

IN THE SUPREME COURT OF THE STATE OF NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL
LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-
BACKED CERTIFICATES, SERIES 2005-A8, Appellant,
Elizabeth A. Brown
Clerk of Supreme Court

vs.

SFR INVESTMENTS POOL 1, LLC, Respondent.

CASE NO.: 79235

District Court Case No.: A739867C

Appeal from the Eighth Judicial District Court In and For the County of Clark
The Honorable Joanna A. Kishner, District Court Judge

JOINT APPENDIX – VOLUME X

WRIGHT, FINLAY & ZAK, LLP

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*Attorneys for Appellant, U.S. Bank, National Association As Trustee For Merrill
Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series
2005-A8*

DOCUMENT	VOL	BATES
Affidavit of Service	I	JA00063
Affidavit of Service	I	JA00138
Affidavit of Service	I	JA00139
Affidavit of Service	I	JA00140
Amended Proposed Findings of Fact and Conclusions of Law	XII	JA02268- JA02283
Bench Memorandum Regarding Whether Defendant is a Bona Fide Purchase is Irrelevant	X	JA01939- JA01943
Complaint	I	JA00001- JA00062
Court's Trial Exhibit 1 - Alessi & Koenig Fax Dated 7-11-12 from Ryan Kerbow to A. Bhame Re: 7868 Marbledoe Ct./HO #18842	X	JA01896- JA01897
Court's Trial Exhibit 2 – Excerpts of Deposition of Ortwerth Dated 6/14/18	X	JA01898- JA01899
Defendant Antelope Homeowners' Association's Answer and Affirmative Defenses	III	JA00434- JA00443
Docket (A-16-739867-C)	XIII	JA02477- JA02483
Findings of Fact and Conclusions of Law and Judgment	XII	JA02300- JA02318
First Amended Complaint	II	JA00283- JA00346
Joint Trial Exhibit 1 - Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	III	JA00523- JA00585
Joint Trial Exhibit 2 - Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	III	JA00586- JA00588
Joint Trial Exhibit 3 - Grant, Bargain, Sale Deed	III	JA00589- JA00592
Joint Trial Exhibit 4 - Notice of Default and Election to Sell Under Deed of Trust	III	JA00593- JA00594
Joint Trial Exhibit 5 - Deed of Trust	III	JA00595- JA00616

DOCUMENT	VOL	BATES
Joint Trial Exhibit 6 - Deed of Trust (Second)	III	JA00617- JA00629
Joint Trial Exhibit 7 - Deed of Trust re-recorded to add correct Adjustable Rate Rider	IV	JA00630- JA00655
Joint Trial Exhibit 8 - Grant, Bargain, Sale Deed re-recorded to correct vesting to show Henry E. Ivy and Freddie S. Ivy, husband and wife as joint tenants with rights of survivorship	IV	JA00656- JA00661
Joint Trial Exhibit 9 - Notice of Delinquent Assessment (Lien)	IV	JA00662
Joint Trial Exhibit 10 - Notice of Delinquent Violation Lien	IV	JA00663- JA00664
Joint Trial Exhibit 11 - Notice of Default and Election to Sell Under Homeowners Association Lien	IV	JA00665
Joint Trial Exhibit 12 - Notice of Trustee's Sale	IV	JA00666
Joint Trial Exhibit 13 - Notice of Trustee's Sale	IV	JA00667
Joint Trial Exhibit 14 - Notice of Trustee's Sale	IV	JA00668
Joint Trial Exhibit 15 - Trustee's Deed Upon Sale	IV	JA00669- JA00670
Joint Trial Exhibit 16 - Release of Notice of Delinquent Assessment Lien	IV	JA00671
Joint Trial Exhibit 17 - Rescission of Election to Declare Default	IV	JA00672- JA00673
Joint Trial Exhibit 18 - Notice of Delinquent Violation Lien	IV	JA00674- JA00675
Joint Trial Exhibit 19 - Request for Notice Pursuant to NRS 116.31168	IV	JA00676- JA00678
Joint Trial Exhibit 20 - Notice of Lis Pendens	IV	JA00679- JA00682
Joint Trial Exhibit 21 - Letter from Miles, Bauer, Bergstrom & Winters, LLP to Henry Ivy	IV	JA00683- JA00685
Joint Trial Exhibit 22 - Letter from Miles, Bauer, Bergstrom & Winters, LLP to Antelope Homeowners Association	IV	JA00686- JA00687
Joint Trial Exhibit 23 - Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP	IV	JA00688- JA00694

DOCUMENT	VOL	BATES
Joint Trial Exhibit 24 - Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC	IV	JA00695- JA00697
Joint Trial Exhibit 25 - Correspondence regarding corrected ARM Note	IV	JA00698
Joint Trial Exhibit 26 - Affidavit of Lost Note	IV	JA00699- JA00708
Joint Trial Exhibit 27 - Affidavit of Lost Note	IV	JA00709- JA00716
Joint Trial Exhibit 28 - Correspondence regarding Note	IV	JA00717- JA00718
Joint Trial Exhibit 29 - Deed of Trust, Note, and Lost Note Affidavit (Part 1)	V	JA00719- JA00968
Joint Trial Exhibit 29 - Deed of Trust, Note, and Lost Note Affidavit (Part 2)	VI	JA00969- JA00984
Joint Trial Exhibit 30 - Alessi & Koenig, LLC Collection File	VI	JA00985- JA01160
Joint Trial Exhibit 31 - Affidavit of Doug Miles and Backup	VI	JA01161- JA01181
Joint Trial Exhibit 31a – Excerpt of Affidavit of Doug Miles and Backup	VI	JA01182- JA01183
Joint Trial Exhibit 32 - Title Insurance Documents – First American Title Insurance Company – NV08000274-11/IVY	VI	JA01184- JA01194
Joint Trial Exhibit 33 - Title Insurance Policy – North American Title Insurance Company	VI	JA01195- JA01211
Joint Trial Exhibit 34 - Corporate Assignment of Deed of Trust	VI	JA01212- JA01213
Joint Trial Exhibit 35 - Trustee's Sale Guarantee	VII	JA01214- JA01224
Joint Trial Exhibit 36 - Bank of America, N.A.'s Payment History	VII	JA01225- JA01237
Joint Trial Exhibit 37 - Greenpoint's Payment History	VII	JA01238- JA01248
Joint Trial Exhibit 38 - Bank of America, N.A.'s Servicing Notes	VII	JA01249- JA01261

DOCUMENT	VOL	BATES
Joint Trial Exhibit 39 - Copy of Promissory Note and Allonges	VII	JA01262- JA01277
Joint Trial Exhibit 40 - Pooling and Servicing Agreement	VIII	JA01278- JA01493
Joint Trial Exhibit 41 - Mortgage Loan Schedule for PSA	VIII	JA01494- JA01512
Joint Trial Exhibit 42 - Corporate Assignment of Deed of Trust	VIII	JA01513- JA01514
Joint Trial Exhibit 43 - Acknowledgement of Inspection of the Original Collateral File	IX	JA01515- JA01620
Joint Trial Exhibit 44 - Antelope Homeowners Association's Initial Disclosures and all Supplements	IX	JA01621- JA01737
Joint Trial Exhibit 45 - Exhibit 1 to Deposition of David Alessi – Subpoena for Deposition of N.R.C.P. 30(b)(6) Witness for Alessi & Koenig, LLC	IX	JA01738- JA01746
Joint Trial Exhibit 46 - Exhibit 2 to Deposition of David Alessi – Account Ledger	IX	JA01747- JA01751
Joint Trial Exhibit 47 - Exhibit 3 to Deposition of David Alessi – Notice of Delinquent Assessment (Lien)	IX	JA01752
Joint Trial Exhibit 48 - Exhibit 4 to Deposition of David Alessi – Notice of Delinquent Violation Lien	IX	JA01753- JA01754
Joint Trial Exhibit 49 - Exhibit 5 to Deposition of David Alessi – Notice of Default and Election to Sell Under Homeowners Association Lien	IX	JA01755
Joint Trial Exhibit 50 - Exhibit 6 to Deposition of David Alessi – Notice of Trustee's Sale	IX	JA01756
Joint Trial Exhibit 51 - Exhibit 7 to Deposition of David Alessi – Second Notice of Trustee's Sale	IX	JA01757
Joint Trial Exhibit 52 - Exhibit 8 to Deposition of David Alessi – Third Notice of Trustee's Sale	IX	JA01758
Joint Trial Exhibit 53 - Exhibit 9 to Deposition of David Alessi – Request for Payoff by Miles Bauer	IX	JA01759- JA01760
Joint Trial Exhibit 54 - Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request	X	JA01761- JA01767

DOCUMENT	VOL	BATES
Joint Trial Exhibit 55 - Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer	X	JA01768- JA01770
Joint Trial Exhibit 56 - Exhibit 12 to Deposition of David Alessi – Trustee’s Deed Upon Sale	X	JA01771- JA01772
Joint Trial Exhibit 57 - Exhibit 1 to Deposition of David Bembas – Notice of Taking Deposition of SFR Investments Pool 1, LLC	X	JA01773- JA01778
Joint Trial Exhibit 58 - Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)	X	JA01779
Joint Trial Exhibit 59 - Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien	X	JA01780
Joint Trial Exhibit 60 - Exhibit 4 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01781
Joint Trial Exhibit 61 - Exhibit 5 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01782
Joint Trial Exhibit 62 - Exhibit 6 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01783
Joint Trial Exhibit 63 - Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11	X	JA01784- JA01785
Joint Trial Exhibit 64 - Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11	X	JA01786- JA01788
Joint Trial Exhibit 65 - Exhibit 9 to Deposition of David Bembas – Trustee’s Deed Upon Sale	X	JA01789- JA01790
Joint Trial Exhibit 66 - Antelope Homeowners Association’s Answers to Plaintiff U.S. Bank’s Interrogatories	X	JA01791- JA01809
Joint Trial Exhibit 67 - Antelope Homeowners Association’s Answers To Plaintiff U.S. Bank’s Requests for Admission	X	JA01810- JA01825
Joint Trial Exhibit 68 - Antelope Homeowners Association’s Answers To Plaintiff U.S. Bank’s Request for Production of Documents	X	JA01826- JA01845
Joint Trial Exhibit 69 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank’s Interrogatories	X	JA01846- JA01857

DOCUMENT	VOL	BATES
Joint Trial Exhibit 70 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Requests for Admissions	X	JA01858- JA01870
Joint Trial Exhibit 71 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Request for Production of Documents	X	JA01871- JA01882
Joint Trial Exhibit 72 - Email Re: URGENT WIRE REQUEST: Status Update re: 10- H1715 (1st) De Vera Relevance, Hearsay, Authenticity, and Foundation	X	JA01883- JA01888
Joint Trial Exhibit 73 - BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure Relevance, Hearsay, Authenticity, and Foundation	X	JA01889- JA01893
Joint Trial Exhibit 74 – Alessi & Koenig Fax Dated 7-11-12 from Ryan Kerbow to A. Bhame Re: 7868 Marbledoe Ct./HO #18842	X	JA01894- JA01895
Notice of Appeal	XIII	JA02341- JA02366
Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	XII	JA02319- JA02340
Notice of Entry of Order	I	JA00131- JA00137
Notice of Entry of Order	III	JA00426- JA00433
Notice of Entry of Order	X	JA01974- JA01983
Notice of Entry of Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment	III	JA00469- JA00474
Notice of Entry of Stipulation and Order	II	JA00267- JA00274
Notice of Entry of Stipulation and Order	X	JA01959- JA01966
Notice of Entry of Stipulation and Order Dismissing Henry E. Ivy and Freddie S. Ivy Without Prejudice	II	JA00361- JA00367

DOCUMENT	VOL	BATES
Notice of Entry of Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association	II	JA00278- JA00282
Notice to Adverse Parties and to the Eighth Judicial District Court of Remand of Previously-Removed Case to this Court	II	JA00141- JA00262
Objections to U.S. Bank's Amended Pre-Trial Disclosures	III	JA00475- JA00479
Order Denying Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6)	I	JA00126- JA00130
Order Denying The Antelope Homeowners' Association's Motion to Dismiss	III	JA00390- JA00393
Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment	III	JA00465- JA00468
Proposed Findings of Fact and Conclusions of Law	III	JA00480- JA00488
Recorders Transcript of Bench Trial – Day 1	XIII	JA02484- JA02575
Recorders Transcript of Bench Trial – Day 2	XIV	JA02576- JA02743
Recorders Transcript of Bench Trial – Day 3	XV	JA02744- JA02908
Recorders Transcript of Bench Trial – Day 4	XI	JA01984- JA02111
Recorders Transcript of Bench Trial – Day 5	XII	JA02112- JA02267
Recorders Transcript of Bench Trial – Day 6	XIII	JA02367- JA02476
Recorder's Transcript of Hearing: All Pending Motions	II	JA00373- JA00389
Recorder's Transcript of Hearing: All Pending Motions	III	JA00394- JA00425
Recorder's Transcript of Hearing: All Pending Motions	III	JA00444- JA00464

DOCUMENT	VOL	BATES
Second Amended Proposed Findings of Fact and Conclusions of Law and Judgment	XII	JA02284- JA02299
SFR Investments Pool 1, LLC's Answer to Complaint, Counterclaim and Cross-Claim	I	JA00097- JA00114
SFR Investments Pool 1, LLC's Answer to First Amended Complaint	II	JA00347- JA00356
SFR Investments Pool 1, LLC's Trial Brief Re Admissibility of Certain Proposed Exhibits	III	JA00489- JA00510
SFR Investments Pool 1, LLC's Trial Brief Re Statute of Limitations	III	JA00511- JA00522
Stipulation and Order to Amend Caption	X	JA01953- JA01958
Stipulation and Order Dismissing Henry E. Ivy and Freddie S. Ivy Without Prejudice	II	JA00357- JA00360
Stipulation and Order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice	II	JA00263- JA00266
Stipulation and Order for Dismissal Without Prejudice as to Claims Between Antelope Homeowners Association and U.S. Bank National Association	X	JA01967- JA01973
Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association	II	JA00275- JA00277
Transcript of Proceedings	I	JA00064- JA00096
U.S. Bank's Bench Memorandum Regarding Authentication and Admissibility of Proposed Exhibits 21, 22, 23, 24 and 31	X	JA01900- JA01911
U.S. Bank's Bench Memorandum Regarding Business Record Exception	X	JA01944- JA01952
U.S. Bank's Bench Memorandum Regarding Pre-Foreclosure Satisfaction of the Superpriority Portion of the HOA's Lien	X	JA01932- JA01938
U.S. Bank's Bench Memorandum Regarding Standing to Maintain Its Claims in this Action and Standing to Enforce the Deed of Trust and Note	X	JA01919- JA01931
U.S. Bank's Bench Memorandum Regarding Statute of Limitations	X	JA01912- JA01918

DOCUMENT	VOL	BATES
U.S. Bank's Objections to SFR Investments Pool 1, LLC's Pre-Trial Disclosures	II	JA00368- JA00372
U.S. Bank's Reply to SFR Investments Pool 1, LLC's Counterclaim	I	JA00115- JA00125

VOLUME X

DATE	DOCUMENT	VOL	BATES
04/16/19	Joint Trial Exhibit 54 - Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request	X	JA01761- JA01767
04/16/19	Joint Trial Exhibit 55 - Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer	X	JA01768- JA01770
04/16/19	Joint Trial Exhibit 56 - Exhibit 12 to Deposition of David Alessi – Trustee’s Deed Upon Sale	X	JA01771- JA01772
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04/16/19	Joint Trial Exhibit 58 - Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)	X	JA01779
04/16/19	Joint Trial Exhibit 59 - Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien	X	JA01780
04/16/19	Joint Trial Exhibit 60 - Exhibit 4 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01781
04/16/19	Joint Trial Exhibit 61 - Exhibit 5 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01782
04/16/19	Joint Trial Exhibit 62 - Exhibit 6 to Deposition of David Bembas – Notice of Trustee’s Sale	X	JA01783
04/16/19	Joint Trial Exhibit 63 - Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11	X	JA01784- JA01785
04/16/19	Joint Trial Exhibit 64 - Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11	X	JA01786- JA01788
04/16/19	Joint Trial Exhibit 65 - Exhibit 9 to Deposition of David Bembas – Trustee’s Deed Upon Sale	X	JA01789- JA01790
04/16/19	Joint Trial Exhibit 66 - Antelope Homeowners Association’s Answers to Plaintiff U.S. Bank’s Interrogatories	X	JA01791- JA01809
04/16/19	Joint Trial Exhibit 67 - Antelope Homeowners Association’s Answers To Plaintiff U.S. Bank’s Requests for Admission	X	JA01810- JA01825

DATE	DOCUMENT	VOL	BATES
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04/16/19	Joint Trial Exhibit 69 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Interrogatories	X	JA01846- JA01857
04/16/19	Joint Trial Exhibit 70 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Requests for Admissions	X	JA01858- JA01870
04/16/19	Joint Trial Exhibit 71 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Request for Production of Documents	X	JA01871- JA01882
04/16/19	Joint Trial Exhibit 72 - Email Re: URGENT WIRE REQUEST: Status Update re: 10- H1715 (1st) De Vera Relevance, Hearsay, Authenticity, and Foundation	X	JA01883- JA01888
04/16/19	Joint Trial Exhibit 73 - BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure Relevance, Hearsay, Authenticity, and Foundation	X	JA01889- JA01893
04/16/19	Joint Trial Exhibit 74 – Alessi & Koenig Fax Dated 7-11-12 from Ryan Kerbaw to A. Bhame Re: 7868 Marbledoe Ct./HO #18842	X	JA01894- JA01895
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04/16/19	Court's Trial Exhibit 2 – Excerpts of Deposition of Ortwerth Dated 6/14/18	X	JA01898- JA01899
04/17/19	U.S. Bank's Bench Memorandum Regarding Authentication and Admissibility of Proposed Exhibits 21, 22, 23, 24 and 31	X	JA01900- JA01911
04/18/19	U.S. Bank's Bench Memorandum Regarding Statute of Limitations	X	JA01912- JA01918

DATE	DOCUMENT	VOL	BATES
04/18/19	U.S. Bank's Bench Memorandum Regarding Standing to Maintain Its Claims in this Action and Standing to Enforce the Deed of Trust and Note	X	JA01919- JA01931
04/18/19	U.S Bank's Bench Memorandum Regarding Pre-Foreclosure Satisfaction of the Superpriority Portion of the HOA's Lien	X	JA01932- JA01938
04/18/19	Bench Memorandum Regarding Whether Defendant is a Bona Fide Purchase is Irrelevant	X	JA01939- JA01943
04/18/19	U.S. Bank's Bench Memorandum Regarding Business Record Exception	X	JA01944- JA01952
04/18/19	Stipulation and Order to Amend Caption	X	JA01953- JA01958
04/18/19	Notice of Entry of Stipulation and Order	X	JA01959- JA01966
04/23/19	Stipulation and Order for Dismissal Without Prejudice as to Claims Between Antelope Homeowners Association and U.S. Bank National Association	X	JA01967- JA01973
04/23/19	Notice of Entry of Order	X	JA01974- JA01983

DATED this 15th day of June, 2020.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller, Esq.

Christina V. Miller, Esq. (NBN 12448)

7785 West Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

Attorney for Appellant, U.S. Bank, National Association As Trustee For Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 15th day of June, 2020, the foregoing **JOINT APPENDIX – VOLUME X** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

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

Service via electronic notification will be sent to the following:

Jacqueline Gilbert
Karen Hanks

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

/s/ Faith Harris

An Employee of WRIGHT, FINLAY & ZAK, LLP



July
11-H7638

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bars
*** Admitted to the Nevada and California Bar



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ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	A Bhome	Re:	7868 Marbledoe Ct./HO #18842
From:	Ryan Kerbow	Date:	Friday, October 21, 2011
Fax No.:		Pages:	1, including cover
		HO #:	18842

Dear A Bhome:

This cover will serve as an amended demand on behalf of Antelope Homeowners Association for the above referenced escrow; property located at 7868 Marbledoe Ct., Las Vegas, NV. The total amount due through October 31, 2011 is \$4,111.61. The breakdown of fees, interest and costs is as follows:

10/27/2009 Notice of Delinquent Assessment Lien -- Nevada	\$295.00
1/7/2011 Notice of Default	\$395.00
12/20/2010 Pre NOD	\$150.00
6/12/2011 Pre-Notice of Trustee Sale	\$90.00
6/20/2011 Notice of Trustee Sale	\$275.00
6/20/2011 Foreclosure Fee	\$150.00
Total	\$1,355.00
1. Attorney and/or Trustees fees:	\$1,355.00
2. Notary, Recording, Copies, Mailings, and PACER	\$375.00
3. Assessments Through October 31, 2011	\$1,611.61
4. Late Fees Through October 31, 2011	\$150.00
5. Fines Through October 21, 2011	\$0.00
6. Interest Through October 31, 2011	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$210.00
9. Management Company Audit Fee	\$25.00
10. Management Account Setup Fee	\$0.00
11. Publishing and Posting of Trustee Sale	\$175.00
13. Conduct Foreclosure Sale	\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$4,111.61
Less Payments Received:	\$0.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA01761

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



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RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

Total Amount Due:

\$4,111.61

Please have a check in the amount of \$4,111.61 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA01762

Resident Transaction Detail

Active Flag Yes

Void Flag No

ANTELOPE

Account #: 58066

Property Address: 7868 MARBLEDOE ST

Code	Date	Amount	Balance	Check#	Memo
MA	6/1/2005	39.00	39.00		
CC	6/1/2005	175.00	214.00		
PMT	6/2/2005	-253.00	-39.00		
MA	7/1/2005	39.00	0.00		
PMT	7/13/2005	-10.00	-10.00		
MA	8/1/2005	39.00	29.00		
PMT	8/12/2005	-29.00	0.00		
MA	9/1/2005	39.00	39.00		
PMT	9/12/2005	-68.00	-29.00		
MA	10/1/2005	39.00	10.00		
PMT	10/17/2005	-10.00	0.00	1775	101705.usb
MA	11/1/2005	39.00	39.00		
MA	12/1/2005	39.00	78.00		
PMT	12/12/2005	-78.00	0.00	1930	121205.usb
MA	1/1/2006	39.00	39.00		
PMT	1/13/2006	-39.00	0.00	1950	011306.usb
MA	2/1/2006	39.00	39.00		
LF	2/16/2006	1.95	40.95		
MA	3/1/2006	39.00	79.95		
PMT	3/13/2006	-78.00	1.95	1879	031306.usb
MA	4/1/2006	39.00	40.95		
PMT	4/17/2006	-39.00	1.95	1823	041706.usb
MA	5/1/2006	39.00	40.95		
LF	5/16/2006	1.95	42.90		
MA	6/1/2006	39.00	81.90		
LFI	5/30/2006	0.58	82.48		
LF	6/16/2006	1.95	84.43		
PMT	6/15/2006	-79.95	4.48	1904	061506.usb
MA	7/1/2006	39.00	43.48		
LF	7/16/2006	1.95	45.43		
MA	8/1/2006	39.00	84.43		
LFI	7/30/2006	0.58	85.01		
PMT	8/12/2006	-126.00	-40.99	1910	
MA	9/1/2006	39.00	-1.99		
MA	10/1/2006	39.00	37.01		
MA	11/1/2006	39.00	76.01		
PMT	11/15/2006	-76.01	0.00	1979	111506.usb
MA	12/1/2006	39.00	39.00		
PMT	11/30/2006	-115.00	-76.00	1954	113006.USB
MA	1/1/2007	39.00	-37.00		

5/31/2011 11:06:58 AM

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JA01763

Resident Transaction Detail

Active Flag Yes

Void Flag No

ANTELOPE

MA	2/1/2007	39.00	2.00	
MA	3/1/2007	39.00	41.00	
PMT	3/14/2007	-41.00	0.00 1971	031407.usb
PMT	3/29/2007	-80.00	-80.00 2027	032907.usb
MA	4/1/2007	39.00	-41.00	
MA	5/1/2007	39.00	-2.00	
MA	6/1/2007	39.00	37.00	
PMT	6/28/2007	-76.00	-39.00 2062	062807.usb
MA	7/1/2007	39.00	0.00	
MA	8/1/2007	39.00	39.00	
LF	8/16/2007	1.95	40.95	
LFI	8/30/2007	0.58	41.53	
MA	9/1/2007	39.00	80.53	
LF	9/16/2007	3.90	84.43	
MA	10/1/2007	39.00	123.43	
LFI	9/30/2007	1.17	124.60	
PMT	10/1/2007	-119.00	5.60 2123	100107.usb
MA	11/1/2007	39.00	44.60	
LF	11/16/2007	1.95	46.55	
LFI	11/30/2007	0.58	47.13	Late Fee Processed
MA	12/1/2007	39.00	86.13	
LF	12/16/2007	3.90	90.03	Late Fee Processed
LFI	12/30/2007	1.17	91.20	Late Fee Processed
MA	1/1/2008	39.00	130.20	Assessment
LF	1/16/2008	5.85	136.05	Late Fee Processed
LFI	1/30/2008	1.75	137.80	Late Fee Processed
MA	2/1/2008	39.00	176.80	Assessment
PMT	2/4/2008	-125.13	51.67 01076	020408.usb
MA	3/1/2008	39.00	90.67	Assessment
PMT	3/3/2008	-90.67	0.00 1053	
MA	4/1/2008	39.00	39.00	Assessment
LF	4/16/2008	1.95	40.95	Late Fee Processed
PMT	4/30/2008	-79.95	-39.00 01104	043008.usb
MA	5/1/2008	39.00	0.00	Assessment
MA	6/1/2008	39.00	39.00	Assessment
PMT	6/2/2008	-39.00	0.00 01135	060208.usb
MA	7/1/2008	39.00	39.00	Assessment
PMT	7/14/2008	-39.00	0.00 01111	071408.usb
MA	8/1/2008	39.00	39.00	Assessment
LF	8/16/2008	1.95	40.95	Late Fee Processed
LFI	8/30/2008	0.58	41.53	Late Fee Processed
MA	9/1/2008	39.00	80.53	Assessment
LF	9/16/2008	3.90	84.43	Late Fee Processed

Resident Transaction Detail

Active Flag Yes

Void Flag No

ANTELOPE

LFI	9/30/2008	1.17	85.60	Late Fee Processed
MA	10/1/2008	39.00	124.60	Assessment
LF	10/16/2008	5.85	130.45	Late Fee Processed
LFI	10/30/2008	1.75	132.20	Late Fee Processed
MA	11/1/2008	39.00	171.20	Assessment
LF	11/16/2008	7.80	179.00	Late Fee Processed
LFI	11/30/2008	2.34	181.34	Late Fee Processed
PMT	12/1/2008	-210.00	-28.66 01191	120108.usb
MA	12/1/2008	39.00	10.34	Assessment
PMT	12/29/2008	-49.34	-39.00 01279	122908.usb
MA	1/1/2009	39.00	0.00	Assessment
MA	2/1/2009	39.00	39.00	Assessment
LF	2/16/2009	1.95	40.95	Late Fee Processed
LFI	2/28/2009	0.58	41.53	Late Fee Processed
MA	3/1/2009	39.00	80.53	Assessment
LF	3/16/2009	3.90	84.43	Late Fee Processed
PMT	3/27/2009	-126.00	-41.57 1328	
MA	4/1/2009	39.00	-2.57	Assessment
MA	5/1/2009	39.00	36.43	Assessment
PMT	5/12/2009	-84.00	-47.57 01357	051209].usb
MA	6/1/2009	39.00	-8.57	Assessment
MA	7/1/2009	39.00	30.43	Assessment
MA	8/1/2009	39.00	69.43	Assessment
LF	8/16/2009	3.47	72.90	Late Fee Processed
LFI	8/30/2009	1.04	73.94	Late Fee Processed
MA	9/1/2009	39.00	112.94	Assessment
LF	9/16/2009	5.42	118.36	Late Fee Processed
INTENT	9/17/2009	100.00	218.36	INTENT TO LIEN
LFI	9/30/2009	1.63	219.99	Late Fee Processed
MA	10/1/2009	39.00	258.99	Assessment
LF	10/16/2009	7.37	266.36	Late Fee Processed
LFI	10/30/2009	0.65	267.01	Late Fee Processed
MA	11/1/2009	39.00	306.01	Assessment
LF	11/16/2009	9.32	315.33	Late Fee Processed
LFI	11/30/2009	0.82	316.15	Late Fee Processed
MA	12/1/2009	39.00	355.15	Assessment
LF	12/16/2009	11.27	366.42	Late Fee Processed
LFI	12/30/2009	0.99	367.41	Late Fee Processed
MA	1/1/2010	42.90	410.31	Assessment
Late Fee	1/16/2010	13.42	423.73	Late Fee Processed
Interest	1/30/2010	1.18	424.91	Late Fee Processed
Assessment	2/1/2010	42.90	467.81	Assessment
Late Fee	2/16/2010	15.56	483.37	Late Fee Processed

Resident Transaction Detail

Active Flag Yes

Void Flag No

ANTELOPE

Interest	2/28/2010	1.37	484.74	Late Fee Processed
Assessment	3/1/2010	42.90	527.64	Assessment
Late Fee	3/16/2010	17.71	545.35	Late Fee Processed
Interest	3/30/2010	1.56	546.91	Late Fee Processed
Assessment	4/1/2010	42.90	589.81	Assessment
Late Fee	4/16/2010	19.85	609.66	Late Fee Processed
Interest	4/30/2010	1.75	611.41	Late Fee Processed
Assessment	5/1/2010	42.90	654.31	Assessment
Late Fee	5/16/2010	22.00	676.31	Late Fee Processed
Interest	5/30/2010	1.94	678.25	Late Fee Processed
Assessment	6/1/2010	42.90	721.15	Assessment
Late Fee	6/16/2010	24.14	745.29	Late Fee Processed
Interest	6/30/2010	2.12	747.41	Late Fee Processed
Assessment	7/1/2010	42.90	790.31	Assessment
Late Fee	7/16/2010	26.29	816.60	Late Fee Processed
Interest	7/31/2010	2.31	818.91	Late Fee Processed
Assessment	8/1/2010	42.90	861.81	Assessment
Late Fee	8/16/2010	45.24	907.05	Late Fee Processed
Interest	8/31/2010	2.50	909.55	Late Fee Processed
Assessment	9/1/2010	42.90	952.45	Assessment
Late Fee	9/16/2010	2.15	954.60	Late Fee Processed
Assessment	10/1/2010	42.90	997.50	Assessment
Late Fee	10/16/2010	8.58	1,006.08	
Late Fee	10/31/2010	4.39	1,010.47	
Assessment	11/1/2010	42.90	1,053.37	Assessment
Late Fee	11/16/2010	8.58	1,061.95	
Late Fee	11/30/2010	4.67	1,066.62	
Assessment	12/1/2010	42.90	1,109.52	Assessment
Late Fee	12/16/2010	8.58	1,118.10	
Late Fee	12/31/2010	4.92	1,123.02	
Assessment	1/1/2011	45.00	1,168.02	Assessment
Late Fee	1/16/2011	8.58	1,176.60	
Late Fee	1/31/2011	5.18	1,181.78	
Assessment	2/1/2011	45.00	1,226.78	Assessment
Late Fee	2/16/2011	8.58	1,235.36	
Assessment	3/1/2011	45.00	1,280.36	Assessment
Late Fee	3/16/2011	8.58	1,288.94	
Late Fee	3/31/2011	5.67	1,294.61	
Assessment	4/1/2011	45.00	1,339.61	Assessment
Late Fee	4/16/2011	2.25	1,341.86	
Late Fee	4/30/2011	5.90	1,347.76	
Assessment	5/1/2011	45.00	1,392.76	Assessment
Late Fee	5/16/2011	2.25	1,395.01	

Resident Transaction Detail

Active Flag Yes

Void Flag No

ANTELOPE

Assessment	6/1/2011	45.00	1,440.01	Assessment
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Count: 1

Total Units: 300

DOUGLAS E. MILES *
Also Admitted in California and
Illinois

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

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

Also Admitted in District of
Columbia & Virginia
TAMIS S. CROSBY*

L. BRYANT JAEQUEZ *
GINA M. CORENA

WAYNE A. RASH *
ROCK K. JUNG

VY T. PHAM *

KRISTA J. NIELSON
HADI R. SEYED-ALI *

JORY C. GARABEDIAN
THOMAS M. MORLAN

Admitted in California
BRIAN H. TRAN *

ANNA A. GHAJAR *
CORI B. JONES *

STEVEN E. STERN

Admitted in Arizona & Illinois
ANDREW H. PASTWICK

Also Admitted in Arizona and
California

CATHERINE K. MASON *

CHRISTINE A. CHUNG *

HANH T. NGUYEN *

THOMAS B. SONG *

S. SHELLY RAISZADEH *

SHANNON C. WILLIAMS *

ABTIN SHAKOURI *

LAWRENCE R. BOIVIN *



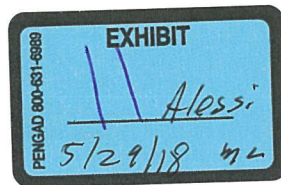
MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Phone: (702) 369-5960

Fax: (702) 369-4955



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

December 16, 2011

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 7868 Marbledoe Street
HO #: 18842
LOAN #: 22353767
MBBW File No. 11-H1638

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,111.61. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

JA01768

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

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

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

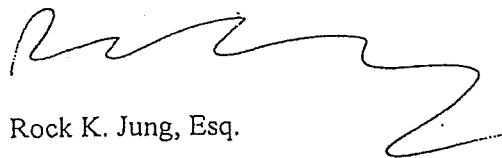
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$405.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$405.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 7868 Marbledoe Street have now been "paid in full".

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: Alessi & Koenig, LLC
 11-H1638
 Date: 12/9/2011 Amount: 405.00
 Check #: 12254 Initials: SRN

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/9/2011	18842	To Cure HOA Deficiency	405.00			

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

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-66/1220 1020
 11-H1638
 Loan # 22353767

12254
 Date: 12/9/2011
 Amount \$**** 405.00

Pay \$****Four Hundred Five & No/100 Dollars
 to the order of
 Alessi & Koenig, LLC

Check Void After 90 Days



Security features. Details on back.

⑈ 12254 ⑈ 122400724⑈ 501006876973 ⑈



⑦

Inst #: 201208030003275
 Fees: \$17.00 N/C Fee: \$0.00
 RPTT: \$30.60 Ex: #
 08/03/2012 03:46:48 PM
 Receipt #: 1259901
 Requestor:
 ALESSI & KOENIG LLC
 Recorded By: COJ Pgs: 2
 DEBBIE CONWAY
 CLARK COUNTY RECORDER

When recorded mail to and
 Mail Tax Statements to:
 SFR Investments Pool I, LLC
 2920 N. Green Valley Parkway
 Building 5, St 525
 Henderson, NV 89014

A.P.N. No.125-18-112-069

TS No. 18842-7868

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool I, LLC**
 The Foreclosing Beneficiary herein was: **Antelope Homeowners Association**
 The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$5,950.00**
 The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$5,950.00**
 The Documentary Transfer Tax: **\$30.60**
 Property address: **7868 Marbledoe Ct., Las Vegas, NV 89149**
 Said property is in [] unincorporated area: **City of Las Vegas**
 Trustor (Former Owner that was foreclosed on): **HENRY E & FREDDIE S IVY**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded November 12, 2009 as instrument number 0004474, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool I, LLC** (Grantee), all its right, title and interest in the property legally described as: **Lot 139 Block B**, as per map recorded in Book 115, Pages 89 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **July 25, 2012** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

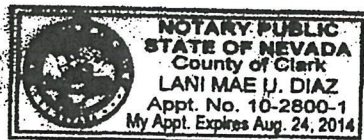
State of Nevada)
 County of Clark)

SUBSCRIBED and SWORN to before me

Aug. 3, 2012

WITNESS my hand and official seal.

(Seal)



(Signature)

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 125-18-112-069
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 5,950.00
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: \$ 5,950.00
d. Real Property Transfer Tax Due \$ 30.60

4. **If Exemption Claimed:**

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SFR Investments Pool I, LLC
Address: 2920 N.Green Valley, Buil 5, #525
City: Henderson
State: NV Zip: 89014

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

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1 **NTTD**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Dana Jonathon Nitz, Esq.

4 Nevada Bar No. 0050

5 Jamie S. Hendrickson, Esq.

6 Nevada Bar No. 12770

7 7785 W. Sahara Ave., Suite 200

8 Las Vegas, NV 89117

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

9 dnitz@wrightlegal.net

10 jhendrickson@wrightlegal.net

11 *Attorneys for Plaintiff, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage*
12 *Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8*

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

11 U.S. BANK, NATIONAL ASSOCIATION AS
12 TRUSTEE FOR MERRILL LYNCH
13 MORTGAGE INVESTORS TRUST,
14 MORTGAGE LOAN ASSET-BACKED
15 CERTIFICATES, SERIES 2005-A8,

16 Plaintiff,

17 vs.

18 SFR INVESTMENTS POOL 1, LLC, a Nevada
19 limited liability company; DOE
20 INDIVIDUALS I through X, inclusive; and
21 ROE CORPORATIONS I through X, inclusive,

22 Defendants.

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

25 Counter/Cross Claimant,

26 vs.

27 U.S. BANK, NATIONAL ASSOCIATION AS
28 TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware corporation, as nominee beneficiary
for UNIVERSAL AMERICAN MORTGAGE
COMPANY, LLC. a foreign limited liability
company; HENRY E. IVY, an individual; and

Case No.: A-16-739867-C

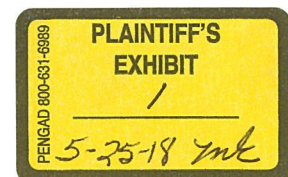
Dept. No.: XXXI

**NOTICE OF TAKING DEPOSITION
OF SFR INVESTMENTS POOL 1, LLC**

Date: May 25, 2018

Time: 2:00 p.m.

Location: Wright, Finlay & Zak
7785 W. Sahara Ave. Suite 200
Las Vegas, NV 89117



1 FREDDIE S. IVY, an individual,

2 Counter/Cross Defendants.

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

4 **NOTICE OF DEPOSITION OF SFR INVESTMENTS POOL 1, LLC,**
5 **7785 WEST SAHARA AVE. SUITE 200, LAS VEGAS, NV 89117**

6 PLEASE TAKE NOTICE that Plaintiff/Counter-Defendant, U.S. Bank, National
7 Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-
8 Backed Certificates, Series 2005-A8 ("U.S. Bank"), shall take the deposition of Plaintiff, SFR
9 Investments Pool 1, LLC(hereinafter "SFR"), on Friday May 25, 2018, at 2:00 p.m. in the
10 offices of Wright, Finlay & Zak, 7785 W. Sahara Ave, Suite 200, Las Vegas, NV 89117, upon
11 oral examination, pursuant to Rule 30 of the Nevada Rules of Civil Procedure.

12 YOU ARE FURTHER NOTIFIED that the deposition shall be taken before a certified
13 court reporter, notary public or other officer authorized to administer oaths by the State of
14 Nevada at the place where the deposition is to be held. The deposition will be recorded by
15 stenographic means. You are invited to attend and to cross examine.

16 YOU ARE FURTHER NOTIFIED that the deponent is not a natural person. Pursuant to
17 Nevada Rule of Civil Procedure 30(b)(6), SFR is advised of its duty to designate one or more of
18 its knowledgeable officers, directors, managing agents, commissioners, employers or other
19 persons who consent to testify on its behalf concerning the subjects identified in this notice.
20 SFR shall designate one (1) or more persons to testify on its behalf who shall be expected to
21 testify and provide full and competent testimony in the following areas of inquiry:

- 22 1. SFR's knowledge regarding the purchase of the subject property **7868 Marble Doe**
23 **Street, Las Vegas, Nevada 89149, APN 125-18-112-069** (hereinafter "Property").
- 24 2. SFR's knowledge regarding the sale of the Property purportedly held on July 25, 2012
25 ("HOA Sale").
- 26 3. SFR's knowledge and/or investigation of the subject property's title status prior to or on
27 July 25, 2012.
- 28 4. SFR's knowledge and/or investigation of the Property's value prior to the HOA Sale.

- 1 5. SFR's policies and procedures when SFR buys a property at a non-judicial foreclosure
2 sale not conducted by a homeowner's association.
- 3 6. SFR's policies and procedures after SFR buys a property at a non-judicial foreclosure
4 sale conducted by a homeowner's association.
- 5 7. SFR's policies and procedures when SFR buys a property at a non-judicial foreclosure
6 sale conducted by a homeowner's association.
- 7 8. How many properties SFR currently owns that it bought at a non-judicial foreclosure
8 sale conducted by or on behalf of a homeowner's association.
- 9 9. How many properties SFR currently owns that were bought at a non-judicial foreclosure
10 sale conducted by Alessi & Koenig, LLC (hereinafter "A&K" or "HOA Trustee")
- 11 10. How many properties SFR currently owns that it bought at a non-judicial foreclosure
12 sale conducted by or on behalf of Antelope Homeowners Association ("Antelope" or
13 "Association").
- 14 11. The nature of SFR's relationships with HOA Trustee and with Antelope, prior to and
15 after the HOA Sale
- 16 12. Communications, correspondence, or other information exchanged between and among
17 Antelope, HOA Trustee, and SFR concerning the Property, the Association's Notices of
18 Lien or Delinquent Assessment, Default and Election to Sell, and Sale, and the HOA
19 Sale.
- 20 13. Communications, correspondence, or other information pertaining to the notices, sale,
21 and money received and disbursed pursuant to the HOA Sale and the Trustee's Deed
22 Upon Sale recorded in the Clark County Recorder's Office as Book and Instrument
23 Number 20120803-0003275.
- 24 14. Communications, correspondence, or other information exchanged between and among
25 Antelope, HOA Trustee, and SFR including all their persons, agents or representatives
26 with regard to this property.
- 27 15. Communications, correspondence, or other information pertaining to publication of the
28 Notice of Sale.
16. Communications, correspondence, or other information exchanged with other bidders
 concerning the HOA Sale whether before or during the HOA Sale.
17. Communications, correspondence, or other information evidencing written or oral
 announcements made to potential bidders prior to or at the HOA Sale.

- 1 18. Communications, correspondence, or other information pertaining to the proceeds of the
2 HOA Sale and disbursements.
- 3 19. Communications, correspondence, or other information pertaining to the distribution of
4 the HOA Sale proceeds.
- 5 20. SFR's factual basis and reasoning for the allegation in SFR's Counterclaim that U.S.
6 Bank has no right, title, interest or claim to the subject property.
- 7 21. All communications reflecting all payments of any kind made to the Association, HOA
8 Trustee, and/or the Association's purported agent(s) by anyone regarding the Property.
- 9 22. How SFR learned about the HOA Sale.
- 10 23. SFR's or its predecessors in interest, or their respective agents', attendance at and/or
11 participation in the HOA Sale.
- 12 24. All communications regarding the mailing/service of foreclosure notices, on any
13 person/entity, related to the foreclosure of the Property.
- 14 25. All communications regarding any agreement/contract between the Association and any
15 third party related to the purchase of the Property, the Association's lien or the HOA
16 Sale.
- 17 26. The number and identity of bidders present, the opening bid, and bidding history at the
18 HOA Sale.
- 19 27. All communications regarding any agreement between SFR and the Association, HOA
20 Trustee, and/or the Association's purported agent(s) or any third person before or after
21 the HOA Sale regarding the Property, the Association's lien, the HOA Sale, the
22 foreclosure deed or this lawsuit.
- 23 28. All communications SFR had with a title company regarding obtaining insurable title for
24 the Property.
- 25 29. Any and all money refunded or returned to you after the HOA Sale by the Association,
26 HOA Trustee, and/or the Association's purported agent(s).
- 27 30. Any and all payment made for taxes, insurance and homeowner's association
28 assessments made by SFR after the HOA Sale.
31. Any and all maintenance or any repairs/improvements made to the Property after the
HOA Sale.
32. Any rental or lease agreement between SFR and any other person or entity concerning
the Property after the HOA Sale.

1 33. All internal communications that mention the Association's lien, delinquent Association
2 assessments and/or HOA Sale and the resulting foreclosure deed as it relates to the
3 Property whether before or after the HOA Sale. For privileged communications, please
4 provide testimony regarding the date of any such communication and the parties
involved.

5 34. Any valuation, appraisals and/or broker's price opinions of the Property obtained by SFR
6 or its agents at any before or after the HOA Sale.

7 35. Any research or information obtained by SFR regarding the Property prior to the HOA
8 Sale.

9 36. All communications regarding all title insurance policies and trustee's sale guarantees
10 that mention the Property, the Association or the Association lien, including any claims
made against such policies or guarantees.

11 37. The factual basis for SFR's responses to any written discovery propounded by any party
12 to this litigation

13 Oral examination will continue from day to day until completed. You are invited to
14 attend and cross-examine.

15 DATED this 26th day of April, 2018.

16 WRIGHT, FINLAY & ZAK, LLP

17 /s/ Jamie S. Hendrickson, Esq.

18 Jamie S. Hendrickson, Esq.

19 Nevada Bar No. 12770

20 7785 W. Sahara Avenue, Suite 200

21 Las Vegas, Nevada 89117

22 jhendrickson@wrightlegal.net

23 *Attorneys for Plaintiff, U.S. Bank, National*

24 *Association as Trustee for Merrill Lynch Mortgage*

25 *Investors Trust, Mortgage Loan Asset-Backed*

26 *Certificates, Series 2005-A8*

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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 25th day of April, 2018, I did cause a true copy of **NOTICE OF TAKING DEPOSITION OF NEVADA ASSOCIATION SERVICES, INC.** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

HOWARD KIM & ASSOCIATES
Howard Kim, Esq.; howard@hkimlaw.com
Diana S. Cline, Esq.; Diana@hkimlaw.com
Jacqueline A. Gilbert, Esq.; Jackie@hkimlaw.com

/s/ Dekova Huckaby
An Employee of WRIGHT, FINLAY & ZAK, LLP

Inst #: 200911120004474
Fees: \$14.00
N/C Fee: \$0.00
11/12/2009 03:00:22 PM
Receipt #: 125960
Requestor:
JUNES LEGAL SERVICES
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-18-112-069

Trustee Sale # 18842-7868

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Antelope Homeowners Association HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **7868 Marbledoe Ct. , Las Vegas, NV 89149** and more particularly legally described as: **Lot 139 Block B Book 115 Page 89** in the County of **Clark**.

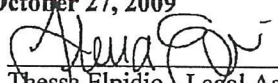
The owner(s) of record as reflected on the public record as of today's date is (are): **Henry & Freddie Ivy**

The mailing address(es) is: **7868 Marbledoe Ct., Las Vegas, NV 89149**

The total amount due through today's date is: **\$692.36**. Of this total amount **\$642.36** represent Collection and/or Attorney fees and **\$50.00** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **October 27, 2009**

By:

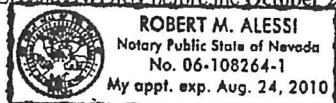

Thessa Elpidio - Legal AssistantAlessi & Koenig, LLC on behalf of **Antelope Homeowners Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **October 27, 2009**

(Seal)



(Signature)


NOTARY PUBLIC

Inst #: 201102170001289

Fees: \$14.00

N/C Fee: \$0.00

02/17/2011 09:33:20 AM

Receipt #: 680059

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: KXC Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033


A.P.N. 125-18-112-069

Trustee Sale No. 18842-7868

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the 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. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$2,522.33** as of **January 7, 2011** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Antelope Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **November 12, 2009** as document number **0004474**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Henry & Freddie Ivy**, of **Lot 139 Block B**, as per map recorded in **Book 115, Pages 89**, as shown on the Condominium Plan, Recorded on as document number **Pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 7868 Marbledoe Ct., Las Vegas, NV 89149.** If you have any questions, you should contact an attorney. 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. NOTICE IS HEREBY GIVEN THAT** The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **November 12, 2009**, executed by **Antelope Homeowners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs. Dated: **January 7, 2011**


Naomi Eden, Alessi & Koenig, LLC on behalf of **Antelope Homeowners Association**



Inst #: 201108110003087

Fees: \$14.00

N/C Fee: \$0.00

08/11/2011 09:59:58 AM

Receipt #: 876604

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: CDE Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-18-112-069

TSN 18842-7868

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On September 14, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on November 12, 2009, as instrument number 0004474, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 7868 Marbledoe Ct., Las Vegas, NV 89149. The owner of the real property is purported to be: Henry & Freddie Ivy

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,798.39. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: June 20, 2011 

By: Branko Jetic on behalf of Antelope Homeowners Association



Inst #: 201204160000922

Fees: \$17.00

N/C Fee: \$0.00

04/16/2012 09:12:04 AM

Receipt #: 1130892

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

Alessi & Koenig, LLC

9500 West Flamingo Rd., Suite 205

Las Vegas, NV 89147

Phone: 702-222-4033

APN: 125-18-112-069

TSN 18842-7868

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **May 9, 2012**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **November 12, 2009**, as instrument number **0004474**, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **7868 Marbledoe Ct., Las Vegas, NV 89149**. The owner of the real property is purported to be: **HENRY E & FREDDIE S IVY**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$4,161.61**. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: April 4, 2012

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Antelope Homeowners Association



Inst #: 201207020001432

Fees: \$17.00

N/C Fee: \$0.00

07/02/2012 01:57:36 PM

Receipt #: 1219673

Requestor:

ALESSI & KOENIG LLC

Recorded By: GILKS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 125-18-112-069

TSN 18842-7868

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

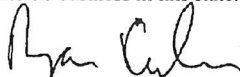
NOTICE IS HEREBY GIVEN THAT:

On July 25, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on November 12, 2009, as instrument number 0004474, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

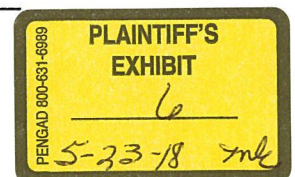
The street address and other common designation, if any, of the real property described above is purported to be: 7868 Marbledoe Ct., Las Vegas, NV 89149. The owner of the real property is purported to be: HENRY E & FREDDIE S IVY

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,071.87. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: June 7, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Antelope Homeowners Association



DOUGLAS E. MILES *
Also Admitted in California and
Illinois

RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*

MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia

TAMI S. CROSBY*
L. BRYANT JAQUEZ *
DANIEL L. CARTER *

GINA M. CORENA
WAYNE A. RASH *

ROCK K. JUNG
VY T. PHAM *
KRISTA J. NIELSON
HADI R. SEYED-ALI *

JORY C. GARABEDIAN
THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN *

ANNA A. GHAJAR *

CORI B. JONES **

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and
California

CATHERINE K. MASON *

CHRISTINE A. CHUNG *

HANH T. NGUYEN *

THOMAS B. SONG *



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

2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 369-4955

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

October 11, 2011

Antelope Homeowners Association
C/o THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 7868 Marbledoe Street, Las Vegas, NV 89149*
MBBW File No. 11-H1638

Dear Sirs:

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

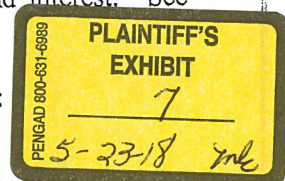
As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

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

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

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



USB000625
JA01784

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

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

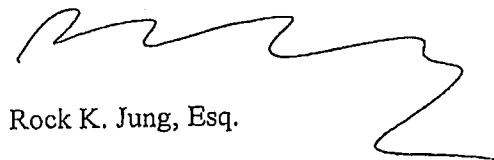
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. For purposes of calculating the nine-month period, the trigger date is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

Please let me know the status of the Foreclosure sale that is scheduled for November 30, 2011. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

DOUGLAS E. MILES *
Also Admitted in California and
Illinois

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

Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
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TAMI S. CROSBY*
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THOMAS B. SONG *

S. SHELLY RAISZADEH *

SHANNON C. WILLIAMS *

ABTIN SHAKOURI *

LAWRENCE R. BOIYIN *



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

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Phone: (702) 369-5960

Fax: (702) 369-4955

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

December 16, 2011

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 7868 Marbledoe Street
HO #: 18842
LOAN #: 22353767
MBBW File No. 11-H1638

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,111.61. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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



USB000636
JA01786

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

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

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

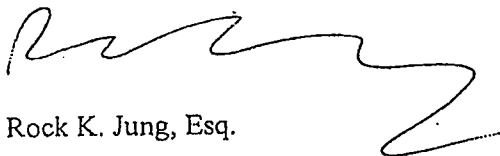
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$405.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$405.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 7868 Marbledoe Street have now been "paid in full".

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: Alessi & Koenig, LLC
 11-H1638
 Date: 12/9/2011
 Amount: 405.00
 Initials: SRN

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/9/2011	18842	To Cure HOA Deficiency	405.00			

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

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074

16-68/1220
 1020

11-H1638

Loan # 22353767

12254

Date: 12/9/2011

Amount \$**** 405.00

Check Void After 90 Days

Pay \$****Four Hundred Five & No/100 Dollars
 to the order of

Alessi & Koenig, LLC

USB000638

11 12254 11 1224007241 501006876973

JA01788

Security features. Details on back.

①

Inst #: 201208030003275
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$30.60 Ex: #
08/03/2012 03:46:48 PM
Receipt #: 1259901
Requestor:
ALESSI & KOENIG LLC
Recorded By: COJ Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool I, LLC
2920 N. Green Valley Parkway
Building 5, St 525
Henderson, NV 89014

A.P.N. No.125-18-112-069

TS No. 18842-7868

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool I, LLC
The Foreclosing Beneficiary herein was: Antelope Homeowners Association
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$5,950.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$5,950.00
The Documentary Transfer Tax: \$30.60
Property address: 7868 Marbledoe Ct., Las Vegas, NV 89149
Said property is in [] unincorporated area: City of Las Vegas
Trustor (Former Owner that was foreclosed on): HENRY E & FREDDIE S IVY

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded November 12, 2009 as instrument number 0004474, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool I, LLC (Grantee), all its right, title and interest in the property legally described as: Lot 139 Block B, as per map recorded in Book 115, Pages 89 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on July 25, 2012 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me

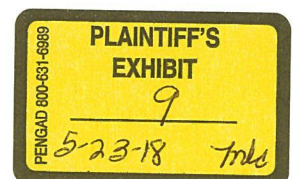
Aug. 3, 2012

WITNESS my hand and official seal.

(Seal)



(Signature)



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 125-18-112-069
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 5,950.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 5,950.00
d. Real Property Transfer Tax Due \$ 30.60

4. If Exemption Claimed:

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

5. Partial Interest: Percentage being transferred: 100 %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SFR Investments Pool I, LLC
Address: 2920 N.Green Valley, Buil 5, #525
City: Henderson
State: NV Zip: 89014

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

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON | NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
KAREN KAO, ESQ.
Nevada Bar No. 14386
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
kkao@lipsonneilson.com

Attorneys for Defendant Antelope Homeowners' Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

**ANTELOPE HOMEOWNERS
ASSOCIATION'S ANSWERS TO
PLAINTIFF U.S. BANK FIRST SET OF
INTERROGATORIES**

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

TO: U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8; and

TO: R. Samuel Ehlers, Esq. and Aaron D. Lancaster, Esq. of the law firm WRIGHT, FINLAY & ZAK, LLP, attorneys for U.S. Bank:

ANTELOPE HOMEOWNERS ASSOCIATION ("Antelope" or "HOA"), by and through its attorneys of record, J. William Ebert, Esq., and Karen Kao, Esq., of the law firm LIPSON NEILSON P.C., hereby submits its Answers to Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8 ("U.S. Bank") First Set of Interrogatories.

PRELIMINARY STATEMENT

Antelope's answers to the following interrogatories are based on information currently known to Antelope and are provided without prejudice to Antelope's right to submit evidence of any subsequently discovered facts, information, or documents, should such become known. These answers are made in a good faith effort to supply such information as presently known to Antelope after reasonable investigation. Antelope reserves its right to further supplement or alter any answer set forth herein and to use such additional information at trial.

Further, because some of these answers may have been ascertained by Antelope's attorneys, investigators, and/or through discovery in this litigation, Antelope may not have personal knowledge of the information from which these answers are derived.

\\

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GENERAL OBJECTIONS

1
2 1. Antelope objects to these interrogatories as overly broad to the extent they
3 seek information or documents not relevant to the issues in this case nor reasonably
4 calculated to lead to the discovery of admissible evidence.

5 2. Antelope objects to these interrogatories to the extent they seek information
6 exempted from discovery and protected from disclosure pursuant to the attorney-client
7 privilege, the attorney work product doctrine, other applicable confidentiality agreements,
8 privileges or protections, privacy protections, or any professional rules of conduct.

9 3. Antelope objects to these interrogatories to the extent they seek confidential
10 and/or proprietary information.

11 4. objects to these interrogatories to the extent they seek information already in
12 U.S. Bank's possession on the ground that producing such information would be
13 duplicative, unduly burdensome and oppressive.

14 5. Antelope objects to these interrogatories to the extent they are predicated
15 upon erroneous assumptions or to the extent they state incorrect facts. When Antelope
16 responds to these interrogatories, Antelope does not agree to these assumptions or factual
17 predicates and specifically reserves the right to challenge any of the assumptions or factual
18 predicates contained in these interrogatories.

19 6. Antelope objects to these interrogatories to the extent they seek information
20 irrelevant to the claims in this case and are not reasonably calculated to lead to the
21 discovery of admissible evidence.

22 7. Antelope objects to these interrogatories to the extent they seek information
23 in violation of the privacy rights of third parties.

24 8. Antelope objects to these interrogatories to the extent they are compound,
25 contain improper subparts, and comprise several interrogatories in one, which is prohibited
26 by FRCP 33(a)(1). These general objections are expressly incorporated into each of the
27 answers set forth below.

28 \\\

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify each Person who assisted YOU in the preparation of the Responses to these Interrogatories, by name, title, and address. YOU may omit anyone who simply typed the responses.

ANSWER TO INTERROGATORY NO. 1:

In addition to the undersigned counsel, Jo'd Davison and Yvette Saucedo of Complete Association Management Company (CAMCO), care of Lipson Neilson P.C.

INTERROGATORY NO. 2:

Please set forth and describe in detail, all actions, mailings, postings, and publishing, if any, that were undertaken by YOU, or on YOUR behalf, relating to the HOA Notices, including, but not limited to, whether they were mailed, how they were mailed, the name of the Person who mailed them, when they were mailed and to whom they were mailed, including their address.

ANSWER TO INTERROGATORY NO. 2:

Objection. Pursuant to NRCP 33(d), the requested information can be derived or ascertained from records already produced by U.S. Bank and the burden of deriving, summarizing, or ascertaining the requested information "is substantially the same for the party serving the interrogatory as for the party served" and, therefore, "it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained."

Without waiving said objections, the HOA responds as follows: HOA is informed and believes that CAMCO sent an intent to lien notice on behalf of the HOA prior to the turnover to the collection company, Alessi & Koenig. No foreclosure notices were sent from the HOA. Any notices required by law to be sent would have been sent by Alessi & Koenig ("A&K"). See A&K file (USB00442-USB00617) served with U.S. Bank's First Supplemental Disclosure. Discovery and investigation are ongoing, and the HOA may supplement this answer as necessary.

INTERROGATORY NO. 3:

If any of the mailings described in Interrogatory No. 2 were returned to YOU or YOU were notified that the mailing(s) were not delivered to any of the addressees, please Identify each addressee and the address used, and whether the mail was re-sent to another address, and if so, the new address.

ANSWER TO REQUSET NO. 3:

Please see HOA's Objections and Answer to Interrogatory No. 2. Additionally, HOA objects to this interrogatory on the grounds that it seeks to place an additional legal burden on the HOA not provided for in NRS Chapter 116 or Nevada law during the pertinent time period. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 4:

If YOU received a returned receipt for any of the mailings Identified in Interrogatory No. 2, please Identify the addressee(s) and their address(es).

ANSWER TO INTERROGATORY NO. 4:

Please see HOA's Objections and Answers to Interrogatory Nos. 2 and 3. Discovery is ongoing, HOA may supplement this answer as necessary.

INTERROGATORY NO. 5:

Please Identify any and all Documents and/or other forms of Communication that were sent to and/or received from any party named in this litigation, in connection with the Property, excluding pleadings and discovery.

ANSWER TO INTERROGATORY NO. 5:

Objection. This interrogatory is overly broad, burdensome, vague and ambiguous as to the phrases "any and all Documents and/or other forms of communication that were sent to and/or received from any party named in this litigation" and "in connection with the Property" and is not reasonably calculated to lead to the discovery of admissible evidence as the request requires the disclosure of communications unrelated to this litigation. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977).

1 Further, the request is overly broad and remote as it is not limited to Documents and/or
2 other forms of communication in responding party's possession and instead seeks such
3 documents from any party that HOA would not have access to. HOA objects to this
4 interrogatory on the grounds that it is not reasonably limited in time or scope.

5 Without waiving said objections, HOA responds as follows: HOA is informed and
6 believes that it produced all non-privileged responsive documents in its possession in its
7 Initial Disclosure of Witnesses and Documents pursuant to the NRCP 16.1 (ANT000001-
8 ANT000115). Discovery and investigation are ongoing, and HOA may supplement this
9 answer as necessary.

10 **INTERROGATORY NO. 6:**

11 Please set forth and describe in detail, the type and nature of any and all fees,
12 assessments, or other monetary charges ("Lien") relating to the HOA Notices, including the
13 monetary amount attributed to each component part of the Lien, the time frame/date(s) for
14 which each component part of the Lien was derived, and how each component part of the
15 Lien was calculated.

16 **ANSWER TO INTERROGATORY NO. 6:**

17 Objection. This Interrogatory seeks information which are irrelevant and immaterial
18 because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance
19 with the notice requirements of NRS116. See NRS 116.3116; *SFR Investments Pool 1,*
20 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014). Further, pursuant to NRCP 33(d), the
21 requested information can be derived or ascertained from records already produced by
22 U.S. Bank and the burden of deriving, summarizing, or ascertaining the requested
23 information "is substantially the same for the party serving the interrogatory as for the party
24 served" and, therefore, "it is a sufficient answer to such interrogatory to specify the records
25 from which the answer may be derived or ascertained."

26 Without waiving said objection, HOA responds as follows: The HOA Notices speak
27 for themselves. HOA is informed and believes that it has produced all relevant documents
28 in its Initial Disclosure of Witnesses and Documents pursuant to the NRCP 16.1. See also

1 A&K file (USB00442-USB0617). Discovery is ongoing, and the HOA will supplement this
2 answer as necessary.

3 **INTERROGATORY NO. 7:**

4 If YOU believe that any portion of the Lien is entitled to “super-priority” status, please
5 describe in detail the type and nature of any and all component parts of what YOU deem
6 “superpriority”, including the monetary amount attributed to each component part, the time
7 frame /date(s) for which each component part of the “super-priority” lien was derived and
8 how each component part of the “super-priority” lien was calculated.

9 **ANSWER TO REQUEST NO. 7:**

10 Objection. This interrogatory seeks a legal conclusion regarding the “super-priority”
11 amount. Further, this Interrogatory seeks information which is irrelevant and immaterial
12 because the recitals in the Trustee’s Deed Upon Sale are conclusive proof of compliance
13 with the notice requirements of NRS 116, which sets forth what may be included in a lien,
14 and that including the entire amount is proper for lien foreclosure notices. See NRS
15 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014);
16 see also, *Shadow Wood HOA v. New York Community*, 132 Nev. Ad. Op. 5 (Jan. 28,
17 2016).

18 Without waiving said objections, HOA responds as follows: HOA is informed and
19 believes that it has no information responsive to this Request. Once a property is referred
20 to collections, all collections activity is handled by the collections company.
21 Notwithstanding the foregoing, please see Notices included in A&K file (USB00442-
22 USB0617) included in U.S. Bank’s First Supplemental Disclosure. Discovery and
23 investigation are ongoing, and HOA may supplement this answer as necessary.

24 **INTERROGATORY NO. 8:**

25 Please Identify each file YOU maintain related to the HOA Sale, the party or Person
26 having custody of it, and the location of each file.

27 \\\

28 \\\

ANSWER TO INTERROGATORY NO. 8:

HOA is informed and believes that it produced all non-privileged responsive documents in its possession in its Initial Disclosure of Witnesses and Documents pursuant to the NRCP 16.1 (ANT000001-ANT000115). Further, HOA is informed and believes that these documents are maintained by CAMCO. Further, at the times relevant hereto, the HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity. A&K maintains its own files; however, please see A&K file, included in U.S. Bank's First Supplemental Disclosure (USB00442-USB00617). Discovery is ongoing, HOA may supplement this answer as necessary.

INTERROGATORY NO. 9:

If YOU mailed any of the Documents relating to the HOA Notices to the Borrower or U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers, please Identify the Document(s), and describe the date and type of mailing, the addressee, and whether a returned receipt came back signed, or YOUR mailing was returned undeliverable.

ANSWER TO INTERROGATORY NO. 9:

HOA is informed and believes that it is unaware of any documents that were sent from the HOA as it hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity. Discovery is ongoing, and the HOA will supplement this answer as necessary.

INTERROGATORY NO. 10:

Please describe YOUR policies and procedures, in effect prior to the HOA foreclosure of the Property, for providing payoff demands in response to a request for a "super-priority" lien payoff demand by a first security interest holder.

REPONSE TO INTERROGATORY NO. 10:

Objection. This interrogatory seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.

1 Further, this interrogatory is ambiguous and vague as to the term “super-priority lien
2 payoff.” Also, it is not reasonably limited in scope and time. HOA further objects to this
3 interrogatory as it is an incomplete hypothetical. This interrogatory also seeks a legal
4 conclusion and presents a hypothetical fact regarding an obligation to provide information
5 about the undetermined super-priority lien amount. HOA further objects to this interrogatory
6 on the grounds that it seeks to place additional legal burden on the HOA not provided for in
7 NRS Chapter 116.

8 Without waiving said objections, HOA responds as follows: Upon information and
9 belief, the HOA follows state and federal statutes regarding disclosure of financial
10 information about homeowners, and acceptance or rejection of lien payments or funds
11 from third parties on behalf of homeowners. Additionally, HOA follows its collection policy
12 as adopted at the time. See Collection Policies (ANT000091-ANT000094). HOA hired a
13 third party, A&K, who held itself as a law firm that specialized in HOA collection work, to
14 handle its collection related activity. At that point, HOA relied on its collection law firm to
15 handle the collection activity and expected that A&K would also follow all relevant state
16 and federal laws. Further, each one of the publicly recorded foreclosure notices contains
17 the lien amount pursuant to NRS 116 and contact information for A&K. Discovery and
18 investigation are ongoing, and HOA may supplement this answer as necessary.

19 **INTERROGATORY NO. 11:**

20 Please Identify any and all Documents and/or other forms of Communication
21 between YOU and the HOA Trustee before the HOA Sale, including anyone YOU
22 understood to be its attorneys, agents, trustees, or servicers, in connection with the
23 Property.

24 **ANSWER TO INTERROGATORY NO. 11:**

25 Objection. This interrogatory calls for information which is irrelevant to the claims
26 in this lawsuit and not reasonably calculated to lead to the discovery of admissible
27 evidence *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344
28 (1977); is overly broad regarding “any and all Documents”; and seeks information which

1 may be protected by the attorney-client privilege and/or attorney work-product doctrine.

2 Without waiving said objections, HOA responds as follows: HOA is informed and
3 believes that it disclosed all non-privileged responsive documents in its possession in its
4 Initial Disclosure of Witnesses and Documents pursuant to the NRCP 16.1. Investigation
5 and discovery are ongoing. HOA will supplement this answer if and as appropriate.

6 **INTERROGATORY NO. 12:**

7 Please Identify any and all Documents exchanged or delivered between YOU and
8 the HOA Trustee before and/or after the HOA Sale in connection with the Property.

9 **ANSWER TO INTERROGATORY NO. 12:**

10 Objection. This interrogatory is not reasonably limited in time or scope and seeks
11 information which is irrelevant to the claims in this lawsuit and not reasonably calculated to
12 lead to the discovery of admissible evidence. Further, this interrogatory is burdensome
13 and duplicative of information already provided in Interrogatory No. 11.

14 Without waiving said objections, HOA responds as follows: Please see HOA's
15 Answer to Interrogatory No. 11.

16 **INTERROGATORY NO. 13:**

17 Please Identify any and all Documents exchanged or delivered between YOU and
18 U.S. Bank before and/or after the HOA Sale in connection with the Property.

19 **ANSWER TO INTERROGATORY NO. 13:**

20 Objection. This interrogatory seeks information which is irrelevant to the claims in
21 this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
22 Further, this interrogatory is not reasonably limited in time or scope, and is burdensome,
23 overly broad, ambiguous and vague as to the term "any and all Documents."

24 Without waiving said objections, HOA responds as follows: HOA is informed and
25 believes that it has no information responsive to this request. HOA hired a third party,
26 A&K, who held itself as a law firm that specialized in HOA collection work, to handle its
27 collection related activity. At that point, HOA relied on its collection law firm to handle the
28

1 collection activity. Discovery is ongoing, and the HOA will supplement this answer as
2 necessary.

3 **INTERROGATORY NO. 14:**

4 Please describe all Documents that evidence any effort by any Person to negotiate,
5 discuss, or tender all or a portion of the amount due and owing under the Lien before the
6 HOA Sale.

7 **ANSWER TO INTERROGTORY NO. 14:**

8 Objection. This interrogatory seeks information which is irrelevant to the claims in
9 this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
10 Further, the request is vague and ambiguous as to the term "tender." This interrogatory
11 also seeks to place additional legal burden on the HOA not provided for in NRS Chapter
12 116. This interrogatory is also seeking a legal conclusion.

13 Without waiving said objection, HOA responds as follows: HOA is informed and
14 believes that it has no information responsive to this request as it hired a third party, A&K,
15 who held itself as a law firm that specialized in HOA collection work, to handle its
16 collection related activity. At that point, HOA relied on its collection law firm to handle the
17 collection activity. Discovery is ongoing, the HOA will supplement this answer as
18 necessary. Also see Miles Bauer "Tender Documents" (USB00161-USB00175) provided
19 with U.S. Bank's First Supplemental Disclosure

20 **INTERROGATORY NO. 15:**

21 Please describe all Documents that evidence a report to YOU of the HOA Sale,
22 including, but not necessarily limited to, any report by the sale crier, and relating to the
23 number of Person(s) in attendance, the Person(s) who qualified to bid before the HOA
24 Sale, the number / amount of each bid, and the party making the bid, and the results.

25 **ANSWER TO INTERROGATORY NO. 15:**

26 Objection. This interrogatory seeks information which is irrelevant to the claims in
27 this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
28

HOA further objects to this interrogatory on the grounds it lacks foundation and assumes facts not established in discovery.

Without waiving said objections, HOA responds as follows: HOA is informed and believes it disclosed all non-privileged responsive documents in its possession in its Initial Disclosure of Witnesses and Documents pursuant to the NRCP 16.1. After conducting a diligent search of its records, the HOA has been unable to locate any documents responsive to this request. Discovery is ongoing, and the HOA will supplement this answer as necessary.

INTERROGATORY NO. 16:

Please provide an accounting of all compensation, consideration, and/or value paid by the HOA Trustee to YOU or anyone at YOUR direction for the conveyance evidenced by the Foreclosure Deed.

ANSWER TO INTERROGATORY NO. 16:

Objection. This interrogatory seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome and overly broad. It is also vague and ambiguous terms "compensation," "consideration," "value," and "conveyance."

Without waiving said objection(s), HOA responds as follows: The Interrogatory, as phrased, is vague and ambiguous as to the information sought and, therefore, impermissibly requires HOA to guess as to the actual information sought. Further, HOA is informed and believes that it hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

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\\

\\

INTERROGATORY NO. 17:

If YOU have ever had any agreement(s)/contract(s) with the HOA Trustee (and/or its agents) regarding compensation for its services in connection with foreclosure sales, please Identify whether the agreement is written, oral, or both, the date, title, and contents of the agreement(s)/contracts(s), including amendments and renewals thereof.

ANSWER TO INTERROGATORY NO. 17:

Objection. This interrogatory seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). HOA further objects to this interrogatory on the grounds that it is not reasonably limited in time or scope.

Without waiving said objections, HOA responds as follows: See Retainer Agreement (ANT000116-ANT000117), provided with Antelope's First Supplemental Disclosure. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 18:

If YOU have ever had any agreement(s)/contract(s) with the HOA Trustee (and/or its agents) regarding properties for sale, please Identify the date, title, and contents of the agreement(s)/contracts(s), including amendments and renewals thereof.

ANSWER TO INTERROGATORY NO. 18:

Objection. This interrogatory is overbroad as to scope and time and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). HOA objects to this interrogatory on the grounds that it is vague and ambiguous as to the undefined terms "any agreement(s)/contract(s)," "agents," and "properties for sale."

Without waiving said objection, HOA responds as follows: The HOA is informed and believes that no such contract exists. Discovery and investigation are ongoing. HOA will supplement this answer as necessary.

INTERROGATORY NO. 19:

State the amount of each and every bid at the HOA Sale and Identify each and every bidder at the HOA Sale.

ANSWER TO INTERROGATORY NO. 19:

Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence as the recitals in the Foreclosure Deed are conclusive proof of compliance with the notice requirements of NRS Chapter 116. See NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014).

Without waiving said objections, HOA responds as follows: HOA is informed and believes it has no information responsive to this request. Further, the HOA relied on the collection company to perform the collection activities pursuant to Nevada law; therefore, any questions related to collection activity would be best answered by the collection company. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 20:

Please provide a detailed accounting of any and all money remitted to YOU at the HOA Sale, including the return / disbursement of any sums collected to qualify the bidders at the HOA Sale.

ANSWER TO INTERROGATORY NO. 20:

Objection. This interrogatory seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. It is also unduly burdensome and overly broad.

Without waiving said objection(s), HOA responds as follows: HOA is informed and believes that it hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity and was not present at the HOA Sale. HOA is informed and believes that any information regarding the amounts remitted at the HOA Sale would be in the possession, custody and control of the foreclosure trustee.

1 Discovery and investigation are ongoing, and HOA may supplement this answer as
2 necessary.

3 **INTERROGATORY NO. 21:**

4 If any disclosures or pronouncements concerning the Lien or the Property were
5 made at the time of the HOA Sale, Identify those Communications.

6 **ANSWER TO INTERROGATORY NO. 21:**

7 HOA objects to this Interrogatory on the grounds that it is vague and overly broad as
8 to the terms "disclosures" and "pronouncements" and unduly burdensome as the HOA was
9 not present at the HOA Sale. Further, this Interrogatory seeks information which is
10 irrelevant to the claims and defenses of the parties in this lawsuit and not reasonably
11 calculated to lead to the discovery of admissible evidence.

12 Without waiving said objection, HOA responds as follows: HOA is informed and
13 believes that it has no information responsive to this request. HOA hired a third party,
14 A&K, who held itself as a law firm that specialized in HOA collection work, to handle its
15 collection related activity. At that point, HOA relied on its collection law firm to handle the
16 collection activity. Discovery and investigation are ongoing, and HOA may supplement this
17 answer as necessary.

18 **INTERROGATORY NO. 22:**

19 Identify the property or community manager for the Property for each year from the
20 Notice of Lien, as defined above under "HOA Notices" in the Definitions section, through
21 the present.

22 **ANSWER TO INTERROGATORY NO. 22:**

23 HOA objects to this interrogatory on the grounds that it is overly broad in time and
24 not reasonably calculated to lead to the discovery of admissible evidence.

25 Without waiving objections, HOA responds as follows: Complete Association
26 Management Company (CAMCO). Discovery and investigation are ongoing, and HOA
27 may supplement this answer as necessary.

28 ///

INTERROGATORY NO. 23:

Identify each board member from the period from 60 days prior to the recording of the Notice of Lien, as defined above under "HOA Notices" in the Definitions section, through the present, including their terms in office and title.

ANSWER TO INTERROGATORY NO. 23:

HOA objects to this interrogatory on the grounds that it is overly broad in time and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving objections, HOA responds as follows:

2010: Ray Wooge, Brian McKay, James Schlobohn

2011: Ray Wooge, Katherine Mizak

2012: Ray Wooge, Katerine Mizak, Trace Burman

2013: Ray Wooge, Trace Burman

2014: Ray Wooge, Valerie Sands, Jennifer Webb

2015: Ray Wooge, Jennifer Webb, Valerie Sands

2016: Valerie Sands, President; Frank Leavitt, Secretary; and Deann Schlobom, Treasurer.

2017: Tracy Burman, President and Director and Frank Leavitt, Treasurer.

2018: Andrew Frischette, President and Director and Joes Broom, Secretary and Treasurer.

Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 24:

Review each of YOUR responses to the First Set of Requests for Admissions, propounded upon YOU concurrently with these Interrogatories. For each response to the First Set of Requests for Admissions that is not an unqualified admission, state:

(a) The number of the request;

(b) All facts upon which YOU based YOUR response and/or denial;

(c) Identify each Person with personal knowledge of the facts upon which YOU based YOUR response;

(d) Identify each Document or Writing that supports YOUR response.

ANSWER TO INTERROGATORY NO. 24:

Objection. This Interrogatory seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Further, this request is burdensome, harassing, and duplicative of information sought in other discovery requests and it is not limited in scope and time. Additionally, this Interrogatory is impermissibly compound. See, e.g., *Kendall v. GES Exposition Services, Inc.*, 174 F.R.D. 684 (D. Nev. 1997). Furthermore, the request is burdensome and oppressive as it is all-encompassing and requires HOA to provide a detailed narrative of its entire defense, including the identity of every witness and document that supports each answer that is not an unqualified admission. See e.g., *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186–87 (D. Kan. 1997); *Grynberg v. Total S.A.*, 2006 WL 1186836, *6–7 (D. Colo. 2006).

Without waiving the foregoing objections, HOA responds as follows: HOA's responses and objections to the Request for Admissions speak for themselves. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 25:

Describe in detail all facts regarding the conveyance of the Property to the HOA Buyer that is evidenced by the Foreclosure Deed, including but not limited to, the amount of the sale and any and all offers and/or counteroffers.

ANSWER TO INTERROGATORY NO. 25:

HOA objects to this interrogatory on the grounds that it is unduly burdensome and overly broad.

Without waiving objections, HOA responds as follows: Upon information and belief, the HOA does not attend the auctions. As such, they are not privy to this information. Further, the HOA relied on the collection company to perform the collection activities

pursuant to Nevada law; therefore, any questions related to collection activity would be best answered by the collection company. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

INTERROGATORY NO. 26:

Identify all Communications between YOU and any representative of the HOA Buyer Relating to the conveyance of the Property to the HOA Buyer that is evidenced by the Foreclosure Deed.

ANSWER TO INTERROGATORY NO. 26:

HOA objects to this interrogatory on the grounds that it is unduly burdensome and overly broad.

Without waiving objections, HOA responds as follows: HOA is informed and believes that the HOA does not attend auctions and relies on the collection company to record all documents associated with the sale. Further, the HOA relied on the collection company to perform the collection activities pursuant to Nevada law; therefore, any questions related to collection activity would be best answered by the collection company. Discovery and investigation are ongoing, and HOA may supplement this answer as necessary.

DATED this 12th day of December, 2018.

LIPSON NEILSON P.C.

/s/ Karen Kao

By: _____

J. WILLIAM EBERT, ESQ. (NV Bar No. 2697)
KAREN KAO, ESQ. (NV Bar No. 14386)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Antelope Homeowners Association

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 12th day of December, 2018, I served the foregoing **ANTELOPE HOMEOWNERS ASSOCIATION'S ANSWERS TO PLAINTIFF U.S. BANK FIRST SET OF INTERROGATORIES** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

WRIGHT, FINLAY & ZAK, LLP
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/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

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kkao@lipsonneilson.com

Attorneys for Defendant Antelope Homeowners' Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

**ANTELOPE HOMEOWNERS
ASSOCIATION'S RESPONSES TO
PLAINTIFF U.S. BANK FIRST SET OF
REQUESTS FOR ADMISSION**

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

TO: U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8; and

TO: R. Samuel Ehlers, Esq. and Aaron D. Lancaster, Esq. of the law firm WRIGHT, FINLAY & ZAK, LLP, attorneys for U.S. Bank:

ANTELOPE HOMEOWNERS ASSOCIATION ("Antelope" or "HOA"), by and through its attorneys of record, J. William Ebert, Esq., and Karen Kao, Esq., of the law firm Lipson Neilson P.C., hereby submits its Responses to Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8 ("U.S. Bank") First Set of Requests for Admission.

INTRODUCTION

Discovery and investigation are ongoing in this action. The following responses are based on Antelope's present knowledge with regard to information responsive to U.S. Bank's Requests for Admission. The following responses are given without prejudice to Antelope's right to produce, at a subsequent time, including at time of trial, all subsequently discovered evidence relating to the proof of presently known or subsequently discovered facts. The information set forth below is true and correct to the best of Antelope's knowledge at this time, but is subject to correction for inadvertent errors or omissions, if any errors or omissions are later found to exist. The right to supplement, modify, or correct these responses prior to and at trial on the basis of additional discovery and development of facts is expressly reserved.

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DEFINITIONS

The following definitions apply to Antelope's objections:

A. "Non-discoverable/Irrelevant" – The request in question concerns a matter that is not relevant to the subject matter of the litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. "Unduly burdensome" – The Request in question seeks discovery which is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

C. "Vague" – The request in question contains a word or phrase which is not adequately defined, or the overall request is confusing or ambiguous, and Antelope is unable to reasonably ascertain what information or documents U.S. Bank seeks in the request. The breadth and/or imprecision of some of U.S. Bank's request causes Antelope to be unable to know what is being actually requested, and, if interpreted in their broadest possible contexts, would impose an undue burden. Accordingly, Antelope objects to the requests on these grounds.

D. "Overly broad" – The request seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation and, accordingly, seeks information or documents which are non-discoverable/irrelevant and is unduly burdensome.

GENERAL OBJECTIONS

The following general objections are made to each request, and are incorporated into each response by reference, whether or not specifically therein. No waiver of any general objection is made notwithstanding a substantive response to any request.

1. Attorney-Client Privilege. Antelope objects to any request, including instructions therefore, that calls for information concerning communications with attorneys, including without limitation the attorneys of record in this action. Privileged Communications will not be disclosed or produced. In the event any attorney-client privileged communications and documents are disclosed or produced, such disclosures or production

1 is purely inadvertent and not a knowing or intentional waiver of the attorney-client privilege.
2 In the event any attorney-client privileged communications and documents are disclosed or
3 produced, Antelope requests immediate notification thereof by U.S. Bank and/or its
4 attorney to Antelope's counsel pursuant to and as required by ABA Formal Opinion 05-437
5 (October 1, 2005) and Nevada Rules of Professional Conduct.

6 2. Work Product Document. Antelope objects to any request, including
7 instructions therefore, that calls for information protected by the work produce doctrine as it
8 applies to any attorney or consultant, including without limitation, the attorneys of record in
9 this action. Such information will not be disclosed or produced. In the event any information
10 and documents protected by the work product doctrine are disclosed or produced, such
11 disclosure or production is purely inadvertent and not a knowing and intentional waiver of
12 such privilege. In the event any information and documents protected by the work product
13 doctrine are disclosed or produced, Antelope requests immediate notification thereof by
14 U.S. Bank and/or its attorney to Antelope's counsel pursuant to and as required by ABA
15 Formal Opinion 05-437 (October 1, 2005) and the Nevada Rules of Professional Conduct.

16 3. Assistance Responding to Requests to Admit. The information supplied in
17 these responses is not based solely on the knowledge of the executing party, but includes
18 the knowledge of the party, and its agents, representatives, employees, officers and
19 attorneys, unless privileged. The word usage and sentence structure may be that of any
20 attorney assisting in the preparation of these Responses and, thus, does not necessarily
21 purport to be the precise language of the executing party.

22 4. Time. Objection is made to U.S. Bank's Request for Admission on the basis
23 that they are unrestricted as to time, and therefore, seek information that is not relevant or
24 reasonably calculated to lead to the discovery of admissible evidence.

25 **GENERAL OBJECTIONS**

26 5. Antelope objects to U.S. Bank's request to the extent that the requests seek
27 any information that is protected by any absolute or qualified privilege of exemption,
28 including, but not limited to, the attorney-client privilege, the attorney work-product

1 exemption, and the consulting-expert exemption.

2 6. Antelope objects to U.S. Bank's requests on the grounds that they are
3 excessively burdensome and that much of the information requested may be obtained by
4 U.S. Bank from other sources more conveniently, less expensively, and with less burden.

5 7. Responses will be made on the basis of information and writings available to
6 and located by Antelope upon reasonable investigation of its records, and inquiry of its
7 present officers and employees. There may be other and further information respecting the
8 requests propounded by U.S. Bank of which Antelope, despite its reasonable investigation
9 and inquiry, is currently unaware. Antelope reserves the right to modify or enlarge any
10 response with such pertinent additional information as it may subsequently discovery.

11 8. No incidental or implied admissions will be made by the responses. The fact
12 that Antelope may respond or object to any request, or part thereof, shall not be deemed an
13 admission that Antelope accepts or admits the existence of any fact set forth or assumed
14 by such request, or that such response constitutes admissible evidence. The fact that
15 Antelope responds to part of any request is not to be deemed a waiver by Antelope of its
16 objections, including privilege, to other parts to such request.

17 9. Each response will be subject to all objections as to competence, relevance,
18 materiality, propriety and admissibility, and to any and all other objections on any ground
19 which would require the inclusion from evidence of any statement herein if any such
20 statements were made by a witness present and testifying at trial, all of which objections
21 and grounds are expressly reserved and may be interposed at such hearings.

22 10. Antelope adopts by reference the foregoing objections and incorporates each
23 objection as if it were fully set forth in each of Antelope's responses.

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RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that the Notice of Lien, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to the Borrower at the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 2:

Admit that the Notice of Lien, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested to U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 3:

Admit that the Notice of Default, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to the Borrower at the Property.

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RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 4:

Admit that the Notice of Default, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 5:

Admit that the First Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to the Borrower at the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 6:

Admit that the First Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 7:

Admit that the Second Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to the Borrower at the Property.

RESPONSE TO REQUEST FOR ADMISSION NO 7:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 8:

Admit that the Second Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers.

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RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 9:

Admit that the Third Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to the Borrower at the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 10:

Admit that the Third Notice of Sale, as described under "HOA Notices" in the Definitions section, was not mailed by certified or registered mail, return receipt requested, to U.S. Bank or its predecessors, attorneys, agents, trustees, or servicers.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Objection. This request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; assumes facts; and seeks a response which is irrelevant and immaterial because the recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS116. See NRS 116.3116; *SFR Invest. Pool I, LLC v. U.S. Bank, N.A. et al.*, 334 P.3d 408 (Nev. 2014).

Without waiving the objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 11:

Admit that YOU did not disclose the estimated “super priority” amount of the Lien in any HOA Foreclosure Notice.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Objection. This Request as it is ambiguous, vague and overly broad as to the undefined term “super-priority”; impermissibly seeks a speculative legal conclusion on a disputed legal issue. See *Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993); *Morgan v. Demille*, 106 Nev. 671, 675-76, 799 P.2d 561, 564 (1990); seeks a response which is irrelevant and immaterial because recitals within the Foreclosure Deed are conclusive proof of compliance with the notice requirements of Chapter 116, and that including the entire amount is proper for lien foreclosure notices. See NRS 116.31162; *SFR v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014); and seeks to impose an additional legal burden not provided for in NRS Chapter 116 as the relevant provisions in effect at the times relevant to the HOA foreclosure merely required that the notice “describe the deficiency in payment” or “The amount necessary to satisfy the lien as of the date of the proposed sale.” See NRS 116.31162(1)(b)(1) and NRS 116.311635(3)(a)-(b).

Without waiving the objection, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 12:

Admit that YOU did not review the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners’ Association (“CC&Rs”), or any amendments thereto, before conducting the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Objection. This request lacks foundation and assumes facts not established in discovery as the HOA did not conduct the foreclosure sale.

Without waiving said objection, HOA responds as follows: HOA did not conduct the HOA Sale and on that basis, denies.

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REQUEST FOR ADMISSION NO. 13:

Admit that the CC&Rs applied to the Property for the period from 60 days prior to the recording of the Notice of Lien through the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

HOA admits only that the CC&Rs were effective for the period from 60 days prior to the recording of the aforementioned Notice of Delinquent Assessment Lien through the HOA Sale, but denies any inference that the CC&Rs applied or governed in any manner that is inconsistent with Nevada law.

REQUEST FOR ADMISSION NO. 14:

Admit that YOU were requested to provide to U.S. Bank or its predecessors, agents, attorneys, servicers, or trustees, the amount of the "super-priority" lien prior to the HOA Sale.

RESPONSE TO REQUEST NO.14:

Objection. This Request as it is vague, ambiguous, and overly broad as to the undefined term "super-priority"; impermissibly seeks a speculative legal conclusion on a disputed legal issue. See *Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-57, 799 P.2d 561, 564 (1990)); assumes facts not in evidence as the HOA is not aware that U.S. Bank, or its predecessors, agents, attorneys, servicers, or trustees ever contacted the HOA during the foreclosure proceedings.

Without waiving said objections, HOA denies as to itself. HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, and therefore, cannot admit or deny the same.

REQUEST FOR ADMISSION NO. 15:

Admit that at the time of the HOA Sale, it was YOUR policy or procedure not to provide payoffs to lenders unless the lender provided borrower authorization.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Deny.

REQUEST FOR ADMISSION NO. 16:

Admit that YOU did not provide to U.S. Bank, or its predecessors, agents, attorneys, servicers, or trustees, the amount of the “super-priority” lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Objection. This Request as it is ambiguous, vague and overly broad as to the undefined term “super-priority”; impermissibly seeks a speculative legal conclusion on a disputed legal issue. See *Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993); *Morgan v. Demille*, 106 Nev. 671, 675-76, 799 P.2d 561, 564 (1990); seeks a response which is irrelevant and immaterial because recitals within the Foreclosure Deed are conclusive proof of compliance with the notice requirements of Chapter 116, and that including the entire amount is proper for lien foreclosure notices. See NRS 116.31162; *SFR v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014); and seeks to impose an additional legal burden not provided for in NRS Chapter 116 as the relevant provisions in effect at the times relevant to the HOA foreclosure merely required that the notice “describe the deficiency in payment” or “The amount necessary to satisfy the lien as of the date of the proposed sale.” See NRS 116.31162(1)(b)(1) and NRS 116.311635(3)(a)-(b).

Without waiving the objection, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 17:

Admit that the HOA Sale was not commercially reasonable as to the place of the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Objection. This Request calls for a legal conclusion regarding the applicability of a commercially reasonable standard to a non-judicial foreclosure sale conducted under NRS 116.

Without waiving said objection, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 18:

Admit that the HOA Sale was not commercially reasonable as to the terms of the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Objection. This Request calls for a legal conclusion regarding the applicability of a commercially reasonable standard to a non-judicial foreclosure sale conducted under NRS 116. HOA further objects to this Request as vague and ambiguous as to the term "terms."

Without waiving said objection, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 19:

Admit that the HOA Sale was not commercially reasonable as to the method of the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Objection. This Request calls for a legal conclusion regarding the applicability of a commercially reasonable standard to a non-judicial foreclosure sale conducted under NRS 116. HOA further objects to this Request as vague and ambiguous as to the term "method."

Without waiving said objection, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 20:

Admit that YOU did not direct YOUR crier at the HOA Sale to make any pronouncements to bidders about whether the Property was sold subject to, or free and clear of, the Deed of Trust.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Objection. This Request seeks to impose an additional legal burden not provided for in NRS Chapter 116 during the pertinent time period.

Without waiving said objection, HOA admits as to itself; however, HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, and had no involvement in the HOA Sale, including the hiring of the crier or directions provided to the crier before the sale. On that basis, HOA cannot admit or deny.

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REQUEST FOR ADMISSION NO. 21:

Admit that at the time of the HOA Sale, it was YOUR policy or procedure not to accept super-priority payoffs prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Deny.

REQUEST FOR ADMISSION NO. 22:

Admit that YOU sold the Property at the HOA Sale for less than 20% of its value.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Objection. This request is vague and ambiguous as to the undefined term "fair market value"; seeks an expert opinion from this lay defendant; and impermissibly seeks a speculative legal conclusion on a disputed legal issue. *See Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-57, 799 P.2d 561, 564 (1990)).

REQUEST FOR ADMISSION NO. 23:

Admit that U.S. Bank, or its predecessors, agents, attorneys, servicers, or trustees, tendered the amount of the "super-priority" lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Objection. This Request as it is vague, ambiguous, and overly broad as to the undefined terms "tendered" and "super-priority"; impermissibly seeks a speculative legal conclusion on a disputed legal issue. *See Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-57, 799 P.2d 561, 564 (1990));

Without waiving said objections, HOA responds as follows: Deny.

REQUEST FOR ADMISSION NO. 24:

Admit that U.S. Bank, or its predecessors, agents, attorneys, servicers, or trustees, tendered payment in any amount to YOU prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Objection. This Request as it is vague, ambiguous, and overly broad as to the undefined term "tendered"; impermissibly seeks a speculative legal conclusion on a

1 disputed legal issue. See *Smith v. Emery*, 109 Nev. 737, 865 P.2d 1386 (1993) (quoting
2 *Morgan v. Demille*, 106 Nev. 671, 675-57, 799 P.2d 561, 564 (1990));

3 Without waiving said objections, HOA responds as follows: Deny.

4
5 DATED this 12th day of December, 2018.

6
7 LIPSON NEILSON P.C.

8 /s/ Karen Kao

9 By:

10 J. WILLIAM EBERT, ESQ. (NV Bar No. 2697)
11 KAREN KAO, ESQ. (NV Bar No. 14386)
12 9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144

14 *Attorneys for Defendant Antelope Homeowners*
15 *Association*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 12th day of December, 2018, I served the foregoing **ANTELOPE HOMEOWNERS ASSOCIATION'S RESPONSES TO PLAINTIFF U.S. BANK FIRST SET OF REQUESTS FOR ADMISSION** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

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/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

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Attorneys for Defendant Antelope Homeowners' Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

**ANTELOPE HOMEOWNERS
ASSOCIATION'S RESPONSES TO
PLAINTIFF U.S. BANK FIRST SET OF
REQUESTS FOR PRODUCTION**

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

TO: U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8; and

TO: R. Samuel Ehlers, Esq. and Aaron D. Lancaster, Esq. of the law firm WRIGHT, FINLAY & ZAK, LLP, attorneys for U.S. Bank:

ANTELOPE HOMEOWNERS ASSOCIATION ("Antelope" or "HOA"), by and through its attorneys of record, J. William Ebert, Esq., and Karen Kao, Esq., of the law firm LIPSON NEILSON P.C., hereby submits its Responses to Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005A8 ("U.S. Bank") First Set of Request for Production.

PRELIMINARY STATEMENT

Antelope's responses to the following requests for production are based on information currently known to Antelope and are provided without prejudice to Antelope's right to submit evidence of any subsequently discovered facts, information or documents, should such become known. These responses are made in a good faith effort to supply such information as presently known to Antelope, after reasonable investigation. Antelope reserves its right to further supplement or alter any answer set forth herein and to use such additional information at trial.

Further, because some of these responses may have been ascertained by Antelope's attorneys, investigators, and/or through discovery in this litigation. Antelope may not have personal knowledge of the information from which these responses are derived.

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GENERAL OBJECTIONS

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2 1. Antelope objects to these requests to produce as overly broad to the extent
3 they seek client specific information or documents, other than those of Plaintiff's and to the
4 extent that they seek information that is not relevant to the issues in this case nor
5 reasonably calculated to lead to the discovery of admissible evidence.

6 2. Antelope objects to these requests to produce to the extent they seek
7 information that is exempted from discovery and protected from disclosure pursuant to the
8 attorney-client privilege, the attorney-work-product doctrine, other applicable confidentiality
9 agreements, privileges or protections, privacy protections, or any professional rules of
10 conduct.

11 3. Antelope objects to these requests to produce to the extent that they seek
12 confidential and/or proprietary information.

13 4. Antelope objects to these requests to produce to the extent they seek
14 information that is already in Plaintiff's possession on the ground that producing such
15 information would be duplicative, unduly burdensome and oppressive.

16 5. Antelope objects to these requests to produce to the extent they are
17 predicated upon erroneous assumptions or to the extent that they state incorrect facts.
18 When Antelope responds to these requests to produce, Antelope does not agree to these
19 assumptions or factual predicates and specifically reserves the right to challenge any of the
20 assumptions or factual predicates contained in these requests to produce.

21 6. Antelope objects to these requests to produce to the extent that they seek
22 documents which are irrelevant to the claims in this lawsuit and not reasonably calculated
23 to led to the discovery of admissible evidence.

24 7. Antelope objects to these requests to produce to the extend they seek
25 information in violation of the privacy rights of third parties

26 8. Antelope objects to the definition of "YOU", "YOUR", and "ANTELOPE" as set
27 forth in the Requests as overly broad and if taken literally, would result in multiple and
28 compound requests in each Request within which it is used.

Without waiving said objections, HOA responds as follows: HOA is informed and believes, there are no documents responsive to this request. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 3:

Any and all Documents YOU sent to or received from the HOA Trustee or its attorneys or agents regarding the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Objection. This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time and/or scope; lacks foundation, assumes facts not established in discovery; is overly broad as to a request for documents "regarding the property"; and the information sought, if it exists, may be protected by the attorney-client privilege and/or attorney work-product doctrine.

Without waiving said objections, HOA responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 4:

Any and all Documents YOU sent to or received from the Borrower or his attorneys, agents, or trustees regarding the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Objection. This request is overly broad as to "all documents"; calls for the production of materials which may be protected by the attorney work product privilege, the disclosure of which would disclose the strategies of defense counsel; calls for materials which are beyond the scope of NRCP 26; improperly assumes that any guarantee or title insurance policy might be involved.

Without waiving said objections, Defendant responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents, if any, in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 5:

Any and all Documents evidencing Trustee's Sale Guarantees, endorsements, "date downs" or other title insurance products for the above-referenced Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Objection. This request is overly broad as to "all documents"; calls for the production of materials which may be protected by the attorney work product privilege, the disclosure of which would disclose the strategies of defense counsel; calls for materials which are beyond the scope of NRCP 26; improperly assumes that any guarantee or title insurance policy might be involved.

Without waiving said objections, Defendant responds as follows HOA is informed and believes that it disclosed all non-privileged responsive documents, if any, in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 6:

Any and all Documents which support YOUR contention that the HOA Sale was valid.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Objection: This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time and/or scope; lacks foundation; assumes facts not established in discovery; and seeks a legal conclusion regarding HOA's rights and obligations under NRS 116.

Without waiving said objections, HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 7:

Any and all Documents which support YOUR contention that the HOA Trustee complied with all statutory notice requirements in conducting the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Please see HOA's Objections and Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 8:

Any and all Documents which support YOUR contention that the amounts stated in the HOA Notices represented the correct amounts owed to the HOA at the time of filing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Objection. This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; burdensome, ambiguous, vague and undefined as to the term "correct amounts"; not limited in scope and/or time; and seeks information which is irrelevant and immaterial because the recitals in the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116 which sets forth what may be included in a lien, and that including the entire amount is proper for lien foreclosure notices. See NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014).

Without waiving said objections, Defendant responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

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REQUEST FOR PRODUCTION NO. 9:

YOUR entire foreclosure file regarding the Property and the HOA Sale for the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Objection. This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; and not limited in scope and/or time.

Without waiving said objections, HOA responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 10:

Any and all Documents Related to, and/or bidding instructions, bids, and qualification of potential bidders, for the HOA Sale of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Objection. This request is vague and ambiguous as to the terms "all documents and "related to"; HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity and had no role in generating bidding instructions or assessing the qualifications of potential bidders, and, therefore, has no documents responsive to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUET FOR PRODUCTION NO. 11:

All Documents that YOU referenced, Identified, referred to, and/or consulted in responding to U.S. Bank's First Set of Interrogatories to YOU.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Please see HOA's and U.S. Bank's disclosures. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 12:

All Documents that reflect calculations of the amount of the HOA lien against the Property, at the inception of the collection and at each stage of the foreclosure thereafter, to the extent the amount was corrected, increased, or modified in any way, through the HOA Sale date.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Objection. This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; burdensome, ambiguous, vague and undefined as to the term "corrected"; not limited in scope and/or time; and seeks information which is irrelevant and immaterial because the recitals in the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116 which sets forth what may be included in a lien, and that including the entire amount is proper for lien foreclosure notices. See NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014).

Without waiving said objections, Defendant responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 13:

All Documents reflecting, relating to, and/or concerning the mailings, personal services, and postings of the HOA Notices.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Objection. This request is overly broad and burdensome because the HOA hired a third-party collection agency to conduct and collect delinquent HOA assessments; calls for documents already in the possession of and produced by U.S. Bank; vague and ambiguous as to the terms "concerning" and "relating to"; not reasonably limited in scope and/or time.

Without waiving said objection, HOA responds as follows: HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, and A&K, would have sent all notices and performed all other acts in collecting the assessments, including conducting the foreclosure sale.

HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 14:

All Documents YOU contend demonstrate or imply that U.S. Bank or its predecessors, agents, servicers, or trustees had notice of the lien, default, and/or foreclosure sale date.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Please see Objections and Response to Request for Production No. 13.

REQUEST FOR PRODUCTION NO. 15:

All Documents reflecting, relating to, and/or concerning the Notice of Lien, as described under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Please see Objections and Response to Request for Production No. 13.

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REQUEST FOR PRODUCTION NO. 16:

All Documents reflecting, relating to, and/or concerning the Notice of Default, as described under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Please see Objections and Response to Request for Production No. 13.

REQUEST FOR PRODUCTION NO. 17:

All Documents reflecting, relating to, and/or concerning the First Notice of Sale, as described under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Please see Objections and Response to Request for Production No. 13.

REQUEST FOR PRODUCTION NO. 18:

All Documents reflecting, relating to, and/or concerning the Second Notice of Sale, as described under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Please see Objections and Response to Request for Production No. 13.

REQUEST FOR PRODUCTION NO. 19:

All Documents reflecting, relating to, and/or concerning the Third Notice of Sale, as described under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Please see Objections and Response to Request for Production No. 13.

REQUEST FOR PRODUCTION NO. 20:

All Documents pertaining to posting and mailing of Notice to Tenant, including any return receipts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Objection. This request is vague and ambiguous as to the undefined term "Notice to Tenant" and, therefore requires the HOA to speculate as to the information sought. Based upon the foregoing objection, HOA is not able to respond to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 21:

All Documents pertaining to delivery of the recorded sale deed to the Ombudsman.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, and is informed and believes A&K has documents responsive to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 22:

All Documents evidencing any written/oral announcements at the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, and has no role in generating bidding instructions or assessing the qualifications of potential bidders, and, therefore, is informed and believes it has no documents responsive to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 23:

All Documents Related to any agreement(s)/contract(s) between YOU and the HOA's community manager at any time from the inception of the collection for the Property and at each stage of the foreclosure thereafter.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Objection. This request is overly broad as to “all documents” and “any agreement(s)/contracts”; vague and ambiguous as to the term “related to”; unduly burdensome in time and/or scope; and assumes facts not established in discovery.

HOA is unable to formulate a response to this Request based on the foregoing objections. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 24:

All Documents related to any agreement(s)/contract(s) between YOU and the HOA Buyer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Objection. This request is overly broad as to “all documents” and “any agreement(s)/contracts”; vague and ambiguous as to the term “related to”; unduly burdensome in time and/or scope; and assumes facts not established in discovery.

HOA is unable to formulate a response to this Request based on the foregoing objections. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 25:

All Documents Related to any agreement(s)/contract(s) between YOU and the HOA Trustee.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Objection. This request seeks information which is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time and/or scope; lacks foundation, assumes facts not established in discovery; is overly broad as to a request for “all documents” and “any agreement(s)/contracts”; vague and ambiguous as to the term “related to”; and the information sought, if it exists, may be protected by the attorney-client privilege and/or attorney work-product doctrine.

Without waiving said objections, HOA responds as follows. HOA is informed and believes that HOA disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 26:

All Documents Related to any agreement(s)/contract(s) between YOU and any professional property purchaser.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Objection. This request is overly broad as to "all documents" "any agreement(s)/contracts" and "any professional property purchaser; vague and ambiguous as to the term "related to"; unduly burdensome in time and/or scope; and assumes facts not established in discovery.

HOA is unable to formulate a response to this Request based on the foregoing objections. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 27:

For each response to U.S. Bank's First Set of Requests for Production of Documents, served concurrently herewith, that is not an unqualified admission, any and all Documents which support YOUR response.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

The objection(s) to each Request for Admission speaks for themselves.

REQUEST FOR PRODUCTION NO. 28:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to the Borrower or the Property during the period from 60 days prior to the recording of the Notice of Lien through the HOA Sale.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Objection. This request is not reasonably limited in time and/or scope; not calculated to lead to the discovery of admissible evidence as the request requires the disclosure of documents unrelated to this litigation. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977); and calls for information which may be protected by the attorney-client privilege and/or attorney work-product doctrine.

Without waiving said objections, HOA responds as follows:

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 29:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to the Borrower, the Property, the contract or agreement, or the relationship or the disputes Related thereto, between YOU and the HOA community manager, or any collection agent or foreclosure trustee including without limitation the HOA Trustee; the selection, retention and termination of the HOA Trustee and all other collection companies used by the HOA for the period from 60 days prior to the recording of the Notice of Lien through the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Objection: this request calls for information that it is overly broad, burdensome, vague and ambiguous as to the phrase "related thereto"; not reasonably limited in time and/or scope; not calculated to lead to the discovery of admissible evidence as the request requires the disclosure of documents unrelated to this litigation. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977); and calls for information which may be protected by the attorney-client privilege and/or attorney work-product doctrine.

HOA is unable to formulate a response to this Request based on the foregoing objections. Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

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REQUEST FOR PRODUCTION NO. 30:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to policies or procedures for the HOA or its community managers or collection agents and foreclosure trustees including the HOA Trustee for responding to requests by beneficiaries, or their attorneys, agents, trustees, or servicers regarding their requests for lien payoffs or their tender of partial or full payment of the HOA liens prior to any HOA non-judicial foreclosure sale at any time prior to the HOA Sale of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Objection: this Request seeks information that is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; vague and ambiguous as to terms "lien payoffs" and "tender"; calls for a legal conclusion; is not reasonably limited in time and/or scope, is unduly burdensome, and compound as it seeks information for at least 12 separate and distinct categories of documents; assumes facts regarding "policies and procedures" and presents a hypothetical fact regarding an obligation to provide information about the undetermined super-priority lien amount. Additionally, the request seeks information subject to the attorney-client privilege. The attorney-client privilege is broadly construed and extends to "factual information" and "legal advice."

Without waiving said objections, HOA responds as follows: Upon information and belief, there are no non-privileged documents responsive to this request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 31:

All Documents and Communications between or among the HOA, the HOA Trustee, and/or any person or entity, regarding an attempt to tender partial or full payment prior to the HOA Sale.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

HOA is informed and believes it is not in possession of any documents or communications responsive to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 32:

All Documents pertaining to the initial notice required by NRS 116.31162(4), and proof of mailing, sent to the unit owner prior to the Notice of Lien, including any return receipts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Objection. This request is overbroad, vague and ambiguous as to "all documents pertaining to the initial notice required under NRS 116.31162(4)"; calls for documents beyond the scope of NRCP 26 in that the request calls for irrelevant documents which are not pertinent to the issues herein; calls for documents beyond the scope of NRCP 26 in that the request calls for documents that are not reasonably calculated to lead to discovery of admissible evidence;

Without waiving said objections, HOA responds as follows: HOA is informed and believes that it disclosed all non-privileged responsive documents in its possession with its disclosures (ANT000001-ANT000117) pursuant to the NRCP 16.1.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 33:

All Documents Identifying or pertaining to the Person designated under NRS 116.31162(2) to sign the Notice of Default.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Objection. This Request is vague and ambiguous as to "all documents pertaining to the person designated under NRS 116.31162(2)"; calls for documents beyond the scope of NRCP 26 in that the request calls for irrelevant documents which are not pertinent to the

issues herein; calls for documents beyond the scope of NRCP 26 in that the request calls for documents that are not reasonably calculated to lead to discovery of admissible evidence; calls for information which may be personal and/or confidential to persons who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 34:

All Documents relating to the conveyance of the Property to the HOA Buyer that is evidenced by the Foreclosure Deed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

HOA hired a third party, A&K, who held itself as a law firm that specialized in HOA collection work, to handle its collection related activity. At that point, HOA relied on its collection law firm to handle the collection activity, had no role in the conveyance of the Property to the HOA Buyer, and, therefore, has no documents responsive to this Request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 35:

All Documents Relating to Communications between YOU and any representative of the HOA Buyer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Please see Objections and Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 36:

All Documents Relating to the status of the Property from the time the HOA Buyer allegedly acquired it at the HOA Sale to the present, including but not limited to, leases, rental agreements, contracts, agreements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Objection. This request seeks information that is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; vague and ambiguous as to term "status"; is not reasonably limited in time and/or scope, is unduly burdensome; and assumes facts not established in discovery.

Without waiving said objections, HOA responds as follows:
Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

REQUEST FOR PRODUCTION NO. 37:

All Documents Relating to expenses incurred by YOU to maintain or improve the Property from the time the HOA Buyer allegedly acquired it at the HOA Sale to the present, including but not limited to, taxes, insurance, maintenance costs, etc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Objection. This request seeks information that is irrelevant to the claims in this lawsuit; not reasonably calculated to lead to the discovery of admissible evidence; vague and ambiguous as to terms "expense" "maintain" and "improve"; is not reasonably limited in time and/or scope, is unduly burdensome; and assumes facts not established in discovery.

Without waiving said objections, HOA responds as follows: Upon information and belief, there are no non-privileged documents responsive to this request.

Investigation and discovery are ongoing. HOA will supplement this response if and as appropriate.

DATED this 12th day of December, 2018.

LIPSON NEILSON P.C.

/s/ Karen Kao

By:

J. WILLIAM EBERT, ESQ. (NV Bar No. 2697)
KAREN KAO, ESQ. (NV Bar No. 14386)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Antelope Homeowners Association

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 12th day of December, 2018, I served the foregoing **ANTELOPE HOMEOWNERS ASSOCIATION'S RESPONSES TO PLAINTIFF U.S. BANK FIRST SET OF REQUESTS FOR PRODUCTION** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

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Attorney for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOE
INDIVIDUALS I through X, inclusive; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-16-739867-C
Dept. No.: XXXI

**SFR INVESTMENTS POOL 1, LLC'S
OBJECTIONS AND ANSWERS TO
PLAINTIFF, U.S. BANK NATIONAL
ASSOCIATION'S INTERROGATORIES
TO DEFENDANT, SFR INVESTMENTS
POOL 1, LLC**

SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its counsel, the law firm of Kim Gilbert Ebron, hereby answers U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8's (the "Bank") first set of interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person who assisted you in the preparation of the Responses to these Interrogatories, by name, title, and address. You may omit anyone who simply typed the responses.

ANSWER TO INTERROGATORY NO. 1:

Christopher Hardin, manager of SFR Investments Pool 1, LLC with an address of 5030 Paradise Road, #B-214, Las Vegas, NV 89119.

INTERROGATORY NO. 2:

Describe YOUR business purpose.

ANSWER TO INTERROGATORY NO. 2:

Objection, this information is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information.

INTERROGATORY NO. 3:

Please identify any and all Documents and/or other forms of communication that were received by YOU from any of the named parties in this litigation or that were sent by YOU to them in connection with the Property.

ANSWER TO INTERROGATORY NO. 3:

Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably limited in time or scope. To the extent this interrogatory seeks post-sale information, such information is not relevant or reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objection SFR answers: After a review of its file with due diligence, SFR does have in its possession any pre-sale documents and/or communications responsive to this request.

INTERROGATORY NO. 4:

Please identify any and all Documents and/or other forms of communication that were received by YOU from Trustee or that were sent by YOU in connection with the Property prior to or after the HOA Sale.

ANSWER TO INTERROGATORY NO. 4:

Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably limited in time or scope. To the extent this interrogatory seeks post-sale information, such information is not relevant or reasonably likely to lead to the discovery of admissible evidence.

1 Subject to and without waiving said objection SFR answers: After a review of its file with due
2 diligence, SFR does have in its possession any pre-sale documents and/or communications
3 responsive to this request.

4 **INTERROGATORY NO. 5:**

5 Please identify any and all Documents and/or other forms of communication that were
6 received by YOU from HOA or that were sent by YOU to HOA in connection with the Property
7 prior to or after the HOA Sale.

8 **ANSWER TO INTERROGATORY NO. 5:**

9 Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably
10 limited in time or scope. To the extent this interrogatory seeks post-sale information, such
11 information is not relevant or reasonably likely to lead to the discovery of admissible evidence.
12 Subject to and without waiving said objection SFR answers: After a review of its file with due
13 diligence, SFR does have in its possession any pre-sale documents and/or communications
14 responsive to this request.

15 **INTERROGATORY NO. 6:**

16 State whether the Property is currently inhabited, and if so, Identify the following
17 information:

- 18 1. By whom the Property is inhabited,
- 19 2. The terms of any rental agreement or lease by any current inhabitant, including:
 - 20 (a) The date of the agreement or lease began
 - 21 (b) When it expires,
 - 22 (c) The amount of rent paid, and
 - 23 (d) How often the rent is paid

24 **ANSWER TO INTERROGATORY NO. 6:**

25 Objection, this information is not relevant to the subject matter involved in the pending
26 action and is not reasonably calculated to lead to the discovery of admissible evidence. Further,
27 this interrogatory seeks confidential and proprietary business information.

28 >>>>

INTERROGATORY NO. 7:

Please identify any and all TSGs and/or title policies obtained by YOU in connection with the Property.

ANSWER TO INTERROGATORY NO. 7:

Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably limited in time or scope. Further, this information is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 8:

If you performed research regarding the Property prior to YOUR acquisition of the Property, then please describe YOUR research as to the following topics:

1. The exterior condition of the Property.
2. The interior condition of the Property.
3. Whether the Property's title history showed recorded liens, including but not limited to deeds of trust.
4. The "fair market value" of the Property based on YOUR definition of that term in YOUR response to Number 20.

ANSWER TO INTERROGATORY NO. 8:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not reasonably limited in scope. Additionally, this interrogatory is vague and ambiguous as to the terms "research", "information" and "fair market value" making a response impossible without speculation. Further, the term "fair market value" requires expert analysis and opinion. Subject to and without waiving said objection, SFR answers: To the extent "research" or "information" includes looking at the Clark County Recorder's website, while SFR does not specifically recall having reviewed the publicly recorded documents related to the Property, SFR admits this is typically something SFR does prior to bidding on a particular property.

INTERROGATORY NO. 9:

If YOU have ever had an agreement(s)/contract(s) with the HOA Trustee (and/or its agents) regarding properties for sale, please identify the contents of the agreement(s)/contract(s).

ANSWER TO INTERROGATORY NO. 9 :

Objection, this interrogatory is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. Further, this interrogatory is vague and ambiguous as to the term “agreement(s)/contract(s)” making a response impossible without speculation. Additionally, to the extent this interrogatory seeks information not related to the subject Property or information post-sale, this interrogatory seeks information that is not relevant to the subject matter in the pending action nor is it reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 10:

If you have ever had any agreement(s)/contract(s) with the HOA (and/or its agents) regarding properties for sale, please identify the contents of the agreement(s)/contract(s).

ANSWER TO INTERROGATORY NO. 10:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. Further, this interrogatory is vague and ambiguous as to the term “agreement(s)/contract(s)” making a response impossible without speculation. Additionally, to the extent this interrogatory seeks information not related to the subject Property or information post-sale, this interrogatory seeks information that is not relevant to the subject matter in the pending action nor is it reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11:

Identify the person or entity which provided the funds used to bid on the Property at the HOA Sale. For example, if there is an investor or investors related to the purchase of the Property, identify the investor(s).

ANSWER TO INTERROGATORY NO. 11:

Objection, this interrogatory is not relevant to the subject matter in the pending action nor is it reasonably calculation to lead to the discovery of admissible evidence. Additionally, this interrogatory seeks confidential and proprietary business information.

INTERROGATORY NO. 12:

What was the opening bid at the Auction?

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ANSWER TO INTERROGATORY NO. 12:

Objection, this interrogatory is overly broad and unduly burdensome in that it requests information outside of SFR's possession or control. This interrogatory is also compound. Subject to and without waiving said objection, SFR answers: SFR does not specifically recall the opening bid price at the Auction.

INTERROGATORY NO. 13:

As part of YOUR strategy for acquisition of the Property, please explain the following:

1. Did you budget for out of pocket expenses for eviction litigation costs to remove the then-occupant of the Property, and what was that sum?
2. Did you budget for out of pocket expenses for exterior maintenance and refurbishment for the Property, and what was that sum?
3. Did you budget for out of pocket expenses for interior maintenance and refurbishment for the Property, and what was that sum?
4. Did you budget for out of pocket expenses, including litigation costs, to remove alleged clouds on Property's title such as, but not limited to, first position deed of trust, taxes, insurance, and what was that sum?

ANSWER TO INTERROGATORY NO. 13:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not reasonably limited in scope. Additionally, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information.

INTERROGATORY NO. 14:

Please identify any documents or internal communications between YOU and any other third-party purchasers from a non-judicial foreclosure sale conducted by homeowner's associations regarding HOA sales, super-priority liens, and business transactions.

ANSWER TO INTERROGATORY NO. 14:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not

1 reasonably limited in time or scope. Further, this interrogatory is vague and ambiguous as to the
2 terms “internal communications”, “super-priority liens” and “business transactions” making a
3 response impossible without speculation. Finally, to the extent this interrogatory seeks documents
4 or communications not directly related to this Property, those communications are not relevant or
5 reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving
6 said objection, SFR answers: After a review of its file with due diligence, SFR does not have any
7 documents or internal communications in its possession responsive to this request.

8 **INTERROGATORY NO. 15:**

9 Please identify the persons or entities who participated at the HOA Sale.

10 **ANSWER TO INTERROGATORY NO. 15:**

11 Objection, this interrogatory is overly broad and unduly burdensome in that it requests
12 information outside of SFR’s possession or control. This interrogatory is also compound. Subject
13 to and without waiving said objection, SFR answers: Bob Diamond participated at the HOA Sale
14 on behalf of SFR. SFR cannot specifically recall the other persons or entities who participated at
15 the HOA Sale.

16 **INTERROGATORY NO. 16:**

17 Identify the Principals, Trustees, Members, Officers, Beneficiaries, or Agents of SFR
18 Investments Pool 1, LLC.

19 **ANSWER TO INTERROGATORY NO. 16:**

20 Objection, this interrogatory is not relevant to the subject matter involved in the pending
21 action and is not reasonably calculated to lead to the discovery of admissible evidence.
22 Additionally, this interrogatory is overly broad and unduly burdensome in that it is not limited in
23 time. Further, this interrogatory seeks confidential and proprietary business information. Subject
24 to and without waiving said objections, SFR answers: SFR Investments, LLC is the sole member
25 of SFR Investments Pool 1, LLC. Christopher Hardin is the manager of SFR Investments Pool 1,
26 LLC. His role is operating SFR Investments Pool 1, LLC.

27 **INTERROGATORY NO. 17:**

28 With regard to YOUR acquisition of the Property, please state the following:

- 1 1. Describe how YOU learned the Property was for sale.
- 2 2. State whether the HOA of anyone at Trustee's office told YOU of the HOA Sale.
- 3 3. Any maintenance or made any repairs/improvements to the Property, please describe
- 4 that work, identifying the person or entity doing the work, and stating the total cost of
- 5 that work.

6 **ANSWER TO INTERROGATORY NO. 17:**

7 Objection, this interrogatory is vague and ambiguous as to the terms "learned" making a
8 response impossible without speculation. Additionally, this interrogatory is not relevant to the
9 subject matter involved in the pending action and is not reasonably calculated to lead to the
10 discovery of admissible evidence. Also, this interrogatory is compound. Further, this
11 interrogatory seeks confidential and proprietary business information.

12 **INTERROGATORY NO. 18:**

13 If you have any agreements with other bidders at the HOA Sale regarding the sale of the
14 Property, please identify the contents of the agreements.

15 **ANSWER TO INTERROGATORY NO. 18:**

16 Objection, this interrogatory is vague and ambiguous as to the term "agreements" making
17 a response impossible without speculation. Subject to and without waiving said objection, SFR
18 answers: After a review of its file with due diligence, SFR does not have any information
19 responsive to this request.

20 **INTERROGATORY NO. 19:**

21 If any disclosures were made by the auctioneer or seller at the time of the HOA Sale,
22 identify those communications.

23 **ANSWER TO INTERROGATORY NO. 19:**

24 Objection, this interrogatory is overly broad and unduly burdensome in that it requests
25 information outside of SFR's possession or control. Subject to and without waiving said
26 objections, SFR answers: SFR cannot recall any disclosures or announcements made at the time
27 of the HOA Sale.

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INTERROGATORY NO. 20:

Describe YOUR definition of “fair market value?”

ANSWER TO INTERROGATORY NO. 20:

Objection, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, the term “fair market value” requires expert analysis and opinion.

INTERROGATORY NO. 21:

If you performed research regarding the Property after YOUR acquisition of the Property, then please describe YOUR research as to the following topics:

1. The exterior condition of the Property.
2. The interior condition of the Property.
3. Whether the Property’s title history showed recorded liens, including but not limited to deeds of trust.
4. The “fair market value” of the Property based on YOUR definition of that term in YOUR response to Number 20.

ANSWER TO INTERROGATORY NO. 21:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not reasonably limited in scope. Additionally, this interrogatory is vague and ambiguous as to the terms “research” and “fair market value” making a response impossible without speculation. Further, the term “fair market value” requires expert analysis and opinion. Subject to and without waiving said objections, SFR answers: To the extent “research” includes looking at the Clark County Recorder and Assessor website, while SFR does not specifically recall having reviewed the publicly recorded documents and assessor information related to the Property, SFR was able to locate in its files a copy of the assessor information page and recorder information page for the Property’s parcel number, dated September 9, 2012.

INTERROGATORY NO. 22:

State the gross revenue YOU have received as a result of YOUR acquisition and use of the Property.

ANSWER TO INTERROGATORY NO. 22:

Objection, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information

INTERROGATORY NO. 23:

State the net income YOU have received as a result of YOUR acquisition and use of the Property.

ANSWER TO INTERROGATORY NO. 23:

Objection, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information

INTERROGATORY NO. 24:

Review each of YOUR responses to the Requests for Admission propounded upon YOU concurrently with these Interrogatories. For each response to the Requests for Admission that is not an unqualified admission, state:

1. The number of the request;
2. All facts upon which you based your response and/or denial.
3. Identify each person with personal knowledge of the facts upon which you based your response;
4. Identify each document or writing that supports your response.

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ANSWER TO INTERROGATORY NO. 24:

Objection, this interrogatory is overly broad and unduly burdensome in that it is not limited in scope. This interrogatory is also compound. Subject to and without waiving said objections, *see* Responses to Requests for Admission.

DATED this 18th day of January, 2017.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

VERIFICATION

I, Christopher Hardin, hereby declare that I have read the foregoing Answers to Interrogatories, and further declare that the responses contained therein are true and correct.

I hereby declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of January, 2017.

/s/ Christopher Hardin
Christopher Hardin, on behalf of
SFR Investments Pool 1, LLC

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
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(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC’S OBJECTIONS AND ANSWERS TO PLAINTIFF, U.S. BANK NATIONAL ASSOCIATION’S INTERROGATORIES TO DEFENDANT, SFR INVESTMENTS POOL 1, LLC**, to the following parties:

Wright, Finlay & Zak, LLP		
	Contact	Email
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	Sara Aslinger	saslinger@wrightlegal.net
	Shadd Wade	swade@wrightlegal.net

/s/ Diana Cline Ebron
an employee of KIM GILBERT EBRON

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOE
INDIVIDUALS I through X, inclusive; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-16-739867-C
Dept. No.: XXXI

**SFR INVESTMENTS POOL 1, LLC'S
OBJECTIONS AND RESPONSES TO
PLAINTIFF, U.S. BANK NATIONAL
ASSOCIATION'S REQUESTS FOR
ADMISSIONS TO DEFENDANT, SFR
INVESTMENTS POOL 1, LLC**

SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its counsel, the law firm of Kim Gilbert Ebron, hereby responds to U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8's (the "Bank") first set of requests for admission as follows:

PRELIMINARY STATEMENT

These responses are based solely on information presently known to SFR. Further discovery may lead to additions to, changes in, or modifications of these responses. Accordingly, these responses are being given without prejudice to SFR's right to produce subsequent discovery evidence and to introduce the same at trial.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that the Deed of Trust was recorded before that certain Notice of Delinquent Assessment Lien, as stated under "HOA Notices" in the Definitions section.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Objection, the documents speak for themselves. Subject to and without waiving said objection, to the extent that these documents can be authenticated, SFR responds: Admit.

REQUEST FOR ADMISSION NO. 2:

Admit that YOU are a purchaser at HOA Sales whereby YOU routinely purchase properties at non-judicial foreclosure sales conducted by homeowner's associations.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Objection, this request is vague and ambiguous as to the term "routinely" making a response impossible without speculation. Further, this information is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: SFR admits it purchases properties at non-judicial foreclosure sales conducted by homeowner's associations.

REQUEST FOR ADMISSION NO. 3:

Admit that YOU had knowledge prior to the HOA Sale that YOU would obtain uninsurable title to the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Objection, this request is vague as to the terms "knowledge" and "uninsurable title" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 4:

Admit that HOA Trustee provided YOU with information on the Property prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Objection, this request is vague and ambiguous as to the term "information" making a

1 response impossible without speculation. Subject to and without waiving said objection, SFR
2 responds: Deny.

3 **REQUEST FOR ADMISSION NO. 5:**

4 Admit that HOA provided YOU with information concerning the Property prior to the
5 HOA Sale.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

7 Objection, this request is vague and ambiguous as to the term “information” making a
8 response impossible without speculation. Subject to and without waiving said objection, SFR
9 responds: Deny.

10 **REQUEST FOR ADMISSION NO. 6:**

11 Admit that as a purchaser at HOA Sales, YOU routinely obtain information from title
12 companies regarding properties in upcoming sales.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

14 Objection, this request is vague and ambiguous as to the terms “routinely” and
15 “information” making a response impossible without speculation. Subject to and without waiving
16 said objection, SFR responds: Deny.

17 **REQUEST FOR ADMISSION NO. 7:**

18 Admit that as a purchaser at HOA Sales, YOU routinely obtain information from realtors
19 regarding properties in upcoming sales.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

21 Objection, this request is vague and ambiguous as to the terms “routinely” and
22 “information” making a response impossible without speculation. Subject to and without waiving
23 said objection, SFR responds: Deny.

24 **REQUEST FOR ADMISSION NO. 8:**

25 Admit that as a purchaser at HOA Sales, YOU routinely obtain information from HOA
26 foreclosure agents regarding upcoming sales.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

28 Objection, this request is vague and ambiguous as to the terms “routinely” and

1 “information” making a response impossible without speculation. Subject to and without waiving
2 said objection, SFR responds: Deny and clarify that SFR does sometimes obtain lists of properties
3 scheduled for auction on a particular date from HOA foreclosure agents or collection agents.

4 **REQUEST FOR ADMISSION NO. 9:**

5 Admit that when you obtained the Property at the HOA Sale YOU understood that the
6 Property was being sold subject to the First Deed of Trust.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

8 Deny.

9 **REQUEST FOR ADMISSION NO. 10:**

10 Admit that the HOA Sale was not based on a super-priority lien.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

12 Objection, this request is vague and ambiguous as to the term “super-priority lien” making
13 a response impossible without speculation. Subject to and without waiving said objections, SFR
14 responds: Deny.

15 **REQUEST FOR ADMISSION NO. 11:**

16 Admit that you obtained a title report for the Property before the HOA Sale.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

18 Deny.

19 **REQUEST FOR ADMISSION NO. 12:**

20 Admit that you contacted a title insurance company prior to the HOA Sale regarding
21 marketable title.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

23 Objection, this request is vague and ambiguous as to the term “marketable title” making a
24 response impossible without speculation. Further, this information is not relevant to the subject
25 matter involved in the pending action and is not reasonably calculated to lead to the discovery of
26 admissible evidence. Subject to and without waiving said objections, SFR responds: Deny.

27 **REQUEST FOR ADMISSION NO. 13:**

28 Admit that prior to January 2013, the business model for YOUR company was to treat

properties obtained at non-judicial foreclosure sales conducted by homeowner's associations as being sold subject to a first deed of trust.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Deny.

REQUEST FOR ADMISSION NO. 14:

Admit that you were the only bidder to bid on the Property at the Auction.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Objection, this request is overbroad and unduly burdensome in that it requests information outside of SFR's possession or control. Subject to and without waiving said objection, SFR responds: Deny and clarify that SFR cannot specifically recall who or how many other bidders were present at the HOA Foreclosure Sale, nor can SFR recall the bid amounts; however, SFR has never attended a sale where there was only one bidder in attendance.

REQUEST FOR ADMISSION NO. 15:

Admit that you had an arrangement with other prospective bidders at the HOA Sale that they would not bid on the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Objection, this request is vague and ambiguous as to the term "arrangement" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 16:

Admit that you had an arrangement with other prospective bidders at the HOA Sale that they would not bid on the Property in an effort to minimize the winning bid amount.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Objection, this request is vague and ambiguous as to the term "arrangement" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 17:

Admit that at the time of the HOA Sale the auctioneer did not indicate the Association was

1 foreclosing on the “super-priority” portion of its purported lien.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

3 Objection, this request is vague and ambiguous as to the term “indicate” making a response
4 impossible without speculation. SFR further objects to the term “purported lien” as it implies the
5 Association may not have had a valid lien, which it did. Subject to and without waiving said
6 objections, SFR responds: Deny.

7 **REQUEST FOR ADMISSION NO. 18:**

8 Admit that at the time YOU purchased YOUR interest in the Property, YOU had
9 knowledge that YOU would receive a deed to the Property made without warranty, express or
10 implied, regarding title, possession, or encumbrances.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

12 Objection, this request is vague and ambiguous as to the terms “your interest in the
13 property”, “knowledge”, “without warranty” and “regarding” making a response impossible
14 without speculation. Subject to and without waiving said objections, SFR responds: Deny.

15 **REQUEST FOR ADMISSION NO. 19:**

16 Admit that you have no personal knowledge regarding whether the HOA Trustee and/or
17 Association served all lienholders with a copy of the Notice of Default.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

19 Objection, this request is overbroad and unduly burdensome in that it requests information
20 outside of SFR’s possession or control. Additionally, this request is vague and ambiguous as to
21 the term “served” making a response impossible without speculation. Subject to and without
22 waiving said objection, SFR responds: SFR admits it has no personal knowledge regarding which
23 persons and/or entities were sent a copy of the Notice of Default. That being said, pursuant to the
24 recitals in the recorded Trustee’s Deed Upon Sale, all requirements of law regarding the mailing
25 of copies of notices and the posting and publication of the copies of the Notice of Sale have been
26 complied with.

27 **REQUEST FOR ADMISSION NO. 20:**

28 Admit that you have no personal knowledge regarding whether the HOA Trustee and/or

1 Association served all lienholders with a copy of the Notice of Trustee's Sale.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

3 Objection, this request is overbroad and unduly burdensome in that it requests information
4 outside of SFR's possession or control. Additionally, this request is vague and ambiguous as to
5 the term "served" making a response impossible without speculation. Subject to and without
6 waiving said objection, SFR responds: SFR admits it has no personal knowledge regarding which
7 persons and/or entities were sent a copy of the Notice of Trustee's Sale. That being said, pursuant
8 to the recitals in the recorded Trustee's Deed Upon Sale, all requirements of law regarding the
9 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale
10 have been complied with.

11 **REQUEST FOR ADMISSION NO. 21:**

12 Admit that you have no personal knowledge regarding whether the HOA Trustee and/or
13 Association served all lienholders with a copy of the Notice of Delinquent Lien.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

15 Objection, this request is overbroad and unduly burdensome in that it requests information
16 outside of SFR's possession or control. Additionally, this request is vague and ambiguous as to
17 the term "served" making a response impossible without speculation. Subject to and without
18 waiving said objection, SFR responds: SFR admits it has no personal knowledge regarding which
19 persons and/or entities were sent a copy of the Notice of Delinquent Lien. That being said,
20 pursuant to the recitals in the recorded Trustee's Deed Upon Sale, all requirements of law
21 regarding the mailing of copies of notices and the posting and publication of the copies of the
22 Notice of Sale have been complied with.

23 **REQUEST FOR ADMISSION NO. 22:**

24 Admit that the purchase price for the Property was less than 20% of the fair market value
25 at the time.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

27 Objection, this request is vague and ambiguous as to the meaning of the term "fair market
28 value" making a response impossible without speculation. Additionally, the term "fair market

value” requires expert analysis and opinion. Moreover, this information is not relevant to the subject matter in the pending action nor is it reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 23:

Admit YOU have no evidence that Plaintiff had actual notice prior to the HOA Sale that the HOA was asserting a lien against the Property for unpaid HOA assessments, dues and/or fines.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Objection, this request is argumentative in that it assumes a legal obligation (i.e. actual notice) that does not exist. Further, this request seeks an admission as to information not in SFR’s possession and control. Moreover, this Request is premature to the extent that it seeks information that relates to discovery not yet completed. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 24:

Admit YOU have no evidence that Plaintiff was not notified, prior to the HOA Sale, that the HOA recorded a Notice of Default and Election to Sell Under Homeowners Association Lien against the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Objection, this request seeks an admission as to information not in SFR’s possession and control. Additionally, this request is vague and ambiguous as to the term “notified” making a response impossible without speculation. Moreover, this Request is premature to the extent that it seeks information that relates to discovery not yet completed. Subject to and without waiving said objection, SFR responds: Admit and clarify, SFR has evidence that Plaintiff was notified, prior to the HOA Sale, that the HOA recorded a Notice of Default and Election to Sell Under Homeowners Association Lien against the Property.

REQUEST FOR ADMISSION NO. 25:

Admit YOU have no evidence that Plaintiff had actual notice prior to the HOA Sale that the HOA recorded a Notice of Trustee’s Sale against the Property.

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RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Objection, this request is argumentative in that it assumes a legal obligation (i.e. actual notice) that does not exist. Also, this request seeks an admission as to information not in SFR's possession and control. Moreover, this Request is premature to the extent that it seeks information that relates to discovery not yet completed. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 26:

Admit YOU had knowledge, at the time of the HOA Sale, of HOA Trustee's policy and practices to refuse to provide other lienholders with payoffs.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Objection, this request is vague and ambiguous as to the term "knowledge" and phrase "refuse to provide other lienholders with payoffs" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 27:

Admit YOU had knowledge, at the time of the HOA Sale, of HOA Trustee's policy and practice to refuse to provide lienholders with the super-priority payoff.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Objection, this request is vague and ambiguous as to the term "knowledge" and the phrase "refuse to provide lienholders with the super-priority payoff" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 28:

Admit YOU had knowledge of any defects in the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Objection, this request is vague and ambiguous as to the terms "knowledge" and "defects" making a response impossible without speculation. Additionally, this request calls for a legal conclusion. Subject to and without waiving said objection, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 29:

Admit that prior to the HOA Sale, YOU researched which properties would be available

1 for auction at the HOA Sale.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

3 Objection, this request is vague and ambiguous as to the term “researched” making a
4 response impossible without speculation. Subject to and without waiving said objection, SFR
5 responds: Generally, SFR is aware of the properties scheduled for auction the day before the
6 auction or on the day of the auction, and on that basis SFR admits.

7 **REQUEST FOR ADMISSION NO. 30:**

8 Admit YOU reviewed, whether in person or online, the County Recorder’s index, or the
9 recorded documents on file with the Clark County Recorder’s Office concerning the Property
10 prior to you purported acquisition of the Property.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

12 Objection, this request is vague and ambiguous as to the terms “reviewed” and “your
13 purported acquisition” making a response impossible without speculation. SFR further objects to
14 the term “purported acquisition” as it implies that SFR did not acquire the Property by purchase
15 at auction, which it did. Subject to and without waiving said objections, SFR responds: To the
16 extent “reviewed” means looked at the Clark County Recorder’s website, while SFR does not
17 specifically recall having reviewed the publicly recorded documents related to the Property, SFR
18 admits this is typically something SFR does prior to bidding on a particular property.

19 **REQUEST FOR ADMISSION NO. 31:**

20 Admit that YOU had knowledge that the Property would be sold at auction prior to the
21 date of the HOA Sale.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

23 Objection, this request is vague and ambiguous as to the term “knowledge” making a
24 response impossible without speculation. Subject to and without waiving said objection, SFR
25 responds: Generally, SFR is aware of the properties scheduled for auction the day before the
26 auction or on the day of the auction, and on that basis SFR admits.

27 **REQUEST FOR ADMISSION NO. 32:**

28 Admit that prior to YOU purchasing the Property, YOU researched the fair market value

of the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Objection, this request is vague and ambiguous as to the meaning of the term “fair market value” making a response impossible without speculation. Additionally, the term “fair market value” requires expert analysis and opinion. Moreover, this information is not relevant to the subject matter in the pending action nor is it reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: Deny.

REQUEST FOR ADMISSION NO. 33:

Admit that prior to purchasing YOUR interest in the Property, YOU had knowledge a deed of trust had been recorded against the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Objection, this request is vague as to the phrase “YOUR interest in the Property” and the term “knowledge” making a response impossible without speculation. Moreover, this information is not relevant to the subject matter in the pending action nor is it reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: Although SFR does not specifically recall seeing that a deed of trust was recorded against the Property prior to its purchase, SFR typically checks the recorder’s website and admits that, if it did, it likely would have seen that a deed of trust had been recorded.

REQUEST FOR ADMISSION NO. 34:

Admit that YOU did not request information from the HOA or its agent concerning whether any lienholder had satisfied the super-priority portion of the HOA’s lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Objection, this request is vague and ambiguous as to the terms “request information” and “satisfied” making a response impossible without speculation. Additionally, this request is argumentative in that it assumes a duty where no such duty exists. Subject to and without waving said objection, SFR responds: After reviewing its file with due diligence, SFR does not recall requesting such information from the HOA or its agent prior to the HOA foreclosure sale but

generally speaking, SFR would review the Recorder's website to make sure no documents were recorded against the Property indicating that any portion of the HOA's lien had been paid.

REQUEST FOR ADMISSION NO. 35:

Admit that YOU have obtained revenue from rental or lease of the Property.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Objection, this request is vague and ambiguous as to the meaning of the term "revenue" making a response impossible without speculation. Further, this request is not relevant to the subject matter in this litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: Admit

REQUEST FOR ADMISSION NO. 36:

Admit that the Property is currently rented or leased to a third party.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Objection, this request is not relevant to the subject matter in this litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: Admit.

DATED this 18th day of January 2017.

KIM GILBERT EBRON

/s/ Diana Cline Ebron

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

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Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC’S OBJECTIONS AND RESPONSES TO PLAINTIFF, U.S. BANK NATIONAL ASSOCIATION’S REQUESTS FOR ADMISSIONS TO DEFENDANT, SFR INVESTMENTS POOL 1, LLC**, to the following parties:

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DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOE
INDIVIDUALS I through X, inclusive; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-16-739867-C
Dept. No.: XXXI

**SFR INVESTMENTS POOL 1, LLC'S
OBJECTIONS AND RESPONSES TO
PLAINITFF, U.S. BANK NATIONAL
ASSOCIATION'S REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANT, SFR INVESTMENTS
POOL 1, LLC**

SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its counsel, the law firm of Kim Gilbert Ebron, hereby responds to U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8's (the "Bank") first set of requests for production of documents as follows:

PRELIMINARY STATEMENT

These responses are based solely on information presently known to SFR. Further discovery may lead to additions to, changes in, or modifications of these responses. Accordingly, these responses are being given without prejudice to SFR's right to produce subsequent discovery evidence and to introduce the same at trial.

GENERAL OBJECTIONS

1
2 1. SFR objects to Bank's requests for production to the extent that they seek the
3 disclosure of information that is protected by the attorney-client privilege or work-product
4 exemption in accordance with Nevada Rule of Civil Procedure ("NRC") 26 and applicable case
5 law.

6 2. These responses will be made on the basis of information available to and located
7 by SFR upon reasonable investigation of its records. There may be other and further information
8 respecting the requests for production propounded by the Bank of which SFR, despite reasonable
9 investigation and inquiry, is presently unaware. SFR reserves the right to modify, supplement, or
10 enlarge any response with such pertinent additional information as it may subsequently discover.

11 3. No incidental or implied admissions will be made by the responses to these requests
12 for production. The fact that SFR may respond or object to a request for production, or any part
13 thereof, shall not be deemed an admission that SFR accepts or admits the existence of any fact set
14 forth or assumed by such request for production, or that such response constitutes admissible
15 evidence. The fact that SFR responds to part of any request for production is not deemed a waiver
16 by SFR of its objections, including privilege, to other parts of such request for production.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

19 Any and all Documents YOU sent to or received from U.S. Bank or its attorneys, agents,
20 trustees, or servicers regarding the Property, prior to and after the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

22 Objection, this request is overly broad and unduly burdensome in that it is not reasonably
23 limited in time or scope. To the extent this request seeks documents post-sale, it seeks documents
24 that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
25 Subject to and without waiving said objections, SFR responds: After a review of its file with due
26 diligence, SFR has no pre-sale documents responsive to this request.

27 >>>

28 >>>

REQUEST FOR PRODUCTION NO. 2:

Any and all Documents YOU sent to or received from the Borrowers or their attorneys, agents or trustees regarding the Property, after the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Objection, this request is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. To the extent this request seeks documents post-sale, those documents are not relevant nor reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: After a review of the file with due diligence, SFR has no pre-sale documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

Any and all Documents YOU sent to or received from HOA Trustee or its attorneys or agents regarding the Property, prior to and after the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Objection, this request is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. To the extent this request seeks documents post-sale, those documents are not relevant nor reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: After a review of the file with due diligence, SFR has no pre-sale documents in its possession responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

Any and all Documents YOU sent to or received from HOA or its attorneys, agents, or trustees regarding the Property, prior to and after the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Objection, this request is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. To the extent this request seeks documents post-sale, those documents are not relevant nor reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: After a review of the file with due diligence, SFR has no pre-sale documents responsive to this request.

>>>>

REQUEST FOR PRODUCTION NO. 5:

Any and all Trustee's Sale Guarantees or title insurance policies in YOUR possession for the above-referenced Property obtained prior to or after the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Objection, this request is overly broad and unduly burdensome in that it is not limited in time or scope. Further, this request seeks documents that are neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 6:

Produce the policy and procedures for YOUR company regarding the handling of properties purchased at a non-judicial foreclosure sale conducted by a homeowner's association.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Objection, this request is overly broad and unduly burdensome in that it is not limited in time or scope. Also, this request seeks documents that are neither relevant nor reasonably likely to lead to the discovery of admissible evidence. Additionally, this request seeks confidential and proprietary business information.

REQUEST FOR PRODUCTION NO. 7:

Produce the policy and procedures for YOUR company regarding purchasing properties at a non-judicial foreclosure sale conducted by a homeowner's association.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Objection, this request is overly broad and unduly burdensome in that it is not limited in time or scope. Also, this request seeks documents that are neither relevant nor reasonably likely to lead to the discovery of admissible evidence. Additionally, this request seeks confidential and proprietary business information.

REQUEST FOR PRODUCTION NO. 8:

Any and all Documents which support your contention that the HOA Sale was void.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Objection, this request is overly broad and unduly burdensome in that it requests documents outside of SFR's possession or control. Additionally, the phrase "any and all

documents” is not reasonably limited in scope. Subject to and without waiving said objections, SFR responds: *See* SFR’s initial disclosures and any supplements thereto, specifically *see* [SFR75] [SFR78-79], [SFR83] and [SFR85-87]. *See also* disclosures made by any other person/entity in this case. SFR reserves the right to supplement this response as discovery continues.

REQUEST FOR PRODUCTION NO. 9:

Any and all Documents which support YOUR contention that HOA or its agents, assigns or trustees complied with all statutory notice requirements in conducting the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Objection, this request is overly broad and unduly burdensome in that it requests documents outside of SFR’s possession or control. Additionally, the phrase “all documents” is not reasonably limited in scope. Subject to and without waiving said objections, SFR responds: *See* SFR’s initial disclosures and any supplements thereto, specifically *see* specifically *see* [SFR75] [SFR78-79], [SFR83] and [SFR85-87]. *See also* disclosures made by any other person/entity in this case. SFR reserves the right to supplement this response as discovery continues.

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents reflecting, relating to, or concerning the HOA lien against the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Objection, this request is overly broad and unduly burdensome in that it seeks documents outside of SFR’s possession or control and it is not reasonably limited in time or scope. Subject to and without waiving said objections, SFR responds: *See* SFR’s initial disclosures and any supplements thereto, specifically *see* [SFR75] [SFR78-79], [SFR83] and [SFR85-87]. *See also* disclosures made by any other person/entity in this case. SFR reserves the right to supplement this response as discovery continues.

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REQUEST FOR PRODUCTION NO. 11:

Produce all Documents regarding any rent or other income received by YOU related to the Property, including any and all lease agreements regarding the Property that YOU have entered into with any prospective, current, or former tenant or other inhabitant of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Objection, this request seeks documents that are not relevant to the subject matter involved in the pending action and are not reasonably calculated to lead to the discovery of admissible evidence. Further, this request seeks confidential and proprietary business information.

REQUEST FOR PRODUCTION NO. 12:

Produce YOUR entire file regarding or related to the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Objection, this request is overly broad and unduly burdensome in that it is not limited in time or scope. Also, to the extent this request seeks documents post-sale, those documents are not relevant to the subject matter involved in the pending action and are not reasonably calculated to lead to the discovery of admissible evidence. Additionally, this request also seeks confidential and proprietary business information. Subject to and without waiving said objections, SFR answers: *See* SFR's initial and supplemental disclosures (if any).

REQUEST FOR PRODUCTION NO. 13:

Provide all documents YOU reviewed, prior to the HOA Sale, from HOA Trustee, HOA or any third-party relating to the HOA Sale of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Objection, this request is overly broad and unduly burdensome as the phrases "all documents" and "any third-party" are not reasonably limited in scope. Additionally, this request is vague and ambiguous as to the term "reviewed" making a response impossible without speculation. Subject to and without waiving said objection, SFR responds: After a review of the file with due diligence, while, generally speaking, SFR would typically review the Recorder's website prior to the HOA foreclosure sale, SFR has documents in its possession that are responsive to this request.

REQUEST FOR PRODUCTION NO. 14:

Produce all Documents in YOUR possession demonstrating that any lien holder(s) of record was/were aware, or should have been aware, of the Auction of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Objection, this request is overly broad and unduly burdensome in that it seeks documents outside of SFR's possession or control. Additionally, the phrase "all documents" is not reasonably limited in scope. Additionally, this request is vague and ambiguous as to the terms "aware" and "should have been aware" making a response impossible without speculation. Subject to and without waiving said objections, SFR responds: *See* SFR's initial disclosures and any supplements thereto, specifically *see* [SFR75] [SFR78-79], [SFR83] and [SFR85-87]. *See also* disclosures made by any other person/entity in this case. SFR reserves the right to supplement this response as discovery continues.

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents in YOUR possession demonstrating amounts YOU have spent to maintain, repair or improve the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Objection, this request is overbroad and unduly burdensome in that it is not reasonably limited in time or scope. Additionally, this request seeks documents that are neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 16:

Produce all Documents in YOUR possession demonstrating amounts YOU have paid for all taxes on the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Objection, this request is vague and ambiguous as to the term "taxes" making a response impossible without speculation. Additionally, this request is overbroad and unduly burdensome in that it is not reasonably limited in time or scope. This request is also not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 17:

Provide a copy of any agreement(s) or contract(s) between YOU and the HOA Trustee concerning the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Objection, this request is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. Additionally, this request is vague and ambiguous as to the terms “agreement(s)” and “contract(s)” making a response impossible without speculation. Also, to the extent this request seeks documents post-sale, it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: After a review of the file with due diligence, SFR has no pre-sale documents responsive to this request.

REQUEST FOR PRODUCTION NO. 18:

Provide a copy of any agreement(s) or contract(s) between YOU and the HOA concerning the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Objection, this request is overly broad and unduly burdensome in that it is not reasonably limited in time or scope. Additionally, this request is vague and ambiguous as to the terms “agreement(s)” and “contract(s)” making a response impossible without speculation. Also, to the extent this request seeks documents post-sale, it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds: After a review of the file with due diligence, SFR has no pre-sale documents responsive to this request.

REQUEST FOR PRODUCTION NO. 19:

Provide a copy of the corporate documents or agreement(s), and/or entity formation Documents for YOUR company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Objection, this request is vague and ambiguous as to the terms “corporate documents” and “agreement(s)” making a response impossible without speculation. Additionally, this request is

1 overly broad and unduly burdensome in that it is not reasonably limited in time or scope. Also,
2 this request seeks documents that are neither relevant nor reasonably calculated to lead to the
3 discovery of admissible evidence.

4 **REQUEST FOR PRODUCTION NO. 20:**

5 Provide a copy of any written instructions given to YOU at the HOA Sale.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

7 Objection, this request is vague and ambiguous as to the term “instructions” making a
8 response impossible without speculation. Subject to and without waiving said objection, SFR
9 responds: After reviewing its file with due diligence, SFR does not have any documents in its
10 possession responsive to this request.

11 **REQUEST FOR PRODUCTION NO. 21:**

12 Provide all Documents related to policies of hazard insurance on the Property, including
13 proof of payment by YOU of all premiums and any claims made upon the Policies.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

15 Objection, this request is overly broad and unduly burdensome in that it is not limited in
16 time or scope. Further, this request seeks documents that are neither relevant nor reasonably likely
17 to lead to the discovery of admissible evidence.

18 **REQUEST FOR PRODUCTION NO. 22:**

19 Produce any and all valuations, broker’s price opinions (BPOs) and appraisals of the
20 Property, created before or after YOU purchased the Property.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

22 Objection, this request is vague and ambiguous as to the term “valuations” making a
23 response impossible without speculation. Additionally, this request is overly broad and unduly
24 burdensome in that it is not reasonably limited in time or scope. Further, this request seeks
25 documents that are not relevant to the subject matter involved in the pending action and are not
26 reasonably calculated to lead to the discovery of admissible evidence.

27 >>>

28 >>>

REQUEST FOR PRODUCTION NO. 23:

Produce all Documents regarding any funds or resources YOU have expended in regard to the Property, including but not limited to, purchase of the property, maintenance, improvement, taxes and insurance.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Objection, this request is overbroad and unduly burdensome in that it is not reasonably limited in time or scope. Additionally, this request is vague and ambiguous as to the terms “resources”, “taxes” and “insurance” making a response impossible without speculation. Further, this request seeks documents that are neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 24:

Produce all Documents that identify what YOU believed to be the fair market value of the Property at the time of YOUR purchase of the Property, including the reasons for YOUR belief.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Objection, this request is vague and ambiguous as to the terms “believed”, “fair market value” and “belief” making a response impossible without speculation. Additionally, the term “fair market value” requires expert analysis and opinion. Further, this information is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, SFR responds. *See* [SFR86-87].

REQUEST FOR PRODUCTION NO. 25:

Produce all documents YOU received from the HOA or HOA Trustee whether sent to YOU by them or downloaded or accessed by YOU from their websites or online databases, including without limitation, notices and spreadsheets, of all properties that were scheduled for auction for the same location, date and time as the Property.

>>>>

>>>>

>>>>

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Objection, this request is overly broad and unduly burdensome in that the phrase “all documents” is not reasonably limited in scope. Subject to and without waiving said objections, SFR responds: After reviewing its file with due diligence, SFR does not have any documents in its possession responsive to this request.

DATED this 18th day of January, 2017.

KIM GILBERT EBRON

/s/ Diana Cline Ebron

Diana Cline Ebron, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

Karen L. Hanks, Esq.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC’S OBJECTIONS AND RESPONSES TO PLAINTIFF, U.S. BANK NATIONAL ASSOCIATION’S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, SFR INVESTMENTS POOL 1, LLC**, to the following parties:

Wright, Finlay & Zak, LLP		
	Contact	Email
	NVEfile	nvefile@wrightlegal.net
	Sara Aslinger	saslinger@wrightlegal.net
	Shadd Wade	swade@wrightlegal.net

/s/ Diana Cline Ebron
an employee of KIM GILBERT EBRON



foreclosure.finance@bankofamerica.com

10/20/2010 03:36 PM

To Foreclosure Finance
<foreclosure.finance@bankofamerica.com>

cc "Lovesmith, Nicholas"
<nicholas.lovesmith@bankofamerica.com>

bcc

Subject FW: URGENT WIRE REQUEST: Status Update re:
10-H1715 (1st) De Vera

For Follow Up: Normal Priority
10-21

Approved.

Respectfully,

Debbie Heimbuch
Operations Team Lead, Risk Management
BAC Home Loans Servicing, LP
Foreclosure, Bankruptcy, & Risk Management ("FBRM")
Non-Default Litigation Mgmt Group

805-955-3083 Office
92-595-3083 Internal
888-673-7309 Fax
1757 Tapo Canyon Street
Mail Stop: CA6-913-02-29
Simi Valley, CA 93063
deborah.heimbuch@bankofamerica.com

From: Lovesmith, Nicholas
Sent: Wednesday, October 20, 2010 1:50 PM
To: Heimbuch, Deborah
Cc: Jeremy Bergstrom; Alexander Bhame; Rock Jung
Subject: URGENT WIRE REQUEST: Status Update re: 10-H1715 (1st) De Vera

Deborah, Please approve wire request. Thank you.

Account: 101673818 Mortgagor: MADELINE DE VERA

Submitted wire request to Jeremy Bergstrom in the amount of \$1080.00 to be sent to:
Miles, Bauer, Bergstrom & Winters LLP ATTORNEYS AT LAW to pay for HOA delinquencies
in a super lien state.

Respectfully ,

BONY00137

Nicholas A Lovesmith

BAC Home Loans Servicing, LP
Foreclosure, Bankruptcy, & Risk Management ("FBRM")
Non-Default HOA Superlien Group - Litigations Specialist

805-577-8244 Office 400 National Way
92-598-8244 Internal Simi Valley, CA 93065

Mail Stop: CA6-919-01-27
Nicholas.Lovesmith@BankOfAmerica

For questions on all loans not assigned to myself regarding Non-Default HOA Superlien issues please forward to my Team Leader, Janae Pettelle, for assistance

"Stand by your failures to recognize your success"

From: Rock Jung [mailto:rjung@mileslegal.com]
Sent: Wednesday, October 20, 2010 12:25 PM
To: Lovesmith, Nicholas
Subject: Status Update re: 10-H1715 (1st) De Vera

loan# 101673818

Hello,

Please allow this correspondence to serve as an update on this HOA matter. We have been in contact with the HOA several times and to date, we have determined that there is no currently scheduled sale date. We have also obtained the payoff demand/breakdown and it is attached. I believe that BAC has the first deed of trust lien on this property and this analysis is based on that assumption. If that is incorrect, please let me know.

Since BAC only wishes to protect its first lien, the HOA lien super-priority extends only to the nine months of common assessments owed before the HOA moved to enforce its lien. Here, the assessments are \$ 120.00 monthly. As such, it is our position that the super-priority amount is \$1,080.00. If you'd like to wire my office that sum, we'll tender that to the HOA in exchange for a waiver and release of any HOA lien super-priority. Please let me know how you'd like to proceed here.

Rock K. Jung, Esq.
Associate Attorney-Nevada Office
Phone (702) 369-5960, ext. 412
MILES, BAUER, BERGSTROM & WINTERS, LLP

BONY00138

SFR418 JA01884

ATTORNEYS AT LAW

2200 Paseo Verde Parkway, Suite 250 Henderson, NV 89052

<mailto:rjung@mileslegal.com> <http://www.mileslegal.com>

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From: Rock Jung

Sent: Monday, October 04, 2010 11:38 AM

To: 'Lovesmith, Nicholas'

Cc: 'Pettelle, Janae E'

Subject: Status Update re: 10-H1715 (1st) De Vera
loan# 101673818

Hello,

Please allow this e-mail to serve as an update on this HOA issue. We've been in communication with the HOA several times and to date, we've determined that there is no currently scheduled sale date. We've also been unable to obtain a payoff demand/breakdown to date, but we expect to get that soon. I believe that BAC has the first deed of trust lien on this property and this analysis is based on that assumption. If that is incorrect, please let me know. We'll update you again shortly as new information is ascertained.

Rock K. Jung, Esq.

Associate Attorney-Nevada Office

Phone (702) 369-5960, ext. 412

MILES, BAUER, BERGSTROM & WINTERS, LLP

ATTORNEYS AT LAW

2200 Paseo Verde Parkway, Suite 250 Henderson, NV 89052

<mailto:rjung@mileslegal.com> <http://www.mileslegal.com>

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BONY00139

SFR419 JA01885

From: Rock Jung
Sent: Monday, September 13, 2010 9:22 AM
To: 'Lovesmith, Nicholas'
Cc: 'Pettelle, Janae E'
Subject: Initial letters re: 10-H1715 De Vera
loan# 101673818

Hello,

Attached is a letter we are sending to the borrower and a letter we are sending to the HOA. We will follow up with the HOA by phone in a few days if we don't get a response to this letter.

I'll let you know as soon as we speak to the HOA and we'll readdress the situation at that time.

Rock K. Jung, Esq.

Associate Attorney-Nevada Office

Phone (702) 369-5960, ext. 412

MILES, BAUER, BERGSTROM & WINTERS, LLP

ATTORNEYS AT LAW

2200 Paseo Verde Parkway, Suite 250 Henderson, NV 89052

mailto:rjung@mileslegal.com http://www.mileslegal.com

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. The information herein is confidential, privileged and exempt from disclosure under applicable law. This E-mail (including attachments) are intended solely for the use of the addressee hereof. If you are not the intended recipient of this message, you are prohibited from reading, disclosing, reproducing, distributing, disseminating, or otherwise using this transmission. The originator of this e-mail and its affiliates do not represent, warrant or guarantee that the integrity of this communication has been maintained or that this communication is free of errors, viruses or other defects. Delivery of this message or any portions herein to any person other than the intended recipient is not intended to waive any right or privilege. If you have received this message in error, please promptly notify the sender by e-mail and immediately delete this message from your system.

From: Lovesmith, Nicholas [mailto:nicholas.lovesmith@bankofamerica.com]
Sent: Wednesday, September 08, 2010 1:01 PM
To: Jeremy Bergstrom
Cc: Alexander Bham
Subject: FW: Outside Referral

Respectfully ,

Nicholas A Lovesmith

BAC Home Loans Servicing, LP

Foreclosure, Bankruptcy, & Risk Management ("FBRM")

BONY00140

SFR420 JA01886

Non-Default HOA Superlien Group - Litigations Specialist

805-577-8244 Office 400 National Way
92-598-8244 Internal Simi Valley, CA 93065

Mail Stop: CA6-919-01-27
Nicholas.Lovesmith@BankOfAmerica

For questions on all loans not assigned to myself regarding Non-Default HOA Superlien issues please forward to my Team Leader, Janae Pettelle, for assistance

"Stand by your failures to recognize your success"

From: Lovesmith, Nicholas
Sent: Wednesday, September 08, 2010 1:00 PM
To: 'Jeremy Bergstrom'
Cc: 'Alexander Bhame'
Subject: Ouside Referral

So I attached the ledgers of the ones we need to start ASAP! This is very startling & I just hope nothings gone to sale. Keeping my fingers crossed LOL

Liaison Loan Detail Report

Account	Case Create Date	Case Name	Property Address	Second Lien	Assignee	S
101673818	12/18/2009	MADELINE DE VERA	6041 Shining Light Avenue Las Vegas	No Second	Nicholas Lovesmith	N

BONY00141

SFR421 JA01887

Respectfully ,

Nicholas A Lovesmith

BAC Home Loans Servicing, LP
Foreclosure, Bankruptcy, & Risk Management ("FBRM")
Non-Default HOA Superlien Group - Litigations Specialist

805-577-8244 Office 400 National Way
92-598-8244 Internal Simi Valley, CA 93065

Mail Stop: CA6-919-01-27
Nicholas.Lovesmith@BankOfAmerica

***For questions on all loans not assigned to myself regarding Non-Default HOA Superlien issues
please forward to my Team Leader, Janae Pettelle, for assistance***

"Stand by your failures to recognize your success"



6041 Shining Light Ave..pdf WIRE Form - MILES BAUER - NEVADA1.doc

BONY00142

SFR422 JA01888

Homeowners Association (HOA) Matters - Pre-Foreclosure

This procedure applies to
LAS - Mortgage Resolution Team

--	--

Publication Date: February 20, 2012

Effective Date: February 29, 2012

- [Overview](#)
- [Process Super Lien HOA Matters](#)
- [Process Non-Super Lien HOA Matters](#)
- [Process HOA Lien Matters \(no priority\)](#)
- [Related Procedure/Desktop Procedure](#)

Overview

The Homeowner Association (HOA) Matters - Pre-Foreclosure procedure describes how to handle the three types of HOA matters for Bank of America (BANA).

Note: Recon Trust handles Non-Converted Co-Op matters.
Escalate any Co-Op matters to your Team Manager.

Process Super Lien HOA Matters

Follow the steps below to process super lien Homeowner Association (HOA) matters.

Note: Various states have enacted super lien laws, which grant lien priority to Homeowner Association (HOA)/Condominium Owners Association (COA) liens for non-payment of special assessments and fees.

Step	Action
1	Log on to Case Management System (CMS) as follows: <ul style="list-style-type: none">• Enter the Standard ID in the Network ID field• Enter the standard password in the Network Password field

	<ul style="list-style-type: none"> • Select CORP from the Domain dropdown list • Click the Login button 						
2	Review the matter in accordance with the <u>New Case Referral</u> procedure.						
3	<p>Refer super lien HOA matters to an attorney for an Answer to be filed, and Bank of America National Accounts (BANA)'s priority payment amount can be confirmed.</p> <p>Note: Utilize the access restricted <u>MRT - Attorney Selection Tool</u>.</p>						
4	<p>Confer with assigned outside counsel regarding strategy of file and verify the HOA assessment and/or costs.</p> <p>Note: Usually obtained from the HOA ledger.</p>						
5	<p>Wire the appropriate priority payment to outside counsel after verifying the amount.</p> <p>Notes:</p> <ul style="list-style-type: none"> • BANA's assigned counsel is responsible for forwarding the payment to the HOA counsel. • If the priority payment amount is more than 10% of the property's unpaid principal balance, it is necessary to get Management approval to pay. 						
6	Consult with assigned counsel to determine if the state's foreclosure process requires payment of the entire HOA lien amount to protect BANA's interests.						
7	<p>Determine if the HOA reject the priority payment.</p> <table border="1"> <thead> <tr> <th>If...</th><th>Then...</th></tr> </thead> <tbody> <tr> <td>No</td><td>Close the file once counsel has provided Dismissal, Lien Release, or has indicated that the case can be closed.</td></tr> <tr> <td>Yes</td><td> <ul style="list-style-type: none"> • Fill out the Nevada Bulk Loan spreadsheet and send to the assigned Nevada Bulk Loan Specialist. <p>Note: Refer to the Team Manager for information regarding the assigned individual or obtaining the spreadsheet.</p> <ul style="list-style-type: none"> • Ask the assigned counselor to provide a final invoice. • Close out current CMS file in accordance with the <u>Closing Cases - Single Loan</u> procedure. </td></tr> </tbody> </table>	If...	Then...	No	Close the file once counsel has provided Dismissal, Lien Release, or has indicated that the case can be closed.	Yes	<ul style="list-style-type: none"> • Fill out the Nevada Bulk Loan spreadsheet and send to the assigned Nevada Bulk Loan Specialist. <p>Note: Refer to the Team Manager for information regarding the assigned individual or obtaining the spreadsheet.</p> <ul style="list-style-type: none"> • Ask the assigned counselor to provide a final invoice. • Close out current CMS file in accordance with the <u>Closing Cases - Single Loan</u> procedure.
If...	Then...						
No	Close the file once counsel has provided Dismissal, Lien Release, or has indicated that the case can be closed.						
Yes	<ul style="list-style-type: none"> • Fill out the Nevada Bulk Loan spreadsheet and send to the assigned Nevada Bulk Loan Specialist. <p>Note: Refer to the Team Manager for information regarding the assigned individual or obtaining the spreadsheet.</p> <ul style="list-style-type: none"> • Ask the assigned counselor to provide a final invoice. • Close out current CMS file in accordance with the <u>Closing Cases - Single Loan</u> procedure. 						

Process Non-Super Lien HOA Matters Follow the steps below to process super lien HOA matters.

Note: Some states have enacted super lien laws, which grant lien priority to HOA/COA over HELOC liens (first liens are secured) for non-payment of special assessments and fees.

Step	Action						
1	<p>Log on to <u>Case Management System (CMS)</u> as follows:</p> <ul style="list-style-type: none">• Enter the Standard ID in the Network ID field• Enter the standard password in the Network Password field• Select CORP from the Domain dropdown list• Click the Login button						
2	<p>Review the matter in accordance with the <u>New Case Referral</u> procedure.</p> <p>Note: Utilize the <u>MRT - Attorney Selection Tool</u>.</p>						
3	<p>Verify counsel prepared and filed an answer to a Summons and Complaint.</p> <table><tr><th>If the Summons and Complaint is prepared and filed...</th><th>Then...</th></tr><tr><td>Yes</td><td><p>Refer to the note below.</p><p>Note: After responding to the Complaint, there is no need to keep a file open, and it is not necessary to monitor the matter through to sale. If you have any questions, consult with your manager.</p></td></tr><tr><td>No</td><td>Proceed to the next step</td></tr></table>	If the Summons and Complaint is prepared and filed...	Then...	Yes	<p>Refer to the note below.</p> <p>Note: After responding to the Complaint, there is no need to keep a file open, and it is not necessary to monitor the matter through to sale. If you have any questions, consult with your manager.</p>	No	Proceed to the next step
If the Summons and Complaint is prepared and filed...	Then...						
Yes	<p>Refer to the note below.</p> <p>Note: After responding to the Complaint, there is no need to keep a file open, and it is not necessary to monitor the matter through to sale. If you have any questions, consult with your manager.</p>						
No	Proceed to the next step						
4	<p>Determine if the equity analysis is a Walk.</p> <table><tr><th>If...</th><th>And...</th><th>Then...</th></tr><tr><td>Yes</td><td>A complaint has been filed</td><td><ul style="list-style-type: none">• Counsel files an Answer• Close the case in CMS</td></tr></table>	If...	And...	Then...	Yes	A complaint has been filed	<ul style="list-style-type: none">• Counsel files an Answer• Close the case in CMS
If...	And...	Then...					
Yes	A complaint has been filed	<ul style="list-style-type: none">• Counsel files an Answer• Close the case in CMS					

		A complaint has not been filed	Close the case in CMS
	No	A complaint has been filed	<ul style="list-style-type: none"> • Counsel files an Answer • Take steps to get BANA dismissed from the HOA's action
		A complaint has not been filed	Refer to counsel to determine the next step.

Process HOA Lien Matters (no priority) Follow the steps below to process Non-Superlien HOA matters.

Notes:

- Some states have enacted laws, which grant no lien priority to HOA/COA over mortgages.
- If the HOA asserts lien priority over the mortgage lien, it should be treated as a foreclosure by subordinate/junior lien.

Step	Action
1	<p>Log on to <u>Case Management System (CMS)</u> as follows:</p> <ul style="list-style-type: none"> • Enter the Standard ID in the Network ID field • Enter the standard password in the Network Password field • Select CORP from the Domain dropdown list • Click the Login button
2	<p>Review the matter in accordance with the <u>New Case Referral</u> procedure.</p> <p>Note: Utilize the access restricted <u>MRT - Attorney Selection Tool</u></p>
3	<p>Confirm with the assigned counsel the following:</p>

	Type of Lien	Action
	Superlien	Confirm with assigned counsel to determine if lien is in jeopardy and next steps to be taken in the case.
	Non Superlien	Confirm that the HOA/COA lien does not take priority over the first lien.
4	Verify counsel prepares and files an answer to a Summons & Complaint	
	If Summons and Complaint is filed...	Then...
	Yes	Verify counsel prepares and files an answer.
	No	Confirm with counsel the next steps to be taken in the case.
	Note: If you have any questions or concerns, escalate them to your Team Manager.	

Related Procedure/Desktop Procedure Refer to the following related desktop procedures for further information:

- [Confirmation of Equity Analysis](#)
- [New Case Referral](#)

[Back to Top](#)

[Back to Procedure Portal](#)

Last Updated 2/20/2013 11:44:58 AM
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BANA000411

JA01893

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323
&

DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	A Bhame	Re:	7868 Marbledoe Ct./HO #18842
From:	Ryan Kerbow	Date:	Wednesday, July 11, 2012
Fax No.:		Pages:	1, including cover
		HO #:	18842

Dear A Bhame:

This cover will serve as an amended demand on behalf of Antelope Homeowners Association for the above referenced escrow; property located at 7868 Marbledoe Ct., Las Vegas, NV. The total amount due through August 15, 2012 is \$13,959.28. The breakdown of fees, interest and costs is as follows:

Notice of Delinquent Assessment Lien -- Nevada	\$325.00
Notice of Default	\$400.00
Pre NOD	\$90.00
Release of Lien	\$30.00
Demand Fee	\$150.00
Attorney Fees (3)	\$675.00
Update Demand Fee	\$75.00
Pre-Notice of Trustee Sale	\$90.00
Notice of Trustee Sale	\$275.00
Foreclosure Fee	\$150.00
Total	\$2,260.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA01894

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	\$2,260.00
2. Notary, Recording, Copies, Mailings, and PACER	\$375.00
3. Assessments Through August 15, 2012	\$2,152.74
4. Late Fees Through August 15, 2012	\$11.54
5. Fines Through June 20, 2012	\$7,965.00
6. Interest Through August 15, 2012	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$275.00
9. Management Company Audit Fee	\$75.00
10. Management Account Setup Fee	\$285.00
11. Publishing and Posting of Trustee Sale	\$350.00
13. Conduct Foreclosure Sale	\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$13,959.28
Less Payments Received:	\$0.00
Total Amount Due:	\$13,959.28

Please have a check in the amount of \$13,959.28 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA01895

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
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ADDITIONAL OFFICES IN

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PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323
&

DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	A Bhame	Re:	7868 Marbledoe Ct./HO #18842
From:	Ryan Kerbow	Date:	Wednesday, July 11, 2012
Fax No.:		Pages:	1, including cover
		HO #:	18842

Dear A Bhame:

This cover will serve as an amended demand on behalf of Antelope Homeowners Association for the above referenced escrow; property located at 7868 Marbledoe Ct., Las Vegas, NV. The total amount due through August 15, 2012 is \$13,959.28. The breakdown of fees, interest and costs is as follows:

Notice of Delinquent Assessment Lien -- Nevada	\$325.00
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Pre NOD	\$90.00
Release of Lien	\$30.00
Demand Fee	\$150.00
Attorney Fees (3)	\$675.00
Update Demand Fee	\$75.00
Pre-Notice of Trustee Sale	\$90.00
Notice of Trustee Sale	\$275.00
Foreclosure Fee	\$150.00
Total	\$2,260.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA01896

DAVID ALESSI*
THOMAS BAYARD *
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and Colorado Bars

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&
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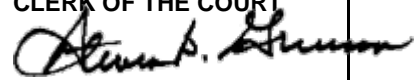
FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	\$2,260.00
2. Notary, Recording, Copies, Mailings, and PACER	\$375.00
3. Assessments Through August 15, 2012	\$2,152.74
4. Late Fees Through August 15, 2012	\$11.54
5. Fines Through June 20, 2012	\$7,965.00
6. Interest Through August 15, 2012	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$275.00
9. Management Company Audit Fee	\$75.00
10. Management Account Setup Fee	\$285.00
11. Publishing and Posting of Trustee Sale	\$350.00
13. Conduct Foreclosure Sale	\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$13,959.28
Less Payments Received:	\$0.00
Total Amount Due:	\$13,959.28

Please have a check in the amount of \$13,959.28 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

<p>1 Q. How long did you work for One West Bank?</p> <p>2 A. April 2012 to November 2013.</p> <p>3 Q. And I'm fairly certain I know the answer</p> <p>4 to this question, but the gap between November of</p> <p>5 2013 and January of 2014, was that just</p> <p>6 transitioning from one place to another?</p> <p>7 A. I got laid off from One West and it</p> <p>8 didn't really make sense for me to start at Ocwen</p> <p>9 when all the holidays were happening, so we just</p> <p>10 started me after the new year.</p> <p>11 Q. And then prior to working at One West</p> <p>12 Bank, where were you employed?</p> <p>13 A. It wasn't mortgage related. Do you still</p> <p>14 want to know about it?</p> <p>15 Q. You can go ahead and give me where it was</p> <p>16 at, yeah.</p> <p>17 A. It was at this place called Lawyers Aid</p> <p>18 Service. They basically ran documents to the</p> <p>19 Secretary of State for people.</p> <p>20 Q. All right. Since January of 2014, have</p> <p>21 you held the same position while working at Ocwen</p> <p>22 or has your position changed?</p> <p>23 A. I have the same job and the same</p> <p>24 responsibilities, but I got raise promotion to</p> <p>25 senior loan analyst versus just a regular loan</p> <p style="text-align: right;">Page 8</p>	<p>1 Certificates, series 2005-8."</p> <p>2 A. A8.</p> <p>3 Q. A8. Excuse me.</p> <p>4 Do you recognize this document as</p> <p>5 something you've seen before today?</p> <p>6 A. Yes.</p> <p>7 Q. If you can go ahead and turn to the</p> <p>8 second page of this document. Can you see towards</p> <p>9 the bottom of the page there's some -- the</p> <p>10 definitions start? Can you see where they start</p> <p>11 down there?</p> <p>12 A. Yes.</p> <p>13 Q. Sorry. We're going to go through these</p> <p>14 to make sure we're all on the same page going</p> <p>15 through this deposition. The first is defining the</p> <p>16 property as 7868 Marbledoe Street, Las Vegas,</p> <p>17 Nevada, 89149-3740, parcel number 125-18-112-069.</p> <p>18 Is that correct as I read it?</p> <p>19 A. Yes.</p> <p>20 Q. As we go through the deposition today, I</p> <p>21 will be referring to the property as either the</p> <p>22 property or the Marbledoe property. Are you</p> <p>23 comfortable with that?</p> <p>24 A. Yes.</p> <p>25 Q. We'll also be talking about a Deed of</p> <p style="text-align: right;">Page 10</p>
<p>1 analyst.</p> <p>2 Q. Can you tell me what your job as a senior</p> <p>3 loan analyst entails?</p> <p>4 A. It's pretty much two parts, there's the</p> <p>5 part I do in the office, which is mostly research</p> <p>6 on litigated loans. So if the attorneys need me to</p> <p>7 review something and explain it to them or find out</p> <p>8 what happened with something, I do that.</p> <p>9 I also execute discovery documents,</p> <p>10 answers, affidavits, declarations, when I'm in the</p> <p>11 office.</p> <p>12 And then the other part is what I do when</p> <p>13 I'm outside the office, which is appear on behalf</p> <p>14 of Ocwen and the loan owners that we service for at</p> <p>15 depos, trials, mediations, hearings, anywhere they</p> <p>16 need a body basically.</p> <p>17 (Exhibit 1 was marked for</p> <p>18 identification.)</p> <p>19 BY MS. SCHIMMING:</p> <p>20 Q. Okay. I'm going to go ahead and hand you</p> <p>21 what we've marked as Exhibit 1.</p> <p>22 This document is titled "A Notice Of Rule</p> <p>23 30(b)(6) Deposition of U.S. Bank National</p> <p>24 Association as Trustee for Merrill Lynch Mortgage</p> <p>25 Investors Trust, Mortgage Loan Asset-Backed</p> <p style="text-align: right;">Page 9</p>	<p>1 Trust today. I'm going to go ahead and have you</p> <p>2 flip really quick to -- in the second stack of</p> <p>3 documents you have, if you see, most of them are</p> <p>4 Bates stamped at the very bottom right-hand corner</p> <p>5 of the page. I'm going to have you go ahead and</p> <p>6 flip to what is Bates stamped as 73.</p> <p>7 For the record, this is Deed of Trust</p> <p>8 recorded on May 23rd, 2005, as instrument number</p> <p>9 20050523-0004228.</p> <p>10 Do you recognize this document as</p> <p>11 document -- the Deed of Trust that is the subject</p> <p>12 of this deposition today?</p> <p>13 A. Yes.</p> <p>14 Q. Whenever we refer to the Deed of Trust</p> <p>15 throughout this deposition, we will be referring to</p> <p>16 this Deed of Trust unless I specify otherwise.</p> <p>17 Okay?</p> <p>18 A. Okay.</p> <p>19 Q. When we talk about the borrowers, we'll</p> <p>20 be referring to Henry E. Ivy and Freddie S. Ivy,</p> <p>21 last name I-V-Y.</p> <p>22 Also, when I refer to the association,</p> <p>23 unless I specify otherwise, I'll be referring to</p> <p>24 Antelope Homeowners' Association. At times I'll be</p> <p>25 talking about the association foreclosure sale.</p> <p style="text-align: right;">Page 11</p>

<p>59:20 60:8, 15 63:8, 14 buy 39:15 buyer 60:5</p> <p>< C > CA 1:24 calculated 49:10 call 16:2 called 8:17 51:17 capacity 55:13 capitalized 44:19 carries 6:10 Case 1:8 7:19, 20 18:17 20:23 26:12, 22 37:17 48:20 57:21 63:9 cash 39:19 caused 63:16 CC 57:19, 22 58:1, 11, 22 CCR 1:24 66:2, 24 certain 8:3 23:3 certainly 61:3 CERTIFICATE 65:1 CERTIFICATES 1:6 2:14 4:25 10:1 12:21 39:20, 21 Certified 2:4 CF001 34:1 chance 13:2 14:13 CHANGE 65:2 changed 8:22 24:5 28:19 CHANTEL 2:9 4:14 chantel@kgelegal.co m 2:12 charge 48:25 check 48:17 49:16, 18 61:3 checked 33:14 checks 16:8 chosen 47:1 Civil 4:7 claim 42:14 clarification 17:15 19:2</p>	<p>clarify 21:9 CLARK 1:2 66:2 clear 24:4 32:9 37:23 62:14 cleared 37:15 clearly 42:15 client 4:18 coded 42:20 coincide 48:17 collateral 34:1, 3 45:15 collection 55:23 come 16:5 comes 60:5 comfortable 6:4 10:23 commencing 66:5 comments 16:20 17:2, 3 58:8 communicate 18:23 20:15 communication 51:4, 14 communications 12:5 51:8, 11 58:9 company 1:11 22:21 34:22 35:6 36:16 41:12 55:24 compare 26:2 27:22 28:1 complaint 56:3 complete 19:24 57:19 66:15 completely 32:10 completion 66:10 concluded 64:8 conditions 57:16 confirm 18:12, 16 39:23 40:1, 2 55:6 confused 24:21, 25 43:3 confusion 24:24 consideration 19:22 considered 60:17 contacted 47:6, 6, 9 50:25 contracts 38:19, 22 conversations 43:10 copies 27:20 29:15, 19 32:6, 8, 15 59:12</p>	<p>copy 24:19 28:4, 21, 23, 24, 24 29:1 30:23 32:2, 15 33:1, 11, 13 36:12 57:16, 19, 19, 22, 25 61:1 64:2 corner 11:4 Corporate 41:7 corporation 1:13 7:5 13:13 CORPORATIONS 1:14 correct 5:7, 10, 11, 16 10:18 14:8 19:4 20:3, 22 21:25 22:12, 23 23:3, 14, 21 26:3, 8, 12, 17, 22 27:4 29:22, 25 30:3, 7, 14 31:6 32:17 34:22, 23 35:8 36:3, 12, 17, 19, 20 37:5, 6, 20 38:7, 17 41:14 42:4, 5 43:16 46:24 50:15 52:8, 13, 21, 24 53:9, 12, 22, 25 54:5 61:14, 24 62:11, 17 corrected 31:10 65:14 correctly 20:19 28:10 38:14 correspondence 31:10 corresponds 62:13 Counsel 4:20 7:21, 25 18:20 21:4, 16 27:25 47:24 55:2, 13 60:21 counsel's 50:1 Countrywide 24:22 26:19, 23 27:13 32:7 Countrywide's 32:20 COUNTY 1:2 66:2 couple 23:2 57:20 COURT 1:1 2:4 4:5 6:9 64:1 covenants 57:16 cover 23:9 covered 45:23</p>	<p>credit 48:25 49:5 50:12, 12 cross-claims 1:16 crossed 33:8 36:25 CSR 1:24 currently 7:4 40:11 42:5 custodian 25:9 34:8, 10, 11</p> <p>< D > data 16:2, 6, 7 date 12:6, 8 20:2 31:24, 25 32:4 36:22 37:7 39:11 48:7 51:15 52:8 dated 22:17 30:5 32:7 36:19 41:14 48:15 52:16 59:18, 21, 22 61:13 62:2 66:21 dates 14:13 day 31:18 65:15 66:21 day-to-day 7:24 deal 57:23 61:18 Dean 2:2, 10 debt 63:12 December 14:6 DECLARATION 65:12 66:1 declarations 9:10 57:16 declare 65:13 66:2, 18 Deed 10:25 11:7, 11, 14, 16 22:8, 11, 17, 20, 22 23:2, 3, 10, 21 24:10 26:3, 4, 16 27:23 30:5, 8, 11 31:5 32:23 34:4 35:1, 4, 14 40:21 41:8, 10, 22 42:14, 16, 19 43:9 44:10 46:25 47:2 deeply 6:19 default 7:16, 17 22:2 44:10 45:2, 5, 17 51:25 63:1 defaults 21:21</p>
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10 *Attorneys for Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for*
11 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
12 *A8*

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

15 U.S. BANK, NATIONAL ASSOCIATION AS
16 TRUSTEE FOR MERRILL LYNCH
17 MORTGAGE INVESTORS TRUST,
18 MORTGAGE LOAN ASSET-BACKED
19 CERTIFICATES, SERIES 2005-A8,

20 Plaintiff,

21 v.

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

24 Defendant.

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

27 Counter-Claimant,

28 vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

**U.S. BANK'S BENCH MEMORANDUM
REGARDING AUTHENTICATION AND
ADMISSIBILITY OF PROPOSED
EXHIBITS 21, 22, 23, 24 AND 31**

1 Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill
2 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8
3 (“U.S. Bank”), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie C.
4 Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to EDCR
5 7.27, the following Memorandum of Points and Authorities supporting the admissibility of
6 Exhibits 21-24 and

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 During trial, U.S. Bank moved to admit certain business records into evidence
10 concerning the tender of the super priority lien by Rock K. Jung, on behalf of Bank of America,
11 N.A., who was on the witness stand and testified regarding the same. Specifically, Mr. Jung’s
12 testimony was expected to cover Proposed Exhibits 21 through 24 and 31 (hereinafter, the
13 “Tender Exhibits”). Exhibits 22 and 24 include letters authored by Mr. Jung, which include his
14 signature (the same letters are included in Proposed Exhibit 31). At the time of this brief, only
15 Proposed Exhibits 22 and 24 had been offered for admission. Defendant/Counter-Claimant SFR
16 Investments Pool 1, LLC (“SFR”) objected to the admission of Proposed Exhibits 22 and 24 on
17 the basis of authentication and hearsay. As set forth herein, Proposed Exhibits 22 and 24 (along
18 with the remaining Tender Exhibits) are admissible under the general exceptions to hearsay, but
19 could also be considered business records fall and are therefore admissible. Additionally, the
20 requirement of authentication for the Tender Exhibits is met under NRS 52.015 and NRS
21 52.025 by Mr. Jung’s testimony.

22 ///

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1 **LEGAL AUTHORITIES**

2 **A. AUTHENTICATION OF THE TENDER EXHIBITS IS MET BY MR. JUNG'S**
3 **TESTIMONY**

4 **NRS 52.015 Authentication or identification required.**

5 1. The requirement of authentication or identification as a condition
6 precedent to admissibility **is satisfied by evidence or other showing sufficient to**
7 **support a finding that the matter in question is what its proponent claims.**

8 2. The provisions of NRS 52.025 to 52.105, inclusive, are **illustrative and**
9 **not restrictive examples of authentication or identification** which conform to
10 the requirements of this section.

11 3. Every authentication or identification is rebuttable by evidence or other
12 showing sufficient to support a contrary finding.

13 (Added to NRS by 1971, 798) (Emphasis added).

14 **NRS 52.025 Testimony of witness with knowledge.**

15 **The testimony of a witness is sufficient for authentication** or identification if
16 the witness has personal knowledge that a matter is what it is claimed to be.

17 (Added to NRS by 1971, 798).

18 Mr. Jung testified that when he worked for Miles Bauer, he wrote thousands of letters to
19 HOA collection agents requesting a super priority lien payoff and offering that his client would
20 pay the same upon sufficient proof. U.S. Bank makes the following offer of proof that upon
21 further examination, Mr. Jung would testify that he is familiar with the record keeping practices
22 of Miles Bauer based upon his employment with that firm as an attorney for more than 4 years.
23 Additionally, Mr. Jung testified at trial that he has personal knowledge of Exhibits 22 and 24.
24 We presume based upon his testimony of the work he did at Miles Bauer that he also has
25 personal knowledge of the rest of the Tender Exhibits. **Although Mr. Jung could not initially**
26 **recall all of the details of these particular letters** (date, exact tender figure), **he testified that**
27 **he recognized Exhibits 22 and 24 as letters that he drafted, that he recalled the general**
28 **substance and purpose of the letter and recognized his signature.** Mr. Jung's testimony

1 demonstrated that the Exhibits 22 and 24 are what they purport to be—letters from Mr. Jung to
2 Alessi & Koenig, LLC, drafted on behalf of his client Bank of America, N.A., for the purpose of
3 obtaining information regarding the HOA’s superpriority lien payoff, offering to pay the same,
4 and tendering a check in the amount of the superpriority lien.

5 **B. THE TENDER EXHIBITS WERE CREATED IN SUCH A WAY AS TO OFFER**
6 **ASSURANCES OF ACCURACY.**

7 **NRS 51.075 General exception; other exceptions illustrative.**

- 8 1. A statement is not excluded by the hearsay rule if its nature and the
9 special circumstances under which it was made offer assurances of
10 accuracy not likely to be enhanced by calling the declarant as a
11 witness, even though the declarant is available.
12 2. The provisions of NRS 51.085 to 51.305, inclusive, are illustrative and
13 not restrictive of the exception provided by this section.

14 **NRS 51.315 General exception; other exceptions illustrative.**

- 15 1. A statement is not excluded by the hearsay rule if:
16 (a) Its nature and the special circumstances under which it was made
17 offer strong assurances of accuracy; and
18 (b) The declarant is unavailable as a witness.
19 2. The provisions of NRS 51.325 to 51.355, inclusive, are illustrative and
20 not restrictive of the exception provided by this section.

21 The Nevada Supreme Court has repeatedly addressed the application of NRS 51.075 and
22 51.315 and recognized that “a statement is not excluded by the hearsay rule if its nature and the
23 circumstances under which it is made offer assurances of accuracy not likely to be enhanced by
24 calling the declarant as a witness.” *Johnstone v. State*, 92 Nev. 241, 244, 548 P.2d 1362, 1363
25 (1976) (citing NRS 51.075) (internal quotes omitted). “Our statutes thus endorse Judge Learned
26 Hand's observation that the requisites of an exception to the hearsay rule, necessity, and
27 circumstantial guaranty of trustworthiness.” *Id.* at 244, 1364 (internal quotes omitted). “Our
28 Evidence Code explicitly disavows any attempt to limit hearsay rule exceptions to some
preconceived list; for it twice declares that expressly stated exceptions are ‘illustrative and not
restrictive.’...It therefore is this court’s obligation to decide whether the general criteria
recognized in NRS 51.075(1) and NRS 51.315(1) are satisfied in the instant case.” *Id.* (citing

1 NRS 51.075(2) and NRS 51.315(2)).

2 In *Johnstone*, the accused sought to exclude witness statements made to an investigating
3 officer from absent witnesses. *Id.* at 241, 1362. The Court ultimately found that the witness
4 statements should not have been excluded by the trial court, holding that the witnesses had no
5 motive to lie and further acknowledging the accuracy of the information based upon the
6 similarity of both statements. *Id.* at 244, 1366; *see also Woods v. State*, 101 Nev. 128, 135-36,
7 696 P.2d 464, 469 (1985) (finding that the lower court's exclusion of witness statements was
8 improper, and should have been admitted pursuant to NRS 51.075 because "Murnighan was not
9 involved in any way with appellant Cathy Woods. . . No advantage accrued either to her from
10 the prosecution or to the prison authorities for making her statements about Mitchell's murder.
11 There is no suggestion of bias on her part or of any motive either to inculcate [the accused] or to
12 exculpate appellant. Indeed, at the time that Murnighan first related [the] statements she could
13 not have known what would aid appellant, for appellant had not yet implicated herself in the
14 Mitchell murder.").

15 **The Nevada Supreme Court has also considered admission of correspondence that**
16 **was determined to be inadmissible under the business records exception, but admissible**
17 **under NRS 51.075.** *Emmons v. State*, 107 Nev. 53, 57-58, 807 P.2d 718, 721 (1991) *overruled*
18 *on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000). The trial
19 court held that a physician's letter was not admissible under the business records exception
20 because the admitting party failed to establish that the letter was written "in the course of a
21 regularly conducted activity." *Id.* Nonetheless, the Supreme Court found that the
22 correspondence was admissible under the general exception to the hearsay rule because the
23 physician who prepared the letter was a disinterested party with no apparent motive to lie. *Id.* at
24 58 ("Here, the radiologist was a disinterested witness with no apparent motive to lie. Therefore,
25 under the circumstances of this case, we hold that testimony regarding the radiologist's opinion
26 was admissible under the general exception to the hearsay rule.").

27 ///

1 **Finally, the Nevada Court of Appeals admitted an inventory list relying upon NRS**
2 **51.075, which would have been otherwise inadmissible.** “The facts in this case indicate that
3 the inventory list, although made for the purpose of litigation, is trustworthy. Both the stores’
4 manager and owner saw the stolen items on the hood of the police car; the manager
5 contemporaneously wrote a list of those items; the manager immediately went to her office and
6 typed the inventory based upon that hand-written list; the owner observed that the same items
7 were missing from the storeroom, reviewed the list and confirmed the inventory was accurate;
8 and the owner corroborated the information in the inventory through his trial testimony.”
9 *McDermett v. State*, No. 66678, 2015 WL 1879764, at *2 (Nev. App. Apr. 13, 2015). The court
10 reasoned,

11 Documents prepared primarily for the purpose of litigation generally do not fall within
12 the regularly conducted activity or business records' exception to the hearsay rule because
13 they lose one of the indicia of trustworthiness for that exception. *A.L.M.N, Inc. v. Rosoff*,
14 104 Nev. 274, 284, 757 P.2d 1319, 1325 (1988). A statement, however, is not excluded
by the hearsay rule if its nature and the special circumstances under which it was made
offer assurances of accuracy. NRS 51.075.

15 *A.L.M.N., Inc. v. Rosoff*, 104 Nev. 274, 285, 757 P.2d 1319, 1326 (1988), relied on *Clark v. City*
16 *of Los Angeles*, 650 F.2d 1033, 1037 (9th Cir.1981), *cert. denied*, 456 U.S. 927, 102 S.Ct. 1974,
17 72 L.Ed.2d 443 (1982), where the court noted,

18 The basis for the business record exception is that accuracy is assured because the maker
19 of the record relies on the record in the ordinary course of business activities.”¹⁹ **This is,**
20 **we add, particularly true when the maker of the record prepares the documents**
21 **without knowledge of their probable use in impending litigation.** (Emphasis added.)

22 [Fn. 19: See also S. Gard, 4 Jones on Evidence 575 (1972) (citations omitted):

23 **The element of unusual reliability of business records is said variously to be**
24 **supplied by systematic checking,** by regularity and continuity which produce
25 **habits of precision, by actual experience of business in relying upon them, or**
by a duty to make an accurate record as part of a continuing job or
occupation. (Emphasis added.)

26 Here, Mr. Jung testified that he drafted the letters in Exhibits 22 and 24 while he was
27 employed with Miles Bauer as an attorney for Bank of America, N.A. These letters were not
28

1 personal correspondence, but rather for a business purpose. These letters were also drafted more
2 than 5 years before any litigation was filed in this case. U.S. Bank makes the following offer of
3 proof that upon further examination, Mr. Jung would testify that he is familiar with the record
4 keeping practices of Miles Bauer based upon his employment with that firm as an attorney for
5 more than 4 years; that these letters were relied upon by himself, Miles Bauer and Bank of
6 America, N.A.; and that he was under a duty as counsel and employee to keep an accurate record
7 of the events described in the letters. Mr. Jung, as a Nevada licensed attorney was and is subject
8 to the Nevada Rules of Professional Conduct:

9
10 **Rule 4.1. Truthfulness in Statements to Others.** In the course of
representing a client a lawyer shall not knowingly:

11 (a) **Make a false statement of material fact or law to a third person;** or

12 (b) Fail to disclose a material fact to a third person when disclosure is
13 necessary to avoid assisting a criminal or fraudulent act by a client, unless
disclosure is prohibited by Rule 1.6.

14 [Added; effective May 1, 2006.] (Emphasis added).

15 **B. THE RECORDS OF A REGULARLY CONDUCTED ACTIVITY ARE**
16 **ADMISSIBLE AS AN EXCEPTION TO HEARSAY.**

17 The Tender Exhibits would also qualify under the business records exception to hearsay,
18 but they don't necessarily have to be termed as business records of "Miles Bauer".

19 NRS 51.135 provides:

20 A memorandum, report, record or compilation of data, in any form, of acts,
21 events, conditions, opinions or diagnoses, made at or near the time by, or from
22 information transmitted by, a person with knowledge, all in the course of a
23 regularly conducted activity, as shown by the testimony or affidavit of the
24 custodian or other qualified person, is not inadmissible under the hearsay rule
unless the source of information or the method or circumstances of preparation
indicate lack of trustworthiness.

25 A "qualified person" required to authenticate the writing has been broadly interpreted as
26 anyone who understands the record-keeping system involved. *United States v. Ray*, 930 F.2d
27 1368, 1370 (9th Cir.1990). For example, in *People v. Champion*, 9 Cal.4th 879, 39 Cal.Rptr.2d
28 547, 891 P.2d 93, 111-12 (Cal.1995), *cert. denied*, **1125 516 U.S. 1049, 116 S.Ct. 714, 133

1 L.Ed.2d 668 (1996), the California Supreme Court admitted as properly authenticated a form
2 filled out by a police laboratory technician when a fingerprint expert testified about the
3 procedures for completing those forms.

4 In *Thomas v. State*, 114 Nev. 1127, 1147–48, 967 P.2d 1111, 1124–25 (1998), the
5 Nevada Supreme Court held that “Nevada law does not define what an ‘other qualified person’
6 means for the purpose of authenticating a business record.” (two witnesses testified that the
7 documents to be admitted were kept in the ordinary course of business, but admitted that they
8 were not the custodian of records for these documents). In *Thomas*, the Court held that although
9 the authenticating witnesses did not personally prepare the documents in question, “they both
10 knew that the documents were kept in the ordinary course of business and the procedures for
11 completing those writings,” and determined that, “the proper foundation was laid for the
12 documents to fall under the business records hearsay exception. Accordingly, the district court
13 did not abuse its discretion in admitting them.” (citing *See People v. Beeler*, 9 Cal.4th 953, 39
14 Cal.Rptr.2d 607, 891 P.2d 153, 167–68 (Cal.1995), *cert. denied*, 516 U.S. 1053, 116 S.Ct. 723,
15 133 L.Ed.2d 675 (1996) (concluding that the trial court has wide discretion in determining
16 whether sufficient foundation has been laid to qualify evidence as a business record)). *Id.*

17
18 In *Greco v. State*, No. 67973, 2016 WL 937117, at *3–4 (Nev. App. Mar. 9, 2016), the
19 Nevada Court of Appeals recently followed the *Thomas* Court’s holding regarding admissibility
20 requirements for a business record:

21 Just as in *Thomas*, Brannon did not author the document in question, **but knew**
22 **that it was kept in the ordinary course of business, and described the**
23 **procedures under which the writing was created.** Although Brannon's
24 testimony was not as detailed as Greco might have preferred, all that the State was
25 required to do was to make a “prima facie” case for admissibility, which it did
26 under *Thomas*. The district court has “considerable discretion” in determining
27 whether a prima facie foundation has been laid for the admission of evidence
28 under the business records exception to the hearsay rule. *Id.* Under the
circumstances of this case, we cannot conclude that the district court abused its
“considerable” discretion” when the State's questioning closely tracked the steps
prescribed in *Thomas*.

1 Mr. Jung has already testified as to the authenticity of some of the Tender Exhibits. He
2 testified that he personally drafted Proposed Exhibits 22 and 24, that they were illustrative of the
3 thousands of letters of he had drafted as an attorney at Miles Bauer for Bank of America in
4 making HOA lien payoffs. He also testified that the contents were created at or near the time of
5 the event noted in the records and in the course of the regularly conducted activity of providing
6 legal representation to Bank of America. Unless this Court determines that the source of
7 information contained in the business records or the method or circumstances of preparation of
8 the business records indicate a lack of trustworthiness, the Tender Exhibits records are
9 admissible. *Id.*

10 **The Tender Exhibits are also admissible pursuant to the general exceptions set**
11 **forth in both NRS 51.075 and 51.315.** The nature and special circumstances of the business
12 correspondence by an officer of this Court (Mr. Jung testified that he is a Nevada licensed
13 attorney and was so during the time he drafted the letters) offer the requisite “assurances of
14 accuracy.” Additionally, Mr. Jung testified that he recognized his signature on the letter and had
15 a practice of signing the letters in Exhibits 22 and 24.

16 The Nevada Supreme Court has addressed this very issue and taken into account the fact
17 that the information at issue is more likely accurate when it is commonly relied upon by
18 reasonable and prudent persons in the conduct of their affairs. *State, Dep’t of Motor Vehicles v.*
19 *Kiffe*, 101 Nev. 729, 733, 709 P.2d 1017, 1020 (1985) (admitting otherwise inadmissible
20 evidence holding that “the evidence consisting of Officer Davis’s statements is of the type
21 commonly relied upon by reasonable and prudent persons in the conduct of their affairs.”).
22 Accordingly, Mr. Jung had an interest and obligation to keep accurate records based upon his
23 employment as counsel for Bank of America, as an attorney employed by Miles Bauer and as a
24 member of the State Bar of Nevada. In addition, the information was regularly used by Mr. Jung
25 in the performance of his “ordinary course of business activities” as counsel for Bank of
26 America, N.A. based upon his testimony that he had drafted thousands of similar letters for this
27 same purpose. Further, Mr. Jung drafted these letters as an attorney employed by Miles Bauer
28

1 and there was no indication that the letters were made with “knowledge of their probable use in
2 impending litigation,” particularly when the letters were drafted 5 years prior to litigation and 3
3 years before the issuance of the *SFR Investments* decision.

4 There is no motive to falsify information, as the information in the letters was relied
5 upon by Mr. Jung in his job duties. There is also no evidence that the Tender Exhibits lack
6 trustworthiness. There is no benefit to have inaccurate information when he was under a duty
7 as counsel for Bank of America. Inaccurate information would only frustrate and compromise
8 Mr. Jung’s ability to efficiently and successfully represent his client.

9 Here, at the time the information was entered, there was no motive to lie, nor any benefit
10 received from lying. Indeed, Mr. Jung as counsel, employee and officer of the Court was under
11 a duty to keep accurate records and make truthful communications to third parties as part of his
12 obligation as an attorney. To the contrary, falsifying the information or even negligently
13 entering the information, could lead to bar discipline and/or employment termination.

14 Any alleged motive to falsify information is further diminished because when all of the
15 records at issue were created, this litigation was not pending. Moreover, irrespective of any
16 pending litigation, Mr. Jung, as a current practicing Nevada attorney still maintains an
17 obligation and interest in testifying truthfully regarding the Tender Exhibits.

18
19 **C. THE TENDER EXHIBITS WOULD ALSO BE ADMISSIBLE AS PAST**
20 **RECOLLECTION RECORDED**

21 Although the Tender Exhibits would qualify for admission under the general exceptions to
22 hearsay and as business records, they would also qualify under the Past Recollection Recorded
23 exception under NRS 51.125.

24 **NRS 51.125 Recorded recollection.**

25 1. A memorandum or record concerning a matter about which a witness
26 once had knowledge but now has insufficient recollection to enable the witness to
27 testify fully and accurately is not inadmissible under the hearsay rule if it is shown
28 to have been made when the matter was fresh in the witness’s memory and to
reflect that knowledge correctly.

1 2. The memorandum or record may be read into evidence but may not itself
2 be received unless offered by an adverse party.

3 In *Thomas v. Hardwick*, 126 Nev. 142 (Nev. 2010), the Nevada Supreme Court analyzed
4 the admissibility of testimony based upon a doctor's patient notes. The Court analyzed the
5 testimony under both NRS 48.059 and NRS 51.125. The Court found that

6 the fact the chart notes corroborate Dr. Hardwick's testimony as to his habit and
7 routine makes Thomas's challenge to his testimony an especially hard sell. Much
8 of Dr. Hardwick's testimony dealt with the chart notes as past recollection
9 recorded evidence under NRS 51.125(2). **To the extent Dr. Hardwick matched**
10 **his recorded notes to the habit or routine they were shorthand for, the**
11 **district court did not abuse its discretion in this case in admitting the**
12 **testimony under NRS 48.059(1).** Atkins, 112 Nev. at 1127, 923 P.2d at 1123
(reversal based on error in the admission or exclusion of evidence inappropriate
absent "clear abuse" of discretion).

Id at 151.

13 **NRS 48.059 Habit; routine practice.**

14 1. Evidence of the habit of a person or the routine practice of an
15 organization, whether corroborated or not and regardless of the presence of
16 eyewitnesses, is relevant to prove that the conduct of the person or organization
on a particular occasion was in conformity with the habit or routine practice.

17 2. Habit or routine practice may be proved by testimony in the form of an
18 opinion or by specific instances of conduct sufficient in number to warrant a
finding that the habit existed or that the practice was routine.

19 Mr. Jung testified that during his time at Miles Bauer he represented Bank of America in
20 thousands of HOA lien payoff matters, drafting similar letters, all for the same purpose—to pay
21 the HOA superpriority lien to protect the first Deed of Trust interest of his clients. Although Mr.
22 Jung could not initially recall all of the details of these particular letters (date, exact tender
23 figure), he testified that he recognized Exhibits 22 and 24 as letters that he drafted, that he
24 recalled the general substance and purpose of the letter, and recognized his signature. Mr. Jung
25 also testified that he had a routine practice of drafting the letters in Exhibit 22 and 24 when he
26 was retained by Bank of America to make HOA lien payoffs. He testified that his routine
27 practice was to draft an initial contact letter to the HOA collection agent requesting the
28

1 superpriority lien payoff and offering to pay the same on behalf of Bank of America. (Proposed
2 Exhibit 22). He also testified that in response to his initial contact letter he would typically
3 receive a payoff demand from Alessi & Koenig with a full HOA lien payoff statement, which he
4 used to calculate the nine month super priority lien (Proposed Exhibit 23). Finally, he testified
5 that in response to receiving the payoff demand, his routine practice was to prepare a letter and
6 check in the amount of the nine month superpriority lien and have both hand delivered to Alessi
7 & Koenig.

8
9 **CONCLUSION**

10 Based on the foregoing, U.S. Bank respectfully requests that this Court admit the Tender
11 Exhibits, as an exception to the hearsay rule under any of the exceptions discussed herein.

12 DATED this 17th day of April, 2019.

13 WRIGHT, FINLAY & ZAK, LLP

14
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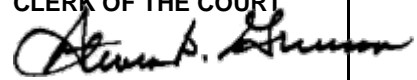
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12 *A8*

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

15 U.S. BANK, NATIONAL ASSOCIATION AS
16 TRUSTEE FOR MERRILL LYNCH
17 MORTGAGE INVESTORS TRUST,
18 MORTGAGE LOAN ASSET-BACKED
19 CERTIFICATES, SERIES 2005-A8,

20 Plaintiff,

21 v.

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

24 Defendant.

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

27 Counter-Claimant,

28 vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

**U.S. BANK'S BENCH MEMORANDUM
REGARDING STATUTE OF
LIMITATIONS**

1 Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill
2 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8
3 (“U.S. Bank”), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie C.
4 Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to EDCR
5 7.27, the following Memorandum of Points and Authorities regarding the issue of statute of
6 limitations.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 Prior to trial, Defendant / Counter-Claimant SFR Investments Pool 1, LLC (“Buyer” of
10 “SFR”) filed a trial brief regarding the issue of statute of limitations.

11 **LEGAL AUTHORITIES**

12 **A. U.S. BANK’S QUIET TITLE CLAIM IS TIMELY.**

13 SFR asserts that U.S. Bank’s quiet title claim was not timely brought, because SFR
14 asserts that quiet title claims are governed by a three-year statute of limitations. SFR is wrong
15 as, quiet title claims are governed by the five-year statute of limitations contained in NRS
16 11.070.

17 **1. NRS 11.070’s Five-Year Statute of Limitations Applies to U.S. Bank’s Quiet 18 Title Claim.**

19 SFR contends that U.S. Bank’s quiet title claim is barred by one of two possible three-
20 year statutes of limitations that govern those claims. However, U.S. Bank’s claim is subject to
21 the five-year period of NRS 11.070, which applies to claims or defenses “*founded upon the title*
22 *to real property*,” where “*the person prosecuting the action* or making the defense, *or* under
23 whose title the action is prosecuted or the defense is made, *or the ... grantor of such person*, was
24 seized or possessed of the premises in question.” NRS 11.070 (emphases added). Accordingly,
25 the statute does not specify that the claimant *itself* have a claim to title or to have been in
26 possession of the property. Rather, all that is required is that (1) title to the property is
27 foundational to the claim and (2) the claimant or one of several other entities—specifically
28 including the claimant’s “grantor”—had possession within the last five years.

1 Here, U.S. Bank’s claim readily satisfies each of the two statutory requirements. First,
2 the claim is “founded upon ... title.” The claim, after all, is denominated quiet *title*. And that
3 sensibly reflects the substance of the dispute, which is whether the HOA conveyed clear *title* to
4 SFR, or whether U.S. Bank’s deed of trust continues to encumber the Property’s *title*. Thus,
5 courts routinely apply NRS 11.070 to quiet-title claims brought by lienholders seeking to
6 confirm the validity of their security interests, as U.S. Bank does here. As a matter of law and
7 logic, a claim whose legal “purpose” is to “quiet title to ... [p]roperty” is necessarily “founded
8 upon ... title” to the property. Had Nevada’s legislature intended to limit NRS 11.070 narrowly
9 to *claims of title* rather than to apply more broadly to any claim *founded upon title*, it could
10 easily have done so, but it did not. In enacting the broader language, the legislature
11 encompassed within NRS 11.070’s scope all claims to determine the validity of deed-of-trust
12 encumbrances on title.

13 *Second*, U.S. Bank’s “grantor” is the former homeowner/borrower—a person who was
14 unquestionably “seized or possessed of the premises” at the time of the HOA Sale. A “grantor”
15 in Nevada law includes a borrower who has executed a deed of trust to provide another party
16 with a security interest in the property. *See* NRS 107.410 (“‘Borrower’ means a natural person
17 who is a mortgagor or *grantor of a deed of trust under a residential mortgage loan*.”) (emphasis
18 added); *Rose v. First Fed. Sav. & Loan Ass’n of Nevada*, 105 Nev. 454, 457, 777 P.2d 1318,
19 1319 (1989) (grantor of deed of trust is party obligated to pay the loan). There is no dispute that
20 here, Henry & Freddie Ivy—the borrowers on the note and grantor of the deed of trust which
21 U.S. Bank owns and for which U.S. Bank is record beneficiary—had possession of the Property
22 up until the HOA Sale on July 25, 2012, less than five years before U.S. Bank’s claims were
23 filed. Because NRS 11.070 applies where *either* a quiet title claimant itself, “*or the ... grantor of*
24 *such person*, was seized or possessed of the premises in question,” whether U.S. Bank was
25 “seized or possessed of the premises,” is irrelevant. NRS 11.070 (emphasis added).

26 Moreover, the Nevada Supreme Court’s sole citation to NRS 11.070 in the last 40 years
27 confirms that the statute covers claims where the claimant has a property interest other than title.
28

1 In that case, *Bentley v. State*, the court considered the claims of intervenors whose dispute
2 concerned water rights, not title. *See* No. 64773, 2016 WL 3856572 (Nev. 2016) (unpublished
3 order of affirmance). The parties against whom the intervenors asserted their claims, the
4 Bentleys, had built a structure diverting a greater share of the contested water to their property
5 than they had drawn before. *Id.* at *10. The Nevada Supreme Court calculated the timeliness of
6 the intervenors' claims based on the date that the Bentleys seized that larger amount of the water
7 flow; it did not consider when the intervenors had possession to any of the claimed flow of
8 water. *Id.* Thus, not only did the Nevada Supreme Court apply NRS 11.070 to claims involving
9 property interests that were not title to real property, but it also calculated the limitations period
10 based on when the target of the claim, not the claimant, had acquired possession of that property
11 interest.

12 Also, in *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*,
13 the Nevada Supreme Court held that Saticoy Bay's quiet title claim, one similar to U.S. Bank's
14 claim in this matter, was governed by the five-year statute of limitations in NRS 11.080. 133
15 Nev. Adv. Op. 3, 388 P.3d 226, 232 (2017). The Court stated,

16 "Such an action would be a complaint for quiet title . . . and would be governed
17 by NRS 11.080 . . . [which] provides for a five-year statute of limitations
18 beginning from the time the 'plaintiff or the plaintiff's ancestor, predecessor, or
grantor was seized or possessed of the premises in question.'" *Id.*

19 Nevada's lower courts have similarly followed the expansive reading of NRS 11.070,
20 and have applied it to claims involving disputes over whether a lien continued to encumber a
21 property, the same issue in dispute here. For example, in *Raymer v. U.S. Bank National*
22 *Association*, a Nevada state district court cited NRS 11.070 in holding that a claim concerning
23 the continuing validity of a lien was untimely filed after five years. No. 16-A-739731-C, 2016
24 WL 10651933, at *2 (Nev. Dist. Ct. Dec. 28, 2016). Moreover, federal District Courts in
25 Nevada have also held that quiet title claims are subject to a five-year statute of limitations. *See*
26 *Bank of America, N.A. v. Nevada Trails II Cmty., Ass'n.*, Case No. 2:16-cv-00880-JCM-PAL at
27 *4, 2017 WL 2960521 (D. Nev. July 11, 2017) (bank's quiet title claim was timely filed within
28

1 the five-year limitations period); *Nationstar Mortg., LLC v. Falls at Hidden Canyon*
2 *Homeowners Ass’n*, Case No. 2:15-cv-01287-RCJ-NJK, 2017 WL 2587926 (D. Nev. June 14,
3 2017) (Bank’s claim for quiet title was timely brought within five years of the foreclosure
4 sale)). *See also Bank of N.Y. Mellon Trust Co., N.A. v. Jentz*, Case No. 2:15-cv-01167-RCJ-
5 CWH, 2016 WL 4487841 (Aug. 24, 2016) (argument that bank’s claims were barred because
6 they were “action[s] upon a liability created by statute,” which have a three-year limitations
7 period were denied. The court reiterated that the statute of limitations for a quiet title claim is
8 five years).

9 **2. Quiet title actions are not subject to the three-year statute of limitations in NRS**
10 **11.190(3)(a) because a quiet title action is not a claim based upon statutory**
11 **liability.**

12 The problem with SFR’s argument is that NRS 11.190 specifically does not apply to
13 recovery of real property. The statute in question reads as follows:

14 Except as otherwise provided in [NRS 40.4639](#), [125B.050](#) and [217.007](#),
15 **actions other than those for the recovery of real property**, unless
16 further limited by specific statute, may only be commenced as follows:

17 . . .

18 Within 3 years:

19 (a) An action upon a liability created by statute, other than a penalty or
20 forfeiture.

21 (Emphasis added.)

22 As discussed by the Nevada Supreme Court in *Torrealba v. Kesmetis*, 124 Nev. 95, 102,
23 178 P.3d 716, 722 (2008), the phrase “liability created by statute” means “a liability which
24 would not exist but for the statute. Where a duty exists only by virtue of a statute . . . the
25 obligation is one created by statute.” Thus, the statute in question **must reference the liability in**
26 **order for NRS 11.190(3)(a) to apply**. Again, in this case, NRS Chapter 116 is silent on liability
27 as to damages caused by an HOA’s wrongful foreclosure. Therefore, NRS 11.190(3)(a) cannot
28 apply because the claim does not turn on any statutory violation, but rather is a question as to
whether the foreclosure of a super-priority lien was properly noticed and conducted. In turn,

1 because no express limitation period applies, the default rule of four years controls. *See* NRS
2 11.220 (“An action for relief, not hereinbefore provided for, must be commenced within 4 years
3 after the cause of action shall have accrued.”). **However, because the claims pending in this**
4 **trial against SFR are not founded on a wrongful foreclosure, but rather quiet title, and**
5 **specifically the quality of title, if any, that was passed to SFR at the HOA Sale, the 4 year**
6 **statute of limitations under NRS 11.220 does not apply.¹**

7 Further, NRS 116.3116 et seq. creates no private right of action and provides no
8 remedy. Compare with NRS 598D.110 creating a liability for criminal and civil penalties for
9 “lender who willfully engages in an unfair lending practice,” creating the right to sue by the
10 borrower and the remedies of actual damages and “the costs of bringing the action and
11 reasonable attorney’s fees”; and with NRS 608.260 creates a private right of action to enforce
12 the minimum wages administratively set by the Labor Commissioner under NRS 608.250. *See*
13 *Torrealba*, 124 Nev. at 102-103, 178 P.3d at 722 (“Because the position, duties, and liability of
14 a notary public are authorized by statute, we determine that a claim on a notary’s official bond
15 under NRS 240.150(1) is an action upon a liability created by statute”) (*citing Sonoma County v.*
16 *Hall*, 132 Cal. 592, 62 P. 257 (Cal. 1900); *see also City of Leavenworth v. Hathorn*, 144 Kan.
17 340, 58 P.2d 1160, 1161-62 (Kan. 1936) (holding that civil liability arising from a public
18 official’s failure to perform the statutory duties of his office or post is a liability created by
19 statute)). In other words, the statute creates the HOA’s ability to foreclose against a property
20 and the actions it must take before conducting a foreclosure. The statute does **not** authorize any
21 penalty or liability for failure to comply with the statute. Thus, the Court should find that U.S.
22 Bank’s quiet title claim was timely.

23
24 ///

25
26 ///

27 ¹ NRS 11.220 is located under the title of “Actions Other Than for the Recovery of Real
28 Property.

1 **CONCLUSION**

2 Based on the foregoing, U.S. Bank respectfully requests that this Court find that the
3 statute of limitations on U.S. Bank's claims did not expire prior to filing its pleadings.

4 DATED this 18th day of April, 2019.

5 WRIGHT, FINLAY & ZAK, LLP

6
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15 *Bank, National Association as Trustee for Merrill*

16 *Lynch Mortgage Investors Trust, Mortgage Loan*

17 *Asset-Backed Certificates, Series 2005-A8*

18 **CERTIFICATE OF SERVICE**

19 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
20 ZAK, LLP, and that on this 18th day of April, 2019, I did cause a true copy of **U.S. BANK'S**
21 **BENCH MEMORANDUM REGARDING STATUTE OF LIMITATIONS** to be e-filed and
22 e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as
23 follows:

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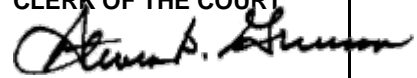
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DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

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

Defendant.

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

Counter-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C

Dept. No.: XXXI

**U.S. BANK'S BENCH MEMORANDUM
REGARDING STANDING TO
MAINTAIN ITS CLAIMS IN THIS
ACTION AND STANDING TO
ENFORCE THE DEED OF TRUST AND
NOTE**

Plaintiff / Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill
Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8

1 (“U.S. Bank”) by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie C.
2 Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to EDCR
3 7.27, the following Memorandum of Points and Authorities supporting U.S. Bank’s standing.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **LEGAL AUTHORITY**

6 **A. U.S. BANK HAS STANDING TO PURSUE ITS CLAIMS AGAINST**
7 **DEFENDANT SFR INVESTMENTS**

8 Pursuant to *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (“*Lujan*”), upon which
9 SFR relies, the Supreme Court looks at three elements which the claimant has the burden to
10 prove in order to establish its standing. First, the plaintiff must suffer an injury in fact – an
11 invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or
12 imminent. Second, there must be a causal connection between the injury and the conduct
13 complained of. Third, it must be likely, as opposed to merely speculative, that the injury will be
14 redressed by a favorable decision. *Lujan*, 504 U.S. 555, 560-61 (1992) (internal quotations,
15 alterations, and citations omitted).

16 To clarify, each of these elements are “not mere pleading requirements but rather . . .
17 each element must be supported in the same way as any other matter on which the plaintiff bears
18 the burden of proof, i.e., with the manner and degree of evidence required at the successive
19 stages of the litigation.” *Id.* at 561.¹ For example, “[a]t the pleading stage, general factual
20 allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to
21 dismiss [the Court] presumes that general allegations embrace those specific facts that are
22 necessary to support the claim. . . . at the final stage, those facts (if controverted) must be
23 supported adequately by the evidence adduced at trial.” *Id.* (internal quotations, alterations, and
24 citations omitted).

25 First, the “‘injury in fact’ test requires more than an injury to a cognizable interest; [i]t
26 requires that the party seeking review be himself among the injured.” *Id.* at 563. The inquiry into

27 _____
28 ¹ *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883–889, 110 S.Ct. 3177, 3185–3189,
111 L.Ed.2d 695 (1990).

1 whether a party is a real party in interest pursuant to NRCP 17(a) overlaps with the question of
2 standing. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). A real
3 party in interest “is one who possesses the right to enforce the claim and has a significant interest
4 in the litigation.” *Id.*; quoting *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983).
5 Plus, “the injury required . . . may exist solely by virtue of statutes creating legal rights, the
6 invasion of which creates standing.” *Id.* at 578 (internal quotations, alterations, and citations
7 omitted). In addition, the “injury produced by determinative or coercive effect upon the action of
8 someone else may be sufficient for standing.”² Specifically, a court finding that defendants have
9 repeatedly engaged in injurious acts in the past may show a sufficient likelihood that defendants
10 will engage in them in the near future for purposes of standing to sue. *Steel Co. v. Citizens for a*
11 *Better Environment*, 523 US 83, 109, 118 S. Ct. 1003, 1020 (1998).

12 Second, the injury must be fairly traceable to the challenged action of the defendant, and
13 not the result of the independent action of some third party not before the court. *Lujan*, 504 U.S.
14 555, 560-61 (1992) (internal quotations, alterations, and citations omitted). Last, plaintiffs do
15 not have to “demonstrate that there is a ‘guarantee’ that their injuries will be redressed by a
16 favorable decision.”³ Instead, the “plaintiffs’ burden is relatively modest.”⁴ The plaintiff “need
17 only show that there would be a change in legal status, and that a practical consequence of that
18 change would amount to a significant increase in the likelihood that the plaintiff would obtain
19 relief that directly redresses the injury suffered.”⁵

20 Here, U.S. Bank has met its burden in proving the three elements in *Lujan*: 1) U.S. Bank
21 stands to suffer an injury in fact of an extinguished secured interest in unique real property as

23 2 *Bennett v. Spear*, 520 U.S. 154, 169, 117 S.Ct. 1154, 1164 (1997); see *Tozzi v. U.S. Dep’t of*
24 *Health and Human Servs.*, 271 F.3d 301, 309 (D.C.Cir.2001) (When “the alleged injury flows
25 not directly from the challenged agency action, but rather from independent actions of third
26 parties, we have required only a showing that the agency action is at least a substantial factor
27 motivating the third parties’ actions.”) (internal quotations omitted).

28 3 *Renee v. Duncan*, 623 F.3d 787, 797–98 (9th Cir. 2010), opinion supplemented on reh’g, 686
F.3d 1002 (9th Cir. 2012); citing to *Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997,
1003 (9th Cir.1998).

4 *Id.*; citing to *Bennett v. Spear*, 520 U.S. 154, 171.

5 *Id.*; citing to *Utah v. Evans*, 536 U.S. 452, 464, 122 S.Ct. 2191, 153 L.Ed.2d 453 (2002).

1 being the first Deed of Trust holder, i.e., there is a present controversy as to the interest in the
2 Property; 2) U.S. Bank stands to suffer an injury traceable to the conduct of SFR, which despite
3 obtaining a foreclosure deed without warranty, continues to assert a superior title interest in the
4 Property which prevents U.S. Bank from enforcing its Deed of Trust;; and 3) this potential injury
5 to U.S. Bank would be redressed by a decision rendered in U.S. Bank’s favor. See *Id.* Therefore,
6 U.S. Bank has standing to assert its rights in this matter because U.S. Bank would be injured
7 depending on the outcome of this action that affects Fannie Mae’s ability to recover against its
8 secured interest.⁶

9 SFR is expected to argue that because SFR did not conduct the foreclosure, U.S. Bank
10 cannot have an “injury in fact” attributable to SFR. This argument is strained, as SFR readily
11 acknowledges that U.S. Bank has an interest in the Property that was affected by the HOA
12 foreclosure sale. In fact, SFR filed a counterclaim against U.S. Bank for quiet title and
13 declaratory relief. Here, it is not necessarily the fact that the HOA Sale occurred, so much as that
14 SFR, which received a foreclosure deed without warranty, continues to assert a superior title
15 interest in the Property. It is this adverse interest in the Property that is at the heart of this quiet
16 title action. SFR’s adverse interest in the Property, and occupation of the Property, prevents U.S.
17 Bank from enforcing its rights under the Deed of Trust and Note—either to continue a
18 relationship with its borrower in place, or proceed with foreclosure of its security interest.

19 Recent decisions by the Nevada Supreme Court also render SFR’s standing argument
20 meritless. This Court recently held that a [Lender] “clearly has standing under Nevada law to
21 argue that the HOA Sale was invalid as a means of protecting its deed of trust, *see Doe v. Bryan*,
22 102 Nev. 523, 525, 728 P.2d 443, 444 (1986); *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495,
23 498 (1983)...” *SFR Investments Pool 1, LLC v. Green Tree Servicing, LLC*, Case No. 68324,
24 385 P.3d 582 Order of Affirmance, Docket No. 16-32597, 2016 WL 6092947 (Unpub. Disp.)

25
26 6 For example, courts have held that an injured party has standing in a declaratory action
27 concerning a coverage dispute between a tortfeasor and its insurer because it would affect that
28 party's ability to recover. *Americana Art China Co. v. Hartford Cas. Ins. Co.*, No.
HHDCV116026636S, 2013 Conn. Super. LEXIS 1883, at *11-13 (Super. Ct. Aug. 15,
2013)(citing collection of cases).

(Nev. October 18, 2016). *Accord PHH Mortg. Corp. v. SFR Investments Pool 1, LLC*, 2018 WL 547230, at *2 (D. Nev. Jan. 24, 2018) (“[Lender] is not seeking to enforce the note in this action; rather it seeks a declaration that it is the beneficiary of the [Deed of Trust] and mortgage loan and that these still encumber the [p]roperty.”); *Newlands Asset Holding Tr. v. SFR Invs. Pool 1, LLC*, No. 3:17-cv-00370-LRH-WGC, 2017 WL 5559956, at *3 (D. Nev. Nov. 17, 2017). (holding that a beneficiary has standing under a deed of trust to assert quiet title claims); and *Bank of Am., N.A. v. Lake Mead Ct. Homeowners Ass’n*, Case No. 2:16-cv-00504-GMN-NJK, at *3 (D. Nev. Mar. 14, 2018) (a protective order granted upon finding that production of a deed of trust and assignments is sufficient to establish standing). This mirrors the situation here.

Moreover, under Nevada law, all that is required for a beneficiary of a deed of trust to prove standing to enforce the same, is a recorded assignment. See *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012). More generally, the Nevada Supreme Court said, “‘To have standing, the party seeking relief [must have] a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party.’” *Nationstar Mortg., LLC v. SFR Invest. Pool I, LLC*, 133 Nev., Adv. Op. 34, 396 P.3d 754, 756 (2017).” *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419, 2018 WL 1448731 (Nev. Mar. 21, 2018). Certainly holding the Note, owning the Loan, and being the beneficiary of record on the Deed of Trust threatened with extinguishment qualifies as sufficient interest.

In this case, the Assignment of the Deed of Trust to U.S. Bank occurred after the HOA Sale.⁷ Despite the timing of the Assignment to U.S. Bank, U.S. Bank has a constitutionally protected property interest. A basic tenet of contract law is that an assignee stands in the shoes of the assignor, whereby the assignee acquires all rights and obligations that the assignor of the contract possessed. In the context of promissory notes and deeds of trust, “a deed of trust conveys to the trustee the legal title of the property for securing the borrower’s performance under the note and deed of trust for the benefit of the beneficiary. See NRS 107.020. Generally,

⁷ See **Joint Trial Exhibit** (“JTE”) **42**.

1 the transfer or assignment of a negotiable promissory note carries with it the deed of trust.”
2 *Thomas v. BAC Home Loans Servicing, LP*, 2011 Nev. Unpub. LEXIS 1176 (Nevada). In other
3 words, assignment of the deed of trust carries with it the right to enforce the underlying debt of
4 the note. Another way of stating the same premise is that a subsequent assignee of a deed of
5 trust has the same rights as the original beneficiary under the Deed of Trust.

6 The HOA Sale did not extinguish U.S. Bank’s interest in the Deed of Trust. If the
7 assignor of the Deed of Trust, U.S. Bank’s predecessor-in-interest, could have challenged the
8 foreclosure sale, and a subsequent assignee inherits the rights of the assignor, it naturally and
9 logically follows that U.S. Bank, as the assignee under the Deed of Trust, inherits its
10 predecessor-in-interest’s ability to challenge the HOA foreclosure sale.⁸ U.S. Bank will testify
11 that it obtained its interest in the Deed of Trust and Note (the “Loan”) well before the HOA
12 Sale, but that there was no reason to memorialize the transfer in a recorded assignment at that
13 time. That U.S. Bank owned the loan prior to the HOA Sale but did not have a recorded
14 assignment memorializing the same did not prejudice SFR or any party to the HOA foreclosure
15 and sale for the following reasons: (1) U.S. Bank’s predecessor and its prior servicer both
16 received the HOA’s foreclosure notices; (2) U.S. Bank is not challenging the proper mailing
17 and receipt of the HOA’s foreclosure notices; and (3) the timing of the recorded assignment has
18 no impact on any of the issues in this case. Therefore, U.S. Bank has standing to challenge the
19 HOA foreclosure sale in this matter.

20 Furthermore, any assertion that U.S. Bank lacks standing or any protected property
21 interest because the Deed of Trust was extinguished by the HOA foreclosure sale is the very
22 question at issue here: whether the HOA foreclosure extinguished the Deed of Trust. The
23 argument that U.S. Bank lacks standing is based entirely upon inherently circular reasoning.
24 Moreover, if U.S. Bank lacks standing, no party would be able to challenge the validity of the

26 ⁸ *Winn v. Amerititle, Inc.*, 731 F. Supp. 2d 1093, 1099 (D. Idaho 2010) (quoting *Federal Deposit*
27 *Ins. Corp. v. Main Hurdman*, 655 F. Supp. 259, 267 (E.D.Ca. 1987)) (“Modern interpretations of
28 Rule 17(a) allow a real party in interest the ability to assign her rights in an action to a third
party. The assignment can give the assignee proper standing as the real party in interest ‘even
when the claim is not assigned until after the action has been instituted.’”).

1 HOA foreclosure sale, as U.S. Bank's predecessor-in-interest is no longer a real party in
2 interest. Also, because U.S. Bank's prior servicer Bank of America, through counsel, tendered
3 a check in the amount of nine months of assessment prior to the HOA's sale, those payments
4 extinguished the superpriority portion of the lien. Therefore, the HOA only foreclosed on the
5 sub-priority portion of the lien, and U.S. Bank's Deed of Trust remains a valid encumbrance on
6 the Property, superior to SFR's interest in the Property. U.S. Bank, therefore, has a
7 constitutionally protected property interest.

8 **B. U.S. BANK IS THE HOLDER OF THE NOTE.**

9 The instant action is not a suit on the Note against the borrower or a judicial foreclosure
10 where U.S. Bank is enforcing the terms of the Deed of Trust. Regardless, U.S. Bank can
11 demonstrate a recorded assignment ending in its name, transferring both the beneficial interest in
12 the Deed of Trust and all rights under the Note. Additionally, although the assignments are
13 sufficient to demonstrate the presumed note holder and beneficiary, U.S. Bank can demonstrate
14 that it is also the holder of the Note.

15 Further, under Nevada law, all that is required for a beneficiary of a Deed of Trust to
16 prove standing to enforce the deed of trust, is a recorded assignment. *See Edelstein v. Bank of*
17 *N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012). More generally, the Nevada Supreme Court
18 said, "'To have standing, the party seeking relief [must have] a sufficient interest in the litigation,
19 so as to ensure the litigant will vigorously and effectively present his or her case against an
20 adverse party.' *Nationstar Mortg., LLC v. SFR Invest. Pool I, LLC*, 133 Nev., Adv. Op. 34, 396
21 P.3d 754, 756 (2017)." *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419,
22 2018 WL 1448731 (Nev. Mar. 21, 2018). Certainly holding the note and owning the Loan and
23 being the beneficiary of record on the Deed of Trust threatened with extinguishment should
24 qualify for such a sufficient interest.

25 In addition, under Nevada law, an executed and recorded assignment of deed of trust also
26 transfers the note, absent evidence that the parties intended otherwise. In *Edelstein v. Bank of*
27 *N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012), the Nevada Supreme Court adopted the
28 Restatement approach regarding the separation and unification of the note and deed of trust, and

1 found that where the beneficial interest in the deed of trust has been transferred via a recorded
2 assignment, the interest in the note generally follows, absent evidence that the parties did not so
3 intend.

4 Specifically, “[a] transfer of an obligation secured by a mortgage also transfers
5 the mortgage unless the parties to the transfer agree otherwise.” Restatement
6 (Third) of Prop.: Mortgages § 5.4(a) (1997). Similarly, “[e]xcept as otherwise
7 required by the Uniform Commercial Code, a transfer of a [deed of trust] also
8 transfers the obligation the [deed of trust] secures unless the parties to the transfer
9 agree otherwise.” *Id.* at § 5.4(b). Thus, unlike the traditional rule, **a transfer of
either the promissory note or the deed of trust generally transfers both
documents.**” (see *Id.* at 517-18) (Emphasis added.)

10 . . .
11 The Restatement notes that “[i]t is conceivable that **on rare occasions** a
12 mortgagee will wish to disassociate the obligation and the [deed of trust], but that
13 result should follow only upon evidence that the parties to the transfer so agreed.
14 **The far more common intent is to keep the two rights combined.**” *Id.* at § 5.4
cmt. a. This is because, as we have discussed, both the promissory note and the
deed must be held together to foreclose; “[t]he [general] practical effect of
[severance] is to make it impossible to foreclose the mortgage.” *Id.* at § 5.4 cmt.
C; see also *Cervantes*, 656 F.3d at 1039. (See *Id.*)(emphasis added).

15 Here, the recorded assignment⁹ assigns the beneficial interest in the Deed of Trust “having an
16 original principal sum of \$212,750.00 with interest, secured thereby, and the full benefit of all
17 the powers and of all the covenants and provisos therein contained . . . [and] the Assignor’s
18 interest under the Deed of Trust” to U.S. Bank.

19 The Note is a negotiable instrument within the meaning of NRS 104.3102(1). U.S. Bank
20 owns the Loan currently, which is secured by the first Deed of Trust, and is entitled to enforce it
21 as a negotiable instrument because the Note bears a chain of endorsements from the former
22 holder, Universal American Mortgage Company, LLC to GreenPoint Mortgage Funding, Inc and
23 then from GreenPoint Mortgage Funding, Inc to blank.¹⁰ NRS 104.3301(1)(a), 104.3109,
24 104.3201. In *Leyva v. National Default Servicing Corp.*, 127 Nev. Adv. Op. 40, 255 P.3d 1275
25 (2011), the Nevada Supreme Court described in detail how a promissory note may be enforced
26
27

28 ⁹ See Joint Trial Exhibit (“JTE”) 42.

¹⁰ See JTE 39.

1 by someone other than the payee named on the note, and consistent with Nevada's version of the
2 Uniform Commercial Code:

3 For a note in order form to be enforceable by a party other than to whom the note
4 is originally payable, the note must be either negotiated or transferred. A
5 "[n]egotiation" means a transfer of possession, whether voluntary or involuntary,
6 of an instrument by a person other than the issuer to a person who thereby
7 becomes its holder." NRS 104.3201(1). "[I]f an instrument is payable to an
8 identified person, negotiation requires transfer of possession of the instrument *and*
9 its endorsement by the holder." NRS 104.3201(2) (emphasis added). An
10 "endorsement" is a signature that is "made on an instrument for the purpose of
11 negotiating the instrument." NRS 104.3204(1). Thus, if the note is payable to the
12 order of an identifiable party, but is then sold or otherwise assigned to a new
13 party, it must be endorsed by the party to whom it was originally payable for the
14 note to be considered properly negotiated to the new party. Once a proper
15 negotiation occurs, the new party, or "note holder," with possession is entitled to
16 enforce the note. NRS 104.1201(2)(u)(1). . . .

17 *Leyva*, 127 Nev. Adv. Op. 40, 255 P.3d at 1280-81.

18 In short, even if the recorded Assignment is not enough to prove U.S. Bank's standing,
19 which it is, U.S. Bank is holder of the original Note. Plus, U.S. Bank still has standing to assert
20 its rights in this matter because of the imminent and irreparable injury it stands to suffer as a
21 direct result of SFR asserting a superior title interest to the Property it acquired at the HOA Sale.

22 **C. SFR LACKS STANDING TO CHALLENGE THE VALIDITY OF THE NOTE 23 AND ASSIGNMENTS**

24 The authenticity of the Note and Assignments cannot reasonably be questioned pursuant
25 to NRS 52.435 for the following reasons: (1) the recorded Assignments are self-authenticating
26 as public records; (2) the Assignments are sufficient proof under Nevada law that the Note was
27 transferred along with the Deed of Trust from the assignor beneficiary to the assignee
28 beneficiary in the Assignments, which ends in U.S. Bank; and (3) SFR does not have standing
to challenge the validity of the Assignments because SFR is not in privity of contract with U.S.
Bank.

It is a basic principle of Nevada law that only parties to a contract, and persons who are

intended beneficiaries, may sue to enforce its terms.¹¹ In *Wood v. Germann*, the Nevada Supreme Court considered whether a borrower had standing to challenge the validity of an assignment of the deed of trust concerning his loan. The Nevada Supreme Court found that the borrower, who was a party to the deed of trust, lacked standing to challenge the assignment thereof, because he was not a party to the agreement between the assignor and assignee. (“*the homeowner, who is neither a party to the PSA [servicing agreement] nor an intended third-party beneficiary, lacks standing to challenge the validity of the loan assignment.*”)¹² Additionally, multiple courts, including the U.S. District Court for the District of Nevada, have found that a plaintiff, even a borrower, lacks standing to challenge the assignments of deeds of trust.¹³ Thus, because SFR is not a party to U.S. Bank’s Deed of Trust, Note, or the Assignments, it lacks standing to challenge the validity of these documents.

It is anticipated that SFR will also challenge the validity of the securitized trust, for which U.S. Bank is the trustee. However, SFR cannot show that it is a party or third-party beneficiary of any of the Loan documents--the Note, Deed of Trust, Assignments, applicable Servicing Agreement or securitized trust. Courts throughout the country have consistently stated that even borrowers lack standing to object to or enforce any terms of a servicing agreement concerning the nature of a trust. *In re Almeida*, 417 B.R. 140, 149 n.4 (Bankr. D. Mass. 2009); *In Re*

¹¹ *GECCMC 2005-CI Plummer St. Office Ltd. P’ship v. JPMorgan Chase Bank, Nat’l Ass’n*, 671 F.3d 1027, 1033 (9th Cir. 2012); *WuMac, Inc. v. Eagle Canyon Leasing, Inc.*, 2013 WL 593396, at *3 (D. Nev. Feb. 14, 2013).

¹² *Wood v. Germann*, 130 Nev. Adv. Rep. 58, 331 P.3d 859, 861 (2014)(citing to See, e.g., *Rajamin*, 757 F.3d at 88, 2014 U.S. App. LEXIS 12251, 2014 WL 2922317, at *7-8; *Calderon*, 941 F. Supp. 2d at 767; *Dernier*, 87 A.3d at 474-75.).

¹³ *Viloria v. Premium Capital Funding, LLC*, 2012 WL 4361252, *3 (D. Nev. Sept. 20, 2012) (citing, *Bridge v. Aames Cap. Corp.*, 2010 WL 3834059, at *3, 5 (N.D. Ohio Sept. 29, 2010) (“Courts have routinely found that plaintiffs may not challenge an assignment between an assignor and assignee”); see also *Byczek v. Boeler Cos., Inc.*, 230 F. Supp. 2d 843, 845 (N.D. Ill. 2002) (third party lacked standing to challenge validity of Assignment); *Liu v. T & H Mack, Inc.*, 191 F.3d 790 (7th Cir. 1999) (plaintiffs lack standing to attack any problems with the reassignment of investment trust agreement); *Graham v. Recontrust Co., N.A.*, 2012 WL 1035712, *4 (D. Ore. March 27, 2012) (borrower does not have standing to assert violation of PSA to which she is not a party)); *Carter v. Sables, LLC*, (Dist. Nev. Sept. 26, 2016) (“Well established law does not recognize claims for fraudulent securitization”); and *Vazquez v. Bank of America Home Loans*, 2010 WL 3385347, *1 (D. Nev. Aug. 23, 2010).

1 *Correia*, 452 B.R. 319, 324-325 (1st Cir. BAP (Mass) 2011); *Bittinger v. Wells Fargo Bank*,
2 *N.A.*, 744 F. Supp. 2d 619, 625-626 (S.D. Tex. 2010); and *Livonia Property Holdings, LLC v.*
3 *12840-12976 Farmington Road Holdings, LLC*, 717 F. Supp. 2d 724, 748 (E.D. Mich. 2010).
4 Based on case law, any challenge as to the validity of a servicing agreement is barred, due to the
5 SFR's lack of standing to assert a violation of the agreement or a violation of the terms of the
6 Loan trust.¹⁴

7 Even before *Wood*, courts in Nevada dismissed lawsuits on the ground that a mortgagor
8 has no standing to challenge an assignment based on purported breaches of securitization
9 agreements to which they are not a party and that they therefore lack standing to enforce. *E.g.*,
10 *Byrd*, 2014 U.S. Dist. LEXIS 97922, at *9 (plaintiff borrower “does not have standing to
11 challenge the validity of the trust’s securitization agreements” including the PSA); *Viloria v.*
12 *Premium Capital Funding LLC*, 2012 WL 4361252, at *3 (D. Nev. Sept. 20, 2012) (“Plaintiffs
13 lack standing to challenge the assignments of the Note and Deed of Trust and lacks standing to
14 enforce or assert claims arising under the trust purchase agreement or Pooling and Servicing
15 Agreement (‘PSA’) surrounding the ‘securitization’ of the Note.”) (citing cases). See also *Shaw*
16 *v. CitiMortgage, Inc.*, 2015 WL 476161, at *2 (D. Nev. Feb. 5, 2015) (citing *Wood*, 331 P.3d at
17 861) (“Because [plaintiff] was not a party to the PSA, he lacks standing to challenge the
18 assignment.”). **The same result is required here— because SFR lacks standing to challenge**
19 **U.S. Bank’s standing to enforce the Note and Deed of Trust, this Court should not consider**
20 **SFR’s arguments because it lacks any support under Nevada law.**

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26 14 Similarly, SFR lacks standing to assert any claim that the Assignments are invalid because
27 they occurred after the closing date of the Loan trust, because the sale of the Note, and the
28 delivery of the loan related documents to the purchaser, has nothing to do with when the
assignment of the deed of trust to the purchaser of the loans is recorded. Any closing date is
irrelevant to the need, or lack thereof, of an assignment of the Deed of Trust. *Rajamin v.*
Deutsche Bank National Trust Co., 757 F.3d 79 (2d Cir. 2014).

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CONCLUSION

Based on the foregoing, this Court should find that U.S. Bank is a proper party to this action and therefore, has standing to assert this quiet title action against SFR.

DATED this 18^h day of April, 2019.

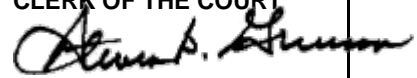
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2005-A8*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 18th day of April, 2019, I did cause a true copy of **U.S. BANK'S BENCH MEMORANDUM REGARDING STANDING TO MAINTAIN ITS CLAIMS IN THIS ACTION AND STANDING TO ENFORCE THE DEED OF TRUST AND NOTE** to be e-served through the Eighth Judicial District EFP system pursuant to NEFR 9, addressed as follows:

/s/ Lisa Cox
An Employee of WRIGHT, FINLAY & ZAK, LLP



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11 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
12 *A8*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 U.S. BANK, NATIONAL ASSOCIATION AS
16 TRUSTEE FOR MERRILL LYNCH
17 MORTGAGE INVESTORS TRUST,
18 MORTGAGE LOAN ASSET-BACKED
19 CERTIFICATES, SERIES 2005-A8,

20 Plaintiff,

21 v.

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

24 Defendant.

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

27 Counter-Claimant,

28 vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C

Dept. No.: XXXI

**U.S. BANK'S BENCH MEMORANDUM
REGARDING PRE-FORECLOSURE
SATISFACTION OF THE
SUPERPRIORITY PORTION OF THE
HOA'S LIEN**

1 Plaintiff / Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill
2 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8
3 (“U.S. Bank”) by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie C.
4 Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to EDCR
5 7.27, the following Memorandum of Points and Authorities supporting the pre-foreclosure
6 satisfaction of the superpriority portion of the HOA’s lien.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **LEGAL AUTHORITY**

9 **A. THE NEVADA SUPREME COURT HAS CONFIRMED THE SUPERPRIORITY**
10 **PORTION OF A HOMEOWNERS ASSOCIATION LIEN IS LIMITED TO UP TO**
11 **NINE MONTHS OF ASSESSMENTS**

12 In *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev.
13 Adv. Op. 35, 373 P.3d 66 (2016) (“*Ikon*”), the Nevada Supreme Court clarified that “the
14 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees
15 and foreclosure costs incurred; rather it is limited to an amount equal to the common expense
16 assessments due during the nine months before foreclosure.” The *Ikon* court reviewed both the
17 legislative history of NRS 116.3116, as well as advisory opinions from the Nevada Real Estate
18 Division, which concluded that “[t]he association’s lien does not include “costs of collecting”
19 defined by NRS 116.310313, so the super priority portion of the lien may not include such costs.
20 NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not
21 make such charges part of the association’s lien.” The *Ikon* court then found that the Legislature
22 intentionally excluded late fees and interest from the super priority lien statute. Based on a
23 consideration of the Legislature’s intent, the statutory text of NRS 116.3116 and statutory
24 construction principles, the court concluded that “the super priority lien granted by NRS
25 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather
26 it is limited to an amount equal to the common expense assessments due during the nine months
27 before foreclosure.”

28 Here, the evidence admitted in the record will show that the monthly assessment prior to

1 the HOA Sale was \$45.00. Prior to the HOA Sale, Miles Bauer tendered a check in the amount
2 of \$405.00, which represented nine months of assessments (at \$45.00 per month), to satisfy the
3 superpriority portion of the HOA's lien (the "Tender"). Alessi wrongfully and unjustifiably
4 rejected the Tender. Therefore, the HOA proceeded to foreclose on the sub-priority portion of its
5 lien only and the Property was sold to SFR subject to U.S. Bank's Deed of Trust.

6 **B. TENDER, WHETHER ACCEPTED OR REJECTED, OF AN AMOUNT EQUAL**
7 **TO OR IN EXCESS OF NINE MONTHS OF ASSESSMENTS OPERATES TO**
8 **EXTINGUISH THE SUPERPRIORITY PORTION OF THE HOA'S LIEN.**

9 A beneficiary of a first deed of trust can preserve its interest by "determining the precise
10 amount of the super-priority amount" and tendering it "in advance of the sale." *SFR Investments*
11 *Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 418. *See also Bank of America, N.A. v. SFR*
12 *Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018) (as amended on denial of
13 rehearing Nov. 13, 2018) ("*Diamond Spur*"). Tender is "where there is an offer to perform a
14 condition or obligation, coupled with the present ability of immediate performance, so that if it
15 were not for the refusal of cooperation by the party to whom tender is made, the condition or
16 obligation would be immediately satisfied." *Fresk v. Kraemer*, 99 P. 3d 282, 286-87 (Or. 2004).
17 *See also* 15 Williston, a Treatise on the Law of Contracts, §1808 (3rd ed. 1972).

18 In *Diamond Spur*, the Nevada Supreme Court, reiterated, reaffirmed and summarized the
19 Court's numerous holdings regarding tender, as follows:

- 20 • "A valid tender operates to discharge a lien." (Internal citations omitted)
21 (p. 3).
- 22 • "A plain reading of this statute [NRS 117.3116(2) 2012] indicates that the
23 superpriority portion of an HOA lien includes only charges for maintenance
24 and nuisance abatement, and nine months of unpaid assessments." (Citing to
25 *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev., Adv. Op. 35, ___, 373
26 P.3d 66, 72 (2016). (p. 4).
- 27 • "The only legal conditions which may be attached to a valid tender are either a
28 receipt for full payment or a surrender of the obligation" (Internal citations
omitted). (p.6). The Court also noted that Bank of America had a right to
insist that acceptance of its tender would satisfy the superpriority portion of
the lien.
- "[A] first deed of trust holder's unconditional tender of the superpriority

1 amount due results in the buyer at foreclosure taking the property subject to
2 the deed of trust.”

- 3 • “Tendering the superpriority portion of an HOA lien does not create, alienate,
4 assign or surrender an interest in land. Rather, it preserves a pre-existing
5 interest, which does not require recording.” (pp. 8-9).
- 6 • “To satisfy the superpriority portion of an HOA lien, the tendering party is not
7 required to keep a rejected tender good by paying the amount into court.”
8 (p. 11).
- 9 • “A party’s status as a BFP is irrelevant when a defect in the foreclosure
10 proceeding renders the sale void.” (Internal citations omitted) (p. 13). See
11 also *Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank*, No.
12 71246, 2017 WL 6597154 *2 n.1 (Nev. Dec. 22, 2017) (unpub. disp.)
13 (“*Golden Hill*”).
- 14 • When the superpriority portion of an HOA’s lien has been discharged by
15 tender, “the HOA’s foreclosure on the entire lien resulted in a void sale as to
16 the superpriority portion.” *Diamond Spur*, 427 P.3d at 117.
- 17 • When the superpriority portion of an HOA’s lien has been discharged and the
18 purchaser at the subsequent foreclosure sale takes its interest subject to the
19 first deed of trust. (Citing to UCIOA § 3-116 cmt. 2, illus. 3 (amended 2008),
20 7 pt. 1 B U.L.A. 209 (Supp. 2018) (explaining that when a bank pays the
21 superpriority portion of an HOA lien, the subsequent foreclosure sale “will not
22 extinguish Bank’s mortgage lien, and the buyer at the sale will take the unit
23 subject to the Bank’s mortgage lien”). (pp. 13-14).

24 Furthermore, when rejection of a tender is unjustified, the tender is still effective to
25 discharge the lien. *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 2016 WL 4543202 (Nev.
26 Aug. 11, 2016) (unpublished, citing *Hohn v. Morrison*, 870 P.2d 513, 516-17 (Colo. App. 1993);
27 *Lanier v. Mandeville Mills*, 189 S.E. 532, 534-35 (Ga. 1937); *Fed. Disc. Corp. v. Rush*, 257
28 N.W. 897, 899 (Mich. 1934); *Segars v. Classen Garage & Serv. Co.*, 612 P.2d 293, 295-96
(Okla. Civ. App. 1980); *Reynolds v. Price*, 71 S.E. 51, 53 (S.C. 1911); *Karnes v. Barton*, 272
S.W. 317, 319 (Tex. Civ. App. 1925); *Hilmes v. Moon*, 11 P.2d 253, 260 (Wash. 1932); *see also*
59 C.J.S. *Mortgages* § 582 (2016).

Here, Alessi was the HOA’s agent for the foreclosure of the Property, and was authorized
to accept partial payments. The Tender letter from Miles Bauer was not conditional. Even if the
Tender letter accompanying Miles Bauer’s check did attach conditions, the conditions did not
defeat the effect of tender because Miles Bauer was entitled to attach those conditions. Miles
Bauer’s Tender letter stated that endorsement of the check represented an agreement the

1 superpriority lien had been paid. The Tender letter did not depend on an uncertain event or
2 contingency. Thus, Miles Bauer's unconditional Tender of nine months of assessments, in the
3 amount of \$405.00, was sufficient to discharge the HOA's superpriority lien prior to the HOA
4 Sale. And the HOA did not establish a new superpriority lien after the Tender discharged the
5 existing superpriority lien. Therefore, SFR took its interest in the Property, if any, subject to
6 U.S. Bank's Deed of Trust.

7 Alessi's rejection of the Tender letter was in bad faith because it did not communicate an
8 alternate amount Alessi believed comprised the superpriority lien. To the extent Alessi's
9 rejection of the Tender was due to a mistaken interpretation of the law that fees and costs were
10 included in the superpriority amount, Alessi was incorrect. Alessi's error does not justify the
11 rejection of the Tender. In *K&P Homes v. Christiana Trust*, 133 Nev. Adv. Op. 51, 398 P.3d
12 292 (2017), the Nevada Supreme Court answered a certified question and held the *SFR* decision
13 applied retroactively because that decision did not create new law or overrule existing precedent.
14 Applying the same standard to Alessi, NRS Chapter 116 was always clear that only a maximum
15 of nine months of assessments were recoverable. That Alessi did not interpret the law correctly
16 does not mean that the Tender was not valid.

17 The Tender effectively discharged the superpriority portion of the lien as a matter of law,
18 leaving the HOA with only a sub-priority interest to transfer at the HOA Sale. The sale,
19 therefore, had no impact on the first Deed of Trust. "A foreclosure sale by a junior mortgagee
20 has no effect on the rights of senior lienholders because the purchaser of a junior mortgage takes
21 subject to the rights of all senior liens and encumbrances." *In re Del Gizzo*, 5 B.R. 446, 448
22 (Bankr. D.R.I. 1980) (citing *Brunette v. Myette*, 40 R.I. 546, 102 A. 520 (1918)). The HOA could
23 not convey a superior interest in the Property than it had. Due to the Tender by U.S. Bank's
24 predecessor in interest, the interest conveyed at the HOA Sale to SFR was subject to U.S. Bank's
25 Deed of Trust. *See* NRS 116.31164(3)(a) (the purchaser at an HOA foreclosure receives "a deed
26 without warranty which conveys to the grantee all title of the unit's owner to the unit.").

27 ///

1 **CONCLUSION**

2 Based on the foregoing, U.S. Bank respectfully requests that this Court find that the
3 evidence submitted in the record at trial is sufficient to support a finding that the super-priority
4 portion of the HOA's lien was properly tendered, satisfied and therefore extinguished, prior to
5 the HOA Sale date. As a result, SFR took its interest in the Property, if any, subject to U.S.
6 Bank's Deed of Trust.

7 DATED this 18th day of April, 2019.

8 WRIGHT, FINLAY & ZAK, LLP

9
10 By: /s/ Natalie C. Lehman

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17 *Attorneys for U.S. Bank, National Association as*
18 *Trustee for Merrill Lynch Mortgage Investors Trust,*
19 *Mortgage Loan Asset-Backed Certificates, Series*
20 *2005-A8*

21 **CERTIFICATE OF SERVICE**

22 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
23 LLP, and that on this 18th day of April, 2019, I did cause a true copy of **U.S. BANK'S BENCH**
24 **MEMORANDUM REGARDING PRE-FORECLOSURE SATISFACTION OF THE**
25 **SUPERPRIORITY PORTION OF THE HOA'S LIEN** to be e-served through the Eighth
26 Judicial District EFP system pursuant to NEFR 9, addressed as follows:

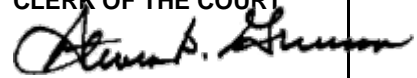
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28 eservice@kgelegal.com
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sochoa@lipsonneilson.com
BEbert@lipsonneilson.com

/s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP

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11 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
12 *A8*

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

15 U.S. BANK, NATIONAL ASSOCIATION AS
16 TRUSTEE FOR MERRILL LYNCH
17 MORTGAGE INVESTORS TRUST,
18 MORTGAGE LOAN ASSET-BACKED
19 CERTIFICATES, SERIES 2005-A8,

20 Plaintiff,

21 v.

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

24 Defendant.

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

27 Counter-Claimant,

28 vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

**BENCH MEMORANDUM REGARDING
WHETHER DEFENDANT IS A BONA
FIDE PURCHASE IS IRRELEVANT**

1 Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for
2 Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-
3 A8 (“U.S. Bank”), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie
4 C. Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to
5 EDCR 7.27, the following Memorandum of Points and Authorities regarding whether or not
6 Plaintiff is a bona fide purchaser is irrelevant.

7 **LEGAL AUTHORITIES**

8 U.S. Bank’s predecessor in interest tendered a check in the amount of nine
9 months worth of assessments to the HOA’s collection agent prior to the HOA Sale (“Tender”).¹
10 The Tender was sufficient to discharge the HOA’s superpriority lien, and the putative bona fide
11 purchaser status of Defendant is irrelevant because it could not have revived the discharged
12 superpriority status of the HOA’s lien.

13 Pursuant to NRS 116.3116(1), an HOA has a lien for unpaid assessments,
14 including a first deed of trust with respect to nine months of unpaid assessments immediately
15 preceding institution of an action to enforce the lien. NRS 116.3116(2)(b) and (c). The Nevada
16 Supreme Court confirmed the interpretation that, “as to first deeds of trust, NRS 116.3116(2)
17 splits an HOA lien into two pieces, a superpriority amount and a subpriority piece.” *SFR*
18 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014) (“*SFR*
19 *Investments*”).
20

21 In *SFR Investments*, the Nevada Supreme Court held that a first Deed of Trust
22 holder’s pre-foreclosure tender of the superpriority amount of the HOA’s lien prevents the first
23 Deed of Trust from being extinguished. 334 P.3d at 414 (“[A]s junior lienholder, [the holder of
24 the first Deed of Trust] could have paid off the [HOA] lien to avert loss of its security[.]”). A
25 beneficiary of a first deed of trust can preserve its interest by “determining the precise amount of
26 the super-priority amount” and tendering it “in advance of the sale.” *SFR Investments, supra*, at

27 ¹ See Joint Trial Exhibits (“JTE”) **21-24, 30, 31**; Testimony of Harrison Whittaker (U.S. Bank)
28 and Rock K. Jung.

1 418. See also *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev., Advance
2 Opinion 72 (September 13, 2018, as modified by the Order Amending Opinion filed November
3 13, 2018) (hereinafter referred to as “*Diamond Spur*”).

4 The only portion of the HOA’s lien that is prior to the first Deed of Trust’s interest is
5 that amount up to nine months of assessments. *Horizons at Seven Hills Homeowners*
6 *Association v. Ikon Holdings*, 373 P.3d 66, 132 Nev. Adv. Op. 35 (Nev. 2016). As the Supreme
7 Court held, “Taking into consideration the legislative intent, the statute’s text, and statutory
8 construction principles, we conclude the super priority lien granted by NRS 116.3116(2) does
9 not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an
10 amount equal to the common expense assessments due during the nine months before
11 foreclosure.” *Id.* at p. 13.

12 Here, the Tender was proper in form, amount and timing to satisfy the HOA’s
13 superpriority lien prior to the HOA Sale, but was wrongfully and unjustifiably rejected by the
14 HOA’s collection agent. However, the rejection is of no consequence because when rejection of
15 a tender is unjustified, the tender is still effective to discharge the lien. *Stone Hollow Ave. Trust*
16 *v. Bank of America, N.A.*, 2016 WL 4543202 (Nev. Aug. 11, 2016) (unpublished, citing *Hohn v.*
17 *Morrison*, 870 P.2d 513, 516-17 (Colo. App. 1993); *Lanier v. Mandeville Mills*, 189 S.E. 532,
18 534-35 (Ga. 1937); *Fed. Disc. Corp. v. Rush*, 257 N.W. 897, 899 (Mich. 1934); *Segars v.*
19 *Classen Garage & Serv. Co.*, 612 P.2d 293, 295-96 (Okla. Civ. App. 1980); *Reynolds v. Price*,
20 71 S.E. 51, 53 (S.C. 1911); *Karnes v. Barton*, 272 S.W. 317, 319 (Tex. Civ. App. 1925); *Hilmes*
21 *v. Moon*, 11 P.2d 253, 260 (Wash. 1932); *see also* 59 C.J.S. *Mortgages* § 582 (2016).

22 Further, because the Tender discharged the HOA’s lien’s superpriority portion as a
23 matter of law, Defendant’s alleged bona fide purchaser status is irrelevant. The bona fide
24 purchaser rule is concerned with whether a purchaser takes title unaffected by “latent equity”
25 “of which he has no notice, constructive or actual.” *Shadow Wood Homeowners Ass’n, Inc. v.*
26 *New York Community Bancorp, Inc.*, 366 P.3d 1105, 1116 (Nev. 2016) (*quoting Moore v. De*
27 *Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923)). It has no nexus to this case. The Deed of
28

1 Trust survived because the Tender discharged the superpriority portion of the lien prior to the
2 HOA Sale. The HOA Sale was a subpriority sale and the HOA could not convey a superior
3 interest than it had in the Property. In *Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan*
4 *Chase Bank*, Case No. 71246, 2017 WL 6597154 (Dec. 22, 2017) (Unpublished) (“*Golden*
5 *Hill*”), the Nevada Supreme Court reasoned, “[a]lthough appellant argues it was a bona fide
6 purchaser, appellant has not explained how its putative BFP status could have revived the
7 already-satisfied superpriority component of the HOA’s lien.” *Golden Hill*, at * 1, n.1. Tender
8 discharges the superpriority portion of the HOA’s lien as a matter of law. Equitable principles,
9 including Defendant’s bona fide purchaser affirmative defense, are therefore irrelevant in this
10 respect.

11 This principle was expressed again by the Nevada Supreme Court in *Diamond Spur*:

12 **A party’s status as a BFP is irrelevant when a defect in the foreclosure**
13 **proceeding renders the sale void.** Because a trustee has no power to convey an
14 interest in land securing a note or other obligation that is not in default, a
15 purchaser at a foreclosure sale of that lien does not acquire title to that property
interest.

16 A foreclosure sale on a mortgage line after valid tender satisfies that lien is void,
17 as the lien is no longer in default. It follows that after a valid tender of the
18 superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void
as to the superpriority portion, because it cannot extinguish the first deed of trust
on the property.

19 Because Bank of America’s valid tender discharged the superpriority portion of
20 the HOA’s lien, the HOA’s foreclosure on the entire lien resulted in a void sale as
21 to the superpriority portion. **Accordingly, the HOA could not convey fully title**
22 **to the property, as Bank of America’s first deed of trust remained after**
23 **foreclosure. As a result, SFR purchased the property subject to Bank of**
24 **America’s deed of trust.**

25 ///

26 ///

1 *Id.* at * 13-14 (Emphasis added & citations omitted). Therefore, whether or not Defendant is a
2 bona fide purchaser is irrelevant.

3 **CONCLUSION**

4 Based on the foregoing, U.S. respectfully requests that this Court rule that Defendant's
5 status as a bona fide purchaser is irrelevant.

6 DATED this 18th day of April, 2019.

7 WRIGHT, FINLAY & ZAK, LLP

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17 *Merrill Lynch Mortgage Investors Trust, Mortgage*

18 *Loan Asset-Backed Certificates, Series 2005-A8*

19 **CERTIFICATE OF SERVICE**

20 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
21 LLP, and that on this 18th day of April, 2019, I did cause a true copy of **BENCH**
22 **MEMORANDUM REGARDING WHETHER DEFENDANT IS A BONA FIDE**
23 **PURCHASE IS IRRELEVANT** to be e-served through the Eighth Judicial District EFP system
24 pursuant to NEFR 9, addressed as follows:

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28 mike@kgelegal.com

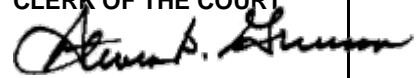
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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 U.S. BANK, NATIONAL ASSOCIATION AS
16 TRUSTEE FOR MERRILL LYNCH
17 MORTGAGE INVESTORS TRUST,
18 MORTGAGE LOAN ASSET-BACKED
19 CERTIFICATES, SERIES 2005-A8,

20 Plaintiff,

21 v.

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

24 Defendant.

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

27 Counter-Claimant,

28 vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

**U.S. BANK'S BENCH MEMORANDUM
REGARDING BUSINESS RECORD
EXCEPTION**

1 Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill
2 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8
3 (“U.S. Bank”), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Natalie C.
4 Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submit, pursuant to EDCR
5 7.27, the following Memorandum of Points and Authorities supporting the admissibility of U.S.
6 Bank’s business records at trial.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 During trial, U.S. Bank moved to admit certain business records into evidence
10 concerning its loan against the Property, including certain records of its servicers who handle
11 the day-to-day handling of the loan on behalf of U.S. Bank. Defendant/Counter-Claimant SFR
12 Investments Pool 1, LLC (“SFR”) objected to the admission of U.S. Bank’s business records as
13 hearsay. As set forth herein, business records fall within an exception to hearsay and are,
14 therefore, admissible.

15 NRS 51.135, “Record of regularly conducted activity,” provides:

16 A memorandum, report, record or compilation of data, in any form, of acts,
17 events, conditions, opinions or diagnoses, made at or near the time by, or from
18 information transmitted by, a person with knowledge, all in the course of a
19 regularly conducted activity, as shown by the testimony or affidavit of the
20 custodian or other qualified person, is not inadmissible under the hearsay rule
unless the source of information or the method or circumstances of preparation
indicate lack of trustworthiness.

21 Moreover, the electronic information, data, and screenshots from U.S. Bank’s electronic
22 database are admissible pursuant to NRS 51.075 and 51.315. The nature and special
23 circumstances of the electronic databases offer the requisite “assurances of accuracy” for
24 several reasons. First, the information included is entered and relied upon by U.S. Bank and its
25 loan servicers as part of those entities’ business obligations and contractual requirements related
26 to administering and servicing millions of residential mortgage loans. Second, accurate
27 information is necessary for each of these entities to administer and service the loans. Third,
28

1 these entities perform audits and spot checks of the information, and this is generally the type of
2 information that, if incorrect, would be detected and corrected. Fourth, and finally, electronic
3 data, by its nature, is generally more accurate and reliable than data manually entered and
4 transferred by humans.

5 **LEGAL AUTHORITIES**

6 **A. U.S. BANK'S BUSINESS RECORDS ARE MAINTAINED IN SUCH A WAY AS 7 TO OFFER ASSURANCES OF ACCURACY.**

8 NRS 51.075 General exception; other exceptions illustrative.

- 9 1. A statement is not excluded by the hearsay rule if its nature and the
10 special circumstances under which it was made offer assurances of
11 accuracy not likely to be enhanced by calling the declarant as a
12 witness, even though the declarant is available.
- 13 2. The provisions of NRS 51.085 to 51.305, inclusive, are illustrative and
14 not restrictive of the exception provided by this section.

15 NRS 51.315 General exception; other exceptions illustrative.

- 16 1. A statement is not excluded by the hearsay rule if:
17 (a) Its nature and the special circumstances under which it was made
18 offer strong assurances of accuracy; and
19 (b) The declarant is unavailable as a witness.
- 20 2. The provisions of NRS 51.325 to 51.355, inclusive, are illustrative and
21 not restrictive of the exception provided by this section.

22 The Nevada Supreme Court has repeatedly addressed the application of NRS 51.075 and
23 51.315 and recognized that "a statement is not excluded by the hearsay rule if its nature and the
24 circumstances under which it is made offer assurances of accuracy not likely to be enhanced by
25 calling the declarant as a witness." *Johnstone v. State*, 92 Nev. 241, 244, 548 P.2d 1362, 1363
26 (1976) (citing NRS 51.075) (internal quotes omitted). "Our statutes thus endorse Judge Learned
27 Hand's observation that the requisites of an exception to the hearsay rule, necessity, and
28 circumstantial guaranty of trustworthiness." *Id.* at 244, 1364 (internal quotes omitted). "Our
Evidence Code explicitly disavows any attempt to limit hearsay rule exceptions to some
preconceived list; for it twice declares that expressly stated exceptions are 'illustrative and not
restrictive.'...It therefore is this court's obligation to decide whether the general criteria

1 recognized in NRS 51.075(1) and NRS 51.315(1) are satisfied in the instant case.” *Id.* (citing
2 NRS 51.075(2) and NRS 51.315(2)).

3 In *Johnstone*, the accused sought to exclude witness statements made to an investigating
4 officer from absent witnesses. *Id.* at 241, 1362. The Court ultimately found that the witness
5 statements should not have been excluded by the trial court, holding that the witnesses had no
6 motive to lie and further acknowledging the accuracy of the information based upon the
7 similarity of both statements. *Id.* at 244, 1366; *see also Woods v. State*, 101 Nev. 128, 135-36,
8 696 P.2d 464, 469 (1985) (finding that the lower court's exclusion of witness statements was
9 improper, and should have been admitted pursuant to NRS 51.075 because “Murnighan was not
10 involved in any way with appellant Cathy Woods. . . No advantage accrued either to her from
11 the prosecution or to the prison authorities for making her statements about Mitchell’s murder.
12 There is no suggestion of bias on her part or of any motive either to inculcate [the accused] or to
13 exculpate appellant. Indeed, at the time that Murnighan first related [the] statements she could
14 not have known what would aid appellant, for appellant had not yet implicated herself in the
15 Mitchell murder.”).

16 The Nevada Supreme Court has also considered admission of correspondence that was
17 determined to be inadmissible under the business records exception, but admissible under NRS
18 51.075. *Emmons v. State*, 107 Nev. 53, 57-58, 807 P.2d 718, 721 (1991) *overruled on other*
19 *grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000). The trial court held
20 that a physician’s letter was not admissible under the business records exception because the
21 admitting party failed to establish that the letter was written “in the course of a regularly
22 conducted activity.” *Id.* Nonetheless, the Supreme Court found that the correspondence was
23 admissible under the general exception to the hearsay rule because the physician who prepared
24 the letter was a disinterested party with no apparent motive to lie. *Id.* at 58 (“Here, the
25 radiologist was a disinterested witness with no apparent motive to lie. Therefore, under the
26 circumstances of this case, we hold that testimony regarding the radiologist's opinion was
27 admissible under the general exception to the hearsay rule.”).

1 Finally, the Nevada Court of Appeals admitted an inventory list relying upon NRS
2 51.075, which would have been otherwise inadmissible. “The facts in this case indicate that the
3 inventory list, although made for the purpose of litigation, is trustworthy. Both the stores’
4 manager and owner saw the stolen items on the hood of the police car; the manager
5 contemporaneously wrote a list of those items; the manager immediately went to her office and
6 typed the inventory based upon that hand-written list; the owner observed that the same items
7 were missing from the storeroom, reviewed the list and confirmed the inventory was accurate;
8 and the owner corroborated the information in the inventory through his trial testimony.”
9 *McDermett v. State*, No. 66678, 2015 WL 1879764, at *2 (Nev. App. Apr. 13, 2015). The court
10 reasoned,

11 Documents prepared primarily for the purpose of litigation generally do not fall within
12 the regularly conducted activity or business records' exception to the hearsay rule because
13 they lose one of the indicia of trustworthiness for that exception. *A.L.M.N., Inc. v. Rosoff*,
14 104 Nev. 274, 284, 757 P.2d 1319, 1325 (1988). A statement, however, is not excluded
by the hearsay rule if its nature and the special circumstances under which it was made
offer assurances of accuracy. NRS 51.075.

15 *A.L.M.N., Inc. v. Rosoff*, 104 Nev. 274, 285, 757 P.2d 1319, 1326 (1988), relied on *Clark v. City*
16 *of Los Angeles*, 650 F.2d 1033, 1037 (9th Cir.1981), *cert. denied*, 456 U.S. 927, 102 S.Ct. 1974,
17 72 L.Ed.2d 443 (1982), where the court noted,

18
19 The basis for the business record exception is that accuracy is assured because the maker
20 of the record relies on the record in the ordinary course of business activities.”¹⁹ **This is,**
21 **we add, particularly true when the maker of the record prepares the documents**
22 **without knowledge of their probable use in impending litigation.** (Emphasis added.)

23 [Fn. 19: See also S. Gard, 4 Jones on Evidence 575 (1972) (citations omitted):

24 **The element of unusual reliability of business records is said variously to be**
25 **supplied by systematic checking,** by regularity and continuity which produce
26 habits of precision, **by actual experience of business in relying upon them, or**
27 **by a duty to make an accurate record as part of a continuing job or**
28 **occupation.** (Emphasis added.)

1 **B. THE RECORDS OF A REGULARLY CONDUCTED ACTIVITY ARE**
2 **ADMISSIBLE AS AN EXCEPTION TO HEARSAY.**

3 NRS 51.135 provides:

4 A memorandum, report, record or compilation of data, in any form, of acts,
5 events, conditions, opinions or diagnoses, made at or near the time by, or from
6 information transmitted by, a person with knowledge, all in the course of a
7 regularly conducted activity, as shown by the testimony or affidavit of the
8 custodian or other qualified person, is not inadmissible under the hearsay rule
9 unless the source of information or the method or circumstances of preparation
10 indicate lack of trustworthiness.

11 U.S. Bank's representative, Harrison Whittaker, a loan analyst for U.S. Bank's current
12 loan servicer, Ocwen Loan Servicing, LLC ("Ocwen"), testified as to the authenticity of the
13 records and the contents thereof created at or near the time of the event noted in the records and
14 in the course of the loan servicer's regularly conducted activity of servicing the loan. In addition,
15 Mr. Whittaker testified about the steps which Ocwen takes to review and cross-reference the
16 information in the business records of the prior loan servicers which become a part of the loan
17 file which was transferred to and relied on by Ocwen upon the transfer of servicing of the loan to
18 Ocwen. Unless this Court determines that the source of information contained in the business
19 records or the method or circumstances of preparation of the business records indicate a lack of
20 trustworthiness, U.S. Bank's business records are admissible. *Id.*

21 Screen shots and data available in the loan file databases are also admissible pursuant to
22 the general exceptions set forth in both NRS 51.075 and 51.315. The nature and special
23 circumstances of the electronically maintained servicing notes and databases offer the requisite
24 "assurances of accuracy." First, the information included is entered and relied upon by U.S.
25 Bank and its servicers, as part of those entities' business obligations and contractual
26 requirements related to administering and servicing millions of residential mortgage loans.
27 Second, accurate information is necessary for each of these entities to administer and service the
28 loans. Third, these entities perform audits and spot checks of the information, and this is
29 generally the type of information that, if incorrect, would be detected and corrected. Fourth, and
30 finally, electronic data, by its nature, is generally more accurate and reliable than data entered

1 and transferred by humans, manually.

2 The Nevada Supreme Court has addressed this very issue and taken into account the fact
3 that the information at issue is more likely accurate when it is commonly relied upon by
4 reasonable and prudent persons in the conduct of their affairs. *State, Dep't of Motor Vehicles v.*
5 *Kiffe*, 101 Nev. 729, 733, 709 P.2d 1017, 1020 (1985) (admitting otherwise inadmissible
6 evidence holding that “the evidence consisting of Officer Davis’s statements is of the type
7 commonly relied upon by reasonable and prudent persons in the conduct of their affairs.”).
8 Accordingly, the entities at issue here, U.S. Bank and its servicers entering the data, have an
9 interest and obligation to enter it accurately. Indeed, Mr. Whittaker testified that, while human
10 error cannot be eliminated, pursuant to audits, spot checks, and general usage of the data, in the
11 event any inaccuracies exist, they are typically discovered and corrected soon after the data is
12 entered. In addition, the information was regularly used by Ocwen in the performance of
13 “ordinary course of business activities” for its investor, U.S. Bank, and there was no indication
14 that the entries were made with “knowledge of their probable use in impending litigation.”

15 There is no motive to falsify information, as the data is relied upon by U.S. Bank and its
16 servicers who utilize the data daily to administer and service these loans. There is no benefit to
17 have inaccurate information within the systems, or any database utilized by any of U.S. Bank’s
18 servicers. Inaccurate information would only frustrate and compromise U.S. Bank’s ability to
19 efficiently and successfully administer the millions of mortgage loans it owns. Instead the
20 opposite is true – U.S. Bank relies upon the accuracy of the information to administer its
21 residential mortgage loan portfolio. Likewise, U.S. Bank’s servicers also rely upon the data to
22 fulfill their contractual obligations to U.S. Bank to service these loans and the borrowers
23 associated with those loans.

24 Here, at the time the information was entered, there was no motive to lie, nor any benefit
25 received from lying. Indeed, any individual that was employed with the originating lender, the
26 servicer, or U.S. Bank, is charged with entering accurate information, as part of his or her job
27 duties. To the contrary, falsifying the information or even negligently entering the information,
28

1 could lead to discipline or termination.

2 Any alleged motive to falsify information is further diminished because when most of
3 the records at issue were created and the data entered, this litigation was not pending. Moreover,
4 irrespective of any pending litigation, U.S. Bank still maintains an obligation and interest in
5 maintaining the accuracy and integrity of the data and information upon which it relies each day
6 to perform its primary and essential functions of administering millions of residential mortgage
7 loans.

8 Finally, the fact that the data and information at issue here is electronically stored and
9 transferred from the prior lender and servicers who furnished some of the information to U.S.
10 Bank and to other servicers only makes the data and information more accurate. The human
11 component of manually entering data is much more susceptible to human error and inaccuracies.
12 Using very sophisticated software and technology substantially reduces potential errors in the
13 maintenance and transfer of information further establishing the accuracy of the information and
14 the admissibility under both NRS 51.075 and 51.315.

15 **C. COMPUTER PRINTOUTS OF U.S. BANK'S ELECTRONIC RECORDS ARE**
16 **DEEMED ORIGINALS.**

17 Mr. Whittaker, U.S. Bank's representative, testified during trial about entries made in its
18 servicers' electronically-maintained business records and documents maintained in the loan file.
19 Since many of these business records are maintained in an electronic database and not in hard-
20 copy form, a printout thereof is deemed by statute to be an original. NRS 52.205(3) ("If data are
21 stored in a computer or similar device, any printout or other output readable by sight, shown
22 accurately to reflect the data, is an 'original.'").

23 ///

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28 ///

1 **CONCLUSION**

2 Based on the foregoing, U.S. Bank respectfully requests that this Court admit U.S.
3 Bank's loan file records, including data and information electronically stored in its databases, as
4 an exception to the hearsay rule pursuant to NRS 51.075, 51.135, 51.145 and 51.315.

5 DATED this 18th day of April, 2019.

6 WRIGHT, FINLAY & ZAK, LLP

7
8 By: /s/ Natalie C. Lehman

9 Dana Jonathon Nitz, Esq.

10 Nevada Bar No. 0050

11 Natalie C. Lehman, Esq.

12 Nevada Bar No. 12995

13 7785 W. Sahara Ave., Suite 200

14 Las Vegas, Nevada 89117

15 *Attorneys for Plaintiff/Counter-Defendant, U.S.*

16 *Bank, National Association as Trustee for Merrill*

17 *Lynch Mortgage Investors Trust, Mortgage Loan*

18 *Asset-Backed Certificates, Series 2005-A8*

19 **CERTIFICATE OF SERVICE**

20 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
21 LLP, and that on this 18th day of April, 2019, I did cause a true copy of U.S. BANK'S BENCH
22 **MEMORANDUM REGARDING BUSINESS RECORD EXCEPTION** to be e-served
23 through the Eighth Judicial District EFP system pursuant to NEFR 9, addressed as follows:

24 diana@kgelegal.com

25 eservice@kgelegal.com

26 staff@kgelegal.com

27 mike@kgelegal.com

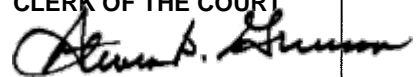
28 kkao@lipsonneilson.com

sochoa@lipsonneilson.com

BEbert@lipsonneilson.com

/s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP



1 **SAO**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Dana Jonathon Nitz, Esq.

4 Nevada Bar No. 0050

5 Natalie C. Lehman, Esq.

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7 7785 W. Sahara Ave., Suite 200

8 Las Vegas, NV 89117

9 (702) 475-7964; Fax: (702) 946-1345

10 nlehman@wrightlegal.net

11 *Attorneys for Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for*
12 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
13 *A8*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **U.S. BANK, NATIONAL ASSOCIATION AS**
17 **TRUSTEE FOR MERRILL LYNCH**
18 **MORTGAGE INVESTORS TRUST,**
19 **MORTGAGE LOAN ASSET-BACKED**
20 **CERTIFICATES, SERIES 2005-A8,**

21 **Plaintiff,**

22 **vs.**

23 **SFR INVESTMENTS POOL 1, LLC, a Nevada**
24 **limited liability company; ANTELOPE**
25 **HOMEOWNERS ASSOCIATION, a Nevada**
26 **non-profit corporation; DOE INDIVIDUALS I**
27 **through X, inclusive; and ROE**
28 **CORPORATIONS I through X, inclusive,**

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,

Case No.: A-16-739867-C

Dept. No.: XXXI

STIPULATION AND ORDER TO
AMEND CAPTION

1031

1 MORTGAGE LOAN ASSET-BACKED
2 CERTIFICATES, SERIES 2005-A8;
3 MORTGAGE ELECTRONIC
4 REGISTRATION SYSTEMS, INC., a
5 Delaware corporation, as nominee beneficiary
6 for UNIVERSAL AMERICAN MORTGAGE
7 COMPANY, LLC, a foreign limited liability
8 company; HENDRY E. IVY, an individual; and
9 FREDDY S. IVY, an individual,

Counter/Cross Defendants.

Plaintiff/Counter-Defendant U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (U.S. Bank), Defendant/Counter-Claimant SFR Investments Pool 1, LLC ("SFR"), and Defendant Antelope Homeowners Association ("Antelope")(together, the "Parties"), by and through their respective attorneys of record, hereby stipulate and agree as follows:

WHEREAS, several named defendants and counter/ cross-defendants have now, or will soon be, dismissed from this action; and

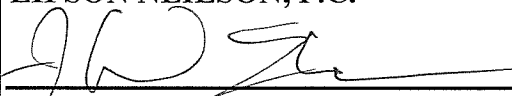
WHEREAS, the only Parties remaining for the trial set for April 16 and 17 are U.S. Bank and SFR;

NOW WHEREFORE, the Parties agree that the caption should be amended to reflect the remaining Parties proceeding to trial.

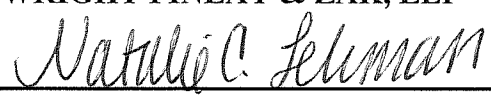
IT IS HEREBY STIPULATED AND AGREED that the caption shall be amended in conformance with the exemplar attached here to as **Exhibit A**.

IT IS SO STIPULATED.

Dated this 12th day of April, 2019.
LIPSON NEILSON, P.C.


J. William Ebert, Esq.
NV Bar No. 2697
Karen Kao, Esq.
NV Bar No. 11876
9900 Covington Cross Dr., Suite 120
Las Vegas Nevada 89144
Attorneys for Antelope Homeowners Assoc.

Dated this 12th day of April, 2019.
WRIGHT FINLAY & ZAK, LLP


Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

1 Stipulation to Amend Caption continued...

2 Dated this 15th day of ~~January~~^{April}, 2019.

3 **KIM GILBERT EBRON**

4 

5 Karen L. Hanks, Esq.

6 NV Bar No. 9578

7 Jason Martinez

8 NV Bar No.

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

9 *Attorneys for SFR Investments Pool 1, LLC*

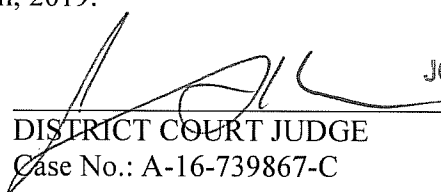
10
11 **ORDER**

12 The Court, having reviewed the Stipulation of the parties, and good cause appearing
13 therefore:

14 **IT IS HEREBY ORDERED** that the caption shall be amended in conformance with
15 Exhibit A, attached hereto, to reflect the parties proceeding to trial.

16 **IT IS SO ORDERED.**

17 DATED this 16th day of April, 2019.

18  JOANNA S. KISHNER

19 DISTRICT COURT JUDGE

20 Case No.: A-16-739867-C

21
22 Submitted by:

23 WRIGHT, FINLAY & ZAK, LLP

24
25 Natalie C. Lehman, Esq.

Nevada Bar No. 12995

26 *Attorneys for U.S. Bank*

1 Stipulation to Amend Caption continued...

2 Dated this _____ day of January, 2019.

3 **KIM GILBERT EBRON**

4
5 _____
6 Karen L. Hanks, Esq.

7 NV Bar No. 9578

8 Jason Martinez

9 NV Bar No.

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

10
11 **ORDER**

12 The Court, having reviewed the Stipulation of the parties, and good cause appearing
13 therefore:

14 **IT IS HEREBY ORDERED** that the caption shall be amended in conformance with
15 Exhibit A, attached hereto, to reflect the parties proceeding to trial.

16 **IT IS SO ORDERED.**


17 DATED this ____ day of April, 2019.

18
19 _____
20 DISTRICT COURT JUDGE

Case No.: A-16-739867-C

21
22 Submitted by:

23 WRIGHT, FINLAY & ZAK, LLP

24 

25 Natalie C. Lehman, Esq.

26 Nevada Bar No. 12995

Attorneys for U.S. Bank

Exhibit A

Exhibit A

Exhibit A

DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

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

Defendant.

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

Counter-Claimant,

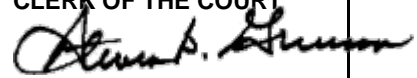
vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C

Dept. No.: XXXI



NTSO

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Natalie C. Lehman, Esq.
Nevada Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
nlehman@wrightlegal.net

Attorneys for Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

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

Defendant.

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

Counter-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

**NOTICE OF ENTRY OF STIPULATION
AND ORDER**

1 **NOTICE OF ENTRY OF STIPULATION AND ORDER**

2 PLEASE TAKE NOTICE that a STIPULATION AND ORDER TO AMEND CAPTION
3 was entered in the above-entitled Court on the 18th day of April, 2019. A copy of which is
4 attached hereto.

5 DATED this 18th day of April, 2019.

6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Natalie C. Lehman, Esq.

8 Dana Jonathon Nitz, Esq.

9 Nevada Bar No. 0050

10 Natalie C. Lehman, Esq.

11 Nevada Bar No. 12995

12 7785 W. Sahara Ave., Suite 200

13 Las Vegas, Nevada 89117

14 *Attorneys for Plaintiff/Counter-Defendant, U.S.*

15 *Bank, National Association as Trustee for Merrill*

16 *Lynch Mortgage Investors Trust, Mortgage Loan*

17 *Asset-Backed Certificates, Series 2005-A8*

18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
20 LLP, and that on this 18th day of April, 2019, I did cause a true copy of **NOTICE OF ENTRY**
21 **OF STIPULATION AND ORDER** to be e-filed and e-served through the Eighth Judicial
22 District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United
23 States Mail, at Las Vegas, Nevada, addressed as follows:

24 diana@kgelegal.com

25 eservice@kgelegal.com

26 staff@kgelegal.com

27 mike@kgelegal.com

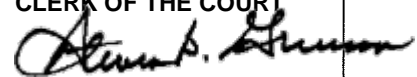
28 kkao@lipsonneilson.com

sochoa@lipsonneilson.com

BEbert@lipsonneilson.com

/s/ Lisa Cox

 An Employee of WRIGHT, FINLAY & ZAK, LLP



1 **SAO**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Dana Jonathon Nitz, Esq.

4 Nevada Bar No. 0050

5 Natalie C. Lehman, Esq.

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7 7785 W. Sahara Ave., Suite 200

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10 nlehman@wrightlegal.net

11 *Attorneys for Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for*
12 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
13 *A8*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **U.S. BANK, NATIONAL ASSOCIATION AS**
12 **TRUSTEE FOR MERRILL LYNCH**
13 **MORTGAGE INVESTORS TRUST,**
14 **MORTGAGE LOAN ASSET-BACKED**
15 **CERTIFICATES, SERIES 2005-A8,**

16 **Plaintiff,**

17 **vs.**

18 **SFR INVESTMENTS POOL 1, LLC, a Nevada**
19 **limited liability company; ANTELOPE**
20 **HOMEOWNERS ASSOCIATION, a Nevada**
21 **non-profit corporation; DOE INDIVIDUALS I**
22 **through X, inclusive; and ROE**
23 **CORPORATIONS I through X, inclusive,**

24 **Defendants.**

25 **SFR INVESTMENTS POOL 1, LLC, a Nevada**
26 **limited liability company,**

27 **Counter/Cross Claimant,**

28 **vs.**

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,

Case No.: A-16-739867-C

Dept. No.: XXXI

STIPULATION AND ORDER TO
AMEND CAPTION

1031

1 MORTGAGE LOAN ASSET-BACKED
2 CERTIFICATES, SERIES 2005-A8;
3 MORTGAGE ELECTRONIC
4 REGISTRATION SYSTEMS, INC., a
5 Delaware corporation, as nominee beneficiary
6 for UNIVERSAL AMERICAN MORTGAGE
7 COMPANY, LLC, a foreign limited liability
8 company; HENDRY E. IVY, an individual; and
9 FREDDY S. IVY, an individual,

Counter/Cross Defendants.

Plaintiff/Counter-Defendant U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (U.S. Bank), Defendant/Counter-Claimant SFR Investments Pool 1, LLC ("SFR"), and Defendant Antelope Homeowners Association ("Antelope")(together, the "Parties"), by and through their respective attorneys of record, hereby stipulate and agree as follows:

WHEREAS, several named defendants and counter/ cross-defendants have now, or will soon be, dismissed from this action; and

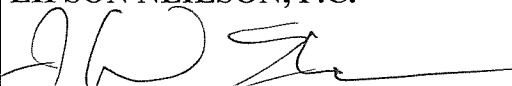
WHEREAS, the only Parties remaining for the trial set for April 16 and 17 are U.S. Bank and SFR;

NOW WHEREFORE, the Parties agree that the caption should be amended to reflect the remaining Parties proceeding to trial.

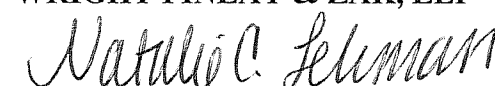
IT IS HEREBY STIPULATED AND AGREED that the caption shall be amended in conformance with the exemplar attached here to as **Exhibit A**.

IT IS SO STIPULATED.

Dated this 12th day of April, 2019.
LIPSON NEILSON, P.C.


J. William Ebert, Esq.
NV Bar No. 2697
Karen Kao, Esq.
NV Bar No. 11876
9900 Covington Cross Dr., Suite 120
Las Vegas Nevada 89144
Attorneys for Antelope Homeowners Assoc.

Dated this 12th day of April, 2019.
WRIGHT FINLAY & ZAK, LLP


Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

1 Stipulation to Amend Caption continued...

2 Dated this 15th day of ~~January~~^{April}, 2019.

3 **KIM GILBERT EBRON**

4 

5 Karen L. Hanks, Esq.

6 NV Bar No. 9578

7 Jason Martinez

8 NV Bar No.

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

9 *Attorneys for SFR Investments Pool 1, LLC*

10
11 **ORDER**

12 The Court, having reviewed the Stipulation of the parties, and good cause appearing
13 therefore:

14 **IT IS HEREBY ORDERED** that the caption shall be amended in conformance with
15 Exhibit A, attached hereto, to reflect the parties proceeding to trial.

16 **IT IS SO ORDERED.**

17 DATED this 16 day of April, 2019.

18  JOANNA S. KISHNER

19 DISTRICT COURT JUDGE

20 Case No.: A-16-739867-C

21
22 Submitted by:

23 WRIGHT, FINLAY & ZAK, LLP

24
25 Natalie C. Lehman, Esq.

Nevada Bar No. 12995

26 *Attorneys for U.S. Bank*

1 Stipulation to Amend Caption continued...

2 Dated this _____ day of January, 2019.

3 **KIM GILBERT EBRON**

4
5 _____
6 Karen L. Hanks, Esq.

7 NV Bar No. 9578

8 Jason Martinez

9 NV Bar No.

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

10
11 **ORDER**

12 The Court, having reviewed the Stipulation of the parties, and good cause appearing
13 therefore:

14 **IT IS HEREBY ORDERED** that the caption shall be amended in conformance with
15 Exhibit A, attached hereto, to reflect the parties proceeding to trial.

16 **IT IS SO ORDERED.**

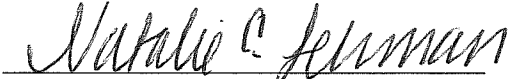
17 DATED this ____ day of April, 2019.

18
19 _____
20 DISTRICT COURT JUDGE

Case No.: A-16-739867-C

21
22 Submitted by:

23 WRIGHT, FINLAY & ZAK, LLP

24 

25 Natalie C. Lehman, Esq.

26 Nevada Bar No. 12995

Attorneys for U.S. Bank

Exhibit A

Exhibit A

Exhibit A

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DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

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

Defendant.

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

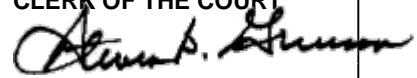
Counter-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI



LIPSON | NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
kkao@lipsonneilson.com

Attorneys for Defendant Antelope Homeowners Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

**STIPULATION AND ORDER FOR
DISMISSAL WITHOUT PREJUDICE AS
TO CLAIMS BETWEEN ANTELOPE
HOMEOWNERS ASSOCIATION AND
U.S. BANK NATIONAL ASSOCIATION**

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

APR 16 '19 4:08:33W

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Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

**STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE
AS TO CLAIMS BETWEEN ANTELOPE HOMEOWNERS ASSOCIATION AND
U.S. BANK NATIONAL ASSOCIATION**

Defendant Antelope Homeowners Association ("Antelope") and Plaintiff / Counter / Cross Defendant U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("US Bank") files this joint Stipulation and Order for Dismissal Without Prejudice as to all claims by and between them, and request that this court dismiss each and every claim by US Bank against Antelope without prejudice. It is further stipulated that each party shall bear its own costs and fees with respect to the claims dismissed pursuant to this stipulation.

In association with this Stipulation, Antelope and US Bank agreed to enter into a Tolling Agreement as of February 2019 ("Agreement"), the terms of which have been agreed upon, and which will be, executed by Antelope and US Bank. The Agreement provides, among other terms, that:

- (1) The parties agree that the claims US Bank asserted against the HOA in the litigation (the "Tolling Claims") are tolled as of the Tolling Date (May 8, 2018) and remain tolled until this Tolling Agreement is terminated, that any statute of limitations, statute of repose, or similar defense based upon the lapse of time or not asserting a claim related to the Tolled Claims shall be tolled and suspended as of the Tolling Date and will remain tolled until this Tolling Agreement is terminated, and that the HOA agrees not to raise, plead or assert such defense

1 relating to the Tolloed Claims for any period from the Tolling Date until this Tolling
2 Agreement is terminated.

3 (2) Notwithstanding anything to the contrary herein, this Tolling Agreement shall
4 not operate to revive any claims or causes of action that were otherwise barred
5 for any applicable limitations period (whether legal, equitable, statutory,
6 contractual, or otherwise) prior to the Tolling Date, and the HOA may assert any
7 applicable limitations period or similar time barred defense which existed in its
8 favor prior to the Tolling Date.

9 (3) All other rights, claims, counterclaims, and defenses existing in favor of the
10 parties are fully preserved.

11 (4) This Tolling Agreement shall terminate 90 days after the earliest date that any
12 of the following occur:

13 a. The Litigation is dismissed in the District Court; or

14 b. Final judgment is entered in the Litigation in District Court, and the time for
15 appellate review expires with no party taking an appeal; or

16 c. If an appeal is taken, the date that either the appeal is dismissed or that date
17 any remittitur or remand is issued by the Court hearing the appeal, or that the appeal
18 is otherwise terminated.

19 (5) Nothing contained in this Tolling Agreement is intended to be, or shall be
20 treated as, an admission of (a) any liability; (b) facts upon which liability could be
21 based; or (c) the validity or waiver of any claim or defense other than the tolling
22 described above.

23 (6) The parties further stipulate that SFR signs this stipulation, only pursuant to
24 NRCP 41(a)(1) and that by signing this stipulation SFR does not waive or is not
25 estopped from asserting U.S. Bank's "claims" are barred because availability of a
26 legal remedy bars an equitable remedy.

27 (7) The parties further stipulate that any and all claims and defenses of
28 whatsoever kind and nature that may exist as between SFR and the HOA are fully

preserved.

IT IS SO STIPULATED.

Dated this _____ day of April, 2019.

LIPSON NEILSON, P.C.

J. William Ebert, Esq.
 NV Bar No. 2697
 Karen Kao, Esq.
 NV Bar No. 11876
 9900 Covington Cross Dr., Suite 120
 Las Vegas Nevada 89144
Attorneys for Antelope Homeowners Association


Dated this _____ day of April, 2019.

WRIGHT FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
 NV Bar No. 00050
 Natalie C. Lehman, Esq.
 NV Bar No. 12995
 7785 W. Sahara Ave., Suite 200
 Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

Dated this 15th day of April, 2019.

KIM GILBERT EBRON


 Diana S. Ebron, Esq.
 NV Bar No. 10580
 Jacqueline A. Gilbert, Esq.
 NV Bar No. 10593
 Karen L. Hanks, Esq.
 NV Bar No. 9578
 7625 Dean Martin Dr., Suite 110
 Las Vegas, Nevada 89139

preserved.

IT IS SO STIPULATED.


<p>Dated this _____ day of April, 2019.</p> <p>LIPSON NEILSON, P.C.</p>	<p>Dated this <u>15th</u> day of April, 2019.</p> <p>WRIGHT FINLAY & ZAK, LLP</p> <p><i>Natalie C. Lehman</i></p>
<p>J. William Ebert, Esq. NV Bar No. 2697 Karen Kao, Esq. NV Bar No. 11876 9900 Covington Cross Dr., Suite 120 Las Vegas Nevada 89144 <i>Attorneys for Antelope Homeowners Association</i></p>	<p>Dana Jonathon Nitz, Esq. NV Bar No. 00050 Natalie C. Lehman, Esq. NV Bar No. 12995 7785 W. Sahara Ave., Suite 200 Las Vegas, Nevada 89117 <i>Attorneys for U.S. Bank National Association</i> <i>Case No. A-16-739867-C</i></p>
<p>Dated this _____ day of April, 2019.</p> <p>KIM GILBERT EBRON</p> <p>Diana S. Ebron, Esq. NV Bar No. 10580 Jacqueline A. Gilbert, Esq. NV Bar No. 10593 Karen L. Hanks, Esq. NV Bar No. 9578 7625 Dean Martin Dr., Suite 110 Las Vegas, Nevada 89139</p>	<p><i>SAO for Dismissal without Prejudice of Antelope Hott</i></p>

1 preserved.

2 IT IS SO STIPULATED.

3
4 Dated this 15th day of April, 2019.

5 **LIPSON NEILSON, P.C.**

6 
7 J. William Ebert, Esq.
8 NV Bar No. 2697
9 Karen Kao, Esq.
10 NV Bar No. 11876
11 9900 Covington Cross Dr., Suite 120
12 Las Vegas Nevada 89144
13 *Attorneys for Antelope Homeowners*
14 *Association*

15 Dated this _____ day of April, 2019.

16 **KIM GILBERT EBRON**

17 Diana S. Ebron, Esq.
18 NV Bar No. 10580
19 Jacqueline A. Gilbert, Esq.
20 NV Bar No. 10593
21 Karen L. Hanks, Esq.
22 NV Bar No. 9578
23 7625 Dean Martin Dr., Suite 110
24 Las Vegas, Nevada 89139

Dated this _____ day of April, 2019.

WRIGHT FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

U.S. Bank, National Association, Plaintiff(s) vs.
SFR Investments Pool 1, LLC
Case No.: A-16-739867-C

ORDER

IT IS SO ORDERED.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Dated: April 16, 2019

Case No. A-16-739867-C
U.S. Bank v. SFR Investments Pool 1, LLC

Submitted by:

LIPSON NEILSON, P.C.


J. William Ebert, Esq.

NV Bar No. 2697

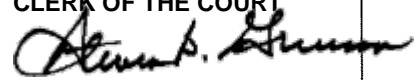
Karen Kao, Esq.

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Attorneys for Antelope Homeowners Association



LIPSON | NEILSON P.C.
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Attorneys for Defendant Antelope Homeowners Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

NOTICE OF ENTRY OF ORDER

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

NOTICE OF ENTRY OF ORDER

Please take notice that the Stipulation and Order for Dismissal without Prejudice as to Claims Between Antelope Homeowners Association and U.S. Bank National Association was filed with this court on the 23rd day of April, 2019, a copy of which is attached.

DATED this 23rd day April, 2019.

LIPSON NEILSON P.C.

By: 

J. William Ebert, Esq. (Bar No. 2697)

Karen Kao, Esq. (Bar No. 14386)

9900 Covington Cross Dr., Suite 120

Las Vegas, NV 89148

Attorneys for Defendant Antelope Homeowners Association

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 23rd day of April, 2019, I served the foregoing **NOTICE OF ENTRY OF ORDER** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

WRIGHT, FINLAY & ZAK, LLP
Regina A. Habermas, Esq.
Jamie S. Hendrickson, Esq.
7785 W. Sahara Ave., Suite 200
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rhabermas@wrightlegal.net
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KIM GILBERT EBRON
Diana Cline Ebron, Esq.
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Las Vegas, NV 89139
diana@kgelegal.com

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON P.C.



LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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kkao@lipsonneilson.com

Attorneys for Defendant Antelope Homeowners Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
ANTELOPE HOMEOWNERS'
ASSOCIATION, a Nevada non-profit
corporation; DOE INDIVIDUALS I through
X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

**STIPULATION AND ORDER FOR
DISMISSAL WITHOUT PREJUDICE AS
TO CLAIMS BETWEEN ANTELOPE
HOMEOWNERS ASSOCIATION AND
U.S. BANK NATIONAL ASSOCIATION**

LIPSON NEILSON P.C.

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Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

**STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE
AS TO CLAIMS BETWEEN ANTELOPE HOMEOWNERS ASSOCIATION AND
U.S. BANK NATIONAL ASSOCIATION**

Defendant Antelope Homeowners Association ("Antelope") and Plaintiff / Counter / Cross Defendant U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("US Bank") files this joint Stipulation and Order for Dismissal Without Prejudice as to all claims by and between them, and request that this court dismiss each and every claim by US Bank against Antelope without prejudice. It is further stipulated that each party shall bear its own costs and fees with respect to the claims dismissed pursuant to this stipulation.

In association with this Stipulation, Antelope and US Bank agreed to enter into a Tolling Agreement as of February 2019 ("Agreement"), the terms of which have been agreed upon, and which will be, executed by Antelope and US Bank. The Agreement provides, among other terms, that:

- (1) The parties agree that the claims US Bank asserted against the HOA in the litigation (the "Tolling Claims") are tolled as of the Tolling Date (May 8, 2018) and remain tolled until this Tolling Agreement is terminated, that any statute of limitations, statute of repose, or similar defense based upon the lapse of time or not asserting a claim related to the Tolleed Claims shall be tolled and suspended as of the Tolling Date and will remain tolled until this Tolling Agreement is terminated, and that the HOA agrees not to raise, plead or assert such defense

1 relating to the Trolled Claims for any period from the Tolling Date until this Tolling
2 Agreement is terminated.

3 (2) Notwithstanding anything to the contrary herein, this Tolling Agreement shall
4 not operate to revive any claims or causes of action that were otherwise barred
5 for any applicable limitations period (whether legal, equitable, statutory,
6 contractual, or otherwise) prior to the Tolling Date, and the HOA may assert any
7 applicable limitations period or similar time barred defense which existed in its
8 favor prior to the Tolling Date.

9 (3) All other rights, claims, counterclaims, and defenses existing in favor of the
10 parties are fully preserved.

11 (4) This Tolling Agreement shall terminate 90 days after the earliest date that any
12 of the following occur:

- 13 a. The Litigation is dismissed in the District Court; or
14 b. Final judgment is entered in the Litigation in District Court, and the time for
15 appellate review expires with no party taking an appeal; or
16 c. If an appeal is taken, the date that either the appeal is dismissed or that date
17 any remittitur or remand is issued by the Court hearing the appeal, or that the appeal
18 is otherwise terminated.

19 (5) Nothing contained in this Tolling Agreement is intended to be, or shall be
20 treated as, an admission of (a) any liability; (b) facts upon which liability could be
21 based; or (c) the validity or waiver of any claim or defense other than the tolling
22 described above.

23 (6) The parties further stipulate that SFR signs this stipulation, only pursuant to
24 NRCP 41(a)(1) and that by signing this stipulation SFR does not waive or is not
25 estopped from asserting U.S. Bank's "claims" are barred because availability of a
26 legal remedy bars an equitable remedy.

27 (7) The parties further stipulate that any and all claims and defenses of
28 whatsoever kind and nature that may exist as between SFR and the HOA are fully

1 preserved.

2 IT IS SO STIPULATED.

3
4 Dated this _____ day of April, 2019.

5 **LIPSON NEILSON, P.C.**

6
7 J. William Ebert, Esq.
NV Bar No. 2697
8 Karen Kao, Esq.
NV Bar No. 11876
9 9900 Covington Cross Dr., Suite 120
Las Vegas Nevada 89144
10 *Attorneys for Antelope Homeowners*
11 *Association*


Dated this _____ day of April, 2019.

WRIGHT FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

12 Dated this 15th day of April, 2019.

13 **KIM GILBERT EBRON**

14 
15 Diana S. Ebron, Esq.
NV Bar No. 10580
16 Jacqueline A. Gilbert, Esq.
NV Bar No. 10593
17 Karen L. Hanks, Esq.
NV Bar No. 9578
18 7625 Dean Martin Dr., Suite 110
19 Las Vegas, Nevada 89139

LIPSON NEILSON P.C.

9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

preserved.

IT IS SO STIPULATED.

Dated this _____ day of April, 2019.

LIPSON NEILSON, P.C.

J. William Ebert, Esq.
NV Bar No. 2697
Karen Kao, Esq.
NV Bar No. 11876
9900 Covington Cross Dr., Suite 120
Las Vegas Nevada 89144
Attorneys for Antelope Homeowners Association

Dated this _____ day of April, 2019.

KIM GILBERT EBRON

Diana S. Ebron, Esq.
NV Bar No. 10580
Jacqueline A. Gilbert, Esq.
NV Bar No. 10593
Karen L. Hanks, Esq.
NV Bar No. 9578
7625 Dean Martin Dr., Suite 110
Las Vegas, Nevada 89139

Dated this 15th day of April, 2019.

WRIGHT FINLAY & ZAK, LLP

Natalie C. Lehman
Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association
Case No. A-16-739867-C


*SAD for Dismissal without
Prejudice of Antelope HOA*

1 preserved.

2 IT IS SO STIPULATED.

3
4 Dated this 15th day of April, 2019.

5 **LIPSON NEILSON, P.C.**

6 
7 J. William Ebert, Esq.
8 NV Bar No. 2697
9 Karen Kao, Esq.
10 NV Bar No. 11876
11 9900 Covington Cross Dr., Suite 120
12 Las Vegas Nevada 89144
13 *Attorneys for Antelope Homeowners*
14 *Association*

12 Dated this _____ day of April, 2019.

13 **KIM GILBERT EBRON**

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15 Diana S. Ebron, Esq.
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21 7625 Dean Martin Dr., Suite 110
22 Las Vegas, Nevada 89139

Dated this _____ day of April, 2019.

WRIGHT FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
NV Bar No. 00050
Natalie C. Lehman, Esq.
NV Bar No. 12995
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank National Association

U.S. Bank, National Association, Plaintiff(s) vs.
SFR Investments Pool 1, LLC
Case No.: A-16-739867-C

ORDER

IT IS SO ORDERED.

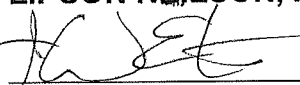

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Dated: April 16, 2019

Case No. A-16-739867-C
U.S. Bank v. SFR Investments Pool 1, LLC

Submitted by:

LIPSON NEILSON, P.C.


J. William Ebert, Esq.

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