

**Case No. 79235**

IN THE SUPREME COURT OF NEVADA

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

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

Electronically Filed  
Jun 14 2021 03:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable JOANNA A. KISHNER, District Judge  
District Court Case No. A-16-739867-C

**SUPPLEMENTAL APPENDIX VOLUME 1**

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Respectfully submitted by:

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1	1	03/15/2019	U.S. Bank National Association's Amended Pre-Trail Disclosures	SA_0001

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1	1	03/15/2019	U.S. Bank National Association's Amended Pre-Trail Disclosures	SA_0001
1	2	04/02/2019	Amended Joint Pre-Trail Memorandum	SA_0013

# **TAB 1**

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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 vs.

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

28 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;

Case No.: A-16-739867-C

Dept. No.: XXXI

**U.S. BANK NATIONAL  
ASSOCIATION'S AMENDED PRE-  
TRIAL DISCLOSURES**

1 MORTGAGE ELECTRONIC  
2 REGISTRATION SYSTEMS, INC., a  
3 Delaware corporation, as nominee beneficiary  
4 for UNIVERSAL AMERICAN MORTGAGE  
5 COMPANY, LLC, a foreign limited liability  
6 company; HENDRY E. IVY, an individual; and  
7 FREDDY S. IVY, an individual,

8  
9 Counter/Cross Defendants.

10 Pursuant to N.R.C.P. Rule 16.1(a)(3), Plaintiff/Counter/Cross-Defendant, U.S. Bank,  
11 National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan  
12 Asset-Backed Certificates, Series 2005-A8 ("U.S. Bank"), by and through its attorneys of  
13 record, Dana Jonathon Nitz, Esq. and Natalie C. Lehman, Esq., of the law firm of Wright,  
14 Finlay & Zak, LLP, hereby identifies and/or produces the following pre-trial disclosures.

15 **I. WITNESSES:**

16 **A. U.S. Bank Expects to Call the Following Witnesses at Trial:**

- 17 1. Corporate Designee for U.S. Bank, National Association as Trustee for Merrill  
18 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates,  
19 Series 2005-A8  
20 c/o Wright, Finlay & Zak, LLP  
21 7785 W. Sahara Avenue, Suite 200  
22 Las Vegas, Nevada 89117
- 23 2. Custodian of Records for U.S. Bank, National Association as Trustee for Merrill  
24 Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates,  
25 Series 2005-A8  
26 c/o Wright, Finlay & Zak, LLP  
27 7785 W. Sahara Avenue, Suite 200  
28 Las Vegas, Nevada 89117
3. Corporate Designee for SFR Investments Pool 1, LLC  
Chris Hardin  
David Bembas  
Paulina Kelso  
Tamara Morales  
c/o Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

- 1 4. Custodian of Records for SFR Investments Pool 1, LLC  
2 c/o Kim Gilbert Ebron  
3 7625 Dean Martin Drive, Suite 110  
4 Las Vegas, Nevada 89139
- 5 5. Corporate Designee for Alessi & Koenig, LLC  
6 c/o HOA Lawyers Group, LLC  
7 9500 West Flamingo Road, Suite 101  
8 Las Vegas, Nevada 89147
- 9 6. Custodian of Records for Alessi & Koenig, LLC  
10 c/o HOA Lawyers Group, LLC  
11 9500 West Flamingo Road, Suite 101  
12 Las Vegas, Nevada 89147
- 13 7. David Alessi  
14 c/o HOA Lawyers Group, LLC  
15 9500 West Flamingo Road, Suite 101  
16 Las Vegas, Nevada 89147
- 17 8. Ryan Kerbow  
18 504 South 9th Street
- 19 9. Las Vegas, NV 89101 Corporate Designee for Antelope Homeowners'  
20 Association  
21 Ray Wooge, Brian McKay, James Schlobohn, Katherine Mizak, Trace Burman,  
22 Valerie Sands, and Jennifer Webb  
23 c/o Lipson Neilson P.C.  
24 9900 Covington Cross Street, Suite 120  
25 Las Vegas, Nevada 89144
- 26 10. Custodian of Records for Antelope Homeowners' Association  
27 c/o Lipson Neilson P.C.  
28 9900 Covington Cross Street, Suite 120  
Las Vegas, Nevada 89144
11. Corporate Designee Universal American Mortgage Company, Inc.  
c/o CT Corporation Systems  
1200 South Pine Island Road  
Plantation, Florida 33324

1 12. Corporate Designee and Custodian of Records for Complete Association  
2 Management Company (CAMCO)

3 Jo'd Davison  
4 Yvette Saucedo  
5 c/o Lipson Neilson P.C.  
6 9900 Covington Cross Street, Suite 120  
7 Las Vegas, Nevada 89144  
8

9 13. Custodian of Records for Universal American Mortgage Company, Inc.

10 c/o CT Corporation Systems  
11 1200 South Pine Island Road  
12 Plantation, Florida 33324  
13

14 14. Rock K. Jung, Esq.

15 c/o Wright, Finlay Zak, LLP  
16 7785 West Sahara Avenue, Suite 200  
17 Las Vegas, Nevada 89117  
18

19 15. Rule 30(b)(6) Witness for Clark County Assessor

20 500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
21 Las Vegas, Nevada 89155  
22

23 16. Rule 30(b)(6) Witness for Clark County Recorder

24 500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
25 Las Vegas, Nevada 89155  
26

27 17. R. Scott Dugan, SRA

28 R. Scott Dugan Appraisal Company, Inc.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, Nevada 89147

18. Henry E. Ivy

c/o Dale E. Haley, Esq.  
1810 E. Sahara Avenue, Suite 1312  
Las Vegas, NV 89104  
(702) 307-5963

19. Freddie S. Ivy

c/o Dale E. Haley, Esq.  
1810 E. Sahara Avenue, Suite 1312  
Las Vegas, NV 89104  
(702) 307-5963

1 20. Ray Wooge

2 c/o Mathew Grode, Esq. and Timothy P. Elson, Esq.  
3 Gibbs Giden Locher Turner Senet & Wittbrodt, LLP  
4 1140 N. Town Center Drive, Suite 300  
5 Las Vegas, NV 89144-0596  
6 (702) 836-9800

7 21. Custodian of Records, Corporate Designee or

8 Teralyn Thompson for State of Nevada Department of Business and Industry  
9 Real Estate Division  
10 2501 E. Sahara Avenue, Suite 303  
11 Las Vegas, Nevada 89104

12 U.S. Bank reserves the right to call any additional witnesses previously identified or  
13 disclosed within discovery responses and initial, supplemental, pretrial and/or expert disclosures  
14 by any party in this action. In addition, U.S. Bank reserves the right to call any witness as may  
15 be necessary for the purpose of impeachment or rebuttal. U.S. Bank reserves the right to amend  
16 this disclosure as may be necessary. By listing witnesses, U.S. Bank does not waive the right to  
17 object to any witnesses at the time of trial.

18 **B. U.S. Bank's Witnesses Who Have Been Subpoenaed for Trial.**

19 None at this time. U.S. Bank reserves the right to subpoena any witnesses it deems  
20 necessary prior to trial.

21 **II. U.S. BANK EXPECTS TO PRESENT THE FOLLOWING DEPOSITIONS AT**  
22 **TRIAL PURSUANT TO NRCP 16.1(a)(3)(B)**

23 **A. U.S. Bank Expects to Use the Depositions as Allowed Under Nevada Law.**

24 None at this time.

25 **B. U.S. Bank Expects to Present the Following Deposition Testimony If the Witness Is**  
26 **Unavailable at the Time of Trial.**

- 27 1. Deposition of David Alessi, 30(b)(6) witness for Alessi & Koenig, LLC (including all  
28 volumes of transcripts and all accompanying exhibits referenced therein)
2. Deposition of David Bambas, 30(b)(6) witness for SFR Investments Pool 1, LLC  
(including all volumes of transcripts and all accompanying exhibits referenced  
therein)



**C. The Following Deposition Testimony Will Be Presented For Impeachment, If the Need Arises.**

1. Deposition of David Alessi, 30(b)(6) witness for Alessi & Koenig, LLC (including all volumes of transcripts and all accompanying exhibits referenced therein)
2. Deposition of David Bembas, 30(b)(6) witness for SFR Investments Pool 1, LLC (including all volumes of transcripts and all accompanying exhibits referenced therein)

U.S. Bank reserves the right to use any deposition designated by any other party related to this matter. U.S. Bank further reserves the right to use any testimony given in the above-named depositions during the trial of this matter regardless of the subject matter, including for impeachment purposes.

By disclosing deposition testimony, including any additional volumes of the transcript and exhibits attached thereto, U.S. Bank does not waive the right to challenge and exclude such deposition testimony and/or exhibits, or portions thereof, on any basis.

**III. EXHIBITS**

**A. U.S. Bank's Exhibits Which It Expects to Offer at Trial:**

Date	Description	Bates Stamped
6/23/2004	Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	USB00001-USB00063
09/14/2006	Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	USB00064-USB00066
5/23/2005	Grant, Bargain, Sale Deed	USB00067-USB00070
8/26/2009	Notice of Default and Election to Sell Under Deed of Trust	USB00071-USB00072
5/23/2005	Deed of Trust	USB00073-USB00094
5/23/2005	Deed of Trust (Second)	USB00095-USB00107
10/20/2005	Deed of Trust re-recorded to add correct Adjustable Rate Rider	USB00108-USB00133
10/03/2006	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	USB00134-USB00139

11/12/2009	Notice of Delinquent Assessment (Lien)	USB00140
10/19/2010	Notice of Delinquent Violation Lien	USB00141- USB00142
2/17/2011	Notice of Default and Election to Sell Under Homeowners Association Lien	USB00143
8/11/2011	Notice of Trustee's Sale	USB00144
4/16/2012	Notice of Trustee's Sale	USB00145
7/02/2012	Notice of Trustee's Sale	USB00146
8/03/2012	Trustee's Deed Upon Sale	USB00147- USB00148
9/20/2012	Release of Notice of Delinquent Assessment Lien	USB00149
1/17/2013	Rescission of Election to Declare Default	USB00150- USB00151
6/07/2013	Notice of Delinquent Violation Lien	USB00152- USB00153
11/05/2014	Request for Notice Pursuant to NRS 116.31168	USB00154- USB00156
7/13/2016	Notice of Lis Pendens	USB00157- USB00160
10/11/2011	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Henry Ivy	USB000161- USB000163
10/11/2011	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Antelope Homeowners Association	USB000164- USB000165
10/21/2011	Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP	USB000169- USB000175
12/16/2011	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC	USB000166- USB000168
4/16/2005	Correspondence regarding corrected ARM Note	USB000286
4/9/2010	Affidavit of Lost Note	USB000182- USB000191
2/14/2007	Affidavit of Lost Note	USB000202- USB000209
2/14/2007	Correspondence regarding Note	USB000216- USB000217
5/13/2005	Deed of Trust, Note, and Lost Note Affidavit	USB00176- USB00441
	Alessi & Koenig, LLC Collection File	USB00442- USB00617
3/22/2018	Affidavit of Doug Miles and Backup	USB00618- USB00638
5/2/2011	Title Insurance Documents – First American Title Insurance Company – NV08000274-11/IVY	USB00639- USB00649
5/23/2005	Title Insurance Policy – North American Title Insurance Company	USB00650- USB00666

6/01/2018	Corporate Assignment of Deed of Trust, recorded as Book and Instrument No.	USB00667-USB00668
3/3/2014	Trustee's Sale Guarantee	USB000669-USB000679
	Bank of America, N.A.'s Payment History	USB00680-USB00692
	Greenpoint's Payment History	USB00693-USB00703
	Bank of America, N.A.'s Servicing Notes	USB00732-USB01011
5/13/2005	Copy of Promissory Note and Allonges	USB01012-USB01027
	Pooling and Servicing Agreement	USB01028-USB01243
	Mortgage Loan Schedule for PSA	USB01244-USB01262
7/02/2018	Corporate Assignment of Deed of Trust	USB01263-USB01264
	Exhibit 1 to Deposition of David Alessi – Subpoena for Deposition of N.R.C.P. 30(b)(6) Witness for Alessi & Koenig, LLC	
	Exhibit 2 to Deposition of David Alessi – Account Ledger	
	Exhibit 3 to Deposition of David Alessi – Notice of Delinquent Assessment (Lien)	
	Exhibit 4 to Deposition of David Alessi – Notice of Delinquent Violation Lien	
	Exhibit 5 to Deposition of David Alessi – Notice of Default and Election to Sell Under Homeowners Association Lien	
	Exhibit 6 to Deposition of David Alessi – Notice of Trustee's Sale	
	Exhibit 7 to Deposition of David Alessi – Second Notice of Trustee's Sale	
	Exhibit 8 to Deposition of David Alessi – Third Notice of Trustee's Sale	
	Exhibit 9 to Deposition of David Alessi – Request for Payoff by Miles Bauer	
	Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request	
	Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer	
	Exhibit 12 to Deposition of David Alessi – Trustee's Deed Upon Sale	
	Exhibit 1 to Deposition of David Bambas – Notice of Taking Deposition of SFR Investments Pool 1, LLC	

	Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)	
	Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien	
	Exhibit 4 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 5 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 6 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11	
	Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11	
	Exhibit 9 to Deposition of David Bembas – Trustee’s Deed Upon Sale	
10/24/2018	Acknowledgement of Inspection of the Original Collateral File	USB01263-USB01370
	Antelope Homeowners Association’s Answers To Plaintiff U.S. Bank written discovery	
	SFR Investments Pool 1, LLC’S Objections And Answers To Plaintiff, U.S. Bank National Association’s written discovery	
	All discovery requests and responses from all parties; all motions with supporting exhibits;	
	Any and all deposition transcripts designated and/or disclosed by any party in this case.	
	Any and all trial transcripts designated and/or disclosed by any party in this case.	
	Antelope Homeowners Association’s Initial Disclosures and all Supplements	ANT000001-ANT000117

U.S. Bank incorporates by this reference each document designated as an exhibit for trial by any other party to this action, regardless of whether the document is subsequently withdrawn or not offered by the proposing party.

U.S. Bank reserves the right to use any documents previously identified or disclosed within discovery responses and initial, supplemental, pretrial and/or expert disclosures by any party in this action. U.S. Bank further reserves the right to use any documents deemed necessary for impeachment or rebuttal purposes. By disclosing documents, U.S. Bank does not waive the right to challenge and exclude documents, or portions thereof, on any basis.

1 **IV. DEMONSTRATIVE EXHIBITS**

2 **A. U.S. Bank May Offer, At Trial, Certain Exhibits For Demonstrative Purposes**  
3 **Including, But Not Limited To, the Following:**

- 4 a. Demonstrative and actual photographs  
5 b. Flowcharts  
6 c. Timeline of events  
7 d. Enlarged exhibits  
8 e. PowerPoint  
9 f. Story boards  
10 g. Projected Images Using Elmo or related devices

11 U.S. Bank reserves the right to use any demonstrative exhibits as disclosed in this  
12 matter. U.S. Bank reserves the right to introduce such other demonstrative exhibits into  
13 evidence as may be necessary for the purposes of impeachment, rebuttal, or both. By disclosing  
14 demonstrative exhibits, U.S. Bank does not waive the right to object to demonstrative exhibits  
15 disclosed by any party at the time of trial.

16 U.S. Bank reserves the right to object to the introduction of exhibits and witnesses not  
17 previously disclosed, and further reserves its objections to any exhibit offered based on  
18 foundation and relevancy. U.S. Bank further reserves the right to supplement its pre-trial  
19 disclosure statement as necessary.

20 DATED this 15<sup>th</sup> day of March, 2019.

21 WRIGHT, FINLAY & ZAK

22 /s/ Natalie C. Lehman

23 Natalie C. Lehman, Esq.

24 Nevada Bar No. 12995

25 7785 W. Sahara Avenue, Suite 200

26 Las Vegas, Nevada 89117

27 *Attorneys for Plaintiff/Counter/Cross-Defendant,*  
28 *U.S. Bank, National Association as Trustee for*  
*Merrill Lynch Mortgage Investors Trust, Mortgage*  
*Loan Asset-Backed Certificates, Series 2005-A8*

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 15<sup>th</sup> day of March, 2019, I did cause a true copy of **U.S. BANK NATIONAL ASSOCIATION'S AMENDED PRE-TRIAL DISCLOSURES** to be e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

KIM GILBERT EBRON:

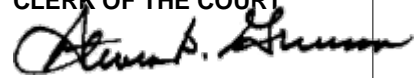
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/s/ Lisa Cox  
An Employee of WRIGHT, FINLAY & ZAK, LLP

# **TAB 2**



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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.

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, INC., a  
Delaware corporation, as nominee beneficiary

Case No. A-16-739867-C

Dept. No. XXXI

**AMENDED JOINT PRE-TRIAL  
MEMORANDUM**



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.

Defendant/Counterclaimant/Cross-Claimant, SFR INVESTMENTS POOL 1, LLC (“SFR”); and Plaintiff/Counterdefendant U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 (“U.S. Bank”) by and through their respective undersigned counsel, hereby submit their Joint Pre-Trial Memorandum.

The parties met and conferred at the EDCR 2.67 conference on July 26, 2018.

**I. Brief Statement of the Facts of the Case (EDCR 2.67(b)(1))**

**The following facts are stipulated by the parties:**

1. This action relates to real property located at 7868 Marbledoe Court, Las Vegas, Nevada 89149. On July 25, 2012, the Association foreclosed on the property. At the sale, SFR placed the highest cash bid at the sale.

2. The Property is subject to a Declaration of Covenants, Conditions & Restrictions Reservation of Easements for Antelope Homeowners’ Association (“HOA”) (“CC&Rs”), recorded against the Property in the Clark County Recorder’s Office.

3. On May 13, 2005, Henry E. Ivy and Freddie S. Ivy (“Borrowers”) obtained a loan for \$212,750.00 secured by a Deed of Trust recorded against the Property, identifying Universal American Mortgage Company, LLC (“Universal”) as the Lender and beneficiary (the “Ivy Note”).

4. The Deed of Trust was recorded against the Property in the Clark County Recorder’s Office on May 23, 2005.

5. The Association retained Alessi & Koenig, LLC (“Alessi”) as its agent to collect delinquent assessments from Borrowers.

6. On November 12, 2009, Alessi, on behalf of the Association, recorded a Notice of Delinquent Assessment (Lien) against the Property in the Clark County Recorder’s Office.

1           7.       On February 17, 2011, Alessi, on behalf of the Association, recorded a Notice of  
2 Default and Election to Sell Under Homeowners Association Lien ("NOD") against the Property  
3 in the Clark County Recorder's Office.

4           8.       On August 11, 2011, Alessi, on behalf of the Association, recorded a Notice of  
5 Trustee's Sale ("NOS #1") against the Property in the Clark County Recorder's Office.

6           9.       On April 16, 2012, Alessi, on behalf of the Association, recorded a second NOS  
7 ("NOS #2") against the Property in the Clark County Recorder's Office.

8           10.      On July 2, 2012, Alessi, on behalf of the Association, recorded a third NOS ("NOS  
9 #3) against the Property in the Clark County Recorder's Office.

10          11.      Alessi, on behalf of the Association, mailed the NOD, NOS #1, NOS#2 and NOS#3  
11 to U.S. Bank's predecessor in interest, Universal and/or its agent(s).

12          12.      Universal, the then recorded beneficiary of the Deed of Trust, and/or its agent(s),  
13 received the NOD, NOS #1, NOS#2 and NOS#3.

14          13.      The Association's foreclosure sale occurred on July 25, 2012 ("Sale").

15          14.      On August 3, 2012, a Trustee's Deed Upon Sale ("TDUS") was recorded in the  
16 Official Records of the Clark County Recorder, conveying the Property to SFR Investment Pool  
17 1, LLC ("SFR").

18          15.      The TDUS stated that the amount of the unpaid debt was \$5,950.00 and that the  
19 sale price at the Sale was \$5,950.00. The Declaration of Value attached to the TDUS stated that  
20 the "Transfer Tax Value" was \$5,950.00.

21          16.      At the time of the Association Sale, Universal was the owner of the Ivy Note and  
22 beneficiary of record of the Deed of Trust.

23          17.      On June 1, 2018, a Corporate Assignment of Deed of Trust was recorded in which  
24 all beneficial interest in the Deed of Trust was purportedly assigned to GreenPoint Mortgage  
25 Funding, Inc.

26          18.      On July 2, 2018, a Corporate Assignment of Deed of Trust was recorded in which  
27 all beneficial interest in the Deed of Trust was purportedly assigned to U.S. Bank National  
28 Association, as trustee, successor in interest to Wachovia Bank, National Association, as trustee

1 for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series  
2 2005-A8 (“U.S. Bank”).

3 **The following is the procedural history of the case:**

4 On July 12, 2016, U.S. Bank filed its Complaint against SFR. On October 19, 2016, SFR  
5 filed its Answer, Counterclaim and Cross-Claim against U.S. Bank, MERS, Universal, Henry Ivy  
6 and Freddie Ivy. On September 26, 2017, MERS as beneficiary-nominee for Universal was  
7 dismissed via stipulation. On July 17, 2018, Henry and Freddie Ivy were dismissed via stipulation.  
8 On May 8, 2018, U.S. Bank filed its Amended Complaint against the Association. On May 29,  
9 2018, SFR filed its Answer to the Amended Complaint.

10 **II. List of Claims for Relief (EDCR 2.67(b)(2))**

11 **A. U.S. Bank’s Causes of Action:**

- 12 1. Quiet Title/Declaratory Relief Pursuant to NRS 30.010 *et seq.* and NRS 40.010 *et seq.*
- 13 2. Preliminary and Permanent Injunction
- 14 3. Wrongful Foreclosure
- 15 4. Breach of Contract
- 16 5. Breach of the Covenant of Good Faith and Fair Dealing

17 **B. SFR's Causes of Action:**

- 18 1. Declaratory Relief / Quiet Title Pursuant to NRS 30.010, *et. seq.*, NRS 40.010 & NRS  
19 116.3116.
- 20 2. Preliminary and Permanent Injunction.
- 21 3. Slander of Title

22 **III. List of Affirmative Defenses (EDCR 2.67(b)(3))**

23 **SFR's Affirmative Defenses:**

- 24 1. Bank fails to state a claim upon which relief may be granted.
- 25 2. Bank is not entitled to relief from or against SFR, as Bank has not sustained any loss,  
26 injury, or damage that resulted from any act, omission, or breach by SFR.
- 27 3. The occurrence referred to in the First Amended Complaint, and all injuries and  
28 damages, if any, resulting therefrom, were caused by the acts or omissions of Bank.

1           4. The occurrence referred to in the First Amended Complaint, and all injuries and  
2 damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties  
3 over whom SFR had no control.

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

5           6. Bank failed to mitigate its damages, if any.

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

8           8. Bank's claims are barred because the Association and its agents complied with  
9 applicable statutes and regulations.

10          9. Bank's claims are barred because the Association and its agents complied with the  
11 noticing requirements outlined in the Association's CC&Rs.

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

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

16          12. Bank has no standing to enforce the deed of trust and/or the underlying promissory  
17 note.

18          13. Bank has no standing to enforce the statutes and regulations identified in the First  
19 Amended Complaint.

20          14. The subject deed of trust and other subordinate interests in the Property were  
21 extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

22          15. The subject deed of trust is not a first position security interest.

23          16. Bank has no standing to challenge the constitutionality of NRS 116.

24          17. Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is entitled  
25 to rely on the recitals contained in the Association foreclosure deed that the sale was properly  
26 noticed and conducted.

27          18. Bank has no remedy against SFR because SFR is a bona fide purchased for value.  
28

1 19. Bank's claims are barred because the Association and its agents complied with the  
2 foreclosure noticing requirements outlined in the CC&Rs.

3 20. The Bank's Unjust Enrichment claim is barred by the Voluntary Payment Doctrine.

4 21. Bank is pursuing two inconsistent remedies in violation of the election of remedies  
5 doctrine.

6 Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative  
7 defenses may not have been alleged herein insofar as sufficient facts were not available after  
8 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend.

9 **U.S. Bank's Affirmative Defenses**

10 1. SFR's Counterclaim fails to state a claim against U.S. Bank upon which relief can be  
11 granted.

12 2. The Property remains subject to Counter-Defendant's first priority Deed of Trust,  
13 thereby forestalling any enjoinder/extinguishment of Counter-Defendant's interest in the  
14 Property.

15 3. SFR, at all material times, calculated, knew and understood the risks inherent in the  
16 situations, actions, omissions, and transactions upon which they now base their various claims for  
17 relief, and with such knowledge, Red Rock undertook and thereby assumed such risks and is  
18 consequently barred from all recovery by such assumption of risk.

19 4. The HOA lien foreclosure sale by which Counterclaimant took its interest was  
20 commercially unreasonable if it eliminated Counter-Defendant's Deed of Trust, as  
21 Counterclaimant contends. The sales price, when compared to the outstanding balance of First  
22 Note and Deed of Trust and the fair market value of the Property, demonstrates that the sale was  
23 not conducted in good faith as a matter of law. The circumstances of sale of the Property violated  
24 the HOA's obligation of good faith under NRS 116.1113 and duty to act in a commercially  
25 reasonable manner.

26 5. Counter-Defendant alleges that SFR's claims are barred by the equitable doctrines of  
27 laches, unclean hands, estoppel, and failure to do equity.  
28

6. Counter-Defendant asserts that any acceptance of any portion of the excess proceeds does not “satisfy” the amount due and owing on the Loan and would not constitute a waiver of its rights under the Loan and Deed of Trust, or statute.

7. Counter-Defendant asserts that by reason of SFR’s acts and omissions, SFR has waived its rights and is estopped from asserting the claims against Counter-Defendants.

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

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

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

11. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Supremacy Clause of the United States Constitution.

12. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Property Clause of the United States Constitution.

13. Counter-Defendant alleges that SFR’s claims are barred in whole or in part because of SFR’s failure to take reasonable steps to mitigate damages, if any, in this case.

14. Counter-Defendant alleges that an entity tendered payment of the super-priority portion of the HOA liens to the HOA and/or its agents.

15. The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Contracts Clause of both the United States Constitution and the Nevada Constitution.

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

17. U.S. Bank reserves the right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

**IV. List of All Claims or Defenses to Be Abandoned (EDCR 2.67(b)(4))**

**SFR:**

SFR abandoned its slander of title claim via stipulation.

**U.S. Bank:**

U.S. Bank abandons Affirmative Defense numbers 9, 10, 11, 12, 15, and 16 based on the decisions of the Nevada Supreme Court since the filing of U.S. Bank's Reply to SFR's Counter/Cross-Claim.

**V. List of All Exhibits, Including Specific Objections Thereto (EDCR 2.67(b)(5))**

Ex.	Description	Bates Stamped	Objections
1	Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	USB00001-USB00063	
2	Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	USB00064-USB00066	
3	Grant, Bargain, Sale Deed	USB00067-USB00070	
4	Notice of Default and Election to Sell Under Deed of Trust	USB00071-USB00072	
5	Deed of Trust	USB00073-USB00094	Hearsay, lacks authentication; lacks foundation; violates best evidence rule

6	Deed of Trust (Second)	USB00095- USB00107	
7	Deed of Trust re-recorded to add correct Adjustable Rate Rider	USB00108- USB00133	Hearsay, lacks authentication; lacks foundation; violates best evidence rule
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	USB00134- USB00139	
9	Notice of Delinquent Assessment (Lien)	USB00140	
10	Notice of Delinquent Violation Lien	USB00141- USB00142	
11	Notice of Default and Election to Sell Under Homeowners Association Lien	USB00143	
12	Notice of Trustee's Sale	USB00144	
13	Notice of Trustee's Sale	USB00145	
14	Notice of Trustee's Sale	USB00146	
15	Trustee's Deed Upon Sale	USB00147- USB00148	
16	Release of Notice of Delinquent Assessment Lien	USB00149	
17	Rescission of Election to Declare Default	USB00150- USB00151	
18	Notice of Delinquent Violation Lien	USB00152- USB00153	
19	Request for Notice Pursuant to NRS 116.31168	USB00154- USB00156	
20	Notice of Lis Pendens	USB00157- USB00160	
21	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Henry Ivy	USB000161- USB000163	Hearsay, lacks authentication; lacks foundation.
22	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Antelope Homeowners Association	USB000164- USB000165	Hearsay, lacks authentication; lacks foundation.
23	Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP	USB000169- USB000175	Hearsay, lacks authentication; lacks foundation.
24	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC	USB000166- USB000168	Hearsay, lacks authentication; lacks foundation.



25	Correspondence regarding corrected ARM Note	USB000286	Hearsay, lacks authentication; lacks foundation.
26	Affidavit of Lost Note	USB000182-USB000191	Hearsay, lacks authentication; lacks foundation.
27	Affidavit of Lost Note	USB000202-USB000209	Hearsay, lacks authentication; lacks foundation.
28	Correspondence regarding Note	USB000216-USB000217	Hearsay, lacks authentication; lacks foundation.
29	Deed of Trust, Note, and Lost Note Affidavit	USB00176-USB00441	Hearsay, lacks authentication; lacks foundation
30	Alessi & Koenig, LLC Collection File	USB00442-USB00617	Hearsay, lacks authentication; lacks foundation.
31	Affidavit of Doug Miles and Backup	USB00618-USB00638	Hearsay, lacks authentication; lacks foundation.
32	Title Insurance Documents – First American Title Insurance Company – NV08000274-11/IVY	USB00639-USB00649	Hearsay, lacks authentication; lacks foundation.
33	Title Insurance Policy – North American Title Insurance Company	USB00650-USB00666	Hearsay, lacks authentication; lacks foundation.
34	Corporate Assignment of Deed of Trust, recorded as Book and Instrument No.	USB00667-USB00668	Hearsay, lacks authentication; lacks foundation; violates best evidence rule
35	Trustee's Sale Guarantee	USB000669-USB000679	Hearsay, lacks authentication; lacks foundation
36	Bank of America, N.A.'s Payment History	USB00680-USB00692	Hearsay, lacks authentication; lacks foundation.

37	Greenpoint's Payment History	USB00693- USB00703	Hearsay, lacks authentication; lacks foundation.
38	Bank of America, N.A.'s Servicing Notes	USB00732- USB01011	Hearsay, lacks authentication; lacks foundation;
39	Copy of Promissory Note and Allonges	USB01012- USB01027	Hearsay, lacks authentication; lacks foundation; violates best evidence rule
40	Pooling and Servicing Agreement	USB01028- USB01243	Hearsay, lacks authentication; lacks foundation.
41	Mortgage Loan Schedule for PSA	USB01244- USB01262	Hearsay, lacks authentication; lacks foundation.
42	Corporate Assignment of Deed of Trust	USB01263- USB01264	Hearsay, lacks authentication; lacks foundation.
43	Acknowledgement of Inspection of the Original Collateral File	USB01263- USB01370	Hearsay, lacks authentication; lacks foundation.
44	Antelope Homeowners Association's Initial Disclosures and all Supplements	ANT000001- ANT000117	Hearsay, lacks authentication; lacks foundation.
45	Exhibit 1 to Deposition of David Alessi – Subpoena for Deposition of N.R.C.P. 30(b)(6) Witness for Alessi & Koenig, LLC		
46	Exhibit 2 to Deposition of David Alessi – Account Ledger		Hearsay, lacks authentication; lacks foundation.
47	Exhibit 3 to Deposition of David Alessi – Notice of Delinquent Assessment (Lien)		
48	Exhibit 4 to Deposition of David Alessi – Notice of Delinquent Violation Lien		
49	Exhibit 5 to Deposition of David Alessi –		

	Notice of Default and Election to Sell Under Homeowners Association Lien		
50	Exhibit 6 to Deposition of David Alessi – Notice of Trustee’s Sale		
51	Exhibit 7 to Deposition of David Alessi – Second Notice of Trustee’s Sale		
52	Exhibit 8 to Deposition of David Alessi – Third Notice of Trustee’s Sale		
53	Exhibit 9 to Deposition of David Alessi – Request for Payoff by Miles Bauer		Hearsay, lacks authentication; lacks foundation.
54	Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request		Hearsay, lacks authentication; lacks foundation.
55	Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer		Hearsay, lacks authentication; lacks foundation.
56	Exhibit 12 to Deposition of David Alessi – Trustee’s Deed Upon Sale		
57	Exhibit 1 to Deposition of David Bembas – Notice of Taking Deposition of SFR Investments Pool 1, LLC		
58	Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)		
59	Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien		
60	Exhibit 4 to Deposition of David Bembas – Notice of Trustee’s Sale		
61	Exhibit 5 to Deposition of David Bembas – Notice of Trustee’s Sale		
62	Exhibit 6 to Deposition of David Bembas – Notice of Trustee’s Sale		
63	Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11		Hearsay, lacks authentication; lacks foundation.
64	Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11		Hearsay, lacks authentication; lacks foundation.
65	Exhibit 9 to Deposition of David Bembas – Trustee’s Deed Upon Sale		
66	Antelope Homeowners Association’s Answers to Plaintiff U.S. Bank’s		

	Interrogatories.		
67	Antelope Homeowners Association's Answers To Plaintiff U.S. Bank's Requests for Admission		
68	Antelope Homeowners Association's Answers To Plaintiff U.S. Bank's Request for Production of Documents		
69	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Interrogatories		
70	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Requests for Admissions.		
71	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Request for Production of Documents		
72	Email Re: URGENT WIRE REQUEST: Status Update re: 10- H1715 (1st) De Vera Relevance, Hearsay, Authenticity, and Foundation		Relevance, Hearsay, Authenticity, and Foundation
73	BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure Relevance, Hearsay, Authenticity, and Foundation		Relevance, Hearsay, Authenticity, and Foundation

**V.**

**Any Agreements as to the Limitation or Exclusion of Evidence (EDCR 2.67(b)(6))**

None.

**VI. List of Proposed Witnesses (Including Experts) and Their Addresses the Parties Intend to Call (EDCR 2.67(b)(7))**

**SFR:**

- David Alessi for Alessi & Koenig, LLC  
HOA Lawyers Group, LLC  
9500 W. Flamingo Road, Ste 204  
Las Vegas, Nevada 89147  
702-222-4033
- Christopher Hardin for SFR Investments Pool 1, LLC  
c/o Diana Cline Ebron  
Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
(702) 485-3300

3. Ray Wooge  
c/o Gibbs Giden Locher Turner Senet & Wittbrodt, LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144-0596  
(702) 836-9800

**U.S. Bank<sup>1</sup>:**

1. Corporate Designee for U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8  
c/o Wright, Finlay & Zak, LLP  
7785 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117
2. Custodian of Records for U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8  
c/o Wright, Finlay & Zak, LLP  
7785 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117
3. Corporate Designee for SFR Investments Pool 1, LLC  
Chris Hardin  
David Bembas  
Paulina Kelso  
Tamara Morales  
c/o Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139
4. Custodian of Records for SFR Investments Pool 1, LLC  
c/o Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139
5. Corporate Designee for Alessi & Koenig, LLC  
c/o HOA Lawyers Group, LLC  
9500 West Flamingo Road, Suite 101  
Las Vegas, Nevada 89147
6. Custodian of Records for Alessi & Koenig, LLC  
c/o HOA Lawyers Group, LLC  
9500 West Flamingo Road, Suite 101  
Las Vegas, Nevada 89147

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<sup>1</sup> Although not required by the rule, SFR incorporates any objections to the witnesses as asserted in its objections to pre-trial disclosures and amended pre-trial disclosures.

7. David Alessi  
c/o HOA Lawyers Group, LLC  
9500 West Flamingo Road, Suite 101  
Las Vegas, Nevada 89147
8. Ryan Kerbow  
504 South 9th Street  
Las Vegas, NV 89101
9. Corporate Designee for Antelope Homeowners' Association  
Ray Wooge, Brian McKay, James Schlobohn, Katherine Mizak, Trace Burman,  
Valerie Sands, and Jennifer Webb  
c/o Lipson Neilson P.C.  
9900 Covington Cross Street, Suite 120  
Las Vegas, Nevada 89144
10. Custodian of Records for Antelope Homeowners' Association  
c/o Lipson Neilson P.C.  
9900 Covington Cross Street, Suite 120  
Las Vegas, Nevada 89144
11. Corporate Designee Universal American Mortgage Company, Inc.  
c/o CT Corporation Systems  
1200 South Pine Island Road  
Plantation, Florida 33324
12. Corporate Designee and Custodian of Records for Complete Association  
Management Company (CAMCO)  
Jo'd Davison  
Yvette Saucedo  
c/o Lipson Neilson P.C.  
9900 Covington Cross Street, Suite 120  
Las Vegas, Nevada 89144
13. Custodian of Records for Universal American Mortgage Company, Inc.  
c/o CT Corporation Systems  
1200 South Pine Island Road  
Plantation, Florida 33324
14. Rock K. Jung, Esq.  
c/o Wright, Finlay Zak, LLP  
7785 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117
15. Rule 30(b)(6) Witness for Clark County Assessor  
500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89155

16. Rule 30(b)(6) Witness for Clark County Recorder  
500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89155

17. Ray Wooge  
c/o Mathew Grode, Esq. and Timothy P. Elson, Esq.  
Gibbs Giden Locher Turner Senet & Wittbrodt, LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144-0596  
(702) 836-9800

18. Custodian of Records, Corporate Designee or  
Teralyn Thompson for State of Nevada Department of Business and Industry Real  
Estate Division  
2501 E. Sahara Avenue, Suite 303  
Las Vegas, Nevada 89104

**VII. Brief Statement of Each Principle Issue of Law Which May Be Contested at Trial  
(EDCR 2.67(b)(8))**

**A. U.S. Bank provides the following statement of each principal of law which may be  
contested:**

U.S. Bank reasserts the issues of law presented by its Opposition to SFR's Motion for  
Summary Judgment and Countermotion for Summary Judgment, including without limitation:

- (1) Whether U.S. Bank's quiet title claims are timely;
- (2) Whether the tender by U.S. Bank's predecessor-in-interest discharged the superpriority  
portion of the lien as a matter of law;
- (3) The amount of the superpriority portion of the lien;
- (4) Whether SFR acquired the Property subject to U.S. Bank's deed of trust;
- (5) Whether the HOA's foreclosure sale was wrongful and/or complied with the provisions  
of NRS Chapter 116;
- (6) Whether the HOA's foreclosure sale should be set aside, and within that inquiry, (a)  
whether the price paid at the foreclosure sale was inadequate and (b) whether there were elements  
of fraud, unfairness, and/or oppression in the HOA foreclosure process and resulting sale;
- (7) Whether the mortgage protection clause(s) in the CC&Rs was applicable to subordinate  
the HOA assessment lien to the Deed of Trust or preclude extinguishment

of the Deed of Trust by a foreclosure sale under NRS 116.31162 through NRS 116.31168;

(8) Whether the recitals in the Foreclosure Deed are conclusive proof of any matter contained therein;

(9) Whether the HOA lien and Notices of Default and Sale included items and amounts not permitted by the CC&Rs and NRS Chapter 116;

(10) Whether SFR was a bona fide purchaser of the Property as a matter of Nevada law; and

**B. SFR provides the following statement of each principal of law which may be contested:**

**1. Whether U.S. was the real party in interest at the time of filing the complaint such that it can challenge Association sale?**

No. Under NRCP 17(a), “[e]very action shall be prosecuted in the name of the real party in interest.” Additionally, “[a] real party in interest is one who possesses the right to enforce the claim and has a significant interest in the litigation.” *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). In other words, the “real party in interest rule” asks is the plaintiff the correct party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 771 (1988) (“appellants are asserting someone else’s potential legal problem; they are not the proper party to assert [this claim]”); see also *Hammes v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the person who is the true owner of the right sought to be enforced).

According to the chain of title, the Deed of Trust was recorded in the name of Universal up until June 1, 2018. As such, at the time U.S. Bank filed its complaint on July 12, 2016, it was not the real party in interest. Having received its purported interest nearly two years after it filed the complaint, does not cure the fact that at the time it filed its complaint it had no interest in the Deed of Trust.

**2. Whether U.S. Bank has standing to challenge the sale?**

No. While the doctrine of standing can also implicate the real party in interest standard, it asks an additional question: whether the plaintiff incurred an injury sufficiently severe, and of a



1 type acknowledged as legally cognizable, such that a suit can be brought at all. *See Schwartz v.*  
2 *Lopez*, 382 P.3d 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of  
3 an injury that **is personal to him** and not merely a generalized grievance.) (emphasis added.)  
4 Thus, merely because a party qualifies as a real party in interest does not itself mean the party has  
5 standing. In order to have standing, the party must also have suffered a legally redressable harm  
6 and the suit must be both “ripe” and not “moot” (at least as to the particular plaintiff) at the time  
7 of the lawsuit.

8 Here, at the time U.S. Bank filed its complaint it had no interest in the Deed of Trust nor  
9 did it have any interest in the Deed of Trust at the time the Association was pursuing foreclosure  
10 and completed its foreclosure. As such, U.S. Bank had no cognizable injury at the time it filed its  
11 complaint. The mere fact that U.S. Bank was purportedly later assigned the Deed of Trust in 2018  
12 does not confer standing upon it either. This is so because any challenge relating to facts occurring  
13 before U.S. Bank obtained an interest such as the sale price was grossly inadequate or any  
14 violation of NRS 116, does not personally belong to U.S. Bank. The Nevada Supreme Court  
15 addressed this standing issue in *West Sunset 2050 v. Nationstar Mortgage, LLC*, 420 P.3d 1032  
16 (Nev. 2018).

17 In *West Sunset*, Nationstar challenged the sale claiming the NOD was not mailed to Bank  
18 of America, the then recorded beneficiary. But the Nevada Supreme Court rejected this argument  
19 noting that Nationstar did not provide any explanation as to how it “was affected-much less  
20 injured-by defective notice to Bank of America.” *Id.* at 1035. The Court further noted that because  
21 the Associated recorded the NOD prior to the assignment to Nationstar, Nationstar has record  
22 notice of the NOD and therefore this “doom[ed] its claim that the defective notice invalidates the  
23 HOA sale.” *Id.*

24 In the present case, any defects in the sale claimed by U.S. Bank (SFR submits there are  
25 none) all occurred prior to U.S. Bank obtaining any alleged interest in the Deed of Trust. Thus,  
26 any grievance about sale irregularities do not belong to U.S. Bank. It is undisputed that once U.S.  
27 Bank was assigned the deed of trust, the foreclosure was long complete. All told, U.S. Bank lacks  
28 standing to challenge any defects with the sale. This includes the sale price was inadequate.

As an initial matter, price alone is not enough to set aside a valid sale. As the Nevada Supreme Court held in *Shadow Canyon*,

inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price**

*Nationstar Mortgage, LLC v. Saticoy Bay, LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis added).

Setting aside the fact that U.S. Bank's challenge fails because it does not and cannot show any fraud, unfairness or oppression that accounted for or brought about the price paid by SFR, even if it could, this challenge is not personal to U.S. Bank. This is so because U.S. Bank obtained its interest **after** the Association sale. In other words, U.S. Bank took its interest with full knowledge of the sale, and as such does not have standing to complain about it. If U.S. Bank bought bad paper that is on U.S. Bank, but that is not legally redressable through this suit.

### 3. Whether U.S. Bank's claim is time-barred?

Yes. Even if this Court finds that U.S. Bank is both the real party in interest and has standing to challenge the sale, U.S. Bank's claim against SFR is time-barred. U.S. Bank's action against SFR, while titled a "quiet title/declaratory relief" cause of action, ultimately seeks only declaratory relief—specifically, a declaration that the deed of trust was not extinguished by the Association foreclosure. But, declaratory relief is not a stand-alone claim,<sup>2</sup> and is only derivative of some other substantive claim brought in the action. Thus, the statute of limitations that governs the declaratory relief is that which applies to the substantive cause of action.<sup>3</sup>

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<sup>2</sup> See *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). See also, *Brannan v. Bank of Am.*, No. 2:16-cv-01004 GMN-GWF, 2018 WL 1220562 (D. Nev. Mar. 8, 2018); *Mayen v. Bank of Am., N.A.*, No. 14-CV-03757, 2015 WL 179541, at \*5 (N.D. Cal. Jan. 14, 2015) ("The Court agrees that declaratory relief is not a standalone claim."); *Nguyen v. JP Morgan Chase Bank*, No. SACV 11-01908, 2012 WL 294936, at \*4 (C.D. Cal. Feb. 1, 2012) ("A claim for declaratory relief is not a stand-alone claim, but rather depends upon whether or not Plaintiff states some other substantive basis for liability.").

<sup>3</sup> "A claim for declaratory relief is subject to a statute of limitations generally applicable to civil

For declaratory relief, the statute of limitations is the one applicable to an ordinary legal or equitable action based on the underlying claim.<sup>4</sup> Here, U.S. Bank challenges to the sale sound in liability drawn from a statute i.e. NRS Chapter 116. This carries a three-year statute of limitations under NRS 11.190(3). The sale of the Property took place on **July 25, 2012**. U.S. Bank waited over three years from the date of the sale, until **July 12, 2016**, to file the instant action. Its claim is therefore time-barred.

Typically, “[w]hen a statute lacks an express limitations period, courts look to analogous causes of action for which an express limitations period is available either by statute or by case law.” *Perry v. Terrible Herbst, Inc.*, 132 Nev. \_\_\_, \_\_\_, 383 P.3d 257, 260 (2016) (quoting *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 518 (Tex. 1998)); citing *Bellemare v. Wachovia Mortg. Corp.*, 284 Conn. 193, 931 A.2d 916, 921 (2007) (“[W]hen a statute includes no express statute of limitations, we should not simply assume that there is no limitation period. Instead, we borrow the most suitable statute of limitations on the basis of the nature of the cause of action or of the right sued upon.”). Thus, if this Court determines that there is no statute of limitations provided for NRS 40.010 (the statute U.S. Bank bases its claim), then this Court can look to analogous limitations periods. In Nevada, the following limitations apply to challenges to foreclosure sales:

TYPE OF LIEN	TYPE OF FORECLOSURE	STATUTE OF LIMITATIONS	STATUTE
Deed of Trust	Non-Judicial	90 days – for Noticing	NRS 107.080
Deed of Trust	Non-Judicial	3 years – for Other	NRS 11.190(3)(a)
Deed of Trust	Judicial	1 year	NRS 21.210
Utility	Judicial	1 year	NRS 21.210

claims.” *Zuill v. Shanahan*, 80 F.3d 1366, 1369-70 (9th Cir. 1996), as amended (June 14, 1996). *See also, Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993) (citing *Gilbert v. City of Cambridge*, 932 F.2d 51, 57–58 (1st Cir.1991) (“a claim for declaratory relief could have been resolved through another form of action which has a specific limitations period, the specific period of time will govern.”))

<sup>4</sup> *Mangini v. Aerojet-General Corp.*, 230 Cal. App. 3d 1125, 1155 (Cal. Ct. App. 1991).

Mechanic	Judicial	1 year	NRS 21.210
Property Tax	Non-Judicial	2 years	NRS 361.600

There is no basis to deviate from the above-analogous limitations periods, and the same limitations periods should apply to actions challenging an NRS 116 sale. Because the longest limitations period recognized is three-years, U.S. Bank's claim is time-barred.

**4. Whether U.S. Bank can seek equitable relief?**

No. Under Nevada law, where an adequate remedy at law exists, a district court is without authority to grant equitable relief. *Las Vegas Valley Water District v. Curtis Park Manor Water Users Association*, 98 Nev. 275, 646P.2d 549 (1982); *Harmon v. Taner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 20, 377 P.2d 622, 630 (1963). See also, *Lewis v. Cocks*, 90 U.S. 466, 470 (1874); *Boyce v. Grundy*, 28 U.S. 210, 215 (1830) ("if the legal remedy is plain, adequate and complete, it must be pursued."); *Parker v. Winnipiseogee Lake Cotton & Woolen Co.*, 67 U.S. 545, 551 (1862) ("suits in equity shall not be sustained in either of the Courts of the United States in any case where plain, adequate, and complete remedy can be had at law.")

Here, any challenge U.S. Bank has to the sale is one of money damages against the Association and/or the Association's agent. There being an adequate remedy at law, U.S. Bank cannot seek equity against SFR.

**5. Whether the sale was affected by fraud, unfairness or oppression?**

Other than complaining about the price paid, U.S. Bank offers no evidence of actual fraud, unfairness or oppression that accounted for or brought about the price paid by SFR. Price alone is not enough. *Nationstar Mortgage, LLC v. Saticoy Bay, LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis added).

**6. Whether SFR is a bona fide purchaser?**

Yes. SFR purchased the property for value without any notice of a prior equity. *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). At the time of the sale, SFR had no notice of a prior equity in the Property where the public records showed only that (1) a deed of

1 trust was recorded after the Association perfected its lien by recording its declaration of CC&Rs,  
2 (2) there was a delinquency by the homeowner, which resulted in the Association instituting  
3 foreclosure proceedings and after complying with NRS Chapter 116, sold the Property at a public  
4 auction. Therefore, nothing known to the Association or its Agent about any purported  
5 irregularities in the foreclosure process could have been known by SFR.

6 **IX. ESTIMATED TIME FOR TRIAL**

7 Three days.

8 **X. ANY OTHER MATTERS**

9 None at this time.

10 Dated this 2<sup>nd</sup> day of April, 2019

11 **KIM GILBERT EBRON**

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