment remittances and written correspondence.***Payments by Phone**

Fay Servicing's Pay-by-phone option makes it possible to make your loan payment by using your touchtone telephone. This service is available to you 24 hours a day, 7 days a week. Simply call the toll-free number below to perform real-time, confidential mortgage payment transactions. And you can call as often as you like, there's no charge for the call or transaction.

Payments Online

Fay Servicing Online Mortgage Payment, free with your online account, can save you time and money with the click of a mouse. Pay your mortgage online and skip paper checks and stamps. Set up your payment in minutes. (Return each month to make your payments, or set up automated recurring payments for convenience.)

MoneyGram Express Payment

MoneyGram ExpressPayment ensures same-day delivery of your payment to Fay Servicing. Visit your local MoneyGram Agent. Call 1-800-926-9400 to locate the one nearest you. Complete the ExpressPayment form, providing your name and Fay Servicing loan number. The Fay Servicing Receive Code is 15055. All ExpressPayment transactions require cash. The agent will charge a fee for this service. Fay Servicing does not charge a fee for this service.

Activity Since Your Last Statement (07/10/2015 - 08/10/2015)

Date	Description	Charges	Payments
08/06/15	CORP ADVANCE ADJUST	\$998.63	
08/06/15	FUNDS APPLIED		\$446.28

*Qualified Written Requests must be submitted to Fay Servicing, LLC, 901 S. 2nd St., Suite 201, Springfield, Illinois 62704.*HUD-approved housing counselors are available at <http://www.hud.gov/offices/hsg/efh/hcc/hcs.cfm> or by calling 1-800-569-4287.**Notice of Error or Information Request:**

If you believe there has been an error with the account or you require additional information, you may send a written Notice of Error or Information Request. All Notices of Error or Information Requests must be sent in writing to the address listed below, as this is our exclusive address under Federal Law for these matters. If you send your correspondence to any other address, it may not be processed in accordance with Federal law. Please submit to Fay Servicing, LLC, 901 S.2nd St., Suite 201, Springfield, Illinois 62704-7909.

Fay Servicing is a debt collector, and information you provide to us will be used for that purpose. To the extent your original obligation was discharged, or is subject to an automatic stay under the United States Bankruptcy Code, this is being provided for informational purposes only and does not constitute an attempt to collect a debt or impose personal liability. Our office hours are Monday-Thursday 9 a.m. - 9 p.m. Friday 9 a.m. - 5 p.m., and Saturday 10 a.m. - 4 p.m. CST. Call today: 1-800-495-7166. NMLS ID#88244. NC residents: Fay Servicing, LLC, NC Permit Number 112302, 440 S. LaSalle St., Suite 2000, Chicago, IL 60605-6011.

Be sure to check box on reverse. Please print.

Account Number: _____

Borrower: _____

Co-borrower: _____

Street: _____

City/State/Zip Code: _____

Home Phone: _____

Other Phone: _____

Borrower email: _____

Co-borrower e-mail: _____

Borrower signature: _____

Co-borrower signature: _____

Exhibit 7

DOC# 544042
11/25/2015 08:47AM

Official Record

Requested By
DEFAULT SERVICES - AVENUE 365

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 2

Fee: \$15.00

Recorded By MFK

RPTT: \$0.00



0544042

Prepared By:

PROF-2013-M4 Legal Title Trust, by U.S. Bank
National Association, as Legal Title Trustee
60 Livingston Avenue, EP-MN-WS3D, St. Paul, MN
55107, Attention: Structured Finance Services

WHEN RECORDED RETURN TO:

Avenue 365 Lender Services
401 Plymouth Rd, Ste. 550
Plymouth Meeting, PA 19462

Parcel # 29-401-17

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned, **BANK OF AMERICA, N.A., S/B/M BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.**, located at **1800 Tapo Canyon Road, Simi Valley, California 93063** ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to: **PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee**, located at **60 Livingston Avenue, EP-MN-WS3D, St. Paul, MN 55107, Attention: Structured Finance Services** ("ASSIGNEE/GRANTEE") all beneficial interest under that certain **DEED OF TRUST**, dated **5/23/2007** and executed by **VICENTA LINCICOME, A MARRIED WOMAN**, borrower(s) to: **Mortgage Electronic Registration Systems, Inc.**, as nominee for **SIERRA PACIFIC MORTGAGE COMPANY, INC.**, its successors and assigns, as original lender, and certain instrument recorded **5/25/2007**, in **INSTRUMENT NO. 407150**, in the Official Records of **LYON County, the State of Nevada**, given to secure a certain Promissory Note in the amount of **\$381,150.00** covering property located at: **70 RIVERSIDE DRIVE, DAYTON, NEVADA 89403**.

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage including the right to have reconveyed, in whole or in part, the real property described therein.



544042

11/25/2015
2 of 2Dated: November 10th, 2015

ASSIGNOR: BANK OF AMERICA, N.A., S/B/M BAC HOME
LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME
LOANS SERVICING, L.P. By: Avenue 365 Lender Services,
LLC, its attorney-in-fact*

By: 

Name: Steven Travascio

Title: Authorized Signatory

*Power of Attorney recorded in Maricopa County, Arizona as

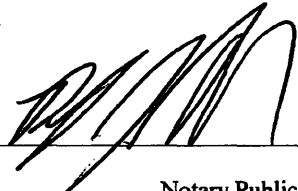
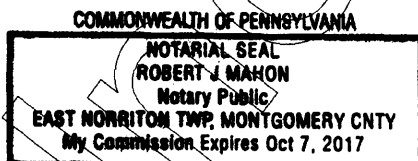
Instrument: 20150617207

State of: Pennsylvania

County of: Montgomery

Before me, Robert J. Mahon, duly commissioned Notary Public, on this day personally appeared Steven Travascio, Authorized Signatory for Avenue 365 Lender Services, LLC, attorney-in-fact BANK OF AMERICA, N.A., S/B/M BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P. known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 10th day of November, 2015.


Notary Public's Signature

Printed Name: Robert J. Mahon

My Commission Expires: 10.07.2017

Property Address: 70 RIVERSIDE DRIVE, DAYTON, NEVADA 89403

Original Loan Amount:
\$381,150.00

Exhibit 8

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

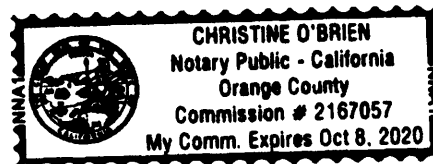
On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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

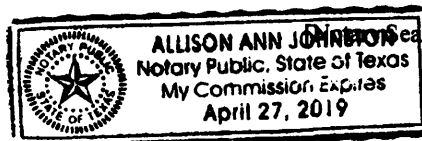
County of Denton

On October 5th 2016 before me, Allison Ann Schuster, 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 9

Doc #: 587470

10/12/2018 02:27 PM Page: 1 of 2

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV
Dawn L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00

Recorded By: mikasebaum

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

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 LINCOCOME, 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 475008 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. 365627.

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.electrostandpub.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.

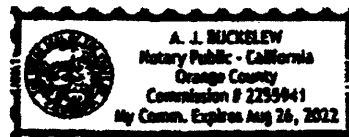
State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Bucklew 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. Bucklew
Signature of Notary



THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any tenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to surrender.

if the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

- (1) Delivering a copy to you personally in the presence of a witness, unless service is accomplished by a sheriff, constable or licensed process server, in which case the presence of a witness is not required;**
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business and to the place where the leased property is situated, if different; or**
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property and mailing a copy to you at the place where the leased property is situated.**

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

- (1) You will be given at least 10 days to answer a summons and complaint;**
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;**
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and**
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.**

Exhibit 10

FILED

2018 DEC 31 AM 10:48

TANVA SETHI
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.

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 Lindcomes 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 Lindcomes. Additionally, Counsel stipulated that the
17 Lindcomes' 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 Lindcome (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 //

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

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 Lindcome'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 Lindcome 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 Lindcome 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 //

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 20th 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 Reviewed, approved and submitted this 18th day of December, 2018.

2
3 

4 Ramir M. Hernandez, Esq.
5 Nevada Bar No. 13146
6 Wright, Finley & Zak
7 7785 W. Sahara Ave., Suite 200
8 Las Vegas, NV 89117
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ORDER
PAGE 8 OF 8

Exhibit 11

70 RIVERSIDE DR

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

Forward Tax Statements to
the address given above

Recorded As An Accommodation
Only Without Liability

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: \$1,148.66

Recorded By: Inhumidat

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
J. Develasco

(Seal)

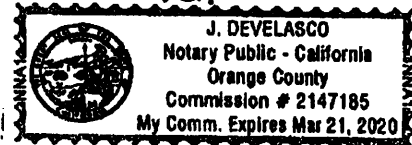


Exhibit 12

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. That I am one of the Plaintiffs herein;

2. That I have read the *Opposition to Bank of America's Motion to Dismiss Plaintiffs' Complaint* and understand the contents thereof, and that the contents are true of my own knowledge, except for those matters stated on information and belief, and as to those matters I believe them to be true;

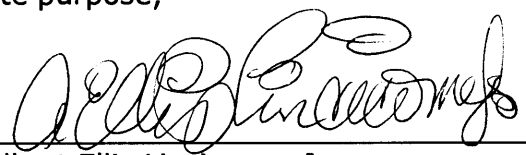
3. That in 2009, I believed that the Loan Modification Agreement may not be enforceable at the time because Bank of America had reported that they did not have the Loan Modification Agreement;

4. That based upon Bank of America's verbal and written statements to me, I did not know what happened with the Loan Modification Agreement;

5. That Bank of America did not provide any notice to me when it chose to record Loan Modification Agreement in March 2011; and

6. That I did not have any reason to believe at the time that Bank of America was committing fraud, withholding information from me, or intentionally refusing to honor the Loan Modification Agreement for any inappropriate purpose;

Further Affiant sayeth naught.


Albert Ellis Lincicome, Jr.

State of Nevada)
)ss.
County of Douglas)

This instrument was sworn to before me on the 4th day of April, 2019, by Albert Ellis Lincicome, Jr.


Notary Public

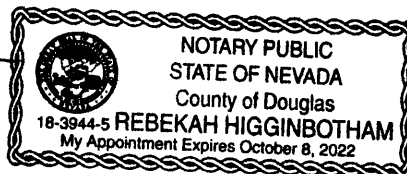


Exhibit 13


AFFIDAVIT OF VICENTA LINCICOME

STATE OF NEVADA)
)ss.
COUNTY OF DOUGLAS)

I, Vicenta Lincicome, being first duly sworn, under penalty of perjury, hereby state as follows:


1. That I am one of the Plaintiffs herein;
2. That I have read the *Opposition to Bank of America's Motion to Dismiss Plaintiffs' Complaint* and understand the contents thereof, and that the contents are true of my own knowledge, except for those matters stated on information and belief, and as to those matters I believe them to be true;
3. That in 2009, I believed that the Loan Modification Agreement may not be enforceable at the time because Bank of America had reported that they did not have the Loan Modification Agreement;
4. That based upon Bank of America's verbal and written statements to me, I did not know what happened with the Loan Modification Agreement;
5. That Bank of America did not provide any notice to me when it chose to record Loan Modification Agreement in March 2011; and
6. That I did not have any reason to believe at the time that Bank of America was committing fraud, withholding information from me, or intentionally refusing to honor the Loan Modification Agreement for any inappropriate purpose;

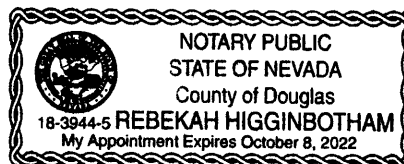
Further Affiant sayeth naught.


Vicenta Lincicome

State of Nevada)
)ss.
County of Douglas)

This instrument was sworn to before me on the 4th day of April, 2019, by Vicenta Lincicome.


Notary Public



FILED

2019 APR 11 AM 11:02

Case No: 18-CV-01332

Dept.: II

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

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, 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.)

**RESPONSE TO DECLARATION OF
SHADD A. WADE**

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome, by and through their attorney of record, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby respond to the Supplemental Declaration of Shadd A. Wade in Support of Motion to Set Aside Default (hereafter "Supplemental Declaration") with the presentation of the Affidavit of Michael G. Millward, Esq., attached hereto as **Exhibit 1**, and the Affidavit of Rebekah Higginbotham attached hereto as **Exhibit 2**.

Plaintiffs disagree with the following assertions contained in Mr. Wade's Supplemental Declaration:

In paragraph nine of the Supplemental Declaration, Mr. Wade asserts that "Plaintiff filed an Application for Entry of Default against Sables, LLC with no service to Sables' counsel of record."



1 Mr. Wade is mistaken. Rebekah Higginbotham, an employee of Millward Law, mailed
2 the Application for Entry of Default on December 19, 2018. A file-stamped copy of the
3 Application for Entry of Default is attached as Exhibit A to the Affidavit of Rebekah
4 Higginbotham attached hereto as **Exhibit 2**.

5 Additionally, Mr. Wade claims to attach a copy of the filed *Application for Entry of*
6 *Default* as Exhibit 4 to his Supplemental Declaration, however, Exhibit 4 to the Supplemental
7 Declaration is a copy of the docket dated January 16, 2019.

8 **AFFIRMATION**

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

12 Dated this 10th day of April, 2019

13 MILLWARD LAW, LTD.

14
15 By: 

16 Michael G. Millward, Esq.



INDEX TO EXHIBITS

Exhibit 1	<i>Affidavit of Michael G. Millward</i>	page
Exhibit 2	<i>Affidavit of Rebekah Higginbotham</i>	page

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that service of the *Response to Declaration of Shadd A. Wade* was made on the _____ day of April 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 I

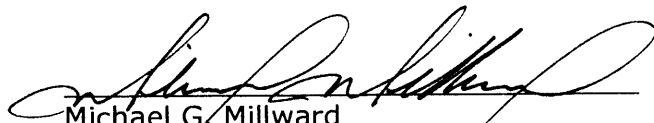
AFFIDAVIT OF MICHAEL G. MILLWARD

STATE OF NEVADA)
)ss.
COUNTY OF DOUGLAS)

I, Michael G. Millward, being first duly sworn, under penalty of perjury, hereby state as follows:

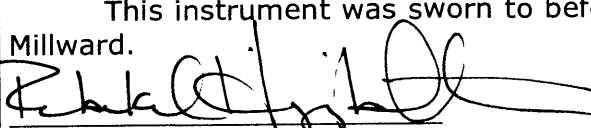
1. That I am an attorney practicing law with the firm Millward Law, Ltd.;
2. That I represent Plaintiffs Ellis and Vicenta Lincicome concerning Third Judicial District Case No. 18-CV-01332;
3. I communicated by email with Sables' counsel on January 18, 2019, regarding my availability to confer;
4. That I was unable to call Sables' counsel as scheduled on January 21, 2019, due to an over booked calendar;
5. I communicated by email with Sables' counsel on January 22, 2019, to arrange a telephone conference for my next available opening; and
6. That to the best of my knowledge, following Sables' default being taken by the Court Clerk on December 21, 2018, service of all papers in this matter has been according to the requirements of NRCP 4.

Further Affiant sayeth naught.


Michael G. Millward

State of Nevada)
)ss.
County of Douglas)

This instrument was sworn to before me on the 10th day of April, 2019, by Michael G. Millward.


Notary Public

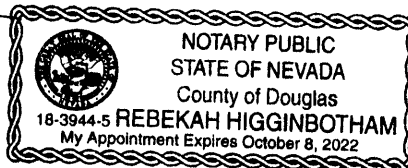


Exhibit 2

AFFIDAVIT OF REBEKAH HIGGINBOTHAM

STATE OF NEVADA)
)ss.
COUNTY OF DOUGLAS)

I, Rebekah Higginbotham, being first duly sworn, under penalty of perjury, hereby state as follows:

1. That I am an employee of Millward Law, Ltd.;

2. That on December 13, 2018, I mailed a copy of the *Three Day Notice of Intent to Take Default* to Sables, LLC, c/o Shadd A. Wade, Esq., Zieve, Brodnax & Steel, 9435 W. Russel Road, Suite 120, Las Vegas, Nevada 89148;

3. That on December 18, 2018, I spoke by telephone and later received communication from the law office of Zieve, Brodnax & Steele on behalf of Defendant Sables, LLC (hereafter "Sables");

4. That during my telephone conversation on December 18, 2018, under no circumstance did I agree to or indicate that an extension of time would be granted to Defendant Sables; and

5. That on December 19, 2018, I served a copy of Plaintiffs' *Application for Entry of Default* on Shadd A. Wade, Esq., on behalf of Defendant Sables, as provided in the Certificate of Mailing set forth on Page 4 of 4 to the Application. A copy of the *Application for Entry of Default* is attached hereto as **Exhibit A**;

6. That also on December 19, 2018, prior to receiving Sables' response to the Complaint, its Declaration of Non-Monetary Status, which was emailed to Millward Law on December 21, 2018, I mailed by first class mail through the United States Post Office, the *Application for Entry of Default*, together with the *Default* to be entered to the Clerk of the

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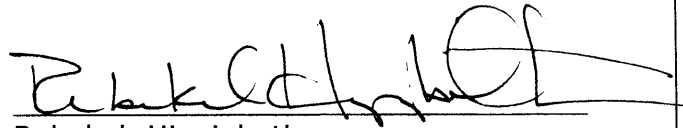
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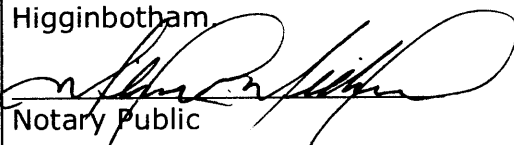
1 Third Judicial District Court. A copy of a letter dated December 19, 2018 is attached hereto
2 as **Exhibit B**.

3 Further Affiant sayeth naught.

4 
5 Rebekah Higginbotham

6 State of Nevada)
7)ss.
8 County of Douglas)

9 This instrument was sworn to before me on the 10th day of April, 2019, by Rebekah
10 Higginbotham

11 
12 Notary Public

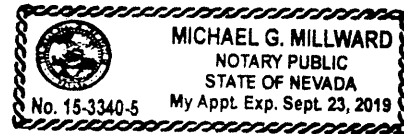


Exhibit A

FILED

2018 DEC 21 AM 10:41

TANJA S. SELLER
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.)

APPLICATION FOR ENTRY OF
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.)

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

Please enter the default of the Defendant SABLES, LLC, for its failure to file an
answer or other responsive pleading to Plaintiffs' Complaint, all as provided by the
Nevada Rules of Civil Procedure as appears from the Affidavit of Michael G. Millward,
attorney for Plaintiffs, attached hereto.

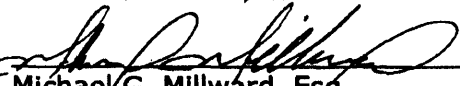
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MILLWARD LAW, LTD
1591 Mono Ave. Minden NV 89423
(775) 600-2776


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Dated this 19th day of December, 2018.

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



APPLICATION FOR ENTRY OF DEFAULT

PAGE 2 OF 4

AFFIDAVIT OF MICHAEL G. MILLWARD

STATE OF NEVADA)
)ss.
COUNTY OF DOUGLAS)

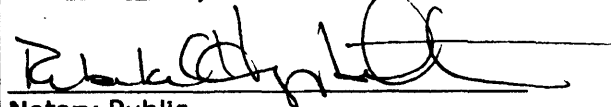
I, MICHAEL G. MILLWARD, do hereby swear or affirm under penalty of perjury that the following assertions are true:

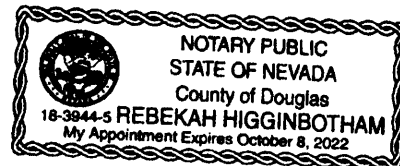
1. I am the attorney of record for Plaintiffs herein;
2. A true and correct copy of the Complaint was personally served upon Defendant SABLES, LLC, c/o Registered Agent Shadd A. Wade, on November 19, 2018. Defendant SABLES, LLC, has failed to answer or plead;
3. No additional time in which to answer or respond to the Complaint has been granted to Defendant SABLES, LLC; my office received a request on behalf of the Defendant SABLES, LLC, seeking an extension of time to file an answer through Friday, December 21, 2018; and
4. The foregoing is made and based upon my own personal knowledge except as to those matters which are based on information and belief, and as to such matters, I believes them to be true. In the event I was called upon to do so, I would and could competently testify as to the foregoing.

Dated this 19th day of December, 2018.


MICHAEL G. MILLWARD

SUBSCRIBED and SWORN to before me
this 19th day of December, 2018.


Notary Public



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



APPLICATION FOR ENTRY OF DEFAULT

PAGE 3 OF 4

CERTIFICATE OF MAILING

Pursuant to NRCP5(b), I hereby certify that service of the foregoing *Application for Entry of Default* was made on the 19th day of December 2018, 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
Legal Order Processing Dept.
C.T. Corporation System
818 W. Seventh Street, 2nd 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

Exhibit B



MILLWARD LAW, LTD.
1591 MONO AVENUE, MINDEN NEVADA 89423

Michael G. Millward, Esq.
Licensed in Nevada & Idaho

December 19, 2018

Third Judicial District Court Clerk
911 Harvey Lane
Yerington, NV 89447

RE: CASE No. 18-CV-01332
LINCICOME V. SABLES, ET AL

Dear Clerk:

Enclosed please find the following items regarding the above-referenced matter:

1. An original and one copy of an *Application for Entry of Default* (against Defendant Bank of America);
2. An original and one copy of a *Default* (against Defendant Bank of America);
3. An original and one copy of an *Application for Entry of Default* (against Defendant Sables); and
4. An original and one copy of a *Default* (against Defendant Sables).

Please file the Applications and enter the Defaults of both Bank of America and Sables, LLC. I have enclosed a self-addressed, stamped envelope for your use in returning file-stamped copies to me.

Please do not hesitate to contact me should you have any questions.

Best Regards,

Rebekah Higginbotham, Paralegal
Millward Law, Ltd.

/rah
Enclosures

WWW.MILLWARDLAW.COM
PHONE: (775) 600-2776



MICHAEL@MILLWARDLAW.COM
FAX: (775) 600-2724

FILED

2019 APR 12 PM 12:32

TANYA SCORINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Darren Brenner

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
AKERMAN LLP
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant Bank of America, N.A.

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

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.

Case No. 18-cv-01332
Dept. No.: II

**DEFENDANT BANK OF AMERICA,
N.A.'S REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

Defendant Bank of America, N.A. (BANA) files this reply supporting its motion to dismiss.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' opposition to BANA's motion to dismiss does not save their time-barred claims against BANA. Plaintiffs allege BANA breached a loan modification agreement that was purportedly offered in 2009 (2009 LMA or LMA). According to plaintiffs, BANA breached the

1 2009 LMA in December 2011 by refusing to accept payments tendered pursuant to the 2009 LMA.
2 Plaintiffs argue they had no reason to believe they could enforce the 2009 LMA, despite knowing
3 BANA would not accept the payments. They now seek to avoid the statute by arguing the statute
4 is tolled because they tendered payments in 2015, made a new offer of a modification in April
5 2015, and did not learn BANA implemented the modification until 2017, when they received the
6 notice of default. Opposition at 11. As discussed below, there is no merit to plaintiffs' arguments.

7 **II. LEGAL ARGUMENT**

8 **A. The Six-Year Statute of Limitations Is Not Tolled by NRS 11.200 or NRS 11.390**

9 As noted in BANA's motion to dismiss, plaintiffs allege BANA breached the 2009 LMA
10 by failing to accept payments as late as December 2011 for the 2009 LMA. *See* Complaint ¶¶89-
11 92, 97. Plaintiffs' argument that NRS 11.200 and 11.390 toll plaintiffs' cause of action for breach
12 of that 2009 LMA are misplaced.

13 NRS 11.200 provides the limitation period of NRS 11.190 commences from the date the
14 last payment or transaction is made upon an existing contract. Here, the breach of contract claim
15 is premised wholly on BANA's breach of the 2009 LMA. Thus, the alleged breach occurred in
16 December 2011 when BANA refused to accept the payments made towards the 2009 LMA.
17 Plaintiffs allege they attempted to make payments toward the LMA from October 2009 to
18 December 2011, but BANA refused to accept these payments. Complaint ¶90. December 2011
19 is the last time plaintiffs allege they attempted to make a payment towards the 2009 LMA and
20 BANA rejected this payment. Thus, plaintiffs were on notice as late as December 2011 that BANA
21 had allegedly breached the 2009 LMA. Plaintiffs' action should have been brought by December
22 2017, if not sooner. *See* NRS 11.190 (six years statute of limitations on contract based claims).

23 Plaintiffs' argument NRS 11.200 extends the originating time to July 2015, the last time it
24 made payments to BANA, is wholly unrelated to plaintiffs' breach of contract cause of action
25 concerning the 2009 LMA. That cause of action is premised on BANA's failure to accept payments
26 on the 2009 LMA. Plaintiffs concede the 2015 payments were made pursuant to an entirely new
27 loan modification offer made in April 2015. That this was a new offer is conceded and supported
28 by the allegations and exhibits. The written 2009 LMA modified the loan by reducing the interest

1 to a step rate interest (4.875% for the first five years and then 5.375% to maturity), extended the
2 maturity to August 1, 2049, increased the principal balance by \$36,046.58 for fees, interest and
3 escrow, and reduced payments to \$2,272.62. Complaint Exh. 3, 4. The written April 2015
4 modification, in contrast, provided for an interest rate of 4.125%, extended the maturity to May 1,
5 2055, and set payments at \$2,013.78 starting May 28, 2015, July 1, 2015 and August 1, 2015.
6 Complaint ¶¶40-45; Exh. 9. These are two separate agreements. BANA's acceptance of the 2015
7 trial plan payments has no impact on the claim that BANA breached that 2009 LMA. Plaintiffs
8 do not allege BANA agreed to accept the 2015 payments as part of the payments due on the 2009
9 LMA. There is certainly no reason to think so. The 2015 payments are lower than what was
10 required in the 2009 LMA. Additionally, BANA made the April 2015 offer in writing. This
11 writing does not refer to the 2009 LMA or the terms in that modification.

12 Plaintiffs' argument the assignment of the deed of trust in 2011 extended the time to bring
13 their action pursuant to NRS 11.390 is also misplaced. Opposition at 9-10. Again, the breach of
14 contract cause of action alleges BANA breached the 2009 LMA in 2011. The assignment reflects
15 a transfer in the interests in the note and deed of trust. Plaintiffs are not parties to this transfer and
16 there is no dispute concerning the validity and enforceability of the note or deed of trust. The
17 transfer of the interest has no effect on when plaintiffs' claim for breach of the 2009 LMA accrues.
18 It does not renew plaintiffs' claims concerning the alleged 2011 breach. Complaint ¶90. Plaintiffs
19 were on notice BANA allegedly breached the 2009 LMA in December 2011. The written
20 assignment does not toll the limitation period for bring the claim.

21 **B. The Statute Of Limitations Is Not Tolloed By The Application Of The Discovery**
22 **Rule Or Equitable Tolling**

23 Plaintiffs' claim the statute of limitations should be tolled by delayed discovery or equitable
24 tolling is unavailing. Opposition at 9-12. As argued in the motion to dismiss, a cause of action
25 for breach of contract "accrues as soon as the plaintiff *knows or should know* of facts constituting
26 a breach." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (citing *Soper*
27 *v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 224 (1995)); *Taylor Bean & Whitaker Mortg. Corp.*
28 *v. Vargas*, No. 70363, 2017 WL 6597161, at *1 (Nev. Dec. 22, 2017) (unpublished disposition).

1 Plaintiffs are expected to exercise due diligence in determining whether they have a cause of
2 action. *See Sierra Pacific Power Co. v. Nye*, 80 Nev. 88, 95, 389 P.2d 387, 390 (1964). Where
3 evidence demonstrates that a plaintiff discovered, or should have discovered, facts giving rise to a
4 cause of action, dismissal on statute of limitations grounds is appropriate. *Bemis*, 114 Nev. at
5 1025, 967 P.2d at 440; *Taylor Bean & Whitaker Mortg. Corp.*, 2017 WL 6597161, at *1 (complaint
6 alleged date defendant failed to make required payment; thus plaintiff knew or should have known
7 date cause of action accrued).

8 Here, there is no dispute plaintiffs discovered, or should have discovered, they had a claim
9 for breach of contract in December 2011. They concede BANA refused to accept the payments
10 and denied the existence of the 2009 LMA. Complaint ¶¶90. Plaintiffs allege they complied with
11 the terms of the agreement – they signed it and returned it to BANA as instructed. ¶¶20, 83. They
12 concede they tendered a payment pursuant to the LMA in September 2009. ¶¶21, 88. However,
13 immediately thereafter, plaintiffs became aware BANA would not accept the terms of the LMA.
14 ¶¶23, 24. BANA refused to accept the October 2009 payment, informed plaintiffs there was no
15 record of a modification, and sent plaintiffs a loan statement that did not include the terms of the
16 modification. ¶¶23, 24. Plaintiffs further concede they were aware BANA would not accept
17 payments from October 2009 through December 2011. ¶¶90, 97.

18 Plaintiffs argue they did not discover they had a cause of action because they did not know
19 BANA had implemented the modification. Opposition at 11-12. However, whether BANA
20 booked the modification or plaintiffs were aware of it is not relevant to the cause of action that
21 BANA breached the agreement by failing to accept the payments in December 2011. That is when
22 plaintiffs were injured by the alleged breach of the agreement, when they attempted to comply
23 with the terms and BANA purportedly prevented them from doing so. Whether BANA booked
24 the modification without plaintiffs' knowledge does not change the facts that BANA purportedly
25 did not accept the payments in December 2011. There is no dispute plaintiffs knew BANA would
26 not accept the payments. They admit it. ¶90. The evidence is incontrovertible that plaintiffs
27 discovered the breach in December 2011, thus delayed discovery does not apply to save this cause
28

1 of action. Plaintiffs should have brought the claim by December 2017; they waited until November
2 2018. It is almost one year too late.

3 Finally, plaintiffs rely on *Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th Cir. 1993)
4 (analysis of California law) for the proposition the statute of limitations should be equitably tolled
5 because a reasonable person would now know they have a cause of action. Opposition at 11.
6 Under the Ninth Circuit standard, courts allow equitable tolling in only two circumstances: where
7 plaintiffs were prevented from filing timely claims due to (1) defendant's wrongful conduct, or (2)
8 extraordinary circumstances. *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir.
9 1996). Plaintiffs allege neither.

10 Plaintiffs fail to demonstrate any basis to permit this court to apply equitable tolling of any
11 applicable statute of limitations. Plaintiffs contend BANA breached the 2009 LMA by failing to
12 accept the payments in December 2011. Nowhere in the complaint or the opposition do plaintiffs
13 sufficiently explain why or how they were prevented from bringing their action sooner, nor do
14 they plead how the applicable statutes of limitations should be tolled from the date they were aware
15 BANA refused to accept the payments. Plaintiffs allege in December 2011, BANA refused to
16 accept the payments and the modification was not implement. ¶90. Moreover, they argue BANA
17 prevented them from knowing the 2009 LMA had been implemented by sending statements that
18 showed the modification had NOT been implemented and did not purportedly acknowledge the
19 modification. *See* Opposition at 11-12. This is simply more evidence plaintiffs were on notice
20 that they had a claim for BANA's alleged breach of the 2009 LMA by failing to accept the
21 payments in December 2011. Plaintiffs do not allege they continued to follow up with BANA
22 regarding the modification, that they attempted to make payments, or that BANA continued to
23 promise that it was investigating.

24 The allegations show the last time the 2009 LMA was discussed was in December 2011.
25 Plaintiffs' delay in filing this action is prejudicial to BANA. BANA was not on notice since
26 December 2011 that the plaintiffs sought to enforce that 2009 LMA. These conclusory statements
27 that a "reasonable person" would not know they had a claim does not establish a basis to support
28 equitable tolling for the breach of contract cause of action.

1 As set forth more fully in the motion to dismiss, each claim based on the alleged breach of
2 contract are time-barred. The belated argument for equitable tolling does not set forth any basis
3 to change that. As such, each of the claims should be dismissed with prejudice.

4 **C. The Declaratory Relief Cause of Action Fails**

5 Plaintiffs argue BANA is a necessary party as to their claims concerning the enforceability
6 of the deed of trust. Opposition at 13-15. According to plaintiffs, complete relief can only be
7 achieved concerning those claims with BANA's presence. However, by the very pleadings alleged,
8 this is not true. BANA is alleged to have breached the 2009 LMA. Though plaintiffs attempt to
9 argue BANA's alleged breach of the 2009 LMA would prevent anyone from enforcing the 2007
10 deed of trust, there is no support for such a windfall. Plaintiffs do not assert a cause of action that
11 the 2007 deed of trust is not enforceable by way of BANA's alleged breach of the 2009 LMA. *See*
12 Complaint. BANA's alleged breach of the 2009 LMA would, according to plaintiffs' reasoning,
13 only render the 2009 LMA unenforceable.

14 Regardless, declaratory relief is a generally remedy rather than an independent claim for
15 relief. *See, e.g., Hymas v. Deutsche Bank Nat. Trust Co.*, No. 2013 WL 6795731, at *5 (D. Nev.
16 Dec. 19, 2013) (holding that neither injunctive relief nor declaratory relief constitute an
17 independent cause of action); *Contreras v. Master Fin., Inc.*, 2011 WL 32513, *4 (D. Nev. Jan. 4,
18 2011) (finding claims for injunctive or declaratory relief are remedies that may be afforded to a
19 party after he has sufficiently established and proven his claims; they are not a separate causes of
20 action). As discussed above, plaintiffs fail to state a cause of action concerning enforcement of
21 the 2009 LMA. Any such "claim" for declaratory relief would be time-barred.

22 In some cases, declaratory relief is available where: "(1) a justiciable controversy exists
23 between persons with adverse interests, (2) the party seeking declaratory relief has a legally
24 protectable interest in the controversy, and (3) the issue is ripe for judicial determination." *Cnty.*
25 *of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998). To
26 the extent the cause of action seeks a declaration concerning the obligations under the deed of trust
27 and the note, BANA is not a party to any alleged controversy concerning those instruments.
28 BANA assigned the deed of trust to US Bank. Servicing of the loan was released to Fay Servicing.

1 Sables is the trustee under the deed of trust conducting the foreclosure. BANA has no role in the
2 foreclosure or any attempt to enforce the deed of trust. There is no justiciable controversy between
3 plaintiffs and BANA in the enforcement of the 2007 deed or the note. Whether BANA breached
4 the terms of the 2009 LMA is not relevant as to the enforceability of the deed of trust itself.
5 Moreover, plaintiffs do not dispute the existence of the modification. Thus, the only question is
6 whether BANA would be liable for a damages.

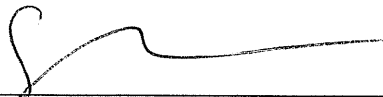
7 **III. CONCLUSION**

8 The complaint fails to state a claim upon which relief may be granted and should be
9 dismissed under Rule 12(b)(5). The court should dismiss all of plaintiffs' causes of action against
10 BANA with prejudice because amendment would be futile. Plaintiffs are not entitled to special
11 damages or any fees for that matter against BANA under the circumstances described herein. *See*
12 NRS 107.560. Rather BANA is entitled to fees under NRS 18.010 since the claims against it
13 where brought without reasonable ground and to harass BANA.

14 Additionally, plaintiffs filed a motion for leave to amend its complaint. Plaintiffs' proposed
15 amended complaint does not alter the allegations or claims against BANA. This court should
16 strike all allegations and claims against BANA from the amended complaint should it grant leave.

17 DATED this 11th day of April, 2019.

18 **AKERMAN LLP**

19 

20 DARREN T. BRENNER, ESQ.
21 Nevada Bar No. 8386
22 SCOTT R. LACHMAN, ESQ.
23 Nevada Bar No. 12016
24 1635 Village Center Circle, Ste. 200
25 Las Vegas, Nevada 89134

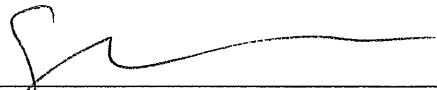
26 *Attorneys for Bank of America, N.A.*

AFFIRMATION
(Pursuant to NRS 239B.030)

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

DATED this 11th day of April, 2019.

AKERMAN LLP



DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

SCOTT R. LACHMAN, ESQ.

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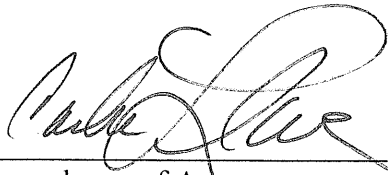
Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 11th day of April, 2019, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**, in the following manner:

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written as follows:

Michael G. Millward, Esq. MILLWARD LAW, LTD. 1591 Mono Avenue Minden, Nevada 89423 <i>Attorneys for Plaintiffs</i>	Christopher A.J. Swift, Esq. Rarnir M. Hernandez, Esq. WRIGHT, FINLAY & ZAK, LLP 7785 W. Sahara Ave, Suite 200 Las Vegas, NV 89117 <i>Attorneys Defendants, Prof-2013 M4-Legal Title Trust. by U.S. Bank, National Association, as Legal Title Trustee and Fay Servicing LLC</i>
Shadd A. Wade, Esq. ZIEVE, BRODNAX & STEELE, LLP 9435 West Russell Road, Suite 120 Las Vegas, NV 89148 <i>Attorneys for Sables, LLC</i>	


An employee of AKERMAN LLP

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2019 APR 12 PM 12:28

TANYA SCERWINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Debra Peoples
DEPUTY

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

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9 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

**REPLY IN SUPPORT OF MOTION FOR
RULE 11 SANCTIONS AGAINST
PLAINTIFFS**

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 Reply in support of its Motion for Rule 11 Sanctions against Plaintiffs
Albert Ellis Lincicome, Jr. and Vicenta Lincicome.

This Reply is based on the papers and pleadings on file, the following Memorandum of
Points and Authorities, and any judicially noticed facts or documents, and any oral argument
presented at hearing.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' Opposition to the Motion for Sanctions does nothing to show that Plaintiffs
4 filed their Application for Default Judgment for a proper purpose. Instead, the Opposition only
5 serves to justify the imposition of Rule 11 relief. Here, Plaintiffs had an opportunity to contest
6 the foreclosure and were even granted a preliminary injunction conditioned on the posting of a
7 bond. Plaintiffs failed to post the bond. Instead of recognizing this defect, Plaintiffs turn to the
8 language of the preliminary injunction order, which they drafted, as a shield for why they have
9 the right to ask for retroactive relief against Sables, and by extension the U.S. Bank and Fay,
10 from foreclosing on the Property. Their interpretation of the preliminary injunction is not only
11 incorrect it is frivolous because the order provides for the dissolution of the injunction if
12 Plaintiffs fail to post a bond. Moreover, their interpretation substantively and improperly affects
13 both the U.S. Bank's and Fay's right to foreclose on the Property. A default judgment cannot
14 be used to affect the rights of parties that have appeared. For these two reasons alone, the
15 application for a *nunc pro tunc* default judgment was procedurally improper. Thus, the
16 Application for Default Judgment was done for an improper purpose. Plaintiffs' actions against
17 Sables required U. S. Bank and Fay to take further action in response, thereby incurring
18 additional and unnecessary fees and costs. Rule 11 protects against such wasteful expenditure of
19 resources. As a result, Rule 11 sanctions against Plaintiffs are warranted.

20 **II. LEGAL ARGUMENT**

21 **A. Plaintiffs' Opposition proves that their filing of the Motion for Default Judgment is**
22 **baseless.**

23 Plaintiffs Opposition fails to substantively address the arguments raised in the Motion
24 for Sanctions. For instance, Plaintiffs do not dispute that 1) Sables has appeared in this case; 2)
25 Sables has filed a disclaimer of interest; and 3) Sables intends to participate in this case.
26 Despite these facts, Plaintiffs argue that they filed the Application for Default Judgment to
27 apply retroactively to December 21, 2018, simply because that is the earliest date they were
28 entitled to request such relief. But Plaintiffs ignore the basic legal premise that cases are to be

1 heard on the merits.¹ Moreover, Plaintiffs do not address that what they are attempting to do is
2 the casebook definition of abuse of process.² Specifically, they filed court papers with an
3 ulterior motive, willfully, and in a manner not proper in the regular conduct of the proceeding.³
4 Here, that improper purpose was to sabotage the foreclosure sale that occurred on January 4,
5 2019, after the fact in order to substantively impact the rights of U.S. Bank Trust and Fay to
6 foreclose on the Property through the filing of the Application for Entry of Default Judgment
7 *nunc pro tunc*. As demonstrated in the Opposition to the Motion for Entry of Default Judgment,
8 the Application for Entry of Default Judgment cannot be used for the purpose that Plaintiffs
9 intend.

10 Moreover, and as noted in the Motion for Sanctions, Sables is actively participating in
11 this case and filed a Disclaimer of Interest pursuant to NRS 107.029. That same statute
12 provides that Sables' obligation to respond to the Complaint is tolled pending the court's ruling
13 to any Objection to the Disclaimer of Interest. Here, Plaintiffs filed an Objection to the
14 Disclaimer of Interest. The Court has yet to rule on the Objection. As such, Sables is under no
15 obligation to respond to the Complaint. There simply is no reason to default Sables, except to
16 gain some unwarranted, collateral tactical advantage over the U.S. Bank Trust and Fay after the
17 Court approved the foreclosure sale if Plaintiffs failed to post a bond. This is precisely the type
18 of game playing Rule 11 is meant to circumvent.

19 Rather than admit that the filing of the Motion for Entry of Default Judgment was
20 improper, Plaintiffs double down and nonsensically argue that the preliminary injunction order
21 prohibited any foreclosure sale without further order of the court.⁴ As a result, Plaintiffs claim
22 that they are not seeking to unwind a sale the Court stated was already enjoined.⁵ However, that
23 same preliminary injunction order also stated two paragraphs later, "That the temporary
24 injunction **shall be effective against Defendants so long as (sic) bond is posted** and Plaintiffs
25

26 ¹ See Response to Plaintiffs' Application for Entry of Default Judgment at fn. 2-3.

27 ² See Motion for Sanctions at fn. 8.

28 ³ *Id.*

⁴ See Opp. at 6:23-27.

⁵ See Opp. at 7:1-3.

1 post additional security in the sum of \$2,105.10 on January 20, 2019, and on the 20th day of
2 each month thereafter with the Third Judicial District Court Clerk's office."⁶ Here, the only
3 valid and reasonable interpretation of the preliminary injunction order is that the temporary
4 injunction was conditioned on the posting of the bond payment. Plaintiffs' failure to post the
5 bond by operation dissolved the injunction. At that point, the U.S. Bank Trust, Fay, and Sables
6 could proceed with the foreclosure sale. Thus, the argument that those parties were not
7 otherwise allowed to proceed with the foreclosure sale is yet another reason the Application for
8 Default Judgment is itself improper.

9 Assuming *arguendo* that the U.S. Bank and Fay had to go back to the Court to ask
10 permission to lift the injunction, Plaintiffs are still seeking retroactive relief based on the default
11 of Sables. So Plaintiffs' argument that they are not seeking to "unwind the sale" is frivolous
12 and is only further evidence of their bad faith.

13 What makes this violation more egregious is that Plaintiffs are apparently taking
14 advantage of this District's lack of electronic filing to play their games. For instance, Sables'
15 attorney states in his declaration to the Court that he contacted the Court on December 18, 2019
16 to determine if a default had been filed.⁷ Three days later, he emailed a copy of Sables'
17 Declaration of Monetary Status to Plaintiff's counsel.⁸ Sables then did not discover that a
18 default had been entered until January 15, 2019.⁹ Plaintiffs then proceeded to file their
19 Application for Default Judgment on or about January 18, 2019, despite the filing of the
20 Disclaimer of Interest. An electronic filing system, as used in some of Nevada's district courts,
21 provides for an immediate notification of filing. This allows parties to plan accordingly.
22 However, a manual filing system is inherently subject to mailing and other clerical delays that
23 can cause filings to be made out of order. The point is that rather than recognize documents that
24 have been filed and the limitations of this district's filing system, Plaintiff's counsel is taking
25 advantage of the system to file papers in a manner that suit his own ends. As stated before, this

26 ⁶ Emphasis added.

27 ⁷ See Decl. of Shadd A. Wade at ¶4.

28 ⁸ *Id.* at ¶5.

⁹ *Id.* at ¶6.

1 is the type of trickery Rule 11 is intended to stop. As a result, it is wholly appropriate to award
2 sanctions in this instance.

3 Overall, Plaintiffs provide no justification as to why the Application for Default
4 Judgment was made for an improper purpose. In fact, their response to the Motion for
5 Sanctions further demonstrates why the Application was baseless. Under the circumstances,
6 this Court should not hesitate to impose sanctions.

7 **B. Plaintiffs provide no legal authority for a *nunc pro tunc* order that substantially**
8 **affects the rights of the other party.**

9 Plaintiffs' only other argument is that they are within their rights to request a *nunc pro*
10 *tunc* or retroactive judgment, but this position is wholly unsupported by any law. The only
11 authority Plaintiffs cite to is the *Opaco Lumber & Realty Co. v. Phipps*, 75 Nev. 312, 315, 340
12 P.2d 95, 97 (1959), decision as support for their requested relief.¹⁰ Specifically, Plaintiffs state
13 that the Nevada Supreme Court did not condemn the request for *nunc pro tunc* relief and said
14 such relief could be appropriate.¹¹ However, the Court in *Opaco* specifically stated that it
15 would not disturb the district court's denial of a motion to strike on the part of the plaintiff's
16 when the defendant's failure to file a timely response had not provided any injury or delay to
17 the plaintiff.¹²

18 The circumstances here are almost identical. Plaintiffs are in no way prejudiced by
19 Sables' tardy appearance because they had their day in court with the two parties that actually
20 controlled the foreclosure, the U.S. Bank Trust and Fay. As has been noted in various
21 pleadings, the Trustee is an agent for the beneficiary and has no discretion on whether a
22 foreclosure can move forward. Moreover, the Court granted Plaintiffs injunctive relief. Any
23 conclusion regarding prejudice is merely form over substance. In the end, Plaintiffs fail to
24 provide any legal authority that *nunc pro tunc* relief at the expense of a party that has appeared
25 in this case is appropriate. It bears repeating that Plaintiffs seek entry of a default judgment
26

27 ¹⁰ See Opp. at 7:20-24.

28 ¹¹ *Id.* at 7:25-8:2.

¹² 75 Nev. at 315, 340 P.2d at 97.

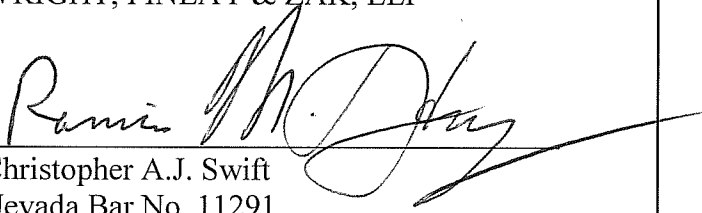
1 against Sables to retroactively unwind a foreclosure sale this Court already ruled could move
2 forward. Thus, the Application for Default Judgment was filed for an improper purpose and
3 sanctions pursuant to N.R.C.P. 11 are appropriate.

4 **III. CONCLUSION**

5 Plaintiffs' Opposition does little to change the basic facts of Plaintiffs' procedural
6 gamesmanship. If anything, it confirms why the filing of the Application for Default Judgment
7 was wholly unwarranted. Rule 11 provides this Court the mechanism to deter future conduct.
8 Consequently, the Court should grant the Rule 11 Motion for Sanctions and impose a monetary
9 sanction against Plaintiffs as well as an award of attorney's fees and costs.

10 DATED this 11th day of April, 2019.

11 WRIGHT, FINLAY & ZAK, LLP

12
13 
14 Christopher A.J. Swift
15 Nevada Bar No. 11291
16 Ramir M. Hernandez, Esq.
17 Nevada Bar No. 13146
18 *Attorney for Defendants, Prof-2013 M4-Legal Title*
19 *Trust, by U.S. Bank, National Association, as*
20 *Legal Title Trustee and Fay Servicing LLC*
21
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
3 ZAK, LLP, and that on this 11th day of April, 2019, I did cause a true copy of the foregoing
4 **REPLY TO OPPOSITION TO MOTION FOR RULE 11 SANCTIONS AGAINST**
5 **PLAINTIFFS** to be served by 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.
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19 Las Vegas, NV 89134

20
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28

An Employee of WRIGHT, FINLAY & ZAK, LLP

FILED

2019 MAY 30 AM 8:44

CLERK OF COURT
JUDICIAL DISTRICT

Victoria Toran

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

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.

ORDER

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 This matter having come on for hearing before the Court on April 15, 2019, at 1:30 PM.
on the following Motions:

- 1) Sables, LLC's Motion to Set Aside Default to which Fay Servicing, LLC and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee filed a Joinder. Plaintiffs filed an Opposition to this Motion;
- 2) Plaintiffs' Application for Entry of Default Judgment against Sables, LLC. Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National

- 1 Association, as Legal Title Trustee filed an Opposition to the Application to which
2 Sables, LLC filed a Joinder.
- 3 3) Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National
4 Association, as Legal Title Trustee's Motion for Rule 11 Sanctions against
5 Plaintiffs. Plaintiffs filed an Opposition to this Motion;
- 6 4) Bank of America N.A.'s Motion to Dismiss Plaintiff's Complaint. Plaintiffs filed an
7 Opposition to this Motion.
- 8 5) Sables, LLC's Declaration of Non-Monetary Status. Plaintiffs filed an Objection to
9 the Declaration; and
- 10 6) Plaintiffs' Motion for Leave to file Amended Complaint to Substitute Parties and
11 add Additional Claims for Relief. No party filed an Opposition to the Motion.

12 Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome ("Plaintiffs") appeared
13 through counsel, Michael G. Millward, Esq., of Millward Law, Ltd. Defendant, Sables, LLC
14 ("Sables"), appeared through its counsel, Shadd Wade, Esq., of the law firm of Zieve, Brodnax
15 & Steele, LLP. Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National
16 Association, as Legal Title Trustee (the "Trust") and Fay Servicing LLC ("Fay") appeared
17 through Ramir M. Hernandez, Esq., of the law firm of Wright, Finlay & Zak, LLP. Defendant,
18 Bank of America, N.A. ("BANA") appeared through its counsel, Darren T. Brenner, Esq., of
19 Akerman LLP.

20 The Court, having reviewed the parties' briefings and heard the parties' oral arguments,
21 orders as follows:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Motion to Set
23 Aside Default is GRANTED, and that the default of Sables filed with the Court on December
24 21, 2018 is SET ASIDE.

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs'
26 Application for Entry of Default Judgment is DENIED.

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Trust and Fay's
28 Motion for Rule 11 Sanctions against Plaintiffs is GRANTED. Plaintiff's Attorney will pay

1 the Trust and Fay their attorney's fees and costs for filing an Opposition to the Application for
2 Entry of Default Judgment against Sables as well as the Rule 11 Motion. Fay and the Trust
3 will be responsible for their travel costs for attending the hearing. Fay and the Trust are
4 granted leave to file a Memorandum of Fees and Costs pursuant to the factors set forth in
5 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

6 Plaintiffs will have ten days after the filing of the Memorandum of Fees and Costs to
7 file an Objection. If an Objection is filed, Fay and the Trust will have ten days to file a Reply.
8 When the matter is submitted, Fay and the Trust will submit a proposed order with the amount
9 awarded in blank.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Declaration
11 of Non-Monetary Status is GRANTED.

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that BANA's Motion to
13 Dismiss Plaintiffs' Complaint is GRANTED in part and DENIED in part. Any claims against
14 BANA seeking injunctive relief are hereby dismissed. All other claims will be allowed to
15 remain.

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that regarding Plaintiff's
17 Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims
18 For Relief, and based on the granting of Sables' Declaration of Non-Monetary Status, Plaintiff
19 are GRANTED leave to file another Motion for Leave to File an Amended Complaint, but is
20 not granted leave to amend its claims as to Sables. After the filing of the Motion, and
21 oppositions thereto, the Court will then make a determination as to whether to grant leave to
22 Plaintiffs to amend the Complaint.

23 ///

24 ///

25 ///

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27 ///

28 ///

1 IT IS SO ORDERED.

2 Dated this 30th day of May, 2019.

3
4 LA
5 DISTRICT JUDGE

6 Respectfully submitted by:

7 Dated this 23rd day of May, 2019

8 WRIGHT, FINLAY & ZAK, LLP

9 

10 Ramir M. Hernandez, Esq.
11 Nevada Bar No. 13146
12 7785 W. Sahara Avenue, Suite 200
13 Las Vegas, Nevada 89117
14 *Attorneys for Defendants, Prof-2013 M4-Legal
Title Trust, by U.S. Bank, National
Association, as Legal Title Trustee and Fay
Servicing LLC*

15 Approved as to form and content by:

16 AKERMAN LLP

17
18
19 Darren T. Brenner, Esq.
20 Nevada Bar No. 8386
21 Scott R. Lachman, Esq.
22 Nevada Bar No. 12016
23 1635 Village Center Circle, Ste. 200
24 Las Vegas, Nevada 89134
25 *Attorneys for Defendant Bank of America, N.A.*

Approved as to form and content by:

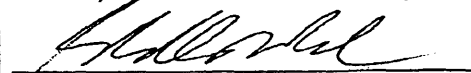
Dated this _____ day of _____, 2019

MILLWARD LAW, LTD.

Michael Millward, Esq.
Nevada Bar No. 11212
1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs

Approved as to form and content by:

ZIEVE, BRODNAX & STEELE, LLP

26
27
28 
Shadd A. Wade, Esq.
Nevada Bar No. 11310
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Attorneys for Defendant, Sables, LLC

1 IT IS SO ORDERED.


2 Dated this ____ day of ^{May}~~April~~, 2019.

3
4
5 DISTRICT JUDGE

6 Respectfully submitted by:

7 Dated this 23rd day of May, 2019


8 WRIGHT, FINLAY & ZAK, LLP

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10 
11 Ramir M. Hernandez, Esq.
12 Nevada Bar No. 13146
13 7785 W. Sahara Avenue, Suite 200
14 Las Vegas, Nevada 89117
15 *Attorneys for Defendants, Prof-2013 M4-Legal*
Title Trust, by U.S. Bank, National
Association, as Legal Title Trustee and Fay
Servicing LLC

Approved as to form and content by:


Dated this ____ day of ____, 2019

MILLWARD LAW, LTD.


Michael Millward, Esq.
Nevada Bar No. 11212
1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs


Approved as to form and content by:

AKERMAN LLP

17  5/11/19
18 Darren T. Brenner, Esq.
19 Nevada Bar No. 8386
20 Scott R. Lachman, Esq.
21 Nevada Bar No. 12016
22 1635 Village Center Circle, Ste. 200
23 Las Vegas, Nevada 89134
Attorneys for Defendant Bank of America, N.A.

Approved as to form and content by:

ZIEVE, BRODNAX & STEELE, LLP


Shadd A. Wade, Esq.
Nevada Bar No. 11310
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Attorneys for Defendant, Sables, LLC

1 WRIGHT, FINLAY & ZAK, LLP
2 R. Samuel Ehlers, Esq.
3 Nevada Bar No. 9313
4 Ramir M. Hernandez, Esq.
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7 Las Vegas, NV 89117
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9 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

NOTICE OF ENTRY OF ORDER

28 TO: ALL INTERESTED PARTIES:

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FILED

2019 JUN 20 PM 1:15


ORIGINAL

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Scheidt

1 **PLEASE TAKE NOTICE** that an Order was entered on 30th day of May, 2019, a file-
2 stamped copy of which is attached hereto.

3 DATED this 12th day of June, 2019.

4 WRIGHT, FINLAY & ZAK, LLP

5 

6 R. Samuel Ehlers, Esq.

7 Nevada Bar No. 9313

8 Ramir M. Hernandez, Esq.

9 Nevada Bar No. 13146

10 7785 W. Sahara Ave, Suite 200

11 Las Vegas, NV 89117

12 *Attorney for Defendants, Prof-2013 M4-Legal Title*
13 *Trust, by U.S. Bank, National Association, as Legal*
14 *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 10th day of June, 2019.

WRIGHT, FINLAY & ZAK, LLP



R. Samuel Ehlers

Nevada Bar No. 9313

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

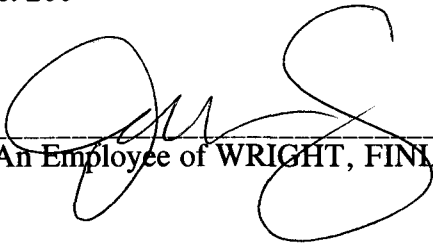
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 12th day of June, 2019, I did cause a true copy of **NOTICE OF ENTRY**
4 **OF ORDER** to be filed and served by depositing a true and correct copy in the United States
5 Mail, addressed as follows:

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

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

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

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21
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23
24
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27
28

An Employee of WRIGHT, FINLAY & ZAK, LLP

FILED

2019 MAY 30 AM 8:44

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

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

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.

ORDER

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 This matter having come on for hearing before the Court on April 15, 2019, at 1:30 PM.
on the following Motions:

- 1) Sables, LLC's Motion to Set Aside Default to which Fay Servicing, LLC and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee filed a Joinder. Plaintiffs filed an Opposition to this Motion;
- 2) Plaintiffs' Application for Entry of Default Judgment against Sables, LLC. Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National

1 Association, as Legal Title Trustee filed an Opposition to the Application to which
2 Sables, LLC filed a Joinder.

3 3) Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National
4 Association, as Legal Title Trustee's Motion for Rule 11 Sanctions against
5 Plaintiffs. Plaintiffs filed an Opposition to this Motion;

6 4) Bank of America N.A.'s Motion to Dismiss Plaintiff's Complaint. Plaintiffs filed an
7 Opposition to this Motion.

8 5) Sables, LLC's Declaration of Non-Monetary Status. Plaintiffs filed an Objection to
9 the Declaration; and

10 6) Plaintiffs' Motion for Leave to file Amended Complaint to Substitute Parties and
11 add Additional Claims for Relief. No party filed an Opposition to the Motion.

12 Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome ("Plaintiffs") appeared
13 through counsel, Michael G. Millward, Esq., of Millward Law, Ltd. Defendant, Sables, LLC
14 ("Sables"), appeared through its counsel, Shadd Wade, Esq., of the law firm of Zieve, Brodnax
15 & Steele, LLP. Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National
16 Association, as Legal Title Trustee (the "Trust") and Fay Servicing LLC ("Fay") appeared
17 through Ramir M. Hernandez, Esq., of the law firm of Wright, Finlay & Zak, LLP. Defendant,
18 Bank of America, N.A. ("BANA") appeared through its counsel, Darren T. Brenner, Esq., of
19 Akerman LLP.

20 The Court, having reviewed the parties' briefings and heard the parties' oral arguments,
21 orders as follows:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Motion to Set
23 Aside Default is GRANTED, and that the default of Sables filed with the Court on December
24 21, 2018 is SET ASIDE.

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs'
26 Application for Entry of Default Judgment is DENIED.

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Trust and Fay's
28 Motion for Rule 11 Sanctions against Plaintiffs is GRANTED. Plaintiff's Attorney will pay

1 the Trust and Fay their attorney's fees and costs for filing an Opposition to the Application for
2 Entry of Default Judgment against Sables as well as the Rule 11 Motion. Fay and the Trust
3 will be responsible for their travel costs for attending the hearing. Fay and the Trust are
4 granted leave to file a Memorandum of Fees and Costs pursuant to the factors set forth in
5 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

6 Plaintiffs will have ten days after the filing of the Memorandum of Fees and Costs to
7 file an Objection. If an Objection is filed, Fay and the Trust will have ten days to file a Reply.
8 When the matter is submitted, Fay and the Trust will submit a proposed order with the amount
9 awarded in blank.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Declaration
11 of Non-Monetary Status is GRANTED.

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that BANA's Motion to
13 Dismiss Plaintiffs' Complaint is GRANTED in part and DENIED in part. Any claims against
14 BANA seeking injunctive relief are hereby dismissed. All other claims will be allowed to
15 remain.

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that regarding Plaintiff's
17 Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims
18 For Relief, and based on the granting of Sables' Declaration of Non-Monetary Status, Plaintiff
19 are GRANTED leave to file another Motion for Leave to File an Amended Complaint, but is
20 not granted leave to amend its claims as to Sables. After the filing of the Motion, and
21 oppositions thereto, the Court will then make a determination as to whether to grant leave to
22 Plaintiffs to amend the Complaint.

23 ///

24 ///

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1 IT IS SO ORDERED.

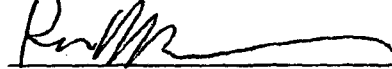
2 Dated this 30th day of May, 2019.

3
4 
5 DISTRICT JUDGE

6 Respectfully submitted by:

7 Dated this 23rd day of May, 2019

8 WRIGHT, FINLAY & ZAK, LLP

9 

10 Ramir M. Hernandez, Esq.
11 Nevada Bar No. 13146
12 7785 W. Sahara Avenue, Suite 200
13 Las Vegas, Nevada 89117
14 Attorneys for Defendants, Prof-2013 M4-Legal
15 Title Trust, by U.S. Bank, National
16 Association, as Legal Title Trustee and Fay
17 Servicing LLC

Approved as to form and content by:

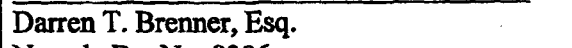
Dated this ____ day of ____, 2019

MILLWARD LAW, LTD.

Michael Millward, Esq.
Nevada Bar No. 11212
1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs

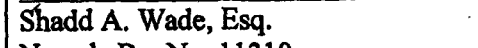
Approved as to form and content by:

AKERMAN LLP

18 
19 Darren T. Brenner, Esq.
20 Nevada Bar No. 8386
21 Scott R. Lachman, Esq.
22 Nevada Bar No. 12016
23 1635 Village Center Circle, Ste. 200
24 Las Vegas, Nevada 89134
25 Attorneys for Defendant Bank of America, N.A.

Approved as to form and content by:

ZIEVE, BRODNAX & STEELE, LLP

26 
27 Shadd A. Wade, Esq.
28 Nevada Bar No. 11310
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Attorneys for Defendant, Sables, LLC

1 IT IS SO ORDERED.


2 Dated this 23rd day of May, 2019.

4
5 DISTRICT JUDGE

6 Respectfully submitted by:

7 Dated this 23rd day of May, 2019

8 WRIGHT, FINLAY & ZAK, LLP

9 
10 Ramir M. Hernandez, Esq.
11 Nevada Bar No. 13146
12 7785 W. Sahara Avenue, Suite 200
13 Las Vegas, Nevada 89117
14 *Attorneys for Defendants, Prof-2013 M4-Legal
Title Trust, by U.S. Bank, National
Association, as Legal Title Trustee and Fay
Servicing LLC*

Approved as to form and content by:

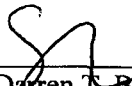
Dated this _____ day of _____, 2019

MILLWARD LAW, LTD.

Michael Millward, Esq.
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1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs

Approved as to form and content by:

17 AKERMAN LLP

18  5/11/19
19 Darren T. Brenner, Esq.
20 Nevada Bar No. 8386
21 Scott R. Lachman, Esq.
22 Nevada Bar No. 12016
23 1635 Village Center Circle, Ste. 200
24 Las Vegas, Nevada 89134
25 *Attorneys for Defendant Bank of America, N.A.*

Approved as to form and content by:

ZIEVE, BRODNAX & STEELE, LLP

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