

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE LLC,

Appellant,

vs.

WEST SUNSET 2050 TRUST,

Respondent.

Case No. 79271

Related Case No. 70754

Electronically Filed
Feb 28 2020 06:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Department XIII
The Honorable Elizabeth Gonzalez, District Judge
District Court Case No. A-13-691323-C

**APPENDIX TO OPENING BRIEF¹,
VOLUME IV**

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¹ Documents from Volumes 1-5 are identical to the Joint Appendix Volumes 1-5 of Related Case No. 70754.

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DATED February 28, 2020.

AKERMAN LLP

/s/ Scott R. Lachman

ARIEL E. STERN, ESQ.

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that I electronically filed on February 28, 2020, the foregoing **APPENDIX TO OPENING BRIEF, VOLUME IV** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[] By placing a true copy enclosed in sealed envelope(s) addressed as follows: Not applicable.

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

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

/s/Carla Llarena
An employee of Akerman LLP

TABLE 3 TO SCHEDULE A

Work performed by ULS:

- Notice of Foreclosure Sale with preparation, mailings, coordination of publication/posting, and recordation
- Title research to identify mailing addresses (\$40+ if outsourced as a "TSG") and obtain pdfs for subsequent use by First 100 in quiet title actions

Breakdown of Placement Payment (per parcel):

		<u>Notes</u>
\$275.00	Sales Agent fee for Notice of Foreclosure	Earned in full when publication order is sent
\$250.00	Addresses	\$40+ more if outside Trustee's Sale Guarantee
\$90.00	Publication of Notice of Sale	Or actual cost, if prices change
\$30.00	Mailing costs for Notice of Sale	Fixed per parcel, for ease of expense tracking
\$74.50	Service of Notice of Sale	Fixed per parcel, for ease of expense tracking
\$13.50	Public Postings of Notice of Sale	Fixed per parcel, for ease of expense tracking
\$17.00	Recordation cost for Notice of Sale	Fixed per parcel, for ease of expense tracking
\$750.00	Placement Payment (relating to Nevada pre-foreclosure)	

TABLE 4 TO SCHEDULE A

Work performed by ULS:

- Holding of Auction
- Preparation of Foreclosure Deed
- [Optional]: Recordation of Foreclosure Deed

Breakdown of Fees and Costs (per parcel):

\$100.00	Auction fees per parcel
\$50.00	Preparation of Foreclosure Deed
\$150.00	Auction fees (paid from auction proceeds, pursuant to NRS 116.31164(3)(c)(1)) (First 100 responsible for fees in which the auction proceeds are less than \$150)

Note: If First 100 optionally requests the ULS record the Foreclosure Deed, then additional fees and costs shall be charged as follows:

\$13.00	Trip to Recorder
\$17.00	Recordation costs of Foreclosure Deed
Varies	RPTT

Invoice

UNITED LEGAL SERVICES INC.
8965 South Eastern Ave Suite 350
Las Vegas, NV 89123
(702) 617-3263

Federal EIN: 46-1434376

INVOICE #
ULS-009

BILL TO:

First 100, LLC
11920 Southern Highlands Pkwy, Suite 200
Las Vegas, NV 89141

INVOICE DATE
03/29/13

DUE DATE
On receipt

BALANCE DUE
\$11,906.00

Placement Payments:

DESCRIPTION	HOA	AMOUNT
1. 2615 W Gary Ave, #1065, Las Vegas, NV	Southgate	\$750.00
2. 7255 W. Sunset Rd., #2046	Tuscano	\$750.00
3. 7255 W. Sunset Rd., #2141	Tuscano	\$750.00
4. 7255 W. Sunset Rd., #1008	Tuscano	\$750.00
5. 7255 W. Sunset Rd., #2017	Tuscano	\$750.00
6. 7255 W. Sunset Rd., #2024	Tuscano	\$750.00
7. 1715 Laurel Ridge Court, Reno	Tuscano	\$750.00
8. 7781 Shalestone Way, Reno	Somerset	\$832.00
9. 1670 Autumn Valley Way, Reno	Somerset	\$832.00
10. 1684 Spicewood Circle, Reno	Somerset	\$832.00
11. 1695 Autumn Valley Court, Reno	Somerset	\$832.00
12. 2145 Heavenly View Trail, Reno	Somerset	\$832.00
13. 8135 Willow Ranch Trail, Reno	Somerset	\$832.00
14. 8985 Chipshot Trail, Reno	Somerset	\$832.00
15. 9099 Cabin Creek Trail, Reno	Somerset	\$832.00
Total		\$11,906.00

BALANCE DUE \$11,906.00

Please make check payable to **United Legal Services Inc.**

Invoice

UNITED LEGAL SERVICES INC.
8965 South Eastern Ave Suite 350
Las Vegas, NV 89123
(702) 617-3263

INVOICE #
ULS-014

BILL TO:

First 100, LLC
11920 Southern Highlands Pkwy, Suite 200
Las Vegas, NV 89141

INVOICE DATE
04/27/13

DUE DATE
On receipt

BALANCE DUE
\$750.00

Placement Payments:

DESCRIPTION	HOA	AMOUNT
1. 7255 W Sunset #2140	Tuscano	\$ 750.00
Total		\$750.00

BALANCE DUE \$750.00

Please make check payable to United Legal Services Inc.

Invoice

UNITED LEGAL SERVICES INC.
8965 South Eastern Ave Suite 350
Las Vegas, NV 89123
(702) 617-3263

INVOICE #
ULS-016

BILL TO:

First 100, LLC
11920 Southern Highlands Pkwy, Suite 200
Las Vegas, NV 89141

INVOICE DATE
05/29/13

DUE DATE
On receipt

BALANCE DUE
\$2,250.00

Placement Payments:

DESCRIPTION	HOA	AMOUNT
1. 7255 W. Sunset #1173	Tuscano	\$ 750.00
2. 7255 W. Sunset #2018	Tuscano	\$ 750.00
3. 7255 W. Sunset #2050	Tuscano	\$ 750.00
Total		\$2,250.00

BALANCE DUE \$2,250.00

Please make check payable to United Legal Services Inc.

Invoice

UNITED LEGAL SERVICES INC.
8965 South Eastern Ave Suite 350
Las Vegas, NV 89123
(702) 617-3263

INVOICE #
ULS-021

BILL TO:

First 100, LLC
11920 Southern Highlands Pkwy, Suite 200
Las Vegas, NV 89141

INVOICE DATE
07/03/13

DUE DATE
On receipt

BALANCE DUE
\$6,400.00

Placement Payments:

DESCRIPTION		HOA	AMOUNT
1.	7255 W Sunset #1049	Tuscano	\$ 800.00
2.	7255 W Sunset #1082	Tuscano	\$ 800.00
3.	7255 W Sunset #1088	Tuscano	\$ 800.00
4.	7255 W Sunset #1151	Tuscano	\$ 800.00
5.	7255 W Sunset #1169	Tuscano	\$ 800.00
6.	7255 W Sunset #2039	Tuscano	\$ 800.00
7.	7255 W Sunset #1032	Tuscano	\$ 800.00
8.	7445 Crested Quail	Sun City Allante	\$ 800.00
Total			\$6,400.00

BALANCE DUE \$6,400.00

Please make check payable to **United Legal Services Inc.**

Proceeds Reconciliation Report 6/25/2013

DEBITS	CREDITS	What	Related to		Proceeds	HOA Lien	Excess
\$693.00		Superiority	NV-S03-27 - 10105 Prattville Ave				
\$525.00		RRE payment plan	NV-BE3-17 - 5261 River Glen Drive Unit 201				
	\$300.00	Fees	Payoff quote for above (2 @ \$150)				
	\$60.00	Fees	Release of Notice of Lien (2 @ \$30)				
	\$44.00	Costs	Recordation of release (2 @ \$22)				
\$7,800.00		Auction proceeds	NV-TU3-03				
	\$0.00	Excess proceeds	None				
	\$125.00	Fees	Conduct foreclosure sale - June 23 sale (1 above @ \$125)				
	\$125.00	Fees	Prepare and record transfer deed for above (1 @ \$125)				
	\$150.00	Fees	Foreclosure fee (1 @ \$150)				
\$6,000.00		Auction proceeds	From First 100 (2 properties)				
	\$250.00	Fees	Conduct foreclosure sale - June 23 sale (2 @ \$125)				
	\$250.00	Fees	Prepare and record transfer deed for above (2 @ \$125)				
	\$300.00	Fees	Foreclosure fee (2 @ \$150)				
	\$533.05	Costs	Recordation RPTT costs for F100 (2 properties)				
	\$12,880.95	Remittance	Proceeds remitted to First 100				
\$15,018.00	\$15,018.00						
		0	Checksum				

Proceeds	HOA Lien	Excess
\$7,800.00	\$7,806.42	-\$6.42

EXHIBIT E

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CERTIFICATE OF CUSTODIAN OF RECORDS

STATE OF NEVADA)
COUNTY OF CLARK) ss: :


JULIA THOMPSON, being first sworn, states:

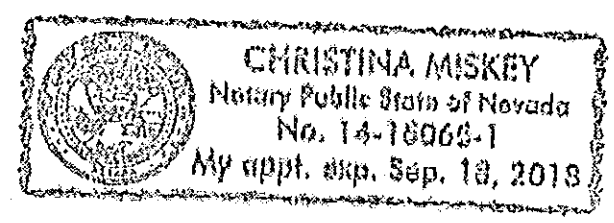
1. I am employed by Red Rock Financial Services ("RRFS") as a supervisor, and in such capacity I am the custodian of the records.
2. On or about the 5th day of January, 2015, I received a Subpoena calling for the production of records pertaining to West Sunset 2050 Trust v. New Freedom Mortgage Corporation, et al., District Court, Clark County Nevada Case No. A-13-691323-C.
3. I and/or persons acting under my supervision have examined the information and/or records requested, and have made a true representation of the information and/or an exact copy of the records.
4. I hereby certify that the information and/or reproduction of documents attached hereto are true and complete.

DATED this 11 day of February, 2015.


JULIA THOMPSON

SUBSCRIBED and SWORN to before me
me this 12 day of February, 2015.


NOTARY PUBLIC in and for said
County and State



Red Rock Financial Services
Account Detail
Tuscano Homeowners Association

Page 1

Information as of: August 10, 2012

Red Rock Financial Services Account Number: R792725

Property Address: 7255 W Sunset Rd #2050, Las Vegas, NV 89113

New Freedom Mortgage Corporation,

Detailed Summary

Date	Description	Amount	Balance	Check#
12/01/2011	Assessment	\$1,476.00	\$1,476.00	
12/01/2011	Late Fee	\$45.00	\$1,521.00	
12/01/2011	Association Setup Fee Resale	\$115.00	\$1,636.00	
12/10/2011	Late Fee	\$15.00	\$1,651.00	
01/01/2012	Assessment	\$164.00	\$1,815.00	
01/10/2012	Late Fee	\$15.00	\$1,830.00	
02/01/2012	Assessment	\$164.00	\$1,994.00	
02/10/2012	Late Fee	\$15.00	\$2,009.00	
02/24/2012	Intent to Lien Letter	\$125.00	\$2,134.00	
02/24/2012	Intent Mailing Costs	\$8.97	\$2,142.97	
02/24/2012	Intent Mailing Costs	\$8.97	\$2,151.94	
03/01/2012	Assessment	\$164.00	\$2,315.94	
03/01/2012	Association Interest	\$7.22	\$2,323.16	
03/10/2012	Late Fee	\$15.00	\$2,338.16	
03/29/2012	Lien Mailing Costs	\$8.97	\$2,347.13	
03/29/2012	Lien for Delinquent Assessment	\$275.00	\$2,622.13	
03/29/2012	Lien Release	\$33.00	\$2,655.13	
03/29/2012	Lien Recording Costs	\$31.00	\$2,686.13	
03/29/2012	Lien Mailing Costs	\$8.97	\$2,695.10	
04/01/2012	Assessment	\$164.00	\$2,859.10	
04/01/2012	Association Interest	\$7.94	\$2,867.04	
04/10/2012	Late Fee	\$15.00	\$2,882.04	
04/29/2012	Association Interest	\$8.66	\$2,890.70	
05/01/2012	Assessment	\$164.00	\$3,054.70	
05/10/2012	Late Fee	\$15.00	\$3,069.70	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 8/10/12

Red Rock Financial Services
Account Detail
Tuscano Homeowners Association
Information as of: August 10, 2012

Page 2

Red Rock Financial Services Account Number: R792725
Property Address: 7255 W Sunset Rd #2050, Las Vegas, NV 89113
New Freedom Mortgage Corporation,

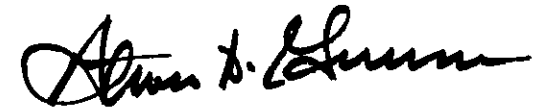
Detailed Summary

Date	Description	Amount	Balance	Check#
05/11/2012	Intent to NOD	\$90.00	\$3,159.70	
05/23/2012	NOD Mailing Charges Adjustment	-\$71.76	\$3,087.94	
05/23/2012	Notice of Default	\$375.00	\$3,462.94	
05/23/2012	NOD Release	\$30.00	\$3,492.94	
05/23/2012	Trustee Sale Guarantee	\$320.00	\$3,812.94	
05/23/2012	NOD Recording Costs	\$22.00	\$3,834.94	
05/23/2012	NOD Release Recording Costs	\$22.00	\$3,856.94	
05/23/2012	NOD Mailing Costs	\$89.70	\$3,946.64	
05/30/2012	Association Interest	\$9.38	\$3,956.02	
06/01/2012	Assessment	\$164.00	\$4,120.02	
06/10/2012	Late Fee	\$15.00	\$4,135.02	
06/29/2012	Association Interest	\$10.10	\$4,145.12	
07/01/2012	Assessment	\$164.00	\$4,309.12	
07/10/2012	Late Fee	\$15.00	\$4,324.12	
07/30/2012	Association Interest	\$10.82	\$4,334.94	
08/01/2012	Assessment	\$164.00	\$4,498.94	
08/10/2012	Payoff Demand	\$150.00	\$4,648.94	
8/10/2012	Late fee	\$15.00	\$4,663.94	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 8/10/12



CLERK OF THE COURT

RPLY

LUIS A. AYON, ESQ.

Nevada Bar No. 9752

MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

MAIER GUTIERREZ AYON

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: laa@mgalaw.com

mes@mgalaw.com

Attorneys for Plaintiff/Counterdefendant

West Sunset 2050 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National Association;
NATIONSTAR MORTGAGE LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

**WEST SUNSET 2050 TRUST'S REPLY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date:

Hearing Time:

Plaintiff/Counterdefendant West Sunset 2050 Trust ("Plaintiff" or "West Sunset"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, hereby files this reply in support of motion for summary judgment and opposition to defendants Nationstar Mortgage LLC and Bank of America, N.A.'s countermotion for summary judgment ("Opposition").

///

1 This reply and opposition is made and based upon the following memorandum of points and
2 authorities, the papers and pleadings on file in this matter and the argument of counsel at the time of
3 the hearing.

4 DATED this 18th day of June, 2015.

5 Respectfully submitted,

6 **MAIER GUTIERREZ AYON**

7
8 /s/ Luis A. Ayon

9 LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust

13
14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 This is a simple case in which a borrower signed over a deed in lieu of foreclosure to her
17 lender in full satisfaction of her debt and recorded the deed in lieu with the county recorder. By
18 satisfying the underlying debt, the deed in lieu extinguished the deed of trust, which had secured the
19 debt. Two years later, Plaintiff, a bona fide purchaser for value, bought the property at a foreclosure
20 sale. Now, four years after the deed in lieu was recorded, Defendants Bank of America, N.A. and
21 Nationstar Mortgage LLC (“Defendants”) as successors in interest to a deed of trust, allege that the
22 deed was fraudulent and barred by the Statute of Frauds.

23 Defendants have no evidence of fraud, and the Statute of Frauds is inapplicable for the
24 reasons discussed below. Furthermore, even if the property had not been transferred back to the
25 original lender in satisfaction of the debt, Defendants’ interests were extinguished by the subsequent
26 homeowners’ association (“HOA”) foreclosure.

27 ///

28 ///

II. ADDITIONAL FACTUAL HISTORY

Property records for 7255 W. Sunset Road, Unit 2050, Las Vegas, Nevada (the “Property”) show that on or about March 1, 2011, Stephanie Tablante transferred title of the Property to her lender, New Freedom Mortgage Corporation (“New Freedom”), in full satisfaction of the debts secured by the Property. The transfer is evidenced by a Deed in Lieu of Foreclosure (“Deed in Lieu”), recorded on March 3, 2011, and re-recorded on June 21, 2011.

Defendants attempt to mislead the Court by asserting in their “Statement of Undisputed Material Facts,” that Stephanie Tablante “never obtained approval to move forward with a deed in lieu of foreclosure.” Opp’n at 3. Defendants go on to allege that Ms. Tablante “had her attorney unilaterally record a false deed in lieu to New Freedom Mortgage Corporation.” *Id.* To the contrary, there is no evidence that Ms. Tablante acted fraudulently in recording the Deed in Lieu. A letter from the Clark County Assessor’s Office dated March 18, 2011, shows that New Freedom was notified of the recording of the Deed in Lieu and provided with a copy of the document. *See* Opp’n, Ex. A. It is undisputed that New Freedom took absolutely no action to notify the Assessor’s Office of any fraud or other error relating to the Deed in Lieu, at that time or at any time thereafter. Two years later, in proceeding with the Tuscano Homeowners’ Association (the “Association”) foreclosure, the Association and its agents reasonably relied on the Deed in Lieu in sending notices to New Freedom.

Plaintiff also disputes Defendants’ assertion that no notice of the lien or notice of default was sent to BANA. *See* Opp’n at 4. At the deposition of Julia Thompson, the person most knowledgeable for the Association’s agent, Red Rock Financial Services (“RRFS”), Ms. Thompson testified that the person who had prepared the notices for the Association foreclosure in this case no longer works at RRFS. Opp’n, Ex. C, at 13–14. Ms. Thompson testified that the notice of default and notice of sale are normally provided to all interested parties as shown on a title report. *Id.* at 9–10. Later on in the deposition, Defendants’ counsel asked Ms. Thompson to whom RRFS had provided a copy of the notice of default. *Id.* at 18. Initially, Ms. Thompson stated that she did not know; and defendants’ counsel immediately requested to go off record. When they came back, Ms. Thompson testified based on review of a document that the Notice of Default was provided to New

Freedom but not to Nationstar or BANA. Ms. Thompson had not prepared the Notice of Default and clearly had no recollection of to whom the notice was sent. Further, the document that caused Ms. Thompson to change her testimony was never entered as an exhibit or produced to Plaintiff. Also, it is undisputed that United Legal Services, the foreclosure agent, sent a notice of sale to New Freedom, BANA, Nationstar, and Cooper Castle one month prior to the auction date. *See* Deposition of Robert Atkinson, attached as Exhibit 10, at 23; Exhibit B to Deposition of Robert Atkinson, at 6, 9, 14.

III. ARGUMENT

A. DEFENDANTS MAY NOT RELY ON EVIDENCE THAT THEY FAILED TO DISCLOSE IN DISCOVERY.

As an initial matter, Defendants in their Opposition and Countermotion for Summary Judgment rely on documents not previously disclosed to Plaintiff. *See* Opp'n, Ex. A, B, E. Defendants are prohibited from relying on these documents under the Nevada Rules of Civil Procedure.

Rule 16.1(a)(1) requires that a party "must, without awaiting a discovery request," provide other parties with all documents in the party's possession and which are discoverable. Rule 26(e) requires that parties supplement these disclosures with information subsequently acquired. Rule 37(c) states:

A party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), *is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.*

Thus, under Rule 37(c), a party that has not disclosed information either in initial disclosures or a supplement to the initial disclosures may not use the evidence at trial *or on a motion*.

Defendants did not previously disclose Exhibits A, B, or E of their Opposition to Plaintiff. Exhibit A consists of several documents, which Defendants imply constitute the entire records of John Peter Lee, Ltd., regarding the Deed in Lieu. *See* Opp'n at 3; Opp'n, Ex. A. Exhibit B consists of a printout of a webpage, which Defendants assert demonstrates that New Freedom Mortgage merged into iFreedom Direct Corporation in 2008. That assertion is not supported by the printout;

1 but in any case, Defendants have never previously asserted that New Freedom ceased to exist in
2 2008 or that it merged into iFreedom Direct Corporation in that year. Exhibit E consists of a two-
3 page document purporting to be Red Rock Financial Services Records, along with a custodian's
4 certificate. *See* Opp'n at 4.

5 Discovery is now closed, and Defendants' attempt to introduce these documents constitutes
6 unfair surprise and would cause substantial prejudice to Plaintiff. Plaintiff has no opportunity to
7 investigate the import of these documents or to depose any witnesses that might have information
8 relating to these documents. For example, Plaintiff questions whether the documents included as
9 Exhibit A to the Opposition constitute all of the documents relating to the Deed in Lieu of
10 Foreclosure and whether Exhibit E represents all the documents in the possession of Red Rock
11 Financial Services relating to the Property.

12 Because Exhibits A, B, and E of the Opposition were not previously disclosed to Plaintiff in
13 accordance with Rule 16.1(a)(1) or 26(e), this Court should disregard those exhibits for purposes of
14 Plaintiff's Motion for Summary Judgment and Defendants' Countermotion for Summary Judgment.

15 **B. DEFENDANTS' PURPORTED INTERESTS UNDER THE DEED OF TRUST HAD BEEN**
16 **EXTINGUISHED EVEN BEFORE THE DEED OF TRUST WAS ASSIGNED.**

17 The Deed in Lieu satisfied all obligations secured by the Deed of Trust. Consequently, the
18 Deed of Trust was extinguished, and Defendants have no interest in the Property.

19 **1. The Deed in Lieu Satisfied the Underlying Debt and Extinguished the**
20 **Deed of Trust.**

21 In Nevada, a loan secured by real property is often evidenced by a note and a deed of trust.
22 *See Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 254 (Nev. 2012). "The note represents the right
23 to the repayment of the debt, while the deed of trust represents the security interest in the property
24 that is being used to secure the note." *Id.* The deed of trust is considered a form of mortgage and
25 does not convey title but "merely a lien on the property as security for the debt." *Id.* The
26 beneficiary of the deed of trust does not have a right to repayment on the loan; only the holder of the
27 note is entitled to repayment. *Bergenfield v. Bank of Am.*, 302 P.3d 1141, 1142 (Nev. 2013). When
28 the underlying debt has been satisfied, a mortgage or deed of trust becomes void. *See Deutsche*

Bank Nat'l Trust Co. v. Fitchburg Capital, LLC, 471 Mass. 248, 254, 28 N.E.3d 416, 422 (2015) (“[A] mortgage derives its vitality from the debt it secures,” and “does not generally have a binding effect that survives its underlying obligation.”); *see also Alliance Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235, 44 Cal. Rptr. 2d 352, 357, 900 P.2d 601, 606 (1995) (“A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien.”).

Here, the Deed in Lieu on its face conveyed absolute title to the Property to New Freedom in full satisfaction of the debts secured by the Property. When New Freedom accepted the Deed in Lieu, the note was fully satisfied. Because the Deed of Trust represented only a security interest in the Property based on the underlying debt, the satisfaction of the underlying debt extinguished the Deed of Trust, or at least any beneficial interest under the Deed of Trust. Moreover, Defendants have not even claimed that they own the Note on which the Deed of Trust was based. The Note has been satisfied; as a result, Defendants as the purported assignees of the beneficial interest of the Deed of Trust have no interest in the Property. Defendants therefore can claim no interest under the Deed of Trust.

2. Defendants Have No Evidence that the Deed in Lieu Was Fraudulent.

Defendants desperately attempt to dismiss the effects of the Deed in Lieu by alleging fraud, but there is no evidence of fraud here.

Defendants cite the absence of documentation in a very sparse file subpoenaed from John Peter Lee, Ltd., attached as Exhibit A to Defendants’ Opposition, to show that Ms. Tablante acted fraudulently in recording the Deed in Lieu. Opp’n at 3. Defendants also conclude that fraud was involved because “the 30(b)(6) witness for the Law Offices of John Peter Lee, Esq. failed to appear twice at scheduled depositions in this matter.” Opp’n at 7.

Defendants’ allegations of fraud are unfounded. It would be an incredible leap for a court to conclude that the nonappearance of a witness for a deposition signified fraud in the underlying subject of the deposition. In addition, as discussed above, this Court should disregard the purported file subpoenaed from John Peter Lee, Ltd.

Even if the Court were to consider the documents, however, the documents provided by the

custodian are so sparse the Court should question whether the custodian's response really contains every document relating to the Deed in Lieu, or whether some documents were not in the file for any of a number of reasons. One can hardly conclude from this lack of evidence, particularly on a summary judgment motion, that New Freedom never agreed to accept the Deed in Lieu. To the contrary, Defendants' own documents show that the Clark County Assessor's Office sent a copy of the Deed in Lieu to New Freedom by letter dated March 18, 2011. *See* Opp'n, Ex. A. New Freedom received a copy of the recording and would have received copies of tax bills, as well as HOA notices; yet, New Freedom never once contested the validity of the Deed in Lieu. The fact that New Freedom (or its successors) never contested the validity of the Deed in Lieu speaks strongly in showing that the Deed in Lieu was not fraudulent. Furthermore, by waiting years after the recording of the Deed in Lieu, Defendants are estopped from asserting fraud. If the allegations of fraud were true, then New Freedom, BANA and Nationstar negligently failed to reject the Deed in Lieu when it was recorded or when they became assignees of the beneficial interest under the Deed of Trust.

Defendants have no proof of any fraud and cannot overcome the presumption that the recorded Deed in Lieu is valid.

3. The Statute of Frauds does not apply here, and the Deed in Lieu Was Effective Without New Freedom's Signature.

Defendants argue the Statute of Frauds as an affirmative defense to attempt to avoid the clear conclusion that the Deed in Lieu extinguished any beneficial interest under the Deed of Trust. As an initial matter, this Court should disregard Defendants' assertion of the Statute of Frauds: Defendants did not plead the Statute of Frauds as an affirmative defense in accordance with NRCP 8(c). BANA's Answer to Complaint, at 6–7; Nationstar Mortgage, LLC's Answer, Counterclaim Against West Sunset 2050 Trust and Cross-Claim Against Stephanie Tablante, at 2–3. Where a party fails to plead the Statute of Frauds as an affirmative defense, that defense is waived. *See Coray v. Hom*, 80 Nev. 39, 389 P.2d 76 (1964) (remanding with instructions not to consider the purported defense of the statute of frauds because that had been waived by failing to plead it as an affirmative defense).

1 Since Defendants did not plead the Statute of Frauds as an affirmative defense, they have waived the
2 defense.

3 Even if Defendants had not waived the affirmative defense, the Statute of Frauds does not
4 invalidate the transfer of title from Ms. Tablante to New Freedom via the Deed in Lieu. NRS
5 111.105 provides that a conveyance of land “may be made by deed, signed by the person from
6 whom the estate or interest is intended to pass . . . , acknowledged or proved, and recorded.” The
7 statute does not require that the recipient of real property countersign the deed. Rather, the
8 conveyance is complete when the deed has been executed by the grantor, acknowledged, and
9 recorded.

10 Since it is undisputed here that the Deed in Lieu was executed by Ms. Tablante,
11 acknowledged, and recorded, title of the Property was effectively transferred from Ms. Tablante to
12 New Freedom. Defendants’ argument that the Deed was invalid because it was not signed by New
13 Freedom is nonsensical—Defendants might as well say the original deed to Ms. Tablante and the
14 Deed of Trust were all invalid because they were signed by the grantors of the deeds but not the
15 grantees! Although Ms. Tablante properly conveyed the Property to New Freedom pursuant to NRS
16 111.105, New Freedom made no promises to Ms. Tablante that required recordation. Defendants
17 therefore cannot argue that the absence of New Freedom’s signature on the Deed in Lieu invalidated
18 the Deed in Lieu under the Statute of Frauds.

19 The Statute of Frauds also does not apply because Ms. Tablante fully performed under the
20 contract, and assuming *arguendo* that the contract had previously been invalid, New Freedom
21 ratified the contract by its silence notwithstanding notice of the Deed in Lieu. *See Wiley v. Cook*, 94
22 Nev. 558 at 565 (“Each of the above understandings, however, were taken out of the statute of
23 frauds by part performance”); *cf.* NRS 111.015 (“Nothing contained in this chapter shall be
24 construed to abridge the powers of courts to compel the specific performance of agreements in cases
25 of part performance of such agreements.”).

26 Because the Deed in Lieu, pursuant to NRS 111.105, did not require New Freedom’s
27 signature, the Deed in Lieu was effective in transferring title and satisfying the debt obligations
28

1 secured by the Property. Consequently, the security interest represented by the Deed of Trust was
2 extinguished.

3 **C. EVEN IF SOME DEFECT OR FRAUD IN RECORDING THE DEED IN LIEU EXISTED,**
4 **PLAINTIFF’S TITLE IS PROTECTED UNDER THE BONA FIDE PURCHASER DOCTRINE.**

5 Defendants have no evidence that the Deed in Lieu was defective or fraudulent; but even if
6 they had such evidence, Plaintiff’s title is protected by the bona fide purchaser doctrine.

7 **1. NRS 111.180 Bars Any Allegation of Fraud Regarding the Deed in Lieu.**

8 NRS 111.180 codifies the bona fide purchaser doctrine, protecting one who purchases in
9 good faith and for valuable consideration. Fraud in a prior conveyance may not be asserted against
10 a subsequent purchaser for value unless that purchaser had actual knowledge, constructive notice or
11 reasonable cause to know of the fraud intended. NRS 111.180(2).

12 Here, New Freedom had become the title owner of the Property in 2011. From 2011 to
13 2013, New Freedom did not contest the validity of the Deed in Lieu or otherwise dispute that it was
14 the title owner of the Property. Although assignments of the beneficial interests in the Deed of Trust
15 were made in 2011 and 2013, these were insufficient to constitute reasonable cause to know of a
16 fraud. First, one would assume that the assignee of a deed of trust would perform a record search
17 when accepting the assignment. However, neither BANA nor Nationstar disputed the validity of the
18 Deed in Lieu prior to institution of this action. Second, although BANA and Nationstar argue that
19 the assignments themselves should have put Plaintiff on notice of the fraud, the assignments only
20 purported to transfer a beneficial interest under the original Deed of Trust. The assignments do not
21 assert an amount still due under the original note or otherwise lay claim to the Property. In fact,
22 Defendants have never asserted in this action that they even hold the original note or any right to
23 payment on that note. *Cf. Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 252 (Nev. 2012) (“[F]or a
24 subsequent lender to establish that it is entitled to enforce a promissory note, it must present
25 evidence showing endorsement of the note either in its favor or in favor of its servicer.”). Since the
26 original note was satisfied by the Deed in Lieu, any transfer of the beneficial interest under the Deed
27 of Trust had no substance. At most, the assignments show that the banks, who were likely
28

transferring hundreds of these interests at a time, were not paying any attention to the specifics of individual properties and whether or not any actual interest in the properties remained.

2. The Bona Fide Purchaser Doctrine, under NRS 111.180, Applies to Purchasers at an HOA Foreclosure Sale.

Defendants argue that “[t]he good faith purchaser standard has no application to an HOA foreclosure sale,” because the legislature “abandoned” the standard as applied to HOA foreclosure sales. Defendants cite to the omission from NRS Chapter 116 of a provision in the 1982 version of the Uniform Common Interest Ownership Act (“UCIOA”) that specifically provides that a good faith purchaser for value acquires a unit free of the association’s debt and any subordinate interest. While it is true that NRS Chapter 116 does not specifically include this provision of the UCIOA, the omission from Chapter 116 does not reflect a legislative intent that the bona fide purchaser doctrine not apply to purchasers at HOA foreclosure sales. The plain language of NRS Chapter 111 applies to all conveyances of property, whether between a traditional buyer and sale, or between a trustee and purchaser at a foreclosure sale. Nowhere does NRS Chapter 116 limit application of NRS 111.180’s bona fide purchaser doctrine in the HOA foreclosure sale context. Because the plain language is clear, this Court need not guess at the legislature’s intent in adopting the UCIOA.

Plaintiff was a bona fide purchaser for value at the HOA foreclosure sale and is therefore protected from any assertion of fraud in a prior conveyance. Summary judgment should therefore be granted in favor of Plaintiff.

D. THE HOA FORECLOSURE EXTINGUISHED ALL OTHER INTERESTS IN THE PROPERTY UNDER NRS CHAPTER 116 AND *SFR*.

The Deed in Lieu, which transferred title pursuant to NRS 111.105, and Plaintiff’s protection as a bona fide purchaser, show that Defendants have no interest in the Property under the Deed of Trust regardless of the HOA foreclosure. As a matter of completeness and for the sake of argument, however, Plaintiff next addresses Defendants’ quarrels with the Nevada Supreme Court’s decision in *SFR Investments Pool 1, LLC v. U.S. Bank, NA.*, 334 P.3d 408 (Nev. 2014), and its application to the current case.

///

1 **1. If Defendants Had Any Interest in the Property Following the Deed in**
2 **Lieu, the Interest Was Extinguished by the HOA Foreclosure Sale.**

3 Any interest beneficial interest under the Deed of Trust that was not wiped out by the Deed
4 in Lieu was subsequently extinguished by the Association's foreclosure sale under NRS
5 Chapter 116.

6 NRS Chapter 116 affirms an HOA's right to collect from units within the community a share
7 of real estate taxes, insurance premiums, maintenance, and other expenses. *See, e.g.*, NRS 116.021;
8 116.3101. In order to provide the HOA with leverage in collecting delinquent assessments, NRS
9 116.3116(1) grants the HOA a statutory lien against a unit for unpaid assessments. The lien is
10 deemed perfected from the time the HOA recorded its CC&Rs, and "[n]o further recordation of any
11 claim of lien for assessment under this section is required." NRS 116.3116(5).

12 NRS 116.3116(2) provides HOA liens with priority over all other liens, with a few
13 exceptions, including a first deed of trust; however, the flush language of NRS 116.3116(2) grants
14 an exception to the exception for up to nine months of HOA assessments. Specifically, the flush
15 language of NRS 116.3116(2) states:

16 The [HOA] lien is also prior to all security interests described in
17 paragraph (b) [including a "first security interest on the unit recorded before the
18 date on which the assessment sought to be enforced became delinquent,"] to the
19 extent of any charges incurred by the association on a unit pursuant to NRS
20 116.310312 and to the extent of the assessments for common expenses based on
21 the periodic budget adopted by the association pursuant to NRS 116.3115 which
would have become due in the absence of acceleration during the 9 months
immediately preceding institution of an action to enforce the lien, unless federal
regulations adopted by the Federal Home Loan Mortgage Corporation or the
Federal National Mortgage Association require a shorter period of priority for the
lien.

22 This flush language creates what is commonly called the superpriority portion of an HOA's lien. In
23 interpreting NRS 116.3116, the Nevada Supreme Court has declared that "the superpriority piece of
24 the HOA lien carries true priority over a first deed of trust." *SFR*, 334 P.3d at 413. Therefore,
25 under Nevada law, an HOA's lien on a property is prior to a first deed of trust to the extent of nine
26 months of assessments and any abatement or maintenance charges.

27 When an HOA forecloses on an HOA lien which includes a superpriority portion, the
28 foreclosure extinguishes any junior lien on the property, including the first deed of trust. *SFR*, 334

P.3d at 419. NRS 116.31162 through 116.31168 govern the foreclosure sale process. In order to foreclose its lien, the HOA must mail a notice of delinquent assessment to the unit's owners, and wait at least thirty (30) days to record a notice of default and election to sell the unit. The lien must remain unpaid for an additional ninety (90) days, following which the HOA may give notice of the sale and sell the unit. NRS 116.31162(1); NRS 116.311635(1)(a). Once the HOA complies with these requirements, the HOA is authorized to proceed with foreclosure.

Here, the Association complied with the statutory requirements and foreclosed on its lien, including a superpriority portion. Since foreclosure of the superpriority portion would have extinguished any junior interest, including a first deed of trust, whatever interest Defendants held that was not extinguished by the Deed in Lieu was extinguished by the Association foreclosure.

2. The HOA Foreclosure Sale Did Not Violate Defendants' Due Process Rights.

Defendants assert that the statutory foreclosure scheme violated Defendants' due process rights under the Fourteenth Amendment "due to RRFS's improper reliance on a fraudulent deed in lieu." Opp'n at 6. As discussed above, RRFS did not improperly rely on the Deed in Lieu, and Defendants' due process rights were not violated by the foreclosure sale.

a. The Statutory Foreclosure Scheme Does Not Violate Due Process

The Nevada Supreme Court has already considered and rejected the argument that the statutory scheme violates due process. In *SFR*, the Nevada Supreme Court found that a bank's due process argument was a "nonstarter" as "it is well established that due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right." *SFR*, 334 P.3d at 418. In coming to this conclusion, the Court noted that Chapter 116 was enacted in 1991 and provided notice to the lender at that time that, by operation of law, unpaid assessments could result in a superpriority lien in favor of the HOA. *Id.* This statutory scheme does not offend due process because after the enactment of Chapter 116 in 1991, a lender is on notice that an HOA could be entitled to a super priority lien at some future date. *SFR*, 334 P.3d at 418 (citing *7912 Limbwood Court Trust v. Wells Fargo Bank*, 979 F. Supp. 2d 1142, 1152 (2013)). In fact, based on a letter produced by BANA in another case,

1 lenders were aware of the superpriority provisions of the law at least by 2011. *See* BANA000268–
2 69 in Case No. A-14-694640-C attached hereto as Exhibit 1.

3 **b. Defendants’ Due Process Rights Were Not Violated.**

4 Defendants have no standing to assert a due process violation because they received record
5 and actual notice of the Association’s intent to foreclose on the Property.

6 For more than sixty years, the United States Supreme Court has held that a notice satisfies
7 due process if it is “reasonably calculated, under all the circumstances, to apprise interested parties
8 of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*
9 *v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). If a notice identifies an event that
10 will impact an individual’s property interest, then due process is satisfied. *United Student Aid*
11 *Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *Mennonite Bd. of Missions v. Adams*, 462 U.S.
12 791, 801 (1983). The United State Supreme Court clarified that if the name of a person with a
13 protectable interest in property is “reasonably ascertainable,” the notice that is “reasonably
14 calculated” to inform him of the impending event must be notice by mail or other equivalent means.
15 *Bender v. City of Rochester, N.Y.*, 765 F.2d 7, 11 (2d Cir. 1985) (citing *Mennonite*, 462 U.S. at 800).
16 Moreover, “receipt of actual notice deprives [a party] of standing to raise the claim” that the
17 statutory notice scheme violated due process. *Wiren v. Eide*, 542 F.2d 757, 762 (9th Cir. 1976).

18 In May 2013, when BANA assigned the beneficial interest under the Deed of Trust to
19 Nationstar, Nationstar was on notice of the language of NRS 116.3116. (*See* Corporation
20 Assignment of Deed of Trust, MSJ, Ex. 13.) In fact, by the time of the assignment, Nationstar was
21 also on notice that the Association had filed a Lien for Delinquent Assessments (MSJ Ex. 6), Notice
22 of Default (MSJ, Ex. 7), and Notice of Foreclosure Sale (MSJ, Ex. 8).

23 In addition to the record notice of the Association’s intent to foreclose, there is no dispute
24 that Defendants received actual notice prior to the foreclosure sale. The foreclosure agent mailed
25 notice of the foreclosure sale to New Freedom, BANA, Nationstar, and Cooper Castle. *See*
26 Deposition of Robert Atkinson, MSJ, Ex. 10, at 23; Exhibit B to Deposition of Robert Atkinson, at
27 6, 9, 14. Defendants had actual notice and an opportunity to be heard; thus, they lack standing to
28

1 raise a due process claim against the statutory notice scheme. Any claim that the Association
2 foreclosure violated Defendants' due process rights is not properly before this Court.

3 Defendants also lack standing to challenge the constitutionality of the conclusive
4 presumption found in NRS 116.31166. Defendants received actual notice of the foreclosure sale, so
5 their due process rights were not violated by application of the presumption.

6 To the extent Defendants may argue that notices of the Association's intent to foreclose were
7 deficient because they were improperly mailed to New Freedom, notice is not deficient simply
8 because a party fails to correct or provide another address to county officials. *See In re*
9 *Foreclosures of Liens for Delinquent Land Taxes by Action v. Bhatti*, 334 S.W.3d 444 (Mo. 2011)
10 (holding that an owner's failure to correct his address with county officials could not be used to
11 ground a due process violation where notice was sent to the address of record). Here, the Deed of
12 Trust requested that tax statements be mailed to New Freedom at its address in Salt Lake City. That
13 same address was listed on the Deed in Lieu. Mailing of notices to New Freedom was therefore
14 sufficient to satisfy due process.

15 **c. There Was No Due Process Violation Because There Was No State**
16 **Action.**

17 Aside from the fact that Defendants received adequate notice to satisfy due process, in order
18 for the Fourteenth Amendment to even be implicated, there must be a state actor. *See Brentwood*
19 *Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). "As a matter of substantive
20 constitutional law the state-action requirement reflects judicial recognition of the fact that 'most
21 rights secured by the Constitution are protected only against infringement by governments.'" *Lugar*
22 *v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 936 (1982) (quoting *Flagg Bros., Inc. v. Brooks*, 436 U.S.
23 149, 155 (1978)). A state action may be found if "there is such a 'close nexus between the State and
24 the challenged action' that seemingly private behavior 'may be fairly treated as that of the State
25 itself.'" *Brentwood*, 531 U.S. at 295 (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351
26 (1974)).

27 Defendants' due process rights in this case could not have been violated because there was
28 no state action. "It is well-settled law that non-judicial foreclosure proceedings do not involve 'state

action,’ even though such proceedings are regulated by state law.” *Edwards v. Aurora Loan Servs., LLC*, 2011 U.S. Dist. LEXIS 46892, *21-22, 2011 WL 1668926 (E.D. Cal. Apr. 29, 2011). Absent state action, there can be no due process violation under the Fourteenth Amendment.

Defendants raise a host of other arguments about the insufficiency of the specific provisions of NRS Chapter 116 to meet due process. Defendants are grasping at straws. These additional procedural safeguards that Defendants would like to see in the statute are not guaranteed by the state or federal constitutions, so long as Defendants had notice and an opportunity to be heard. Here, Defendants had their notice and opportunity as required by statute. Furthermore, the Nevada Supreme Court has already rejected the argument that Chapter 116 violates due process. Accordingly, this Court should reject Defendants’ due process arguments and grant summary judgment to Plaintiff.

E. DEFENDANTS’ ARGUMENT THAT THE FORECLOSURE SALE WAS NOT CONDUCTED IN A COMMERCIALLY REASONABLE MANNER IS INAPPLICABLE UNDER THE STATUTE AND IS UNSUPPORTED BY THE FACTS OF THIS CASE.

Defendants contend that this Court should disregard proper application of NRS Chapter 116 because Plaintiff acquired the Property for a relatively low. Opp’n at 14–19. That defense is inapplicable here because NRS Chapter 116 does not require an HOA foreclosure sale be conducted subject to a separate requirement for commercial reasonableness. *See generally* NRS Chapter 116. Rather, the Legislature “handcrafted” the “special notice requirements and protections . . . in NRS 116.31162 through NRS 116.31168” to govern the foreclosure sale process. *See SFR*, 334 P.3d at 417. Thus, commercial reasonableness is either inapplicable or is satisfied as a matter of law by the HOA’s compliance with the statutory requirements and the conclusive presumptions afforded by NRS 116.31166.

Here, the Foreclosure Deed conclusively resolves, under NRS 116.31166, that the statutory requirements for notice were complied with. Because the statutory notice requirements and protections were fulfilled, this Court need not examine the transaction for commercial reasonableness.

Even if this Court were to analyze the foreclosure sale for commercial reasonableness, however, Defendants have alleged no facts to show that the sale was conducted in a commercially unreasonable manner. Although Defendants may cite to the low price at the public auction as the basis for its argument, “[m]ere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression.” *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). Defendants argue that extremely low sale prices alone should invalidate a sale, but they can cite to no Nevada case that supports their proposition. Here, there is no evidence of fraud or oppression. The Association had no responsibility for protecting Defendants’ interests beyond selling the Property to the highest bidder at the auction. The argument of unfairness was soundly rejected in *SFR*; there, the Court held that extinguishment of a first deed of trust is not unfair because the situation is created by a lender’s own inaction. *See* 334 P.3d at 414 (noting that “as a junior lienholder, U.S. Bank could have paid off the [HOA] lien to avert loss of its security; it also could have established an escrow for [HOA] assessments to avoid having to use its own funds to pay delinquent dues”).

In addition, the price paid at the foreclosure sale did not indicate any commercial unreasonableness since, at the time, the law concerning the superpriority of HOA liens was unsettled. *See Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Case No. 2:13-CV-00649-PMP-NJK, 2015 U.S. Dist. LEXIS 8057, at *12–13 (D. Nev. Jan. 23, 2015). Commercial reasonableness must be assessed as of the time the sale occurred. *Id.* The purchaser at an HOA foreclosure sale before the release of *SFR* was making a “risky investment” and basically “purchasing a lawsuit.” *Id.* A low price was therefore to be expected, as the purchaser could expect to incur litigation fees to even obtain title insurance on such a property, with no assurance that the purchaser would ever receive a clean title. *See id.*

Finally, assuming *arguendo* the applicability of commercial reasonableness to an HOA foreclosure sale, setting aside a commercially unreasonable sale is not a proper remedy when an innocent third party has purchased the property. *See Savage Constr. v. Challenge-Cook Bros.*, 102 Nev. 34, 39, 714 P.2d 573, 576 (1986) (finding commercial unreasonableness but requiring the seller to credit the buyer with the difference rather than setting aside the sale); *Levers v. Rio King*

1 *Land & Inv. Co.*, 93 Nev. 95, 100, 560 P.2d 917, 920 (1977) (affirming the district court’s finding of
2 commercial unreasonableness but reversing the portion of the judgment that set aside the sale). Any
3 analysis of commercial unreasonableness is irrelevant to the current action involving Plaintiffs,
4 because they are innocent third parties. Plaintiffs are not liable for any fraud or irregularity that
5 hypothetically may have occurred with respect to the foreclosure sale. If any flaws exist, Nationstar
6 should seek relief from the foreclosure agent or HOA.

7 **F. DEFENDANTS MISINTERPRET EDELSTEIN AND THE PURCHASE AND SALE**
8 **AGREEMENT.**

9 Defendants cite *Edelstein*, 286 P.3d at 258, for the proposition that a party pursuing
10 nonjudicial foreclosure in Nevada must hold both the right to payment and the lien securing the right
11 to repayment. This stretches the logic and holding of *Edelstein* and misapplies it to the case here.

12 As discussed above, in a typical mortgage transaction, the note represents the right to
13 repayment of the loan, and the deed of trust represents the right to a security interest in the property.
14 *See id.* at 254. Traditionally, the borrower executed both the note and the deed of trust in favor of
15 the lender, *see id.* at 254, 257; however, following the creation of MERS, it became increasingly
16 common for lenders to designate MERS as the beneficiary under deeds of trust and to split the deed
17 of trust from the note, *see id.* at 256. In *Edelstein*, the Nevada Supreme Court held that after the
18 separation of a note and deed of trust, a bank must possess both the note and the deed of trust in
19 order to initiate nonjudicial foreclosure proceedings—that is, the bank must show that it is “the
20 proper entity . . . to proceed against the property.” *Id.* at 255.

21 Here, the “note” and lien were never split. The Association had the right to collect
22 assessments, and also held a security interest in the Property to enforce collection. Although the
23 Association may have sold the right to *proceeds from* collection, the Association did not sell its right
24 to collect. In fact, the Purchase and Sale Agreement referenced by Defendants (the “Agreement”)
25 contemplates that proceeds “will be received by . . . the [Association] (as assessment claimant and
26 lienholder),” and that the Association will use a designated agent “to conduct foreclosure sales on
27 behalf of [the Association].” Purchase and Sale Agreement, Opp’n Ex. D at 2. The clear import of
28 this is that the payment right had not been split from the lien; rather, a third party had purchased the

1 right to *proceeds* from payments collected on behalf of the Association, with the Association
2 retaining the underlying right to payment. *Edelstein*, therefore, does not apply, as the Association
3 was at all times the proper entity to proceed against the Property.

4 Similarly, the purchase of the right to proceeds from collection did not constitute satisfaction
5 of the superpriority portion of the Association's lien. In the Agreement, the Association authorized
6 the designated agent to send out notices of the lien, default, and foreclosure sale *on the Association's*
7 *behalf* and to proceed with the foreclosure sale *on behalf of the Association*. *Id.* at 3, 4. Payments
8 received by the Association from the collection efforts were to be "used to satisfy past due
9 assessments first." *Id.* These provisions show that the Association's lien was not satisfied by the
10 third party's purchase of the rights to proceeds.

11 IV. CONCLUSION

12 For the foregoing reasons and the arguments made in Plaintiff's Motion for Summary
13 Judgment, Plaintiff respectfully requests that this Court grant summary judgment for Plaintiff
14 against all defendants on all claims and counterclaims, and deny Defendants' Countermotion for
15 Summary Judgment.

16 DATED this 18th day of June, 2015.

17 Respectfully submitted,

18 MAIER GUTIERREZ AYON

19 /s/ Luis A. Ayon

20 LUIS AYON, ESQ.
21 Nevada Bar No. 9752
22 MARGARET E. SCHMIDT, ESQ.
23 Nevada Bar No. 12489
24 400 South Seventh Street, Suite 400
25 Las Vegas, Nevada 89101
26 Attorneys for Plaintiff/Counterdefendant West
27 Sunset 2050 Trust
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **WEST SUNSET 2050 TRUST'S**
3 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION**
4 **TO COUNTERMOTION FOR SUMMARY JUDGMENT** was electronically filed on the 18th
5 day of June, 2015 and served through the Notice of Electronic Filing automatically generated by
6 the Court's facilities to those parties listed on the Court's Master Service List and by depositing a
7 true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was
8 fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
9 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

10 Ariel E. Stern, Esq.
11 Allison R. Schmidt, Esq.
12 AKERMAN LLP
13 1160 Town Center Drive, Suite 330
14 Las Vegas, Nevada 89144
15 *Attorneys for Defendant Bank of America, N.A., and Nationstar Mortgage LLC*

16 /s/ Charity Barber
17 An Employee of MAIER GUTIERREZ AYON

EXHIBIT 1

EXHIBIT 1

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. McCLENNAN *

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. NELSON

HADI R. SEYED-ALI *

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN *

ANNA A. GRAJAR *

CORI B. JONES *

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

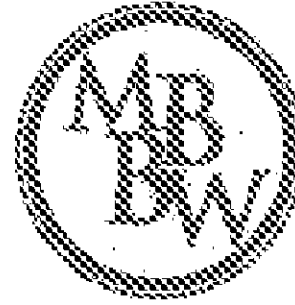
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California

CATHERINE K. MASON *

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RECEIVED

SEP 02 2011

NEVADA ASSOC SR

August 30, 2011

Club Aliante

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 7229 Millerbird Street, North Las Vegas, NV 89084*
MBBW File No. 11-H1329

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:

BANA000268

(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 September 9, 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.

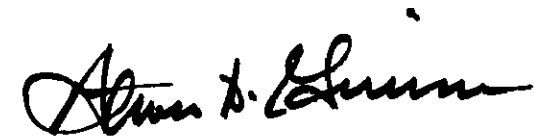
Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0471. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Krista J. Nielson, Esq.



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST,

Plaintiff(s),

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Company;
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership;
STEPHANIE TABLANTE, an individual;

Defendant(s).

AND ALL RELATED CLAIMS

CASE NO. A691323

DEPT. NO. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
WEDNESDAY, JUNE 24, 2015

**RECORDER'S TRANSCRIPT RE:
WEST SUNSET 2050 TRUST'S MOTION FOR SUMMARY JUDGMENT;
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY JUDGMENT**

APPEARANCES:

FOR THE PLAINTIFF:

LUIS A. AYON, ESQ.

FOR THE DEFENDANT:

ALLISON SCHMIDT, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 24, 2015, 9:54 A.M.

2 *****

3 THE COURT: West Sunset 2050 Trust versus New Freedom Mortgage.

4 All right. This is on for West Sunset's motion for summary judgment
5 and the countermotion, and I've reviewed everything. And could counsel state their
6 appearances for the record?

7 MR. AYON: Good morning, Your Honor, Luis Ayon on behalf of plaintiff.

8 MR. SCHMIDT: And good morning, Your Honor, Allison Schmidt on behalf of
9 the defendants, Bank of America and Nationstar Mortgage.

10 THE COURT: All right. We'll start with West Sunset Trust's motion. Do you
11 have anything you'd like to add to what's already been provided to the Court?

12 MR. AYON: Just a little bit, Your Honor. I think that we've kind of looked at
13 the opposition and you can see that they're trying to make this more into an HOA
14 case as far as super priority lien issue, but it's clearly not, and this is kind of an issue
15 where New Freedom Mortgage was deeded the property, were noticed, there was
16 different notices provided throughout the different -- the various different
17 beneficiaries or the transactual who actually owned the property itself, but this was --

18 THE COURT: Okay, yeah. I was confused factually, actually.

19 MR. AYON: Okay.

20 THE COURT: Because as I understand from the defense, basically they
21 wanted to do a deed in lieu of foreclosure, and then the defense's allegation was
22 nobody ever approved that, and then how does New Freedom come into the
23 picture?

24 MR. AYON: New Freedom is the original mortgagor.

25 THE COURT: Okay.

1 MR. AYON: So now at the time --

2 THE COURT: And the original mortgagor had transferred its issue -- its
3 interest down the road a few times so now we've got Nationstar.

4 MR. AYON: Well, we don't --

5 THE COURT: Yes.

6 MR. AYON: I'm sorry, Your Honor, I was just trying to get into as far as the
7 factual.

8 THE COURT: Okay.

9 MR. AYON: What happened was, and we actually don't know when New
10 Freedom transferred. There's the recordings, all those different things that are in
11 the judicial notice pleadings, however, we actually don't -- they're not part of the
12 case right now. At least they -- we're probably going to default them at some point,
13 but they've at least contacted us and said, listen, we have no interest, however,
14 there's no evidence of when the actual transfer took place.

15 It could have taken place immediately after, which is mostly what
16 mortgage companies do is they sell these immediately.

17 THE COURT: Right, these small companies.

18 MR. AYON: That's right. So years later then the transfer of fact, to kind of
19 back up, before all those transfers that were recorded, is you have a situation where
20 a deed in lieu took place by the borrower, and this deed in lieu was actually done by
21 an attorney, John Peter Lee, who then recorded the deed in lieu, then rerecorded it
22 because it didn't have a description of the property.

23 THE COURT: Right.

24 MR. AYON: Now the allegations are that this was a fraudulent deed in lieu,
25 so that's --

1 THE COURT: Well, I understood the allegations -- when you say fraudulent, I
2 understood the allegations to be that they didn't receive approval from Nationstar or
3 Bank of America and that this was just then done and recorded on behalf of New
4 Freedom who was the original mortgagor.

5 MR. AYON: Now there's a couple problems with that -- those allegations.
6 One, is discovery is closed so there is no more evidence as far as being able to
7 prove. And this is an affirmative defense that they have to prove every single
8 element of that affirmative defense.

9 Now, if you look at the documents that was subpoenaed by John Peter
10 Lee, and this is their exhibit number A, this is exhibit A in their opposition to
11 counter-motion. There -- if you flip through the middle, and these aren't date
12 stamped or anything, but if you look kind of in the middle of these documents,
13 there's actually an e-mail -- and I can go and, Your Honor, I can show you exactly
14 what document I'm looking at because I think this is actually pretty important as far
15 as our claims are concerned --

16 THE COURT: I've got it here, exhibit A, items to be produced. Is that what
17 you're looking at?

18 MR. AYON: That's right. And there's an e-mail from Bank of America to the
19 borrower in this case that talks about all the different items that they'd need right
20 around the same time this deed in lieu took place.

21 So knowing what I know about the servicer, knowing what I know about
22 the different lenders, that this was probably a loan modification that failed, and in
23 exchange for any deficiency, credits, any of those things, they went ahead and
24 accepted the deed in lieu. The problem is there's no evidence of that.

25 THE COURT: Well if Bank of America held the mortgage at that point in time,

1 why on earth would they want a deed in lieu of foreclosure to go to the benefit of
2 New Freedom who is not even involved anymore?

3 MR. AYON: We don't know that, Your Honor, and that's the problem with this
4 -- with the evidence that's being presented is that because the recording statute --
5 because of the recordings currently on the property clearly indicated New Freedom
6 Mortgage as the servicer --

7 THE COURT: Well, right, but I mean why would the Bank of America go and
8 check-- or Nationstar go and check the recordings at this point when they don't
9 know they're filing anything? I mean, you know, they've got, I don't know, tens of
10 thousands -- hundreds of thousands of properties. They're not just out there
11 affirmatively checking through the recorder's office, although I'm sure at some point
12 in time you'll have technology that will ping these things up. But do you see what
13 I'm saying? Why on earth are they going to know that this was recorded on behalf
14 of New Freedom who everybody knows doesn't have an interest in this anymore?

15 MR. AYON: We don't know -- well we don't know positively --

16 THE COURT: Well, I mean, John Peter Lee knew he was communicating
17 with the Bank of America, correct?

18 MR. AYON: You would think so.

19 THE COURT: And so I don't get why he filed a deed in lieu of foreclosure to
20 the benefit of New Freedom.

21 MR. AYON: Because they --

22 THE COURT: Does that make any sense to you, Mr. Ayon? What am I
23 missing?

24 MR. AYON: Yes, because they were still the recorded -- they were still the
25 owner of the property under our recording -- under our assessor's site, so they're

1 probably likely is that they did that in order to avoid paying the transfer tax that they
2 would have done in order to transfer it down the road. The problem is is that there
3 isn't any evidence from B of A or their side to actually explain any of this.

4 So we're left with now the foreclosure sale that took place that did
5 notice B of A, did notice Nationstar as far as the transfer from, because it's now New
6 Freedom Mortgage who's getting all the tax -- or getting the tax bills, all those
7 different things because it's now two years down the road. So my client purchases
8 at the HOA sale with the understanding that they are now -- that New Freedom is
9 the actual titleholder, because they were the titleholder at the time according to the
10 recorded documents.

11 So instead of doing what they could have done and tried to do, or didn't
12 do --

13 THE COURT: Well, what should they have done?

14 MR. AYON: Recorded their interest as soon as they -- as soon as they
15 obtained the new interest which is required by law, record their interest in the
16 property, they would have gotten all the notices, the deed in lieu would have gone to
17 them; instead, this happens. Is that -- but the problem is they still get noticed of this
18 foreclosure sale anyway.

19 So they can't -- so the way -- either way you look at it, they're noticed of
20 the sale. They're the record holder and they've known about -- now, what's even
21 more interesting is that down the road even after the foreclosure sale is that they're
22 are transferring the properties, they're doing notice of default, which their trustee
23 then should, and they're required under the law, to go back and look who's the
24 recorded -- who is the titleholder of the property. So they would have been aware of
25 this deed in lieu at some point prior to the HOA sale as well.

1 So there was multiple opportunities to actually figure out if there was a
2 mistake. And that's -- we're under operating under a really big assumption here that
3 there was a mistake in terms of this deed in lieu. But there's no evidence to the
4 contrary that this wasn't exactly what was bargained for by B of A, by New
5 Mortgage, by and of these --

6 THE COURT: Well, there's no evidence that it was bargained for.

7 MR. AYON: But that's not my burden though. And that's the problem with
8 this case --

9 THE COURT: Well, right.

10 MR. AYON: -- is that there is no evidence to rebut the presumptions that is
11 already given to me statutorily.

12 THE COURT: Well. Except if you say, well, this never happened, you don't
13 have any evidence that it never happened. I mean, you can't necessarily -- it's that
14 old thing, you can't prove a negative. So if they say it was never bargained for, we
15 didn't bargain, we didn't bargain. How do you prove we didn't bargain?

16 MR. AYON: But what they're --

17 THE COURT: I guess, you know --

18 MR. AYON: But what they're arguing is that it was done improperly and that's
19 what we're here --

20 THE COURT: Right, because they never had permission to do it.

21 MR. AYON: Exactly, but they don't say that by any evidence, and that's the
22 big problem here is that I still get the rebuttal presumption under the statute, under
23 the recording statutes, under the deed, that says every -- the proper holder was
24 noticed. So they do nothing here to provide evidence to say, listen, this deed is
25 improper, it wasn't noticed, none of those different things have happened in this

1 case.

2 I mean evidentiary, you know, there -- we prevailed just by the evidence
3 that is lacking, the fact that we're unable to rely on all these presumptions. They
4 don't provide anything else to the contrary, even though they are Bank of America
5 and Nationstar, they can provide affidavits saying, listen, this was improperly done,
6 this was not what we bargained for, all those different things, but they don't do it.

7 So that's why we're here today saying, listen, you haven't proven your
8 affirmative defense in this case.

9 THE COURT: Okay. Counsel?

10 MS. SCHMIDT: Yes, Your Honor.

11 I think to say that we have to affirmatively prove that this deed was
12 fraudulent, which we do -- essentially we do assert that it's a rogue document,
13 unilaterally filed -- recorded by the borrower, and we do have evidence that it's a
14 rogue document. First of all, we have the evidence that it's never been delivered, so
15 a bedrock principle of property law for a deed to be effective there has to be delivery
16 and acceptance.

17 Well, there's no acceptance on the face of the deed because this was
18 never assigned by Bank of America who John Peter Lee was dealing with. There's
19 no delivery because it's clear from the face of the documents, which Your Honor can
20 take judicial notice of, that the deeds were returned to John Peter Lee, not New
21 Freedom.

22 And I think Your Honor is on the right track. Why would Bank of
23 America have a property deeded back to a mortgage shop in Utah that has no
24 interest in the loan, that hadn't been dealing with them, that at that time didn't even
25 exist, and I think it's pretty clear once we go through everything that we've attached

1 you see that when there was ever attempted to be notice on New Freedom,
2 everything gets returned as undeliverable. It just didn't exist anymore.

3 And another thing is that what they do have to prove in order to
4 affirmatively prove title in their names that this foreclosure sale was proper.

5 THE COURT: Was properly noticed.

6 MS. SCHMIDT: And there's no dispute, Redrock Financial Services has
7 testified we did not give notice to Bank of America, we did not give notice to
8 Nationstar, despite the fact that the deed in -- the deed of trust had been transferred
9 to Bank of America prior to these foreclosure notices being recorded.

10 And that sort of, to anyone checking a title report, should have kind of
11 pinged their radar that, hey, this deed of trust is still being transferred. If it's been
12 reconveyed, wouldn't there be a reconveyance? Why would they continue to
13 transfer the interest of it?

14 And just from, you know, general industry standards, it's not that a
15 borrower would prepare a deed in lieu of foreclosure, that's a document that Bank of
16 America would prepare and send to them for signing.

17 Another thing is that we subpoenaed all the records from John Peter
18 Lee, and one of the requests was any document indicating that this deed in lieu had
19 been approved or accepted by a lender. We got his entire file; there was nothing in
20 there.

21 What we do have is a letter from Cooper Castle once they started their
22 foreclosure proceedings and reviewed title, which occurred after the HOA
23 foreclosure, and they said they sent him a letter, I believe it's the last page in that
24 exhibit, stating what is this? What have you recorded? We represent Bank of
25 America. What happened here?

1 So we have plenty of evidence, I think, that this isn't a good deed, and
2 there's already questions as to whether 116 provides due process to a lender, and,
3 you know, there's certainly judges on both sides of that issue. But if you take away -
4 -

5 THE COURT: Yeah. I mean, I'm -- I mean, I haven't -- I have a couple under
6 advisement. My inclination is to say, look, as long as there's appropriate notice
7 there's due process, and the statute's constitutional and fine. So really the issue for
8 me here is whether or not they were required to provide notice to Bank of America
9 and Nationstar, or could they have relied on this deed in lieu of foreclosure which
10 was unilaterally filed by the borrower and the borrower's attorney. Although, again,
11 it doesn't really make a lot of sense to me just based on what I know. Maybe there's
12 something out there that John Peter Lee knew that I don't know -- why you would
13 just kind of unilaterally do that in favor of New Freedom when you were dealing with
14 the Bank of America.

15 MS. SCHMIDT: Well, I think -- I think that -- I think Your Honor's on the right
16 track. There does have to be notice. And if we looked at it in terms --

17 THE COURT: Well, what about -- why don't you speak to this, you know,
18 what about the bank's obligations when, you know, on the property, according to the
19 assessor's office, it's giving everybody notice that New Freedom is the one with the
20 interest in the property. What -- you know, Mr. Ayon has touched on some of the
21 bank's obligations here. Do you want to respond to any of that?

22 MS. SCHMIDT: I don't --

23 THE COURT: Because I think this, you know, I think a lot of these cases are
24 really turning out to be very -- you know, once you kind of resolved the broader
25 issues, the constitutionality and all that, they're really fact specific. You know, did

1 they get notice, was the notice proper, that sort of thing, so.

2 MS. SCHMIDT: I think -- I don't know of an affirmative duty that would exist
3 for Bank of America or Nationstar to review title on every single one of their
4 properties on a regular basis. They certainly reviewed title on this property prior, or
5 Cooper Castle did prior to going forward with their own foreclosure, but that -- the
6 ship had sailed, to speak colloquially, at that point and the HOA foreclosure sale had
7 happened.

8 I don't think -- there was never any notice to Bank of America that this
9 document was recorded because it was returned to John Peter Lee, there's no
10 indication from any of the documents that we received in the subpoena that he ever
11 sent it to either New Freedom or Bank of America despite the fact that he was in
12 contact with them.

13 So I don't believe that there was an affirmative duty for either of my
14 clients to go and check title. As Your Honor mentioned, they have hundreds of
15 thousands if not millions, maybe, of properties in Nevada. They can't --

16 THE COURT: Right.

17 MS. SCHMIDT: -- and as you said, maybe one day there will be the
18 technology in place that can do this, but they can't check every single property.

19 And as I've gone through, you know, our foreclosure crisis the past
20 several years, you see all kinds of wacky things that borrowers have either
21 downloaded from the internet and thought this is the way I get out of my mortgage,
22 or this is the way that I get out of my obligation to my lender, and they just record
23 whatever they think will help them.

24 So we have plenty of rogue documents that get recorded and this is
25 one of them, and I think the evidence from the subpoena shows that. And you can't

1 -- there can't be a taking without notice. That's, you know, that's due process in a
2 nutshell, notice and opportunity to be heard.

3 The statute says these are the documents that a lienholder needs to
4 receive notice of, it's undisputed that we didn't receive notice of the notice of default,
5 and United Legal Services actually recognized this deed in lieu of foreclosure as
6 unusual for a rogue document and did provide notice of the sale, but at that point
7 you receive it essentially, at best, three weeks before a sale date, and it's an
8 institutional client, doesn't give them a very good opportunity to cure.

9 And so with the questions of whether due process is satisfied, if you
10 take away one of those notices, then I don't think there's any question that there's
11 no due process. When you take away a mortgage, I believe it was \$165,000, and
12 they buy it for pennies on the dollar, and then --

13 THE COURT: Yeah, I mean, I'm fine with that actually. I mean, I -- you know,
14 because, again, as many judges have said, looking at the climate at the time what
15 wasn't known -- and they're still spending money litigating all this stuff with Mr. Ayon,
16 so by the time it's all said and done, they're not going to get this huge windfall on all
17 of these properties once you go through all the litigation costs and everything like
18 that.

19 So, you know, factoring all that in, the uncertainty -- and there's still a
20 lot of uncertainty because we have all of these different cases with different little
21 factual permutations, different notice issues, different CC&R issues, you know, I kind
22 of reject that argument that it's so cheap. But, you know, notice is the issue. You
23 had to have notice.

24 MR. AYON: Let me just address that very quickly, Your Honor, because --

25 THE COURT: That's my big issue on these things.

1 MR. AYON: If we attach the deposition of Robert Atkinson whose firm
2 conducted the sale, and that's exhibit 10 to our motion, if you look at page 25, he
3 goes into Ms. Schmidt asks, well we'll mark as exhibit B in section 3, blah, blah,
4 blah, section through the documents that we're just referring to that contain the
5 certified mailing receipt, the recorded and unrecorded notice of foreclosure sales,
6 the notice to the tenants, and the UPS Form 3877 that we were just referencing,
7 Answer: you'll now notice that Form 3877, that there is reference to Nationstar
8 Mortgage at Highland Drive address. You may ask where you get this notice, he
9 goes into that: This document titled transfer of the beneficiary to the deed of trust
10 from Bank of America NA to Nationstar, and provides the same Highland Drive
11 address that you find on the certified -- certificate of mailing.

12 So I think that the question's been answered and, you know, to some
13 extent, if Bank of America was involved in some way in either the modification
14 process or any other process, I think they would have been at least aware to know
15 that, listen, we now have this property that we're conducting servicing for, and
16 they're -- the titleholder is somebody completely else.

17 So I think that at least at that point in time --

18 THE COURT: I'm not getting how they would have had notice.

19 MR. AYON: If you look at their involvement -- so there's an e-mail from Bank
20 of America talking about loan documents. They would have -- could have easily --

21 THE COURT: You're talking about the modification.

22 MR. AYON: That's right.

23 THE COURT: But see, to me, I'm not getting there. How on earth is anybody
24 at the Bank of America supposed to figure out, gee, somebody may go to a lawyer
25 and file a deed in lieu of without our knowledge, and that we're supposed to check

1 that. Is that what you're saying?

2 MR. AYON: No, what they would have done though is they could have pulled
3 up the property record at the time of the loan modification was done and noticed that
4 it was in New Freedom and not Nationstar.

5 While this was all going -- without what was happening at the time of
6 the --

7 THE COURT: Yeah, but where, other than Luis Ayon saying that that's their
8 obligation, where are you getting that somehow the bank had this obligation to be,
9 oh, we're in the process of a loan modification; gee, I better check the record --

10 MR. AYON: Well if they're going to --

11 THE COURT: -- and anticipate that.

12 MR. AYON: Well, in order to modify the loan they've got to do it by the
13 beneficiary of the deed of trust. So they're going to have to do it in the name of
14 whoever the record holder of the property is. That has to be done.

15 THE COURT: Right.

16 MR. AYON: So they would have had to at least look at it to say wait a minute,
17 it's New Freedom who actually is the titleholder, we have to make a change,
18 because they wouldn't have been able to do the modification unless it was in the
19 name of the actual owner of the property.

20 THE COURT: Right, but what I'm saying is they didn't do the modification for
21 whatever reason, mainly because a lot of banks just waste everybody's time and
22 don't do the modifications --

23 MR. AYON: We're only speculating here, too.

24 THE COURT: Yeah, but the issue is we are speculating, and what I'm saying
25 is, you know, to me, the bank had no way to know that this was going to occur and

1 I'm still getting to I don't understand why the deed in lieu of was filed and done the
2 way it was done. That doesn't make a lot of sense to me.

3 So, basically, what I've been doing on all of these is taking them under
4 submission and issuing decisions from chambers. So that's what I'm going to do
5 and I know, Mr. Ayon, you may or may not have gotten some of those already.

6 MR. AYON: I don't think -- not in your department, but --

7 THE COURT: Then look for something Monday. Did you have anything to
8 add?

9 MS. SCHMIDT: Well, I didn't know if Your Honor, beyond being noted this
10 year, if you wanted to address the *Edelstein* issue that is kind of unique to these
11 First 100 cases where the -- the way our -- part of our countermotion, and we
12 include the contract as exhibit, the association sells the payment right on these
13 under *Edelstein* in order to have standing to foreclose you need to pick up the lien
14 and the payment right. When they sell the payment right they lost standing to
15 foreclose. So even assuming that there was no issue with notice, even though it's
16 undisputed my client's not received notice, then you have a foreclosure that's
17 improper because of the lack of standing under *Edelstein*.

18 MR. AYON: The problem with that argument, Your Honor, is that they're not
19 foreclosing on the borrower, they're foreclosing on the actual titleholder of the
20 property which is New Freedom Mortgage. I mean, for example, if I go to the HOA
21 at this point and say, listen, I'd like to -- and if it's my property that I own and I go to
22 the HOA and say, listen, I'm in arrears \$5,000 and I say, well, I'll give you \$1,000 for
23 this priority lien amount, they're going to say, no, you owe the \$5,000. And that's
24 this circumstance here. You don't have a super priority lien issue in this case.

25 THE COURT: I don't think that's what counsel's saying.

1 MR. AYON: I think that's exactly what she's saying is that --

2 THE COURT: What are you -- is that what you're saying?

3 MS. SCHMIDT: No, I -- what I'm saying is that for every type of lien on real
4 property there's a payment right and a lien. And in order to have standing to
5 foreclose, which is now black letter law in Nevada --

6 THE COURT: But they sold their payment right and so whoever's getting the
7 payments is a different entity than the HOA. That's what you're saying.

8 MS. SCHMIDT: Correct.

9 MR. AYON: And I think it's only -- and it's only a portion of it but they're still --
10 the HOA's still allowed to foreclose on their entire lien right. So I mean that's --

11 THE COURT: Right, but the issue is whether or not that's a super priority
12 because it only matters -- the super priority portion of the foreclosure is the only
13 thing that matters. That's why we're here.

14 MR. AYON: That's right. Well, but it doesn't matter because it's not a super
15 priority -- there's no priority issue in this case because the owner of the property
16 who's -- the record owner of the property, New Freedom, is the one who's being
17 foreclosed upon. They're responsible for the full lien amount, not just a portion of it.

18 THE COURT: Oh, because of if you respect the deed in lieu of foreclosure.

19 MR. AYON: That's correct.

20 THE COURT: If you set aside the deed in lieu of foreclosure -- so you're
21 saying they're the owner and they have to pay the entire amount because they're
22 not -- they're not standing as a secured -- a secured party, they're standing as the
23 owner itself because of this deed in lieu of foreclosure. So we're right back to
24 square one which is the deed in lieu of foreclosure --

25 MR. AYON: That's absolutely right, yes.

1 THE COURT: -- which nobody had any permission to file and do. So that's
2 what your argument is.

3 MR. AYON: Exactly, then we --

4 THE COURT: And her argument is, no, what we're looking at is you have to
5 have both of these interests. You have to have a lien right and a payment right in
6 order to do this, and because they sold their payment rights they only have one
7 right. Is that what you're saying?

8 MS. SCHMIDT: Yes, and I don't think it matters --

9 THE COURT: I just wanted to make sure I get everybody's argument.

10 MS. SCHMIDT: And my position is it doesn't matter whether it's super
11 priority, sub-priority, you have to have the payment right and the lien, and they don't
12 -- the association only had the lien.

13 THE COURT: Okay. And I get what Mr. Ayon is saying, well, we're not really
14 just talking about -- you know, I'm not sure what you're saying in terms of the
15 standing issue.

16 MR. AYON: That's right. I would say that, Your Honor, I don't know if they
17 actually counterclaimed against the HOA because they would have had to -- they
18 would've had to move to set aside the sale, so they would have had to sue the HOA,
19 the trustees. I mean, I don't think they can necessarily make that standing argument
20 because they're asking for the sale to be set aside at this point --

21 THE COURT: Right.

22 MR. AYON: -- because of that. So I think that argument doesn't apply --

23 THE COURT: They waived?

24 MR. AYON: Yeah.

25

1 THE COURT: All right. Look for something Monday from the chamber's
2 calendar.

3 MR. AYON: Thank you, Your Honor.

4 THE COURT: All right, thank you.

5 MR. AYON: Have a good morning.

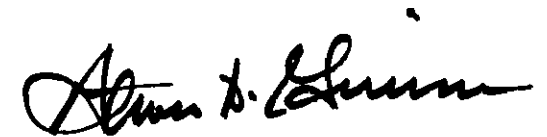
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8 PROCEEDING CONCLUDED AT 10:19 A.M.

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13 ATTEST: I do hereby certify that I have truly and correctly transcribed the
14 audio/video proceedings in the above-entitled case to the best of my ability.

15 
16 _____
17 SUSAN SCHOFIELD
18 Court Recorder/Transcriber
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CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST,

Plaintiff(s),

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Company;
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership;
STEPHANIE TABLANTE, an individual;

Defendant(s).

AND ALL RELATED CLAIMS

CASE NO. A691323

DEPT. NO. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
MONDAY, JULY 13, 2015

**RECORDER'S TRANSCRIPT RE:
CALENDAR CALL**

APPEARANCES:

FOR THE PLAINTIFF:

MARGARET E. SCHMIDT, ESQ.

FOR THE DEFENDANT:

ALLISON SCHMIDT, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, JULY 13, 2015, 9:14 A.M.

2 *****

3
4 THE COURT: West Sunset 2050 Trust versus New Freedom Mortgage.

5 MS. M. SCHMIDT: Good morning, Your Honor. Margaret Schmidt on behalf
6 of the plaintiff.

7 MS. A. SCHMIDT: And Allison Schmidt on behalf of the defendants.

8 THE COURT: Okay. This -- I know I have something under advisement. I
9 haven't issued a ruling on that yet. So for purposes of today let's -- was that
10 dispositive of everything?

11 MS. A. SCHMIDT: Yes.

12 THE COURT: Assuming for today the motion is denied and we're going
13 forward, are both sides able to announce ready?

14 MS. M. SCHMIDT: Well, except for next week, we didn't submit our pre-trial
15 memorandum because we're waiting on the decision.

16 THE COURT: Okay. Basically, let me just tell you my schedule. We have a
17 firm setting on a med-mal case to start next week, July 20th. That's five to seven
18 days, so the earliest we could accommodate your trial, which is one to three days,
19 would be probably Wednesday, July 29th.

20 MS. A. SCHMIDT: My boss, who would be first-chairing this trial who got
21 called away to Texas this morning, is going to Bulgaria --

22 THE COURT: Okay.

23 MS. A. SCHMIDT: -- for I believe it was the entire month of August.

24 THE COURT: Okay. And that would be Mr. Brenner?

25 MS. A. SCHMIDT: Stern, actually, yes.

1 THE COURT: Stern, okay. Because basically we wouldn't put you in August
2 at all because we have a firm trial and a murder setting starting August 3rd, so if this
3 is one to three days we'd give you the end of July, like July 29th, 30th, and 31st. I
4 don't think it would take more than that. That was the estimate.

5 MS. M. SCHMIDT: Yeah, we probably wouldn't need more than two days, I'm
6 thinking.

7 THE COURT: So when is Mr. Stern going to Bulgaria?

8 MS. A. SCHMIDT: You know, I just talked to him briefly at 5:00 A.M. this
9 morning, so I don't know that I got 100% of the details, but I think it would be -- let
10 me see if I have that in my phone.

11 THE COURT: Is he doing one of those legal teaching things in Bulgaria?

12 MS. A. SCHMIDT: No, it's actually something -- it's some religious thing that I
13 don't entirely know about.

14 THE COURT: Following the path of Moses to Bulgaria?

15 MS. A. SCHMIDT: That could very well be what it is, I don't know.

16 And so we were looking at the 29th?

17 THE COURT: Um hmm.

18 I mean, if the motion's granted then that would resolve everything. This
19 is just in case the motion isn't granted then we could fit you in at the end of July,
20 which -- I mean, what does he really need to do, throw some clothes in a bag to go
21 to Bulgaria?

22 MS. A. SCHMIDT: That's true. I know we have a -- I only have my calendar,
23 unfortunately, so I'm not sure -- I thought it was the 1st that he was leaving.

24 THE COURT: Okay, well --

25 MS. A. SCHMIDT: And I know we have a motion to certify class that's pretty

1 big on the 30th, but it'll all depend, too, on --

2 THE COURT: Right.

3 MS. A. SCHMIDT: -- what the issues of fact that remain are so we can
4 subpoena our witnesses.

5 THE COURT: Okay, why don't we do this?

6 MS. A. SCHMIDT: Okay.

7 THE COURT: Why don't we set you for July 29th. If Mr. Stern is unavailable
8 on that date --

9 MS. A. SCHMIDT: Okay.

10 THE COURT: Let opposing counsel know and let the Court know.

11 MS. A. SCHMIDT: Okay.

12 THE COURT: If the motion's granted, that'll be vacated. If the med-mal trial
13 which they estimated five to seven days looks like it's going to be ten days or
14 something like that, as soon as I start to figure that out I will contact the parties and
15 let you know that. So if none of those things occurs then we'll have a trial on July
16 29th. Okay? And if one of those things occurs then we'll either vacate it all together
17 or we'll find you another date.

18 MS. A. SCHMIDT: Okay.

19 THE COURT: Okay?

20 MS. A. SCHMIDT: Great. Thank you.

21 / / / /

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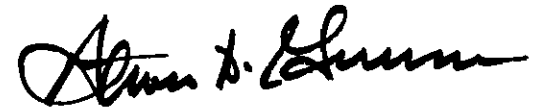
MS. M. SCHMIDT: Thank you, Your Honor.
THE COURT: All right. Thank you.

PROCEEDING CONCLUDED AT 9:41 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



SUSAN SCHOFIELD
Court Recorder/Transcriber



CLERK OF THE COURT

1 **DFLT**
LUIS A. AYON, ESQ.
2 Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
3 Nevada Bar No. 12489
MAIER GUTIERREZ AYON
4 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: laa@mgalaw.com
mes@mgalaw.com

7
8 *Attorneys for Plaintiff/Counterdefendant*
9 *West Sunset 2050 Trust*

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

12 WEST SUNSET 2050 TRUST, a Nevada Trust
13 Plaintiff,

14 vs.

15 NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
16 BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
17 LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
18 Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
19 DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
20

21 Defendants.

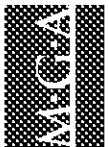
22 AND ALL RELATED CLAIMS.
23

Case No.: A-13-691323-C
Dept. No.: XXI

**DEFAULT AGAINST STEPHANIE
TABLANTE**

24 It appearing from the files and records in the above-entitled action that STEPHANIE
25 TABLANTE, the defendant herein, having been duly served with a copy of the summons and
26 complaint by publication in the Nevada Legal News on September 10, 2014, September 17, 2014,
27 September 24, 2014, October 1, 2014 and October 8, 2014 and mailed to defendant on September 9,
28 2014 by U.S. Mail to the last known addresses; that more than twenty (20) days, exclusive of the

MAIER GUTIERREZ AYON PLLC
ATTORNEYS AT LAW



RECEIVED

JUL 24 2015

CLERK OF THE COURT

1 final date of publication, having expired since service upon the defendant by publication; that no
2 answer or other appearance having been filed and no further time having been granted, the default of
3 defendant STEPHANIE TABLANTE for failing to answer or otherwise plead to plaintiff West
4 Sunset 2050 Trust's complaint is hereby entered.

5 STEVEN D. GRIERSON, CLERK OF THE COURT

6 *[Signature]*
7 Deputy Clerk

8 Regional Justice Court

9 200 Lewis Avenue

Las Vegas, Nevada 89155

JUL 27 2018

Date

VONNE HERNANDEZ

AWA1323

10 The undersigned hereby requests and directs the entry of default.

11 Respectfully submitted,

12 MAIER GUTIERREZ AYON

13 *[Signature]*
14 LUIS AYON, ESQ.

15 Nevada Bar No. 9752

16 MARGARET E. SCHMIDT, ESQ.

17 Nevada Bar No. 12489

18 400 South Seventh Street, Suite 400

19 Las Vegas, Nevada 89101

20 Attorneys for Plaintiff/Counterdefendant West

21 Sunset 2050 Trust

MAIER GUTIERREZ AYON PLLC
ATTORNEYS AT LAW



AFFP
A 691323

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10/08/2014 10:26:21 AM



CLERK OF THE COURT

Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS

DISTRICT COURT
CLARK COUNTY, NEVADA
Case No.: A 691323 Dept. No.: XXI

WEST SUNSET 2050 TRUST, a Nevada Trust Plaintiff,
vs. NEW FREEDOM MORTGAGE CORPORATION, a Foreign Corporation; BANK
OF AMERICA, N.A., a National Association; NATIONSTAR MORTGAGE LLC, a
Foreign Limited Liability Company, COOPER CASTER LAW FIRM, LLP, a Nevada
Limited Liability Partnership STEPHANIE TABLANTE, an individual, DOES I through
X; and ROE CORPORATIONS I through X, inclusive, Defendants.

SUMMONS - CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW. STEPHANIE TABLANTE A civil Complaint has
been filed by the Plaintiff against you for the relief set forth in the Complaint. Object
of Action: This is a Complaint for Title to Property - Quiet Title. 1. If you intend to
defend this lawsuit, within 20 days after this Summons is served on you, exclusive of
the day of service, you must do the following: (a) File with the Clerk of the Court,
whose address is shown below, a formal written response to the Complaint in
accordance with the rules of the Court, with the appropriate filing fee. (b) Serve a
copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiffs
and failure to so respond will result in a judgment of default against you for the relief
demanded in the Complaint, which could result in the taking of money or property or
other relief requested in the Complaint. 3. If you intend to seek the advice of an
attorney in this matter, you should do so promptly so that your response may be filed
on time. 4. The State of Nevada, its political subdivisions, agencies, officers,
employees, board members, commission members and legislators each have 45
days after service of this Summons within which to file and Answer or other
responsive pleading to the Complaint. CLERK OF THE COURT, s/ Joshua Raak,
Deputy Clerk, Date 11-7-13, Regional Justice Court, 200 Lewis Avenue, Las Vegas,
Nevada 89155, MAIER GUTIERREZ AYON, s/ LUIS A. AYON, ESQ., Nevada Bar
No. 9752, MARGARET E. SCHMIDT, ESQ., Nevada Bar No. 12489, 2500 West
Sahara Avenue, Suite 108, Las Vegas, Nevada 89102, Telephone: (702) 629-7900,
Facsimile: (702) 629-7925, E-mail: laa@mgalaw.com, mes@mgalaw.com, Attorneys
for West Sunset 2050 Trust
Published in Nevada Legal News
September 10, 17, 24, October 1, 8, 2014

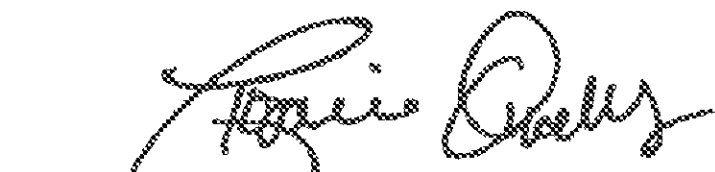
I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada
Legal News, a daily newspaper of general circulation,
printed and published in Las Vegas, Clark County,
Nevada; that the publication, a copy of which is attached
hereto, was published in the said newspaper on the
following dates:

Sep 10, 2014
Sep 17, 2014
Sep 24, 2014
Oct 01, 2014
Oct 08, 2014

That said newspaper was regularly issued and circulated
on those dates. I declare under penalty of perjury that the
foregoing is true and correct.

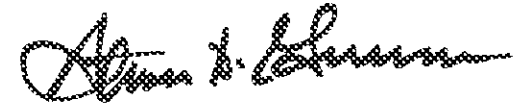
DATED: Oct 08, 2014



Rosalie Qualls

04108253 00381302 702-629-7925

MAIER GUTIERREZ AYON
400 SOUTH SEVENTH STREET
SUITE 400
LAS VEGAS, NV 89101



CLERK OF THE COURT

1 CSERV
LUIS A. AYON, ESQ.
2 Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
3 Nevada Bar No. 12489
MAIER GUTIERREZ AYON
4 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: laa@mgalaw.com
mes@mgalaw.com
7
8 *Attorneys for West Sunset 2050 Trust*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 WEST SUNSET 2050 TRUST, a Nevada Trust
12
13 Plaintiff,

14 vs.

15 NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
16 BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
17 LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
18 Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
19 DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

20 Defendants.
21

Case No.: A-13-691323-C
Dept. No.: XXI

CERTIFICATE OF SERVICE

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on the 9th day of September, 2014, I served a copy of the summons and
24 complaint by depositing a true and correct copy of the same, enclosed in a sealed envelope upon
25 which first class postage was fully prepaid, certified U.S. Mail, return receipt requested, deposited
26 with the United States Postal Service in Las Vegas, Nevada, addressed as follows:

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28 ///

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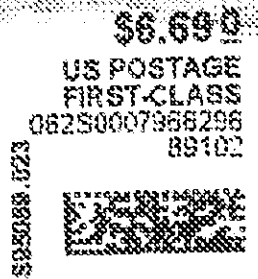
Stephanie Tablante
708 Kelso Way
Las Vegas, Nevada 89107

/s/ Charity Barber
An Employee of MAIER GUTIERREZ AYON

ALIER GUTIERREZ AYON P.L.C.
ATTORNEYS AT LAW

400 South Seventh Street • Suite 400
Las Vegas, Nevada 89101

Stephanie Tablante
708 Kelso Way
Las Vegas, Nevada 89107



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
1. Article Addressed to: STEPHANIE TABLANTE 708 KELSO WAY LAS VEGAS, NV 89107	
2. Article Number (Transfer from service label)	7012 1640 0000 7761 1089

PS Form 3811, February 2004 Domestic Return Receipt 102593-02-04-1840



7012 1640 0000 7761 1089
7012 1640 0000 7761 1089

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit usps.com	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Footmark Here	
Sent to STEPHANIE TABLANTE	
Street Apt. P.O. or PO Box No. 708 KELSO WAY	
City, State, ZIP+4 LAS VEGAS, NV 89107	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stephanie Tablante
716 Kelso Way
Las Vegas, NV 89107

2. Article Number

(Transfer from service label)

7012 1640 0000 7761 1089

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

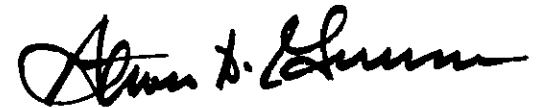
SEP 15 2014

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



CLERK OF THE COURT

1 **DFLT**
LUIS A. AYON, ESQ.
2 Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
3 Nevada Bar No. 12489
MAIER GUTIERREZ AYON
4 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: laa@mgalaw.com
mes@mgalaw.com

7
8 *Attorneys for Plaintiff/Counterdefendant*
9 *West Sunset 2050 Trust*

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

12 WEST SUNSET 2050 TRUST, a Nevada Trust
13 Plaintiff,

14 vs.

15 NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
16 BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
17 LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
18 Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
19 DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
20

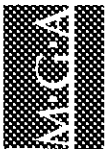
21 Defendants.

22 AND ALL RELATED CLAIMS.
23

Case No.: A-13-691323-C
Dept. No.: XXI

**DEFAULT AGAINST NEW FREEDOM
MORTGAGE CORPORATION**

24 It appearing from the files and records in the above-entitled action that NEW FREEDOM
25 MORTGAGE CORPORATION, the defendant herein, having been duly served with a copy of the
summons and complaint on November 25, 2013; that more than twenty (20) days, exclusive of the
day of service having since expired upon the defendant; that no answer or other appearance having
been filed and no further time having been granted, the default of defendant NEW FREEDOM



1 MORTGAGE CORPORATION for failing to answer or otherwise plead to plaintiff West Sunset
2 2050 Trust's complaint is hereby entered.

3 STEVEN D. GRIERSON, CLERK OF THE COURT

4
5 Deputy Clerk
6 Regional Justice Court
7 200 Lewis Avenue
Las Vegas, Nevada 89155

IVYONNE HERNANDEZ Date

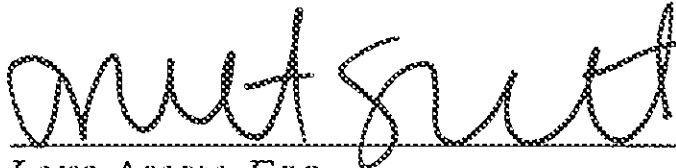
JUL 27 2015

A691323

8 The undersigned hereby requests and directs the entry of default.

9 Respectfully submitted,

10 MAIER GUTIERREZ AYON

11 

12 LUIS AYON, ESQ.

Nevada Bar No. 9752

13 MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489.

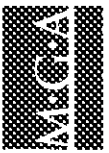
14 400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

15 Attorneys for Plaintiff/Counterdefendant West

16 Sunset 2050 Trust

MAIER GUTIERREZ AYON PLLC
ATTORNEYS AT LAW



AFFIDAVIT OF SERVICE

State of NEVADA

County of CLARK

District Court

Case Number: A-13-691323-C

Electronically Filed
12/11/2013 02:05:28 PM

Plaintiff:

WEST SUNSET 2050 TRUST

vs.

Defendant:

NEW FREEDOM MORTGAGE CORPORATION; BANK OF AMERICA, N.A.;
NATIONSTAR MORTGAGE LLC; COOPER CASTLE LAW FIRM, LLC;
STEPHANIE TABLANTE; DOES I THROUGH X; AND ROE CORPORATIONS I
THROUGH X

For:

SUMM

Las Vegas, NV 89129

Received by AM:PM LEGAL SOLUTIONS on the 22nd day of November, 2013 at 2:17 pm to be served on NEW FREEDOM MORTGAGE CORPORATION, 2363 SOUTH FOOTHILL DRIVE, SALT LAKE CITY, UT 84109.

I, GRANT ROLL, being duly sworn, depose and say that on the 25th day of November, 2013 at 11:50 am, I:

SERVED the within named CORPORATION by delivering a true copy of the SUMMONS & COMPLAINT with the date and hour of service endorsed thereon by me to ELIZABETH CARDENAS as AUTHORIZED LEGAL AGENT of the within named corporation, in compliance with state statutes.

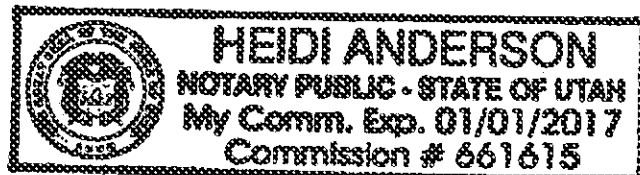
Additional Information pertaining to this Service:

Attempted Service: 2363 SOUTH FOOTHILL DRIVE, SALT LAKE CITY, UT 84109

11-25-13 11:50am served Elizabeth Cardenas/Authorized

I am over the age of 21 and have no interest in the above action.

UCA 78B-5-705. I declare under criminal penalty that the foregoing is true and correct.



Subscribed and Sworn to before me on the 25th day of November, 2013 by the affiant who is personally known to me.

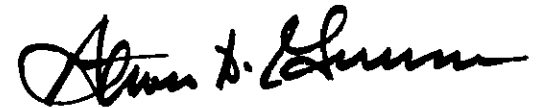
A handwritten signature in cursive script, appearing to read "Heidi Anderson", written over a horizontal line.

NOTARY PUBLIC

A handwritten signature in cursive script, appearing to read "Grant Roll", written over a horizontal line.

GRANT ROLL
Private Investigator A103235

AM:PM LEGAL SOLUTIONS
520 S. 7th St.
Ste. B
Las Vegas, NV 89101
(702) 385-2676
Our Job Serial Number: AND-2013005006
Ref: 5111



CLERK OF THE COURT

NEOD

LUIS A. AYON, ESQ.

Nevada Bar No. 9752

MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

MAIER GUTIERREZ AYON

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: laa@mgalaw.com

mes@mgalaw.com

Attorneys for Plaintiff/Counterdefendant

West Sunset 2050 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

NOTICE OF ENTRY OF DEFAULT

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

///

///

///

///

YOU AND EACH OF YOU will please take notice that a DEFAULT AGAINST NEW FREEDOM MORTGAGE CORPORATION was hereby entered on the 29th day of July, 2015. A copy of which is attached hereto.

DATED this 29th day of July, 2015.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ *Luis A. Ayon*

LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF**
3 **DEFAULT** was electronically filed on the 29th day of July, 2015 and served through the Notice of
4 Electronic Filing automatically generated by the Court's facilities to those parties listed on the
5 Court's Master Service List and by depositing a true and correct copy of the same, enclosed in a
6 sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas,
7 Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative*
8 *Order 14-2 Have Been Served By Mail.*):

9
10 Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
AKERMAN LLP
11 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
12 *Attorneys for Defendant Bank of America, N.A., and Nationstar Mortgage LLC*

13
14
15 /s/ Charity Barber
16 An Employee of MAIER GUTIERREZ AYON
17
18
19
20
21
22
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26
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28

CLERK OF THE COURT

DFLT
LUIS A. AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
MAIER GUTIERREZ AYON
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Telephone: (702) 629-7900
Facsimile: (702) 629-7925
E-mail: laa@mgalaw.com
mes@mgalaw.com

*Attorneys for Plaintiff/Counterdefendant
West Sunset 2050 Trust*

DISTRICT COURT
CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

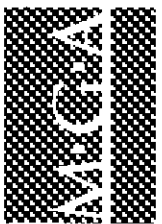
Case No.: A-13-691323-C
Dept. No.: XXI

**DEFAULT AGAINST NEW FREEDOM
MORTGAGE CORPORATION**

AND ALL RELATED CLAIMS.

It appearing from the files and records in the above-entitled action that NEW FREEDOM
MORTGAGE CORPORATION, the defendant herein, having been duly served with a copy of the
summons and complaint on November 25, 2013; that more than twenty (20) days, exclusive of the
day of service having since expired upon the defendant; that no answer or other appearance having
been filed and no further time having been granted, the default of defendant NEW FREEDOM

MAIER GUTIERREZ AYON PLLC
ATTORNEYS AT LAW



RECEIVED

JUL 24 2015

CLERK OF THE COURT

1 MORTGAGE CORPORATION for failing to answer or otherwise plead to plaintiff West Sunset
2 2050 Trust's complaint is hereby entered.

3 STEVEN D. GRIERSON, CLERK OF THE COURT

4
5 Deputy Clerk
6 Regional Justice Court
7 200 Lewis Avenue
Las Vegas, Nevada 89155

IVY HERNANDEZ Date

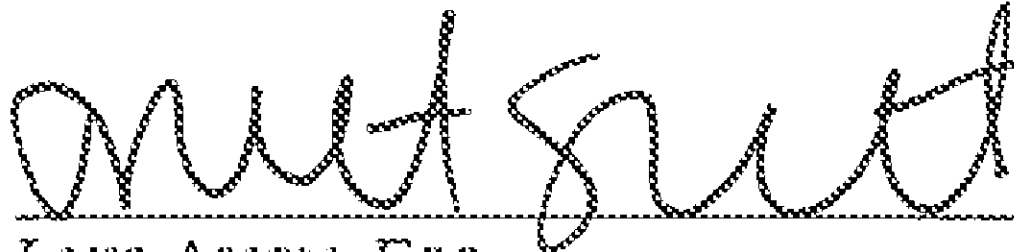
JUL 27 2015

A691323

8 The undersigned hereby requests and directs the entry of default.

9 Respectfully submitted,

10 MAIER GUTIERREZ AYON

11 

12 LUIS AYON, ESQ.

Nevada Bar No. 9752

13 MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

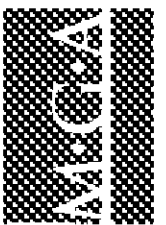
14 400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

15 Attorneys for Plaintiff/Counterdefendant West

16 Sunset 2050 Trust

MAIER GUTIERREZ AYON P.C.
ATTORNEYS AT LAW



AFFIDAVIT OF SERVICE

State of NEVADA

County of CLARK

District Court

Case Number: A-13-691323-C

Electronically Filed
12/11/2013 02:05:28 PM

Plaintiff:

WEST SUNSET 2050 TRUST

vs.

Defendant:

NEW FREEDOM MORTGAGE CORPORATION; BANK OF AMERICA, N.A.;
NATIONSTAR MORTGAGE LLC; COOPER CASTLE LAW FIRM, LLC;
STEPHANIE TABLANTE; DOES I THROUGH X; AND ROE CORPORATIONS I
THROUGH X

For:

SUMM

Las Vegas, NV 89129

Received by AM:PM LEGAL SOLUTIONS on the 22nd day of November, 2013 at 2:17 pm to be served on NEW FREEDOM MORTGAGE CORPORATION, 2363 SOUTH FOOTHILL DRIVE, SALT LAKE CITY, UT 84109.

I, GRANT ROLL, being duly sworn, depose and say that on the 25th day of November, 2013 at 11:50 am, I:

SERVED the within named CORPORATION by delivering a true copy of the SUMMONS & COMPLAINT with the date and hour of service endorsed thereon by me to ELIZABETH CARDENAS as AUTHORIZED LEGAL AGENT of the within named corporation, in compliance with state statutes.

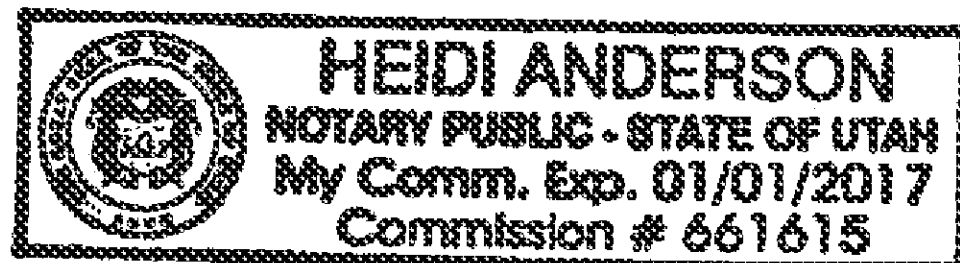
Additional Information pertaining to this Service:

Attempted Service: 2363 SOUTH FOOTHILL DRIVE, SALT LAKE CITY, UT 84109

11-25-13 11:50am served Elizabeth Cardenas/Authorized

I am over the age of 21 and have no interest in the above action.

UCA 78B-5-705. I declare under criminal penalty that the foregoing is true and correct.



Subscribed and Sworn to before me on the 25th day of November, 2013 by the affiant who is personally known to me.

A handwritten signature in cursive script, appearing to read "Heidi Anderson", written over a horizontal line.

NOTARY PUBLIC

A handwritten signature in cursive script, appearing to read "Grant Roll", written over a horizontal line.

GRANT ROLL

Private Investigator A103235

AM:PM LEGAL SOLUTIONS

520 S. 7th St.

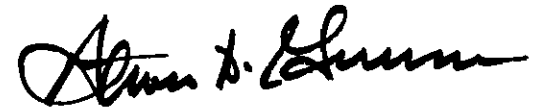
Ste. B

Las Vegas, NV 89101

(702) 385-2676

Our Job Serial Number: AND-2013005006

Ref: 5111



CLERK OF THE COURT

NEOD

LUIS A. AYON, ESQ.

Nevada Bar No. 9752

MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

MAIER GUTIERREZ AYON

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: laa@mgalaw.com

mes@mgalaw.com

Attorneys for Plaintiff/Counterdefendant

West Sunset 2050 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

NOTICE OF ENTRY OF DEFAULT

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

///

///

///

///

YOU AND EACH OF YOU will please take notice that a DEFAULT AGAINST STEPHANIE TABLANTE was hereby entered on the 29th day of July, 2015. A copy of which is attached hereto.

DATED this 29th day of July, 2015.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ *Luis A. Ayon*

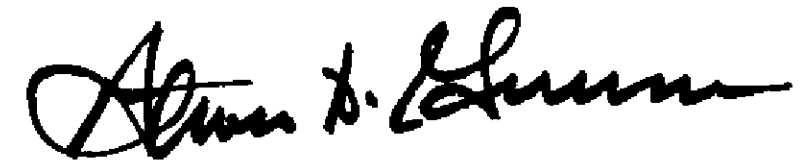
LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF**
3 **DEFAULT** was electronically filed on the 29th day of July, 2015 and served through the Notice of
4 Electronic Filing automatically generated by the Court's facilities to those parties listed on the
5 Court's Master Service List and by depositing a true and correct copy of the same, enclosed in a
6 sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas,
7 Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative*
8 *Order 14-2 Have Been Served By Mail.*):

9
10 Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
AKERMAN LLP
11 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
12 *Attorneys for Defendant Bank of America, N.A., and Nationstar Mortgage LLC*

13
14
15 /s/ Charity Barber
16 An Employee of MAIER GUTIERREZ AYON
17
18
19
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

1 DFLT
LUIS A. AYON, ESQ.
2 Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
3 Nevada Bar No. 12489
MAIER GUTIERREZ AYON
4 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: laa@mgalaw.com
mes@mgalaw.com
7
8 *Attorneys for Plaintiff/Counterdefendant*
West Sunset 2050 Trust

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 WEST SUNSET 2050 TRUST, a Nevada Trust
13 Plaintiff,

14 vs.

15 NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
16 BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
17 LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
18 Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
19 DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
20

21 Defendants.

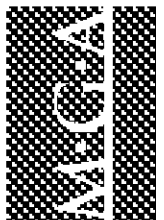
22 AND ALL RELATED CLAIMS.
23

Case No.: A-13-691323-C
Dept. No.: XXI

DEFAULT AGAINST STEPHANIE
TABLANTE

24 It appearing from the files and records in the above-entitled action that STEPHANIE
25 TABLANTE, the defendant herein, having been duly served with a copy of the summons and
26 complaint by publication in the Nevada Legal News on September 10, 2014, September 17, 2014,
27 September 24, 2014, October 1, 2014 and October 8, 2014 and mailed to defendant on September 9,
28 2014 by U.S. Mail to the last known addresses; that more than twenty (20) days, exclusive of the

MAIER GUTIERREZ AYON PLLC
ATTORNEYS AT LAW



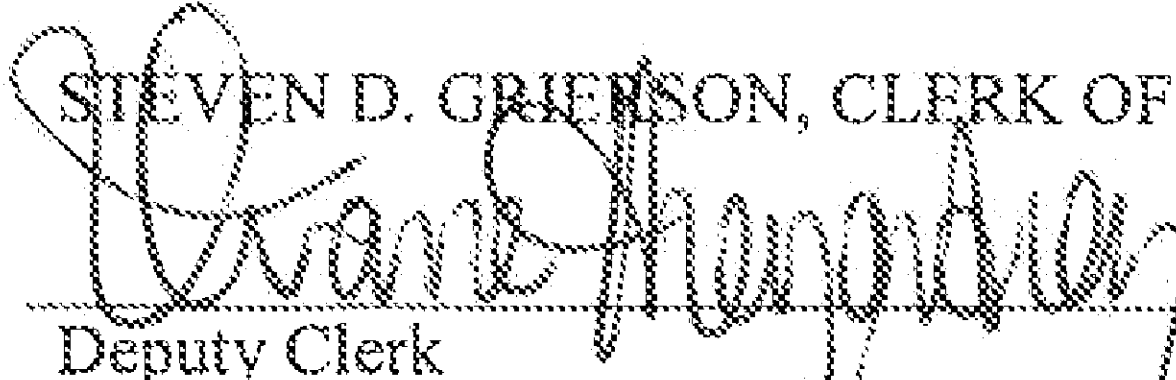
RECEIVED

JUL 24 2015

CLERK OF THE COURT

1 final date of publication, having expired since service upon the defendant by publication; that no
2 answer or other appearance having been filed and no further time having been granted, the default of
3 defendant STEPHANIE TABLANTE for failing to answer or otherwise plead to plaintiff West
4 Sunset 2050 Trust's complaint is hereby entered.

5 STEVEN D. GRIERSON, CLERK OF THE COURT

6 
7 Deputy Clerk

8 Regional Justice Court

9 200 Lewis Avenue

Las Vegas, Nevada 89155

JUL 27 2018

Date

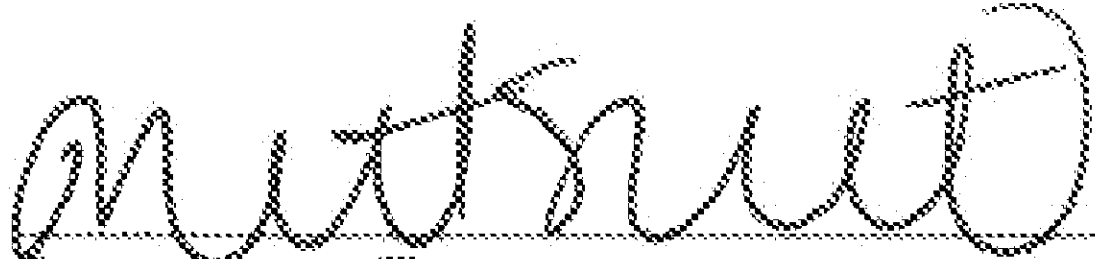
VONNE HERNANDEZ

AWA1323

10 The undersigned hereby requests and directs the entry of default.

11 Respectfully submitted,

12 MAIER GUTIERREZ AYON

13 

14 LUIS AYON, ESQ.

15 Nevada Bar No. 9752

16 MARGARET E. SCHMIDT, ESQ.

17 Nevada Bar No. 12489

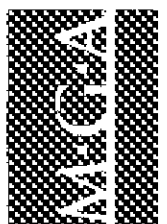
18 400 South Seventh Street, Suite 400

19 Las Vegas, Nevada 89101

20 Attorneys for Plaintiff/Counterdefendant West

21 Sunset 2050 Trust

MAIER GUTIERREZ AYON P.L.C.
ATTORNEYS AT LAW



AFFP
A 691323

Electronically Filed
10/08/2014 10:26:21 AM



CLERK OF THE COURT

Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS

DISTRICT COURT
CLARK COUNTY, NEVADA
Case No.: A 691323 Dept. No.: XXI

WEST SUNSET 2050 TRUST, a Nevada Trust Plaintiff,
vs. NEW FREEDOM MORTGAGE CORPORATION, a Foreign Corporation; BANK
OF AMERICA, N.A., a National Association; NATIONSTAR MORTGAGE LLC, a
Foreign Limited Liability Company, COOPER CASTER LAW FIRM, LLP, a Nevada
Limited Liability Partnership STEPHANIE TABLANTE, an individual, DOES I through
X; and ROE CORPORATIONS I through X, inclusive, Defendants.

SUMMONS - CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW. STEPHANIE TABLANTE A civil Complaint has
been filed by the Plaintiff against you for the relief set forth in the Complaint. Object
of Action: This is a Complaint for Title to Property - Quiet Title. 1. If you intend to
defend this lawsuit, within 20 days after this Summons is served on you, exclusive of
the day of service, you must do the following: (a) File with the Clerk of the Court,
whose address is shown below, a formal written response to the Complaint in
accordance with the rules of the Court, with the appropriate filing fee. (b) Serve a
copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiffs
and failure to so respond will result in a judgment of default against you for the relief
demanded in the Complaint, which could result in the taking of money or property or
other relief requested in the Complaint. 3. If you intend to seek the advice of an
attorney in this matter, you should do so promptly so that your response may be filed
on time. 4. The State of Nevada, its political subdivisions, agencies, officers,
employees, board members, commission members and legislators each have 45
days after service of this Summons within which to file and Answer or other
responsive pleading to the Complaint. CLERK OF THE COURT, s/ Joshua Raak,
Deputy Clerk, Date 11-7-13, Regional Justice Court, 200 Lewis Avenue, Las Vegas,
Nevada 89155, MAIER GUTIERREZ AYON, s/ LUIS A. AYON, ESQ., Nevada Bar
No. 9752, MARGARET E. SCHMIDT, ESQ., Nevada Bar No. 12489, 2500 West
Sahara Avenue, Suite 108, Las Vegas, Nevada 89102. Telephone: (702) 629-7900,
Facsimile: (702) 629-7925, E-mail: laa@mgalaw.com, mes@mgalaw.com, Attorneys
for West Sunset 2050 Trust
Published in Nevada Legal News
September 10, 17, 24, October 1, 8, 2014

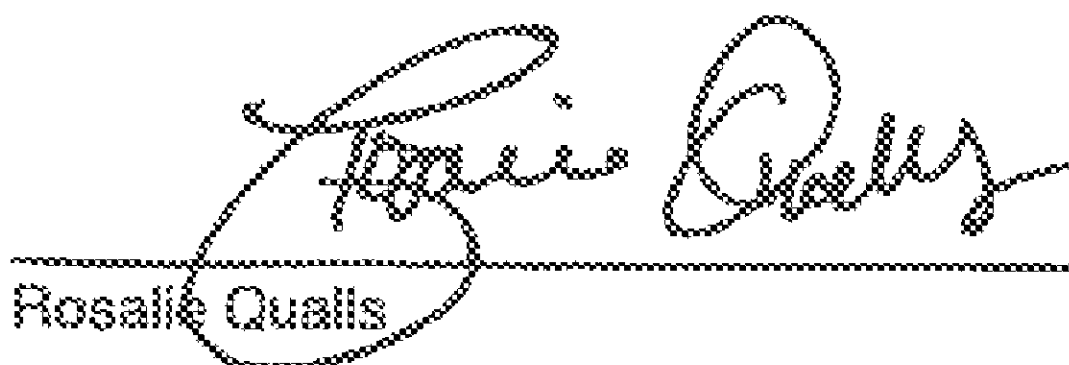
I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada
Legal News, a daily newspaper of general circulation,
printed and published in Las Vegas, Clark County,
Nevada; that the publication, a copy of which is attached
hereto, was published in the said newspaper on the
following dates:

Sep 10, 2014
Sep 17, 2014
Sep 24, 2014
Oct 01, 2014
Oct 08, 2014

That said newspaper was regularly issued and circulated
on those dates. I declare under penalty of perjury that the
foregoing is true and correct.

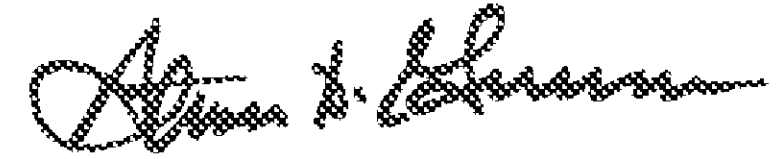
DATED: Oct 08, 2014



Rosalie Qualls

04108253 00381302 702-629-7925

MAIER GUTIERREZ AYON
400 SOUTH SEVENTH STREET
SUITE 400
LAS VEGAS, NV 89101



CLERK OF THE COURT

1 CSERV
LUIS A. AYON, ESQ.
2 Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
3 Nevada Bar No. 12489
MAIER GUTIERREZ AYON
4 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: laa@mgalaw.com
mes@mgalaw.com
7
8 *Attorneys for West Sunset 2050 Trust*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 WEST SUNSET 2050 TRUST, a Nevada Trust
12 Plaintiff,

13 vs.

14 NEW FREEDOM MORTGAGE
15 CORPORATION, a Foreign Corporation;
16 BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
17 LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
18 Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
19 DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

20 Defendants.
21

Case No.: A-13-691323-C
Dept. No.: XXI

CERTIFICATE OF SERVICE

22 CERTIFICATE OF SERVICE

23 I hereby certify that on the 9th day of September, 2014, I served a copy of the summons and
24 complaint by depositing a true and correct copy of the same, enclosed in a sealed envelope upon
25 which first class postage was fully prepaid, certified U.S. Mail, return receipt requested, deposited
26 with the United States Postal Service in Las Vegas, Nevada, addressed as follows:

27 ///

28 ///

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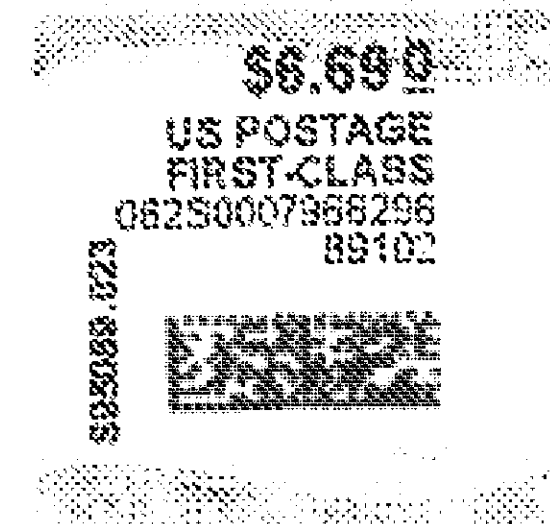
Stephanie Tablante
708 Kelso Way
Las Vegas, Nevada 89107

/s/ Charity Barber
An Employee of MAIER GUTIERREZ AYON

ALIER GUTIERREZ AYON P.L.C.
ATTORNEYS AT LAW

400 South Seventh Street • Suite 400
Las Vegas, Nevada 89101

Stephanie Tablante
708 Kelso Way
Las Vegas, Nevada 89107

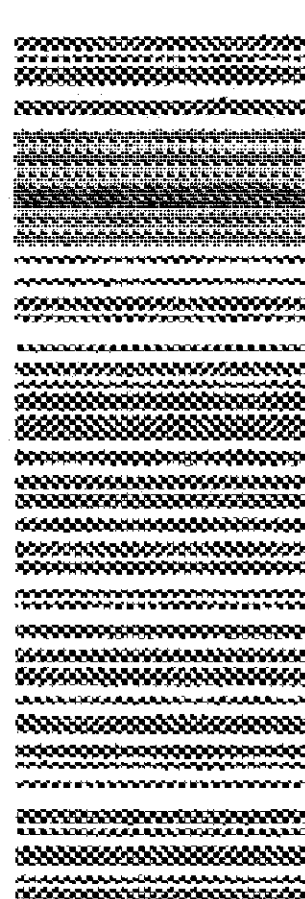
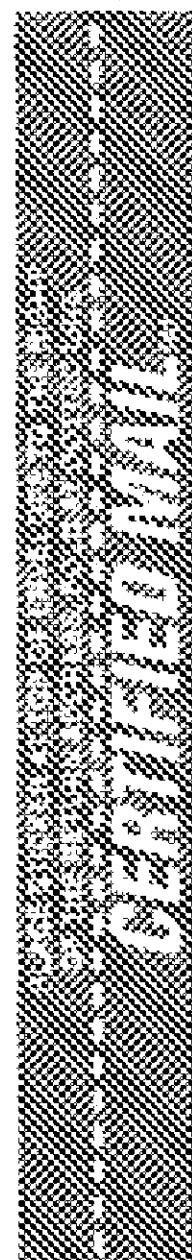


SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X</p>	
<p>1. Article Addressed to:</p> <p>STEPHANIE TABLANTE 708 KELSO WAY LAS VEGAS, NV 89107</p>		<p>B. Received by (Printed Name) C. Date of Delivery</p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>7012 1640 0000 7761 1089</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102593-02-04-1840



7012 1640 0000 7761 1089
7012 1640 0000 7761 1089

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit www.usps.com	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
<p>Sent to STEPHANIE TABLANTE Street Apt. P.O. 708 KELSO WAY or PO Box No. LAS VEGAS, NV 89107 City, State, ZIP+4</p>	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stephanie Tablante
716 Kelso Way
Las Vegas, NV 89107

2. Article Number

(transfer from service label)

7012 1640 0000 7761 1089

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

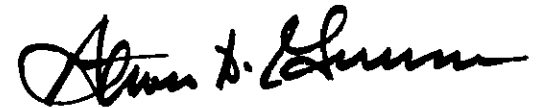
SEP 15 2014

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



CLERK OF THE COURT

ORDR

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: allison.schmidt@akerman.com

*Attorneys for Defendant Nationstar
Mortgage, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

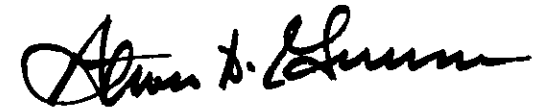
17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.



CLERK OF THE COURT

1 **NEOJ**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 ALLISON R. SCHMIDT, ESQ.
5 Nevada Bar No. 10743
6 AKERMAN LLP
7 1160 Town Center Drive, Suite 330
8 Las Vegas, NV 89144
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: ariel.stern@akerman.com
12 Email: allison.schmidt@akerman.com

13 *Attorneys for Defendant Nationstar Mortgage, LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,
17
18 Plaintiff,

19 v.

20 NEW FREEDOM MORTGAGE
21 CORPORATION, a Foreign Corporation;
22 BANK OF AMERICA, N.A., a National
23 Association; NATIONSTAR MORTGAGE,
24 LLC, a Foreign Limited Liability Company;
25 COOPER CASTLE LAW FIRM, LLP, a Nevada
26 Limited Liability Partnership; STEPHANIE
27 TABLANTE, an individual; DOES I through X;
28 and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

NOTICE OF ENTRY OF ORDER

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6 PLEASE TAKE NOTICE that the Order has been entered on the 8th day of February, 2016,
7 in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

8 DATED this 16th day of February, 2016.

9 **AKERMAN LLP**

10 */s/ Allison R. Schmidt*

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12 Nevada Bar No. 8276

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17 *Attorneys for Defendant Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

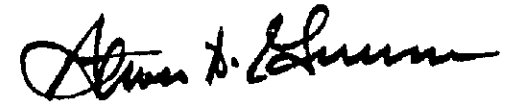
I HEREBY CERTIFY that on this 16th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed to:

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/s/ Brienne Siriwan
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

ORDR

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*Attorneys for Defendant Nationstar
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

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TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.

6. The deed in lieu that was recorded by Tablante is not signed by either New Freedom Mortgage Corporation or Bank of America, NA.

7. The cover page of the deed in lieu recorded by Tablante indicated the documents was to be returned to the offices of John Peter Lee, Esq. upon recording.

8. Red Rock Financial Services (RRFS) recorded a notice of delinquent assessment lien on April 4, 2012.

9. Later, RRFS recorded a Notice of Default on May 29, 2013.

10. RRFS did not provide any foreclosure notices to Bank of America, which was the record beneficiary of the senior deed of trust.

11. Prior to the foreclosure sale, the senior deed of trust was assigned to Nationstar.

12. A foreclosure sale was held by United Legal Services on June 22, 2013, where the property was sold to Plaintiff for \$7,800.

13. The declaration of value recorded with the trustee's deed lists the value of the property at the time of the sale as \$63,280.00.

CONCLUSIONS OF LAW

1. Under Nev. R. Civ. P. 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029; NRCP 56(c).

2. Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.* All evidence and inferences are viewed in a light most favorable to the non-moving party on a summary judgment motion. *Id.*

3. Nationstar and its predecessor in interest, Bank of America, was entitled to receive the foreclosure notices as the senior deed of trust could be effected by the foreclosure sale. NRS 116.31168, NRS 116.31163(2); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

4. Tablante's recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust of its property rights.

5. RRFS failed to provide any foreclosure notices to the beneficiary of the senior deed of trust. As a result, the beneficiary had no opportunity to cure the delinquency in assessment payments.

6. Because of the failure to provide the required notices to the beneficiary of the senior deed of trust, the foreclosure sale did not extinguish the senior deed of trust.

ORDER

IT IS HEREBY ORDERED that Nationstar's Countermotion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

DATED this 4th day of February, 2016.

District Court Judge

Submitted by:

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Approved as to form and content:

(provided to plaintiff's counsel but did not sign)

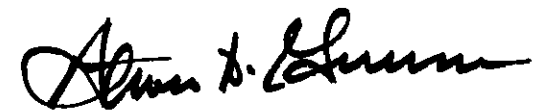
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CLERK OF THE COURT

MRCN
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DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C
Dept. No.: XXI

**PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
AND AMEND ORDER GRANTING
DEFENDANTS NATIONSTAR
MORTGAGE LLC AND BANK OF
AMERICA, N.A.'S COUNTERMOTION
FOR SUMMARY JUDGMENT**

Plaintiff/Counterdefendant West Sunset 2050 Trust ("Plaintiff" or "West Sunset"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, hereby files this motion for reconsideration of the order granting defendants Nationstar Mortgage LLC ("Nationstar") and Bank of America, N.A. ("BANA") summary judgment entered on February 8, 2016.

This motion is made and based upon EDCR 2.24, the following memorandum of points and

authorities, the pleadings and papers on file herein, the attached affidavit of counsel, and any oral argument of counsel at the time of the hearing.

DATED this 4th day of March, 2016.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ Luis A. Ayon

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*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring this **PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING DEFENDANTS NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A.'S COUNTERMOTION FOR SUMMARY JUDGMENT** on for a hearing on the 4 day of April, 2016, at In Chambers a.m./p.m., in Department XXI of the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 4th day of March, 2016.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ Luis A. Ayon

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Sunset 2050 Trust*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff requests this Court reconsider its Order denying Plaintiff's motion for summary judgment and granting Defendants' Nationstar Mortgage ("Nationstar") and Bank of America, N.A. ("BANA") counter-motion for summary judgment. *See* Court Minutes and Decision, attached as **Exhibit 1**. The Order was entered on February 8, 2016, and notice of entry of order was entered on February 16, 2016. *See* Order, attached as **Exhibit 2**; Notice of Entry of Order, attached as **Exhibit 3**.

One of the main issues before the Court was whether the Deed in Lieu was fraudulently recorded, and if so, whether Plaintiff as a subsequent bona fide purchaser at the HOA Foreclosure Sale is entitled to have its interest in the Property protected. First, the Court incorrectly concluded that Nationstar was a legitimate holder of the First Deed of Trust and did not receive notice of the HOA delinquency. Exh. 1. Second, the Court found that the rogue filing of a Deed in Lieu of Foreclosure to Defendant New Freedom Mortgage Co. ("New Freedom") did not divest Nationstar of its interest in the property, meaning Plaintiff purchased the property subject to the First Deed of Trust even though Plaintiff was a bona fide purchaser. *Id.* There has been an intervening change in controlling law with the entry of the Nevada Supreme Court's decision in *Shadow Wood Homeowners Ass'n, Inc., et al. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (2016) ("*Shadow Wood*"), which settles that a third party purchaser who qualifies as bona fide is protected from any latent interest of which he had no notice. Therefore, the Court should reconsider, alter, and amend its Order and enter summary judgment in favor of Plaintiff.

II. SUMMARY OF FACTS

The property at issue in this case is commonly known as 7255 W. Sunset Road, Unit 2050, Las Vegas, NV 89113, and bears Assessor's Parcel Number 176-03-510-102 (the "Property"). The Property is within a common-interest community governed by non-party Tuscano Homeowners Association (the "Association"), a common-interest community association created pursuant to NRS Chapter 116. *See, e.g.*, Declaration of Covenants, Conditions and Restrictions for Tuscano Condominiums ("Tuscano CC&Rs"), attached to Plaintiff's Motion for Summary Judgment

1 (“MSJ”) at Exh. 1, *on file*.

2 Stephanie Tablante purchased the Property on or about December 2, 2005. *See* Grant,
3 Bargain and Sale Deed (NSM00001-NSM00004), attached to MSJ at Exh. 2. Ms. Tablante
4 borrowed money from New Freedom Mortgage Corporation (“New Freedom”), in the amount of
5 \$176,760.00. *See* Deed of Trust (NSM00005–23), attached to MSJ at Exh. 3. A deed of trust
6 securing the loan was recorded on December 7, 2005, in the Official Records of the Clark County
7 Recorder as Instrument Number 20051207-0002367 (the “Deed of Trust”). *See id.*, at NSM00005.
8 The Deed of Trust listed Mortgage Electronic Registration Systems, Inc. (“MERS”), as the
9 beneficiary. *See id.*, at NSM00006.

10 Five years later, on or about March 1, 2011, the Property records show that Ms. Tablante
11 transferred the Property to New Freedom in “full satisfaction of all obligations secured by the Deed
12 of Trust,” by executing a Deed in Lieu of Foreclosure (“Deed in Lieu”). *See* Deed in Lieu of
13 Foreclosure (NSM00025–29), attached to MSJ at Exh. 4. A few months later, the Deed in Lieu was
14 corrected to include the legal description of the Property and was re-recorded on June 21, 2011. *See*
15 Corrected Deed in Lieu of Foreclosure (NSM00030–35), attached to MSJ at Exh. 5. A letter from
16 the Clark County Assessor’s Office dated March 18, 2011, shows that New Freedom was notified of
17 the recording of the Deed in Lieu and provided with a copy of the document. *See* Opposition &
18 Countermotion for Summary Judgment (“Opp’n”) at Exh. A, *on file*.

19 New Freedom—as the owner of record following the Deed in Lieu—failed to pay the
20 Property’s HOA dues, and the Association through its agent recorded a Lien for Delinquent
21 Assessments on April 4, 2012. *See* Lien for Delinquent Assessments (NSM00039), attached to MSJ
22 at Exh. 6. More than thirty (30) days later, on May 29, 2012, the Association recorded a Notice of
23 Default and Election to Sell Pursuant to the Lien for Delinquent Assessments. *See* Notice of Default
24 and Election to Sell Pursuant to the Lien for Delinquent Assessments (NSM00040), attached to MSJ
25 at Exh. 7. More than ninety (90) days following the recording of the Notice of Default and Election
26 to Sell Under Homeowners Association Lien, May 29, 2013, the Association recorded a Notice of
27 Foreclosure Sale Under the Lien for Delinquent Assessments, setting the foreclosure sale for June
28 22, 2013. *See* Notice of Foreclosure Sale Under the Lien for Delinquent Assessments (NSM00043),

1 attached to MSJ at Exh. 8. On that day, the Association sold the Property at public auction to
2 Plaintiff. *See* Foreclosure Deed Upon Sale (NSM00044-NSM00046), attached to MSJ at Exh. 9.

3 A Foreclosure Deed Upon Sale was properly recorded on June 24, 2013. *See id.* The
4 Foreclosure Deed recited, in part, that the sale complied with all requirements of law including
5 proper notice:

6 This conveyance is made pursuant to the powers conferred upon Agent by
7 NRS Chapter 116, the foreclosing Association's governing documents
8 (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded
9 on April 4, 2012 as instrument 201204040001017 in the Official Records of
10 the Recorder of Clark County, Nevada. Default occurred as set forth in the
11 Notice of Default and Election to Sell, recorded on May 29, 2012 as
12 instrument 201205290001690 in the Official Records of the Recorder of
13 Clark County, Nevada. **All requirements of law have been complied with,
including, but not limited to, the elapsing of the 90 days, the mailing of
copies of the notice of Lien of Delinquent Assessment, and Notice of
Default, and the mailing, posting, and publication of the Notice of
Foreclosure Sale.** Agent, in compliance with the Notice of Foreclosure Sale
and in exercise of its power under NRS § 116.31164, sold the property at
public auction on June 22, 2013.

14 *Id.* (emphasis added). Robert Atkinson, the attorney responsible for conducting the foreclosure
15 auction, testified that his firm had mailed notice of the Foreclosure Sale to New Freedom, BANA,
16 Nationstar, and Cooper Castle; and he provided documentation of certified mailing in his deposition.
17 *See* Deposition of Robert Atkinson, attached as **Exhibit 4** at 23; Exhibit B to Deposition of Robert
18 Atkinson, at 6, 9, 14.

19 Meanwhile, notwithstanding the fact that all obligations secured by the Deed of Trust had
20 been satisfied and the Deed of Trust consequently extinguished, on or about July 29, 2011, MERS
21 purportedly assigned the Deed of Trust to BAC Home Loans Servicing, LP FKA Countrywide
22 Home Loans Servicing LP ("BANA"). *See* Assignment of Deed of Trust (NSM00036-NSM00037),
23 attached to MSJ at Exh. 11. BANA substituted The Cooper Castle Law Firm, LLP ("Cooper
24 Castle"), as the Trustee, *see* Substitution of Trustee (NSM00038), attached to MSJ at Exh. 12, and
25 then on March 20, 2013, BANA purportedly assigned the deed of trust to Nationstar. *See*
26 Corporation Assignment of Deed of Trust (NSM00041-42), attached as **Exhibit 5**. At the time of
27 the assignment to Nationstar, Nationstar was on record notice of the Deed in Lieu of Foreclosure, as
28 well as the Association's pending foreclosure sale.

On September 18, 2013, Cooper Castle, as Trustee of the Deed of Trust, instituted foreclosure proceedings by filing a Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust. *See* Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust (NSM00047–51), attached to MSJ at Exh. 14.

III. PROCEDURAL HISTORY

Plaintiff initiated the above-captioned lawsuit on November 6, 2013 in order to quiet title against the adverse interests in the Property of Defendants New Freedom, BANA, Nationstar, Cooper Castle, and Stephanie Tablante, and for injunctive relief preventing Defendants from continuing foreclosure proceedings on the Property. *See* Complaint, *on file*. On February 3, 20213, this Court dismissed Cooper Castle as a party.

On December 19, 2013, BANA filed its Answer. On May 20, 2014, Nationstar filed its Answer and Counterclaim against Plaintiff, and its Cross-Claim against Stephanie Tablante. Plaintiff filed its Answer to Nationstar’s Counterclaim on June 18, 2014.

On May 22, 2015, Plaintiff filed its Motion for Summary Judgment, arguing that the Deed in Lieu of Foreclosure that was recorded on the Property, and which went uncontested by New Freedom, extinguished any interest Nationstar or BANA had in the Property, that the Association’s foreclosure sale extinguished New Freedom’s interest in the Property, and that regardless of whether or not the Deed in Lieu of Foreclosure was properly recorded, Plaintiff was a bona fide purchaser at the Association’s foreclosure sale and now holds valid title to the Property.

On June 10, 2015, Defendants Nationstar and BANA filed their Opposition and Countermotion to the Motion for Summary Judgment, arguing that Nationstar was never provided notice of the Association’s foreclosure of the Property, that First 100, LLC split the payment rights from the security interest and satisfied the super-priority portion of the HOA’s lien, that Nationstar was denied its due process rights, and that the sale was commercially unreasonable.

On June 18, 2015, Plaintiff filed its Reply in support of the Motion for Summary Judgment, and Opposition to Defendants’ Countermotion for Summary Judgment, arguing that Defendants did not previously disclose many of their exhibits submitted in support of their Opposition and Countermotion, that the recordation of the Deed in Lieu of Foreclosure satisfied the underlying

1 debt and extinguished the Deed of Trust on the Property, that Defendants have no evidence the
2 Deed in Lieu was fraudulent, and that Plaintiff's title is protected under the bona fide purchaser
3 doctrine.

4 Following a hearing on the matter, the Court denied Plaintiff's motion for summary
5 judgment, and granted Defendants' countermotion for summary judgment. The Order was entered
6 on February 8, 2016, and notice of entry of order was entered on February 16, 2016. *See* Exh. 2
7 and Exh. 3.

8 **IV. LEGAL ARGUMENT**

9 **A. LEGAL STANDARD—MOTION FOR RECONSIDERATION**

10 The Nevada Supreme Court has held that district courts have the inherent authority to
11 reconsider their prior orders. *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975)
12 ("a court may, for sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case
13 may be, an order previously made and entered on motion in the progress of the cause of
14 proceeding"). Indeed, "the district court is empowered to correct erroneous rulings at any time prior
15 to the entry of final judgment." *Insurance Co. of the West v. Gibson Tile Co., Inc.*, 122 Nev. 455,
16 134 P.3d 698, fn 4 (2006) (Maupin, J., concurring).

17 Accordingly, a party may file a motion for reconsideration under EDCR 2.24 when the
18 decision articulated in the court's findings are "clearly erroneous." *Masonry & Tile Contractors*
19 *Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
20 Similarly, a party may file a motion for relief of an order entered erroneously pursuant to NRCP
21 60(b) or to amend a judgment pursuant to NRCP 59(e).

22 If taken as a Motion under Rule 59(e), it is timely as "[a] motion to alter or amend the
23 judgment shall be filed no later than 10 days after service of written notice of entry of judgment."
24 The Court should grant relief under Rule 59(e) where "(1) the motion is necessary to correct
25 manifest errors of law or fact upon which the judgment is based; (2) the moving party presents
26 newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent
27 manifest injustice; or (4) there is an intervening change in controlling law." *See Turner v.*
28 *Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). The motion must also

1 satisfy Nev. R. Civ. P. 7(b) and be “in writing, . . . state with particularity [its] grounds [and] set
2 forth the relief or order sought.” *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 106–07, 399 P.2d
3 135, 137 (1965) (citing Nev. R. Civ. P. 7(b) and Nev. R. Civ. P. 59(e)).

4 **B. THE COURT ERRED IN ITS ANALYSIS OF THE DEED IN LIEU FILING**

5 The Court held that the “rogue filing of a Deed in Lieu of Foreclosure to New Freedom did
6 not divest Nation Star of its interest in the property.” *See* Exh. 1. *See also*, Exh. 2 (“Tablante’s
7 recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust
8 of its property rights.”). This reasoning led the Court to conclude that because the Association’s
9 agent never provided any foreclosure notices to Nationstar, the “foreclosure sale did not extinguish
10 the senior deed of trust.” Exh. 2 at p. 4.

11 However, Deed in Lieu of Foreclosure (Deed in Lieu) has the same effect as any other
12 foreclosure, thus recordation of the Deed in Lieu provided formal record notice to the world –
13 including the Association and its agent – that Stephanie Tablante had conveyed absolute title to the
14 Property to New Freedom in full satisfaction of the debts secured by the Property.

15 A deed in lieu is, for a great many purposes, the functional equivalent of a formal
16 foreclosure. A deed in lieu essentially involves an alternate method of the collection
17 of security. The lender accepting a deed in lieu, just like the lender exercising strict
foreclosure, has the security interest mature into real ownership without any
requirement of public sale.

18 *Moloney v. Boston Five Cents Sav. Bank FSB*, 422 Mass. 431, 433, 663 N.E.2d 811, 813 (1996).
19 *See also FH Partners, LLC v. Leany*, No. 2:11-CV-0796-LRH-NJK, 2014 WL 3853806, at *2 (D.
20 Nev. Aug. 6, 2014) (a deed in lieu is the functional equivalent of a duly noticed foreclosure sale). In
21 accordance with this case law, the Deed in Lieu expressly conveyed the Property to New Freedom
22 with the consideration being “full satisfaction of all obligations secured by the Deeds of Trust
23 executed by the party of the first part to New Freedom Mortgage Corporation” MSJ at Exh. 4.
24 Thus, the Court erred in holding that the recording of the deed in lieu of foreclosure did not strip
25 Nationstar of its interest in the Property.

26 ///

27 ///

28 ///

C. THE COURT ERRED IN NOT PROTECTING PLAINTIFF’S RIGHTS TO THE PROPERTY AS A BONA FIDE PURCHASER

Despite Plaintiff’s briefing of the issue in the summary judgment pleadings, the Court’s Order failed to address Plaintiff’s status as a bona fide purchaser and the rights that accompany that status. Exh. 2. NRS 111.180(1) defines a bona fide purchaser as a purchaser who “purchases an . . . interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property.” *See also Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 268, 269 (1981) (holding that a bona fide purchaser is someone who purchases a property without notice of outstanding equities).

To be clear, Plaintiff purchased the Property at the HOA foreclosure sale without any notice or reasonable cause to suspect a defect in New Freedom’s title as record owner, and Defendants offered no evidence to dispute this contention. Even if the Deed in Lieu is somehow invalid, that dispute is immaterial because Plaintiff was a bona fide purchaser for value at the Association’s foreclosure sale, and its title should not have been attacked. *See Buhecker v. R.B. Petersen & Sons Const. Co.*, 112 Nev. 1498, 1501, 929 P.2d 937, 939 (1996) (“[W]e conclude that it would be unfair to impute to [the bona fide encumbrancer] constructive notice of the fraud.”).

If the significance of a bona fide purchaser’s status was ever in doubt, an intervening change in controlling law occurred through the Nevada Supreme Court’s decision in *Shadow Wood Homeowners Ass’n, Inc., et al. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (2016) (“*Shadow Wood*”), which affirmatively settles that a third party purchaser who qualifies as bona fide is protected from any latent interest of which he had no notice. “A subsequent purchaser is bona fide under common-law principles if it takes property ‘for a valuable consideration and without notice of prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry.’” *Shadow Wood* at 22 (quoting *Bailey v. Butner*, 64 Nev. 1, 19 (1947)).

Moreover, if there were any question as to Plaintiff’s ability to rely on the recitals set forth in the Association’s foreclosure deed, which stated that that the sale complied with all requirements of

law including proper notice, *Shadow Wood* also effectively confirmed the Nevada Supreme Court’s previous holding in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. ___, 334 P.3d 408 (2014), *reh’g denied* (Oct. 16, 2014) (“*SFR Investments*”), which stated that the foreclosure deed’s recitals are conclusive as to notice.

The Nevada Supreme Court held in *SFR Investments* that a foreclosure deed “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all other persons.’” *SFR Investments*, 334 P.3d at 411-412 (citing NRS 116.31166(2)). Thus, a purchaser at an HOA foreclosure sale may rely on specific recitals in the foreclosure deed as “conclusive proof of the matters recited” as follows: “(a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The giving of notice of sale.” NRS 116.31166(1).

This sentiment was reaffirmed in *Shadow Wood*, wherein the Court, quoting *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1135 (D. Nev. 2015), stated that “under NRS 116.31166, when a foreclosure deed recited that there was a default, the proper notices were given, the appropriate amount of time elapsed between notice of default and sale, and the notice of sale was given, it was ‘conclusive proof’ that the required statutory notices were provided.” *Shadow Wood* at 10. While the *Shadow Wood* court declined to extend NRS 116.31166 as “conclusively establishing a default,” the court did not take issue with the recitals pertaining to notice. *Id.* Thus, Plaintiff had a right to rely on the recitals contained in the foreclosure deed that the sale was properly noticed and Defendants provided no evidence indicating Plaintiff had any notice that the Association’s foreclosure sale was in any way improper.

Just as the Nevada Supreme Court recognized the purchaser’s probable bona fide status in *Shadow Wood* due to the evidence suggesting a lack of notice, this Court should grant Plaintiff’s Motion here, because any actual defects in the Association sale were entirely unknown to Plaintiff. *Id.* (“Because the evidence does not show Gogo Way had any notice of the pre-sale dispute between NYCB and Shadow Wood, the potential harm to Gogo Way must be taken into account and further defeats NYCB’s entitlement to judgment as a matter of law.”).

1 **V. CONCLUSION**

2 Based on the foregoing reasons, Plaintiff respectfully requests this Court alter, amend, or
3 reconsider its Order denying Plaintiff's motion for summary judgment and granting Nationstar and
4 BANA's counter-motion for summary judgment.

5 DATED this 4th day of March, 2016.

6 Respectfully submitted,

7 **MAIER GUTIERREZ AYON**

8 /s/ Luis A. Ayon

9 LUIS AYON, ESQ.
10 Nevada Bar No. 9752
11 MARGARET E. SCHMIDT, ESQ.
12 Nevada Bar No. 12489
13 400 South Seventh Street, Suite 400
14 Las Vegas, Nevada 89101
15 *Attorneys for Plaintiff/Counterdefendant West*
16 *Sunset 2050 Trust*
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **MOTION FOR**
3 **RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING**
4 **DEFENDANTS NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A.'S**
5 **COUNTERMOTION FOR SUMMARY JUDGMENT** was electronically filed on the 4th day of
6 March, 2016 and served through the Notice of Electronic Filing automatically generated by the
7 Court's facilities to those parties listed on the Court's Master Service List and by depositing a true
8 and correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully
9 prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
10 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

11
12 Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
AKERMAN LLP
13 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
14 *Attorneys for Defendant Bank of America, N.A., and Nationstar Mortgage LLC*

15
16
17 /s/ Charity Barber
18 An Employee of MAIER GUTIERREZ AYON
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property

COURT MINUTES

July 24, 2015

A-13-691323-C West Sunset 2050 Trust, Plaintiff(s)
vs.
New Freedom Mortgage Corporation, Defendant(s)

July 24, 2015	1:00 PM	Decision	W. Sunset 2050 Trust's Motion for Summary Judgment...Oppositio n to Motion for Summary Judgment and Countermotion for Summary Judgment
---------------	---------	----------	--

HEARD BY: Adair, Valerie

COURTROOM:

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff's Motion for Summary Judgment is DENIED; Nation Star's Countermotion for Summary Judgment is GRANTED as it appears from the record that Nation Star, the legitimate holder of the First Deed of Trust did not receive notice of the HOA delinquency. The rogue filing of a Deed in Lieu of Foreclosure to New Freedom did not divest Nation Star of its interest in the property. Accordingly the Plaintiff purchased the property subject to the first Deed of Trust. Nation Star to prepare a detailed Finding of Fact and Decision of Order.

CLERK'S NOTE: Copies of this minute order placed in the attorney folders of:

PRINT DATE: 07/24/2015

Page 1 of 2

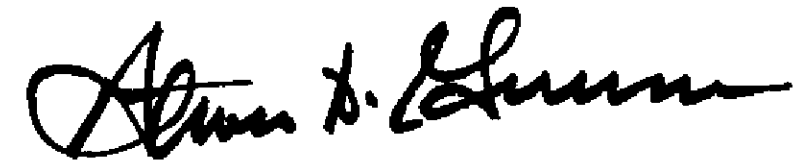
Minutes Date: July 24, 2015

A-13-691323-C

Luis Ayon (MAIER GUTIERREZ AYON)
Allison Schmidt (ACKERMAN LLP)

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

ORDR

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: allison.schmidt@akerman.com

*Attorneys for Defendant Nationstar
Mortgage, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.

5. RRFS failed to provide any foreclosure notices to the beneficiary of the senior deed of trust. As a result, the beneficiary had no opportunity to cure the delinquency in assessment payments.

6. Because of the failure to provide the required notices to the beneficiary of the senior deed of trust, the foreclosure sale did not extinguish the senior deed of trust.

ORDER

IT IS HEREBY ORDERED that Nationstar's Countermotion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

DATED this 4th day of February, 2016.

Valerie Adams
District Court Judge *attn*

Submitted by:

ARIELE E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Defendant Nationstar Mortgage, LLC

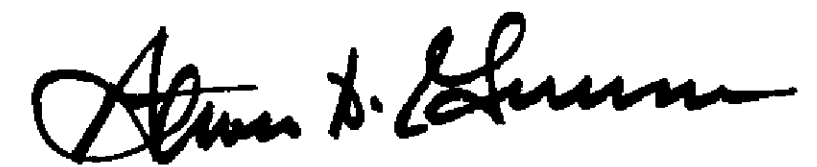
Approved as to form and content:

(provided to plaintiff's counsel but did not sign)

Luis A. Ayon, Esq.
Margaret E. Schmidt, Esq.
2500 W. Sahara Ave., Ste. 106
Las Vegas, NV 89102
Attorneys for Plaintiff

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

NEOJ
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
AKERMAN LLP
1160 Town Center Drive, Suite 330
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Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: allison.schmidt@akerman.com

Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

NOTICE OF ENTRY OF ORDER

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6 PLEASE TAKE NOTICE that the Order has been entered on the 8th day of February, 2016,
7 in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

8 DATED this 16th day of February, 2016.

9 **AKERMAN LLP**

10 */s/ Allison R. Schmidt*

11 ARIEL E. STERN, ESQ.

12 Nevada Bar No. 8276

13 ALLISON R. SCHMIDT, ESQ.

14 Nevada Bar No. 10743

15 1160 Town Center Drive, Suite 330

16 Las Vegas, Nevada 89144

17 *Attorneys for Defendant Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

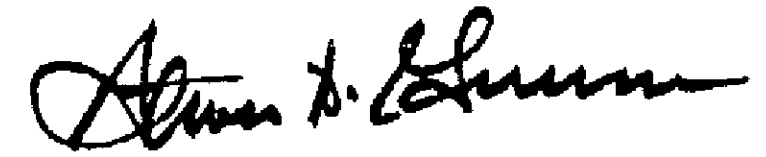
I HEREBY CERTIFY that on this 16th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed to:

Luis A. Ayon, Esq.
MAIER GUTIERREZ AYON PLLC
cmb@mgalaw.com
djb@mgalaw.com
dtr@mgalaw.com
jrm@mgalaw.com
jag@mgalaw.com
laa@mgalaw.com
mes@mgalaw.com
ndv@mgalaw.com
Attorneys for West Sunset 2050 Trust

/s/ Brieanne Siriwan
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

ORDR

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
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1160 Town Center Drive, Suite 330
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Email: allison.schmidt@akerman.com

*Attorneys for Defendant Nationstar
Mortgage, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.

6. The deed in lieu that was recorded by Tablante is not signed by either New Freedom Mortgage Corporation or Bank of America, NA.

7. The cover page of the deed in lieu recorded by Tablante indicated the documents was to be returned to the offices of John Peter Lee, Esq. upon recording.

8. Red Rock Financial Services (RRFS) recorded a notice of delinquent assessment lien on April 4, 2012.

9. Later, RRFS recorded a Notice of Default on May 29, 2013.

10. RRFS did not provide any foreclosure notices to Bank of America, which was the record beneficiary of the senior deed of trust.

11. Prior to the foreclosure sale, the senior deed of trust was assigned to Nationstar.

12. A foreclosure sale was held by United Legal Services on June 22, 2013, where the property was sold to Plaintiff for \$7,800.

13. The declaration of value recorded with the trustee's deed lists the value of the property at the time of the sale as \$63,280.00.

CONCLUSIONS OF LAW

1. Under Nev. R. Civ. P. 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029; NRCP 56(c).

2. Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.* All evidence and inferences are viewed in a light most favorable to the non-moving party on a summary judgment motion. *Id.*

3. Nationstar and its predecessor in interest, Bank of America, was entitled to receive the foreclosure notices as the senior deed of trust could be effected by the foreclosure sale. NRS 116.31168, NRS 116.31163(2); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

4. Tablante's recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust of its property rights.

1 5. RRFS failed to provide any foreclosure notices to the beneficiary of the senior deed
2 of trust. As a result, the beneficiary had no opportunity to cure the delinquency in assessment
3 payments.

4 6. Because of the failure to provide the required notices to the beneficiary of the senior
5 deed of trust, the foreclosure sale did not extinguish the senior deed of trust.

6 ORDER

7 IT IS HEREBY ORDERED that Nationstar's Countermotion for Summary Judgment is
8 GRANTED;

9 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

10 DATED this 4th day of February, 2016.

11 Valerie Adams
12 District Court Judge atw

13 Submitted by:

14 A. Stern
15 ARIEN E. STERN, ESQ.
16 Nevada Bar No. 8276
17 ALLISON R. SCHMIDT, ESQ.
18 Nevada Bar No. 10743
19 1160 Town Center Drive, Suite 330
20 Las Vegas, Nevada 89144
21 Attorneys for Defendant Nationstar Mortgage, LLC

22 Approved as to form and content:

23 (provided to plaintiff's counsel but did not sign)

24 Luis A. Ayon, Esq.
25 Margaret E. Schmidt, Esq.
26 2500 W. Sahara Ave., Ste. 106
27 Las Vegas, NV 89102
28 Attorneys for Plaintiff

EXHIBIT 4

EXHIBIT 4

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a)
Nevada Trust,)

Plaintiff,)

v.)

NEW FREEDOM MORTGAGE)
CORPORATION, a Foreign)
Corporation; BANK OF AMERICA,)

N.A., a National Association;)

NATIONSTAR MORTGAGE, LLC, a)

Foreign Limited Liability)

Company; COOPER CASTLE LAW)

FIRM, LLP, a Nevada Limited)

Liability Partnership;)

STEPHANIE TABLANTE, an)

individual; DOES I through X;)

and ROE CORPORATIONS I)

through X, inclusive,)

Defendants.)

NATIONSTAR MORTGAGE, LLC,)

Counterclaimant,)

v.)

WEST SUNSET 2050 TRUST, a)

Nevada Trust,)

Counter-Defendant.)

CASE NO. A-13-691323-C

DEPT. NO. XXI

DEPOSITION OF

30(B)(6) DESIGNEE

UNITED LEGAL SERVICES, LLC

ROBERT ATKINSON, ESQ.

LAS VEGAS, NEVADA

MONDAY, MAY 11, 2015

Reported By Kele R. Smith, NV CCR No. 672, CA CSR No.
13405

JOB NO.: 245765A

Page 2

1 DEPOSITION OF ROBERT ATKINSON, ESQ.,
2 taken at 1160 Town Center, Suite 330, Las Vegas, Nevada,
3 on Monday, May 11, 2015, at 10:14 a.m., before Kele R.
4 Smith, Certified Court Reporter, in and for the State of
5 Nevada.
6
7 APPEARANCES:
8 For the Witness:
9 IN PROPER PERSON
10 BY: ROBERT ATKINSON, ESQ.
11 8965 South Eastern Avenue
12 Suite 260
13 Las Vegas, Nevada 89123
14 (702) 614-0600
15
16 For the Plaintiff:
17
18 MAIER GUTIERREZ AYON
19 BY: KATHRYN L. BUTLER, ESQ.
20 2500 West Sahara Avenue
21 Suite 106
22 Las Vegas, Nevada 89102
23 (702) 629-7900
24 klb@mgalaw.com
25
26 For the Defendants NationStar Mortgage:
27
28 AKERMAN
29 BY: ALLISON SCHMIDT, ESQ.
30 1160 Town Center Drive
31 Suite 330
32 Las Vegas, Nevada 89144
33 (702) 634-5000
34 allison.schmidt@akerman.com
35

Page 3

1 I N D E X
2
3 WITNESS: ROBERT ATKINSON, ESQ.
4
5 EXAMINATION PAGE
6 By Ms. Schmidt 4
7
8
9
10
11
12 EXHIBITS
13 MARKED PAGE
14 Exhibit A Documents Brought By Witness -
15 Emails, Statutes, Fee Schedules 8
16 Exhibit B United Legal Services
17 Documents 26
18 Exhibit C Documents From Prior
19 Collection Agency 55
20 Exhibit D Documents From Land Records 55
21
22 Exhibit E Contracts With HOA and First
23 100 55
24 Exhibit F Auction Results 55
25 Exhibit G Emails 55

Page 4

1 LAS VEGAS, NEVADA; MONDAY, MAY 11, 2015
2 10:14 A.M.
3 -oOo-
4 (The Reporter was relieved of her duties
5 under NRCP 30(b) (4).)
6 Whereupon,
7 ROBERT ATKINSON, ESQ.,
8 having first been called as a witness, was duly sworn
9 and testified as follows:
10
11 BY MS. SCHMIDT:
12 Q. Can you state your name and spell your last name
13 for the record?
14 A. Robert Atkinson, A-T-K-I-N-S-O-N.
15 Q. And my name is Allison Schmidt. I'm the attorney
16 for Bank of America and NationStar Mortgage in the
17 action designated as Case No. A-13-691323. Have you
18 been a witness or have you been deposed before today?
19 A. I am here in my capacity as PMK for United Legal
20 Services, Inc. I'm also here in an attorney capacity
21 representing myself. On that basis, I reserve the right
22 to object to any questions that may arise.
23 With respect to your specific question: Have I
24 been subject to a deposition, with respect to United
25 Legal Services, Inc., no. This is my first one. But I

Page 5

1 have another one scheduled this afternoon, so I think
2 the wave is starting to hit.
3 Q. Since you are an attorney, I'll probably waive
4 your standard admonitions. I assume you understand the
5 deposition process?
6 A. I do. And the ground rules.
7 Q. Okay. Great.
8 And you understand that since you've designated
9 yourself as someone with knowledge in this case, you may
10 be required to give testimony at trial if this case gets
11 tried?
12 A. I do.
13 Q. Okay. And today my purpose is to find out,
14 essentially, what you would say at trial if this case
15 gets tried. Do you understand that?
16 A. I do.
17 Q. All right. And you understand that the oath you
18 just took is the same oath you would take in a court of
19 law?
20 A. I do.
21 Q. Okay. Let's see. Is there any reason that
22 you're not able to give your best and truthful testimony
23 today?
24 A. No.
25 Q. Do you take any medication that might affect your

Page 6

1 testimony?
 2 A. No.
 3 Q. Do you feel well today?
 4 A. I do.
 5 Q. Okay. All right.
 6 A. And to qualify that, pursuant to my oath, I am
 7 testifying to the best of my knowledge and recollection
 8 as to events which took place almost two years ago.
 9 Q. When I ask my questions, since you are acting as
 10 your attorney as well, I'll give you some time to object
 11 in case you want to make your objection, as I understand
 12 that that might be the case.
 13 How did you prepare for this deposition today?
 14 A. I printed out the documents that I had previously
 15 provided to you on disk, and I printed out ancillary
 16 documents related to HOA lien sales that you perhaps
 17 might have had a question on, and that's it.
 18 Q. So all the documents that you've reviewed in
 19 preparation for today's deposition have been provided?
 20 A. All the documents that were responsive to your
 21 specific request that were anticipated as part of the
 22 deposition have been provided.
 23 Q. Okay. When you say "ancillary documents," what
 24 are you referring to?
 25 A. Well, I'm glad you asked. In case the subject

Page 7

1 goes there, one of them is a breakdown of the NAC
 2 statutory costs. Again, these are small percentage
 3 items, but in case you had a question on them.
 4 Another is a printout from the Clark County
 5 treasurer's office that explains why for all of these
 6 HOA sales the value shown on the DOV form on the
 7 foreclosure deed is not equal to the auction value, and
 8 those are specific instructions from the Clark County
 9 treasurer.
 10 And I printed off the relevant statutes from NRS
 11 116 relating to foreclosure in case we needed them as
 12 reference during the conversation.
 13 And lastly is a printout example of request for
 14 notice that the mortgage companies are doing in the land
 15 records now, which I do not recall a single one being
 16 land records back in the day, but now all of the
 17 mortgage companies are filing requests for land
 18 documents.
 19 Q. Would we be able to make copies of those
 20 documents really quick so she would have a copy and I
 21 would have a copy as well?
 22 A. Absolutely. For the ones that are not the
 23 statutes, this is your copy. Actually, if you want more
 24 than one copy, there's that. I'm not -- if we get into
 25 116, we will. If you want we can.

Page 8

1 Q. I don't think we need the 116.
 2 A. Here is a copy of the Clark County treasurer
 3 document.
 4 MS. BUTLER: I'll just look through it real
 5 quick and I should be fine.
 6 THE WITNESS: I'm not bringing these because
 7 I want to lead off with these. I brought these in case
 8 you asked me.
 9 MS. SCHMIDT: Got it. Would you mind if I
 10 mark these as an exhibit to this deposition so when we
 11 get the transcript, we will have them all together?
 12 THE WITNESS: That is fine. I brought these
 13 in case we needed them.
 14 MS. SCHMIDT: Can we mark all of these as
 15 Exhibit A.
 16 (Exhibit A was marked.)
 17 MS. SCHMIDT: Did you have any questions for
 18 me before we start?
 19 THE WITNESS: I do not.
 20 MS. SCHMIDT: Okay.
 21 BY MS. SCHMIDT:
 22 Q. What do you do for a living?
 23 A. I'm an attorney.
 24 Q. And who is your employer?
 25 A. Atkinson Law Associates.

Page 9

1 Q. Okay. And how is Atkinson Law Associates
 2 affiliated with United Legal Services?
 3 A. Common ownership. I own 100 percent of both
 4 firms. The firms themselves have no relationship
 5 whatsoever to each other. United Legal Services is no
 6 longer in business and has not been in business for a
 7 long time now.
 8 Q. Do you know approximately when United Legal
 9 Services ceased operations?
 10 A. With respect to the HOA foreclosure sales, it was
 11 October of 2013. We almost began another project in
 12 approximately May or June of 2014 for a commercial HOA,
 13 but that project aborted, and I did not consider that to
 14 be a job. So effectively it's October 2013.
 15 Q. So as of today, are you involved in any HOA
 16 foreclosures, or has that ceased?
 17 A. That's ceased. Other than that one aborted
 18 commercial HOA foreclosure, which is a project we never
 19 actually ended up doing, it has completely ceased all
 20 business since October 2013.
 21 Q. Got it.
 22 Are you familiar with the property located at
 23 7255 West Sunset Road, Unit 2050, Las Vegas, Nevada
 24 89113?
 25 A. I'm familiar to the extent that I was the

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1 auctioneer for that property at an auction that was
2 scheduled and arranged for by United Legal Services.

3 Q. And when you say you were the auctioneer, was
4 United Legal Services just the auctioneer or were they
5 also the trustee? I'm trying to figure out what that
6 relationship was at the time of the sale?

7 A. Your question is legally incorrect. There is a
8 mass of confusion in the industry between NRS 107 and
9 NRS 116. NRS 116 does not use the word "trustee." It
10 used the words "agent authorized for sale." However,
11 other players in the industry, including Alessi &
12 Koenig, would oftentimes use the language of 107 for
13 their NRS 116 sales. So you see things like "trustee
14 foreclosure deeds for HOA sales. We believe that to be
15 utterly legally incorrect, but people nevertheless would
16 recognize such deeds as being a valid 116 foreclosure.

17 We always in all capacities were an NRS 116 agent
18 authorized for sale. And by the way, when I use the
19 collective word "we," I mean specifically the law firm
20 United Legal Services.

21 Q. Okay. And so did United Legal Services have the
22 relationship you just described with the Tuscano HOA?

23 A. Yes. As provided in Section 4 of the documents
24 that were provided, there is a contract with the HOA.
25 Have you had a chance to review the document entitled

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1 Purchase and Sale Agreement?

2 Q. I have, actually. Maybe not with respect to this
3 case, but I am familiar with the contents --

4 A. It's a generally standard template that was used
5 for tri-party agreements between an HOA, the company
6 First 100, LLC, and United Legal Services as agent
7 authorized for sale. In this document the HOA
8 specifically has the collections file transferred from
9 Red Rock Financial Services to United Legal Services.
10 These files were always transferred after Red Rock had
11 done the Notice of Lien and had filed a Notice of
12 Default. The purpose of this Purchase and Sale
13 Agreement, amongst other purposes, had United Legal
14 Services act in that final third stage of the sale to
15 notice up a foreclosure sale and to conduct the auction.

16 Q. Okay. And who would retain United Legal
17 Services? Was it the HOA or First 100?

18 A. I'm attempting to find the specific clause in the
19 contract to point you to. Section 7.08 of the contract
20 is entitled, "Limited Scope of Attorney-Client
21 Representation. By this contract, an attorney/client
22 relationship is established between Agent and Seller,
23 however, Agent is not the general counsel for Seller and
24 is the attorney-at-law of Seller only for the limited
25 scope of services described herein and contemplated to

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1 be performed by Agent under this agreement."

2 So specifically United Legal Services, Inc. is --
3 step back. I forgot to put the end quote. The quote
4 ended with the words "under this agreement."

5 United Legal Services is a Nevada law firm, and
6 so through this contract, the HOAs retained United Legal
7 Services to perform the scope of services.

8 Q. The contract you're referencing, is that the only
9 contract that governs the tri-partite relationship you
10 were describing between Tuscano -- or I should say
11 amongst Tuscano, First 100, and United Legal Services?

12 A. There is the Purchase and Sale Agreement itself.
13 The Purchase and Sale Agreement, as with them all,
14 included what we would call a first batch. It would be
15 one or more properties that would be subject to the
16 Purchase and Sale Agreement. Subsequent batches that
17 would come in -- and I believe on Tuscano there were
18 four additional batches, and these batches would come in
19 through a self-executing Exhibit 3 to the Purchase and
20 Sale Agreement, the examples of which we provided to
21 you.

22 For example, I believe the -- here's the example
23 of the subject property coming in simply as a contract
24 extension. And that contract extension was not a full
25 new -- brand new Purchase and Sale Agreement but merely

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1 a signed Exhibit 3, and that sped up the business
2 considerably.

3 The Purchase and Sale Agreement was the only
4 contractual legal agreement between United Legal
5 Services and the HOA. There was a separate purchase
6 arrangement agreement between United Legal Services and
7 First 100, LLC whereby First 100, LLC would pay for the
8 costs of United Legal Services to perform the services.
9 In other words, it was a zero-cost contract for the HOA.

10 Q. Okay.

11 A. And that document was provided for you as well in
12 the Section 4.

13 Q. So to make sure I understand, United Legal
14 Services would be paid for their services by First 100?

15 A. That is correct, and what would happen is we
16 would get notified that another batch had come in or for
17 the first batch a PSA had been signed. We would send
18 out an invoice to First 100, and they initially started
19 off at \$750, pursuant to the purchase arrangement
20 agreement, and I provided the invoice showing the
21 subject property for this deposition as one of those
22 invoices. This is invoice ULS-016.

23 That covered the NAC costs, so this was a
24 contractual -- a statutorily defined up-front number,
25 and I wasn't going to do -- and by "I," I mean in my

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1 capacity as president of United Legal Services. I was
2 not going to have United Legal Services do any work
3 until First 100 paid for the costs. A lot of these were
4 costs.

5 Q. When you say "the NAC costs," are you referring
6 to the schedule of costs that you provided today as
7 well?

8 A. That is correct. If you refer to the schedule of
9 costs -- may I? In Exhibit A you will see a document
10 entitled Collections Fees and Costs Scheduled. So these
11 were broken out. The top section is relating to NOS.
12 Relating to the Notice of Sale. The bottom section is
13 relating to sale. So the costs relating to the Notice
14 of Sale are these seven items. The sum of those seven
15 items in this schedule is \$800. For most of the
16 duration of it prior to approximately June 22nd, 2013,
17 it was \$750.

18 The reason that this changed is because the very
19 last item, which is the USPS mailing cost, including
20 certified mail, went up from \$5 to \$55, and the reason
21 is because there was a statute change that went into
22 effect approximately June 22nd, 2013, whereas after that
23 date there are -- you had to send out certified mail to
24 all of the relevant parties as opposed to regular first
25 class mail to regular parties. So we bumped up the cost

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1 to \$800. So the sum from here to here was \$800. At the
2 time this was implemented it was 750.

3 Q. And that's why the invoice that you just
4 indicated, it appears that the costs per property were
5 \$750?

6 A. That is correct. And in addition, that \$750 is
7 referred to in the Payment Arrangement Agreement between
8 United Legal Services and First 100 as executed on
9 December 5th, 2012 in placement for Clark County
10 properties -- because it differed by county -- was \$750.

11 Q. Thank you. How did the relationship between
12 United Legal Services and First 100 come about?

13 A. First 100 had contacted me to --

14 MS. BUTLER: You're not going to get into
15 any client confidentiality?

16 THE WITNESS: No. I'm going through that in
17 my head.

18 A. First 100 had contacted me to perform and act as
19 the agent authorized for sale for HOA industry
20 relationships that they were developing as part of their
21 business model. The very first auction that I
22 personally held was in my former law firm, and realizing
23 that my insurance for that law firm would not cover this
24 sort of activity, I felt it prudent to start a brand new
25 law firm whose sole purpose was HOA foreclosure

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1 auctions, and so I formed United Legal Services for that
2 purpose.

3 Q. And what was your former law firm that you were
4 referencing?

5 A. It's a law firm called Kupperlin Law Group, LLC.

6 Q. And can you spell that just?

7 A. K-U-P-P-E-R-L-I-N. My son's name is Cooper.

8 Q. Who at First 100 contacted you?

9 A. My primary point of contact throughout the whole
10 process was Michelle Sergent. The development of the
11 Purchase and Sale Agreement was mostly conducted with
12 Jay Bloom. But after these got going, United Legal
13 Services had very little interaction with Jay Bloom. It
14 was more of a volume relationship, and Michelle Sergent
15 over there was a point of contact, so when a PSA needed
16 to get executed, she'd send it to me. I'd Email her
17 back. And I believe we provided some Emails for you as
18 well. You'll see there that almost all the Emails are
19 to and from Michelle Sergent.

20 Q. So once United Legal Services is retained to be
21 the agent, as you put it, for the HOA, what duties does
22 United Legal Services undertake?

23 A. The typical business process would be to obtain
24 the collections file from Red Rock, produce a Notice of
25 Foreclosure Sale, record that document, notice it out

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1 pursuant to statute, take calls and any payments
2 proffered, and for those properties for which the lien
3 was not satisfied as of the date of sale, to conduct the
4 foreclosure sale.

5 We also provided a notice -- sorry the actual
6 foreclosure deed to an auction winner for any auction in
7 which First 100 was the winner. United Legal Services,
8 who had electronic filing capacity with the Clark County
9 recorder, we would record those documents as a courtesy,
10 as an accommodation we call it. For other parties we
11 would simply provide the foreclosure deed, typically
12 with a suggested DOV, but I have no idea what the DOV --
13 what actually got filed for the subject property.

14 Q. And how did United Legal Services calculate the
15 amount that was owed that's listed in the Notice of
16 Sale?

17 A. We started with the total amount owed as provided
18 by Red Rock Financial Services, and the total amount
19 owed included overdue assessments, plus late fees, plus
20 collections costs, and excluded any compliance files.
21 And then we added the cost shown in exhibit -- of
22 collections costs.

23 Q. Uh-huh?

24 A. But the entire first section, which I believe
25 added up to \$1,200. Because if someone -- let me --

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1 pull that document back out so I can explain how it
2 works. We do this very carefully. If -- do you see the
3 \$1200 number on this exhibit?

4 Q. I do.

5 A. So if the property went for auction, then that
6 was how much total would have been owed. However, if
7 somebody attempted to pay it off before auction -- and
8 quite a few of these properties did get paid off before
9 the auction -- we would subtract out charges relating to
10 the auction, as you can see in the second table of this
11 exhibit. But we would add in the statutorily permitted
12 additional costs such as recordation and release of
13 notice. The net on that is minus 146. So if somebody
14 called in and said, "How much do I owe to pay this off,
15 we would take a look at the number that was calculated
16 in the Notice of Foreclosure Sale and subtract \$146.

17 Q. Okay. And for clarity of the record, we were
18 referring to the document contained in Exhibit A that's
19 entitled Collection Fees and Costs Schedule.

20 When you indicated that quite a few properties
21 got paid off prior to auction, how would that come
22 about?

23 A. We -- we got calls from property owners, many of
24 whom were quite irate. We occasionally got contacted by
25 servicers. Very rarely. And occasionally we would be

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1 contacted by confused tenants. At all times we
2 expressed the need to pay this off prior to auction;
3 that foreclosure was eminent, and for homeowners that
4 expressed a desire to pay, it was either done as a
5 payment in full or if they're able to strike a deal to
6 be on a shortened payment plan, those would be
7 accommodated as well. If it was one of the rare
8 contacts from a mortgage servicer, we accepted any money
9 that was provided to us. This happened on -- to my
10 recollection, six occasions out of the between 1 and 200
11 properties that were placed with us.

12 On all six occasions they tendered just the nine
13 months assessments with no collections costs. In all
14 six we recorded notice of partial payment in the land
15 records prior to the auction. That did not occur in
16 this case. For the subject property for this lawsuit,
17 we were not contacted by either the homeowner or a
18 servicer.

19 Q. Okay. When United Legal Services gets the file
20 from Red Rock Financial Services, does it take any
21 independent steps to verify the file is correct, the
22 work that had been done by Red Rock was correct?

23 A. No. That was the responsibility of the HOA
24 pursuant to the Purchase and Sale Agreement.

25 Q. So United Legal Services would have no

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1 independent knowledge of whether or not Red Rock
2 essentially did what it was required to do?

3 A. We had absolutely no knowledge of that. Correct.

4 Q. Okay. In this case you indicated that one of the
5 duties of United Legal Services was to notice out a
6 Notice of Sale, provide notice in accordance with the
7 law. What is your understanding of who is required to
8 receive notice at the Notice of Sale?

9 A. Let us refer to the statute. Under NRS
10 116.311635 it says, "The association or other person
11 conducting the sale shall also, after the expiration of
12 the 90 days and before selling the unit:

13 "(a) Give notice of the time and place of the
14 sale in the manner and for a time not less than that
15 required by law for the sale of real property upon
16 execution, except that in lieu of following the
17 procedure for service on a judgment debtor pursuant to
18 NRS 21.130, service must be made on the unit's owner as
19 follows:"

20 Subsections 1 and 2 of that talk about mailing it
21 to the unit and then posting it on the unit. Subsection
22 B, which I think is relevant for your client, says,
23 "Mail, on or before the date of first publication of
24 posting, a copy of the notice by certified or registered
25 mail, return receipt requested to:"

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1 May I point out that the statute that says "copy
2 of the notice by certified or registered mail" didn't
3 always say that. Pursuant to Senate Bill 280, it used
4 to say first class. Under -- for the subject property,
5 the pre-amendment statute was in effect, and so the
6 mailing requirement was only by first class mail to the
7 parties, which I'm about to express.

8 Continuing with the quotation from the statute,
9 subsection 1, "Each person entitled to receive a copy of
10 the Notice of Default and Election to Sale under notice
11 NRS 3.1163."

12 Subsection 2, "The holder of a recorded security
13 interest or the purchaser of the unit, if either of them
14 has notified the association, before the mailing of the
15 Notice of Sale, of the existence of the security
16 interest, lease or contract of sale, as applicable."
17 And 3, "The Ombudsman."

18 We had no knowledge as to which holders of
19 recorded security interests had notified the
20 association. It is our legal position that any recorded
21 security interest, in order to win any case on notice,
22 would have to provide proof positive that they notified
23 the association prior to the sale. However, because we
24 had no knowledge of this, we went ahead and mailed it to
25 the security interests and assignments as recorded in

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1 the land records out of an abundance of caution.

2 Does that make sense?

3 Q. Yes. Thank you. So to ascertain what security
4 interests existed on the property, did United Legal
5 Services obtain a title report, or did they do some
6 title research?

7 A. United Legal Services performed title research.
8 I'm also a real estate attorney, and I'm quite familiar
9 with title and recordation and security instruments, so
10 what we would do is we would pull a fresh printout from
11 the Clark County recorder's office, and we would also do
12 side research on the borrower's names in order to ensure
13 that there were no security interests on the relevant
14 parcel that didn't come up when you typed in the parcel
15 number. We would also, by the way, do bankruptcy
16 searches, including the day before each sale.

17 And in the Section 2 of the documents I sent you
18 is a printout of the Clark County recorded documents, a
19 printout of the Clark County assessor, which indicates
20 what the mailing address of the deed was at the time, a
21 printout of the deed itself, and then behind it is the
22 recorded security interests and any assignments thereof.
23 I haven't look at this in awhile, so I don't know if
24 there were any assignments, but we can certainly flip
25 through it and see if there were.

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1 Q. Do your records show precisely what parties were
2 provided with the Notice of Sale in this case?

3 A. They do. In Section 3, which is the documents
4 that were produced by United Legal Services, stepping
5 through it, you can see -- the first document. Do you
6 have that with you?

7 Q. I don't have them from your documents, but I did
8 print us out a copy of the recorded documents.

9 A. Okay. Let's step through this. This is the
10 unrecorded original Notice of Foreclosure Sale, the
11 recorded Notice of Foreclosure Sale, the Notice to
12 Tenants of Property, which was a statutorily required
13 item. Here is the certified mailing receipt to owner or
14 occupant. Here's the certified mail to New Freedom
15 Mortgage Corporation. Here is returned USPS from Cooper
16 Castle, returned mail from owner or occupant, returned
17 mail from New Freedom Mortgage Corporation, returned
18 certified mail from owner/occupant, and then returned
19 certified mail from New Freedom Mortgage Corporation,
20 and then you'll see a Form 3877 from the post office.
21 U.S. Post Office Form 3877 is a bulk certificate of
22 mailing document. Are you familiar with these?

23 Q. No.

24 A. Okay. There are multiple types of mail:
25 Regular, first class mail, certified mail, registered

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1 mail, and so forth. A certificate of mail indicates
2 that you have transmitted to the post office a first
3 class mail item. It's proof that it got mailed.
4 There's no proof of receipt. There's no proof of
5 delivery or anything. It's a certificate of mailing.

6 Now there are individual U.S. postal certificates
7 of mail for individual pieces, but as we were billed in
8 volume, we asked the post office if there was an easier
9 way to do this, and they told us about Form 3877 and how
10 to fill it out.

11 The way you read this form is each one of the
12 addresses in the second column is something in which a
13 U.S. first class mail envelope went out the door. For
14 example, you can see the Ombudsman on there, and you can
15 see the transferees and other people that were in the
16 land records. And then they stamped the whole thing.
17 The slashes on the bottom are required by the post
18 office. If we didn't put them in, then the person in
19 the post office would to make sure there's a complete
20 column so that there's no subsequent shenanigans as to
21 typing in something.

22 So this certificate of mail shows all of the U.S.
23 first class pieces of mail that went out the door
24 relevant to the property. In addition, you can see on
25 the bottom of Form 3877 -- you can see our code, and we

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1 had internal codes for each property, and this is NV,
2 meaning Nevada, dash T3, which is batch three of
3 Tuscano, dash 03, which is the subject property.

4 Q. So this form would show that these got mailed,
5 but not necessarily indicate receipt of those?

6 A. That is correct. We were under no statutory duty
7 whatsoever to send it out with delivery confirmation or
8 certified mail or anything.

9 Q. Okay.

10 MS. SCHMIDT: Do you mind if we go off the
11 record for two seconds?

12 (Discussion off the record.)

13 MS. SCHMIDT: We'll mark as Exhibit B --
14 this is the Section 3 of documents that we were just
15 referring to that contain the certified mailing
16 receipts, the recorded and unrecorded Notice of
17 Foreclosure Sales, the notice to tenants, and the USPS
18 Form 3877 that we were just referencing.

19 A. Now you'll notice on the Form 3877 there is a
20 reference to NationStar Mortgage at the Highland Drive
21 address. You may ask where did we get that address, and
22 may I refer you to Bates stamp N as in Nancy SM as in
23 Mary 0041. This document is the document entitled
24 Corporation Assignment and Deed of Trust, and it
25 transfers the beneficial interest in the deed of trust

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1 from Bank of America, N.A. to NationStar Mortgage, and
2 it provides the same Highland Drive address that you
3 find on the certificate of mailing.

4 (Exhibit B was marked.)

5 BY MS. SCHMIDT:

6 Q. Looking at the Notice of Foreclosure Sale that's
7 recorded NSM 00043, was this something that was
8 generated by United Legal Services?

9 A. Yes.

10 Q. And I see it's executed by a Mia --

11 A. Fregeau.

12 Q. Fregeau. What's her role with United Legal
13 Services?

14 A. She's no longer employed by United Legal Services
15 as United Legal Services is no longer in business. At
16 the time she was a staff employee.

17 Q. And at the time that this was executed, what were
18 her duties?

19 A. She wore several hats. She posted items on the
20 property and the public notice postings. She handled
21 all of the outbound mail such as filling out the
22 certified mailing receipts. She handled incoming
23 returned mail and scanned and sorted them. She also
24 work our call center. We had a very tiny call center,
25 but we would get calls, and if she was out posting, then

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1 another employee would handle the calls.

2 Q. And what is the amount listed as due and owing on
3 this document?

4 A. It's found the last word of Paragraph 2, which is
5 7,806.42.

6 Q. And can you explain to me again how that was
7 calculated?

8 A. Certainly. It may take a moment to rebuild my
9 calculation, so hold, please.

10 If you look on the back page of the collections
11 file that we received from Red Rock Financial Services,
12 you'll see the last page, Page 6 of 6 of Accounts Detail
13 a total of \$6487.42. As discussed, that is the sum of
14 collections costs plus past due assessments. If you add
15 \$1,150, which was the pre-June 22nd, 2013 amount, you
16 will get \$7,637.42.

17 Now, the file was transferred as of May 23rd,
18 2013. The sale is set for June 22nd, 2013, so we had to
19 add in one more month of unpaid assessments and one more
20 month of late fees. At the time the monthly assessments
21 were \$164. At the time the late fees were \$15. So if
22 you add 179 to 7,637.42, you get 7,806.42, and that's
23 the number that's in the Notice of Foreclosure Sale.

24 Q. The notice indicates that a sale would be held on
25 June 22nd, 2013 at 9:00 a.m. Do you agree with that?

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1 A. If by that you mean did that sale for the subject
2 property occur on that date, I would have to look at
3 the --

4 Q. Well, preliminarily, do you agree that that's the
5 date listed on the Notice of Foreclosure Sale?

6 A. Is that your question? Yes. That is the date
7 listed on the foreclosure sale.

8 Q. Did the sale actually go forward on that date?

9 A. Yes. I say that by referring to the documents,
10 specifically the Foreclosure Deed on Sale, as well as
11 the auction results that were provided to you on this
12 property, which were filled out at the time of the sale.

13 Q. What steps did United Legal Services take to
14 publicize the sales?

15 A. They were published and posted. It was all done
16 pursuant to statute. There was no marketing or
17 advertising done in any manner. However, we had a
18 regular public auction and people knew about our sales,
19 and so they were the same cast of characters that you
20 would find at HOA foreclosures over at Alessi & Koenig.
21 For example, one of the principals of SFR Investments
22 commonly showed up.

23 Q. Did United Legal Services ever contact
24 individual -- I'll say purchasers from the cast of
25 characters to let them know that that specific sale was

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1 happening?

2 A. Not as a matter of practice. Occasionally it
3 might have happened, but not as a matter of practice.

4 Q. When you say that the sales were published and
5 posted according to statute, where would they be
6 published?

7 A. In the Clark County Legal News. Affidavit of
8 Publications are in the documents provided. And the
9 postings took place on the property as well as in three
10 public locations. The Affidavit of Posting for the
11 three public locations are provided in the documents.
12 Those are public boards that are in existence around
13 town. We were very careful to select those, and the
14 Affidavit of Service provides the items that were taped
15 to the unit on the door. And on this one we provided a
16 photograph of the documents taped to the door. I'm sure
17 you saw that.

18 Q. And did the investors or purchasers that would
19 attend these sales ever contact United Legal Services?

20 A. Yes.

21 Q. Did United Legal Services have a website or
22 something like that where someone could look up upcoming
23 foreclosure sales?

24 A. No. It's a very small community of people that
25 buy these things.

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1 Q. Were you personally in attendance of this
2 auction?

3 A. I called every auction held in Clark County that
4 United Legal Services did. So the answer to your
5 question is yes.

6 Q. Do you have any records or memory that indicate
7 how many individuals attended this particular auction?

8 A. I do not and did not keep an attendance ledger of
9 any auction. There was at least two individuals, but
10 there could have been five or six or ten. Sometimes
11 there was as high as 15.

12 Q. What was the opening bid for this auction?

13 A. You would have to refer to the MP3 of the
14 auction. On many of the auctions I recorded them for
15 posterity just in case I needed it, so I provided that
16 MP3 to you, so you can listen to it.

17 Q. And that was on the CD that you provided?

18 A. Yes. Under Section 5. And you will hear that
19 there is regular, normal, spirited bidding. This
20 particular property got up to \$7,800.

21 Q. Was \$7,800 what the property was sold for?

22 A. Correct.

23 Q. If the borrower had wanted to pay off the lien,
24 let's say at 8:00 a.m. prior to the sale, what would --
25 how much would they have had to pay to satisfy the lien?

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1 A. I believe I have answered that question. Let me
2 reiterate my answer. It would have been the amount
3 shown in the Notice of Foreclosure Sale minus \$146.

4 Q. So that would be the 7,806.42 minus the \$146?

5 A. And the \$146 is shown as Table 2 to the
6 collections cost document found in Exhibit 1. The
7 property owner or anyone else did not show up to this
8 auction. If they had, we absolutely would take that
9 money.

10 Q. Do you recall who was the high bidder at this
11 sale?

12 A. A gentleman -- I don't know how to spell his last
13 name, but it's Jacob Lefkowitz or something like that.
14 He was a regular. We saw him all the time.

15 Q. Can you estimate about how many properties he has
16 purchased from United Legal Services auctions?

17 A. It is my understanding that Jacob personally was
18 a bidder -- so just to clarify your question, I don't
19 recall Jacob ever taking properties in his personal
20 name, but instead after the sale and auctions were
21 concluded, then as part as part of bringing up the
22 receipt for sale, which you have a copy of, we would ask
23 for vesting information, and vesting information on this
24 one happened to be the trust. West Sunset 2050 trust.
25 I do not recall offhand how many properties for

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1 which Jacob personally was the successful bidder on
2 behalf of some other entity. Perhaps 5 or 10.

3 You have to understand that a lot of these
4 properties were lousy properties. I don't know if you
5 understand the cash flow, but these properties, as part
6 of the Purchase and Sale Agreement contract were all
7 contractually obligated to be started with an opening
8 bid of \$99, and the reason is because most of the
9 properties sold for just 2 or \$3,000 because they're
10 crappy little condos.

11 So when you start putting together the cost of
12 sale, plus the cost of rehab, plus the cost of
13 litigation, you might be in at \$9,000 just to get a
14 first deed of trust foreclosure sale stalled out in
15 court, and on those properties, this is an apartment
16 unit, it might rent out for \$500. These are not good
17 parts of town. So at \$500 and you're in it for 9,000,
18 now you've got a pay-back period of 18 months just to
19 get your money back. This thing's got a lien amount of
20 7800. You know? This one probably was a two bedroom.
21 I don't even know. The reason it went more is because
22 for the rent you might be able to get \$900 and your
23 payback period is less.

24 It's my understanding that a lot of these guys
25 would go buy the property and try to peek in the window

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1 and see if it was in the good shape, and if it was in
2 good shape, then hey, my rehab cost will be 500 bucks.

3 I was not part of it, but I was aware of the fact
4 that there were calculations as to how much each
5 individual bidder was willing to bid up to. It's all --
6 my understanding is hard cash flow costs.

7 Q. So pursuant to the contract with the HOA and
8 First 100, do you believe the bidding on this would have
9 started at \$99?

10 A. Every property that United Legal Services acted
11 as the agent authorized for sale and was the auctioneer
12 for began opening bid at \$99. So as a result, this
13 particular property would have started at \$99 as an
14 opening bid.

15 Q. So is it possible that a purchaser could buy
16 these properties for less than the amount of the lien
17 owed?

18 A. Oh, yes. In fact, that was an explicit part of
19 the First 100 business model, to my understanding. Have
20 you ever attended an Alessi & Koenig foreclosure
21 auction? You personally?

22 Q. Not that I can recall.

23 A. They're very interesting because a third to a
24 half of them are won by the HOA. Alessi & Koenig sets
25 the initial opening bid at the lien amount, and these

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1 cash flow investors say, "I'm not going to pay 13,000
2 for a condo or \$8,000 for a condo," and so there's no
3 overbid. Now, Alessi & Koenig, back in the day, would
4 then identify the HOA was the opening bidder as being
5 the winner. Then the HOAs would become title owner of
6 the property. What are they going to do with the title
7 owner of the property? That was really troublesome to
8 the HOA. Now they had to insure the property. What
9 were they going to do? Fix it up and rent it out?

10 First 100, it is my understanding, spotted an
11 opportunity in the business model saying as part of the
12 multifaceted complex document that is a PSA, said, Hey,
13 auction this thing off. By setting it at \$99, they were
14 virtually assured that somebody would overbid because
15 somebody would take a flier for 100 bucks. Most of them
16 would offer 2 or 3,000, and that way the HOA could be
17 comforted that they wouldn't end up being the owner of
18 the property. And, in fact, on none of our auctions was
19 the HOA winning bid ever the winning bidder at \$99.

20 And by the way, I don't know if you know this,
21 but this is entirely hearsay, but it is my understanding
22 that after awhile, Alessi & Koenig was instructed to
23 cancel the auction if there was no overbid, which I
24 found to be an extremely interesting practice, if that's
25 what they were doing. They would call it at 15,000, the

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1 amount of the lien, no overbids. They would cancel in
2 order to prevent their HOA from having the take back the
3 property. That is entirely hearsay. I don't know if
4 they did that.

5 You can see the pressure the HOAs were under.
6 Like, Oh, man. I don't want the property. No one is
7 buying it. Cancel the sale and leave it in the property
8 owner's name. That \$99 opening bid was a very
9 attractive part of the First 100 business model.

10 Q. Was there a First 100 agent or representative
11 that attended the sale?

12 A. Yes. Typically it was Jay Bloom, but sometimes
13 it was another employee.

14 Q. And if there were no third-party bidders -- and
15 by third party I mean not the HOA and not First 100 --
16 what would happen in those instances?

17 A. You can probably listen to and hear for yourself
18 on the MP3 that was provided. There were three
19 properties that were auctioned that day. Two of them
20 were bought by First 100. One for 3,000 and the other
21 for \$3,000. In the MP3 -- I haven't listened to it in
22 awhile, but generally the way the bids would go is that
23 somebody would start off with \$100 or \$500, because if
24 nobody overbid, why would you overbid yourself?

25 Generally somebody would say \$100, and then

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1 occasionally we'd have one go off for \$100, but
2 generally there was active bidding because Hey, man, why
3 not bid \$500? It's still cheap because you never know.
4 Generally it would go \$100, \$500 as the opening bid, and
5 somebody else would top that by a 500, and generally bid
6 in increments of \$500 until you hit a stopping point.
7 It's a public auction. We found the market value for
8 it, and the auction ceased.

9 Sometimes -- because everybody walked in with a
10 number that was their bid cap, because these are very
11 calculated cash flow kind of guys -- when things got
12 closer to a bid cap, people would reduce the increment
13 to less than \$500. So that's probably what happened on
14 the subject property going off at 7800. You probably
15 got -- these guys have the same business models, and
16 somebody was in the 7,000s and then Jay -- I don't know
17 what his cap was, but he had a higher cap than anyone
18 else, so he won the property at 7800.

19 Q. Were the sales ever canceled or postponed to
20 attempt to get more bidders there?

21 A. No. It is United Legal Services' position that
22 every auction was commercially reasonable.

23 Q. I know you indicated before on the six or so
24 occasions where the security interest holder paid some
25 money to United Legal Services it was your practice to

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1 record a Notice of Partial Payment.

2 A. Yes.

3 Q. Would that be information that was announced at
4 the sale as well?

5 A. Oh, yes. And it, as you might imagine, affects
6 the purchase price because it would be relevant
7 information into the calculation of these characters.

8 Q. In your experience did that have an effect of
9 chilling the bidding on certain properties where the
10 partial payment had been recorded?

11 THE WITNESS: I object to the form of the
12 question in the sense that "chilling the bidding" is an
13 undefined term.

14 A. How I would instead characterize it is that my
15 understanding is that the price would be less than it
16 otherwise would have gone for without the presence of
17 that information.

18 BY MS. SCHMIDT:

19 Q. Prior to calling the sales, does United Legal
20 Services or I should say did United Legal Services
21 announce whether or not there was a deed of trust on the
22 property at all?

23 A. No. That was not anything required by statute.
24 It was absolute caveat emptor. I mean, you don't hear
25 that down at regular foreclosure auctions. There was no

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1 need for that. Nor did United Legal Services take any
2 legal position whatsoever as to the legal effect of an
3 NRS 116 foreclosure on an extant deed of trust.

4 As a matter of fact, we expressly put that on the
5 six or so Notice of Partial Payment of Lien. I can
6 provide an example if you wish. It says, We have no
7 legal position as to what this payment is, but the payor
8 intended it to pay off the nine-months super priority.

9 Q. I want to look at the Foreclosure Deed Upon Sale
10 Bates stamped NSM 0044 and including the Declaration of
11 Value through NSM 00046.

12 A. Okay.

13 Q. Are you familiar with this document?

14 A. The NSM 0044 and 45 document was produced and
15 executed by United Legal Services, and the Bates stamp
16 46 document was a blank deed -- sorry. A blank
17 Declaration of Value form that was produced but not
18 executed by United Legal Services. The asterisk by
19 United Legal Services and then it says at the bottom "as
20 agent for Tuscano Homeowners' Association," that was
21 additional language and clarification that was required
22 by Clark County recorder or these things would get
23 kicked back unless we put that in.

24 But the actual handwriting in Section 3 of the
25 DOV form that is not familiar to me, it would have been

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1 somebody on the buyer's side. That's not my
2 handwriting. It's not Mr. Opdyke's handwriting. We
3 never fill those out except for First 100 purchases.
4 And certainly that is not any signature -- the grantee,
5 as you can see, signed the DOV form.

6 Q. Can you tell me who Robert Opdyke is?

7 A. He's an attorney that is currently an employee of
8 Atkinson Law Associates, but at the time also did and
9 worked as a part-time employee at United Legal Services.

10 Q. Can you tell me what his role was in United Legal
11 Services when he was working there?

12 A. I can answer that two ways. First, he acted in
13 an attorney capacity. Second is that he assisted with
14 the production of the documents and in the evaluation of
15 the land records.

16 Q. Does the foreclosure deed contain the price paid
17 of the auction?

18 A. No. Nor is there any statutory requirement for
19 it to do so. There is, in fact, a statutory discussion
20 of the language for such foreclosure deeds in NRS 116.
21 Are you familiar with that particular language?

22 Q. Yes.

23 A. You will find that language in there, and the
24 discussion of the language to be found in the
25 foreclosure deed in the statutes makes no reference to

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1 any requirement to having to have the sale price
2 incorporated in the foreclosure deed.

3 Q. Does it anywhere in the Foreclosure Deed Upon
4 Sale recite the consideration paid for the property?

5 A. No. Nor is there any requirement for it to do
6 so. Pursuant to the Email from Clark County treasurer
7 that is found in Exhibit 1, they expressly said that it
8 should be at market value. There is a statutory basis
9 for that. I don't know if you're aware of that, but the
10 Clark County -- the reason for that Email was because
11 the Clark County recorder was having a conniption fit
12 over a \$2,000 DOV form, and there's a statute -- it's
13 like NRS 375 or something. I can look it up -- that
14 says that in -- for recordation, real property transfer
15 taxes -- then any transfer which is a gift or of nominal
16 value shall be at full market value. I forget the exact
17 language, but the reading that you see is from Georgia
18 who works in the audit department. They got a readout
19 from, I think, the DA's office saying that the HOA
20 foreclosure sales -- we're going to deem them to be
21 nominal, and therefore they have to be at full market
22 value. I personally do not believe it to be nominal.
23 \$2,000 is \$2,000.

24 However, it is my perception it's more of a
25 revenue grab for the government than anything else

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1 because they knew all these players had money, and if
2 they could get \$300 out of them instead of \$20 of them,
3 then they would certainly do that, but that was my
4 perception.

5 Q. The amount listed on the Declaration of Value,
6 NSM 00046 is \$63,280. Where would that figure come
7 from?

8 A. I have no knowledge whatsoever as to how the
9 buyer obtained that number on the DOV form. We provided
10 them a blank DOV form. I can guess -- and if you permit
11 me to -- what we would do for the foreclosure deeds that
12 we recorded as an accommodation for First 100 sales, we
13 would go to the land records and call up the assessor's
14 value on the Clark County treasurer's website because
15 that's where Clark County recorder pointed us to. I
16 forget if it was that mail or a subsequent phone call.
17 They said, Use the assessed value of the current year.
18 There it is right there. I had no knowledge of it until
19 today. It's right there on the then current year tax
20 assessed value on the Clark County treasurer website
21 printout for the parcel. Do you see that?

22 Q. And for the record, we're indicating on the Clark
23 County Assessor information under Real Property Assessed
24 Value is the total taxable value for the year 2013
25 through '14 and appears to be \$63,280.

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1 A. That was the industry standard.
 2 Q. So just so I understand, on these declarations of
 3 value that were not for First 100, the grantee, whoever
 4 purchased at the sale, would be in charge of
 5 ascertaining the total value sales price of the property
 6 and filling them in themselves?
 7 A. Ascertaining is -- I would instead use the word
 8 "determining." But because a Clark County recorder had
 9 set it out as a general rule, then it is my
 10 understanding that the industry players all knew the
 11 rule, and per our discovery today, that it appears that
 12 they did the exact same thing, because that's what
 13 everybody did. Because otherwise how would you
 14 determine what a market value is? If the Clark County
 15 recorder said go to the Clark County website and use the
 16 assessed value, that's what people did.
 17 Q. So for this particular declaration of value in
 18 this case, that information was filled in by the grantee
 19 and not United Legal Services. Is that correct?
 20 A. Correct.
 21 Q. Okay. I believe you indicated previously it was
 22 the HOA's responsibility to make sure that the work that
 23 had been done by -- in this case -- Red Rock Financial
 24 Services was correct?
 25 A. Yes. It is definitely not United Legal

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1 Services's responsibility to be auditing or inspecting
 2 the work of Red Rock Financial Services in terms of how
 3 they did the Notice of Lien and Notice of Default. When
 4 I say "did," I mean both the compilation and recordation
 5 of that document, as well as any noticing required by
 6 the statutes.
 7 Q. United Legal Services didn't go through
 8 certificates of mailing that might have been in Red
 9 Rock's file?
 10 A. We were under no duty to do so whatever.
 11 Q. And United Legal Services didn't check to make
 12 sure that Red Rock Financial Services complied with
 13 posting requirements?
 14 A. We were under no duty to do so. If there was a
 15 flaw in Red Rock's work, you'll have to talk to Red
 16 Rock.
 17 Q. Looking at the first page of the Foreclosure Deed
 18 Upon Sale, NSM 00044, looking at the bottom of the
 19 paragraph in the middle of it where it says -- I'm
 20 quoting from the deed. "All requirements of law have
 21 been complied with, including, but not limited to te
 22 elapsing of the 90 days, the mailing of copies of the
 23 Notice of Lien of Delinquent Assessment, and Notice of
 24 Default, and the mailing, posting, and publication of
 25 the Notice of Foreclosure Sale."

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1 Based on your testimony -- I should say that's
 2 the end of the quote. The quote ends with "Notice of
 3 Foreclosure Sale."
 4 Based on your testimony, the individual signing
 5 this for United Legal Services would have no personal
 6 knowledge that all those requirements had been complied
 7 with. Is that correct?
 8 A. Pursuant to my earlier statement, United Legal
 9 Services had no duty or obligation to inspect or audit
 10 Red Rock's records. I believe the statement and line of
 11 argument that you're presenting is conflating two
 12 different concepts.
 13 Q. Well, my question is -- I mean, you testified
 14 that you didn't check whether or not Red Rock Financial
 15 Services did the correct mailing or the posting or the
 16 work they did in terms of the creating and recording of
 17 these documents, so I'm wondering --
 18 A. The purpose --
 19 Q. Let me just finish this -- if the individual for
 20 United Legal Services who executed this would have
 21 personal knowledge of whether or not those had been
 22 complied with since it wasn't one of United Legal
 23 Services's duties to check those things.
 24 A. You misunderstand the purpose of that language.
 25 That language is specific language that's found in NRS

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1 116.31166 subsection 1. That statute discusses the
 2 effects of certain recitals in the deed, and what the
 3 statutes say is that if those recitals that you read
 4 about are present in an HOA foreclosure deed -- and by
 5 HOA foreclosure I mean NRS 116 foreclosure -- then they
 6 are conclusive proof of the matter's recital.
 7 Now, I will leave it up to you attorneys to
 8 explore the various wrinkles of that. Your questions
 9 are intending for me to form a legal opinion as to what
 10 it is. My legal opinion is that if the foreclosure deed
 11 contains the recitals, then by statute they're
 12 conclusive proof of the matter's recital.
 13 If you believe that based on my earlier testimony
 14 relative to United Legal Services' personal knowledge of
 15 things that United Legal Services performed and lack of
 16 personal knowledge of things that a prior collections
 17 agency performed, whether those facts have any sort of
 18 legal effect on the statutory recitals, is not my fight.
 19 Q. I understand. What I'm trying to find out here
 20 is whether or not Robert Opdyke -- and I apologize if
 21 I'm mispronouncing that to him wherever he is -- whether
 22 or not he had personal or business records knowledge of
 23 each and every thing in the recitals.
 24 A. What we had was the documents we were provided
 25 from Red Rock Financial Services. So in that document

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1 you can see a lengthy set of assessments as well as
2 collections efforts. Mr. Opdyke had no personal
3 knowledge of any activity of Red Rock Financial
4 Services. United -- nor is he particularly any sort of
5 target for your investigation. He's simply a signatory
6 for United Legal Services.

7 I think your question is better: Did United
8 Legal Services as an entity have any knowledge of any
9 particular activity of Red Rock Financial Services, and
10 my response is: We were provided the documents that we
11 were provided, which comprise the lien, a Notice of
12 Default, and an accounting ledger. We got no other
13 documents from Red Rock Financial Services on any of the
14 accounts, and so we know what was in here and nothing
15 else.

16 Q. So when the recitals say that all requirements of
17 law have been complied with -- for instance, the mailing
18 of copies of the Notice of Delinquent Assessment Lien --
19 even though United Legal Services is signing that, they
20 have no personal knowledge that those requirements were
21 complied with?

22 A. That is correct. We relied on Red Rock Financial
23 Services to perform their collections activities in a
24 professional manner, and our assumption is that they
25 would not have sent over any deficient file. So the

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1 statement was made on the assumption that it was correct
2 because Red Rock did not flag it as being a troubled or
3 a redo file.

4 By the way, your line of inquiry is not how I
5 read that statute.

6 Q. Fair enough.

7 A. That's fine.

8 Q. I know quite a bit of this is up in the air and
9 subject to all of our interpretation.

10 A. By the way, if you find that Red Rock's files are
11 in order, then it doesn't matter.

12 Q. In United Legal Services's files for each
13 property, does it keep copies of any correspondence it
14 receives related to that property?

15 A. Yes.

16 Q. Does United Legal Services maintain a call log
17 for properties for -- for instance, if someone called,
18 would there be a record of that in the file?

19 A. No written record.

20 Q. Did anyone contact United Legal Services to pay
21 off this particular -- to make a payment on this
22 particular property prior to sale?

23 A. No.

24 Q. If United Legal Services received contact from a
25 beneficiary of a first deed of trust who requested a

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1 superpriority payoff, what was United Legal Services'
2 policy at the time between 2012 to the date of sale,
3 June 22nd, 2013, in responding to those requests?

4 A. We always had an open-door policy with respect to
5 any servicer or deed of trust beneficiary that contacted
6 us. Those contacts were very rare and very far in
7 between. In general, they would ask how much should
8 they pay, and we would say, "We cannot provide you with
9 legal advice."

10 And then they would say, "We only want to pay
11 nine months of assessments and not collections costs,"
12 and I would say, "You are free to do so," and then we
13 would explain what we would do. And on those rare
14 occasions when a servicer did contact us to make some
15 sort of payment, they were always delighted that we
16 would take payment without demanding collections costs
17 and we would record the payments in the land record.
18 Apparently no other NRS 116 foreclosure agent would do
19 that and so apparently it was a best practice.

20 Q. If a beneficiary called and said, "Can you tell
21 me what the monthly assessments are or quarterly
22 assessments," looking at that information so they could
23 calculate nine months, United Legal Services would give
24 that to them?

25 A. Certainly. Because the monthly assessment was

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1 found right in the account detail.

2 Q. I usually say "borrower," but I should say unit
3 owner" -- contacted United Legal Services and wanted to
4 explore ways to save their home, who would have the
5 ultimate authority to decide whether or not to enter
6 into some sort of payment plan with them?

7 A. Typically our policy was to tell them that the
8 amount shown -- the amount that was required to stop a
9 sale was the amount shown in the Notice of Foreclosure
10 Sale minus \$146, and we would inform them that would
11 have to be paid in full prior to the auction.
12 Occasionally, homeowners would also contact the HOA
13 either through the HOA board member or FirstService
14 Residential, formerly known as RMI, and sometimes we
15 would get a request from the HOA or RMI to accept a
16 payment plan for a unit owner, and in those instances we
17 would put people on payment plans. We would then
18 postpone auctions to keep them on a short leash, and
19 when the payment plan was complete, we would cancel the
20 auction. It didn't happen that often.

21 Q. Would it be the HOA that decided whether or not
22 to allow the home owner to enter some sort of payment
23 plan?

24 A. Usually the HOA boards are extremely quiescent in
25 the sense that they relied heavily on RMI -- now

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1 FirstService Residential -- to perform the day-to-day
2 management of the HOA community, and so it was very rare
3 would I actually get contacted by anyone on the HOA
4 board. It was always through somebody over at RMI.

5 Q. So it was the management company, generally, that
6 would decide whether or not to allow a payment plan?

7 I'm trying to figure out who has the authority to --

8 A. RMI would clearly have the authority to put
9 somebody on a payment plan and request that a payment
10 plan be put on. It was very rare. In general I was
11 contractually obligated to take this thing for sale. If
12 somebody called up and said, "I'd like to go on a
13 payment plan," our standard response is: "You have to
14 pay it in full before the sale." Why? Because we're
15 permitted to do that. It's just like a regular deed of
16 trust auction. I mean, you're in arrearage for \$20,000,
17 and the answer is no.

18 But you have to realize that this is a fairly
19 rare event because most of these homeowners were
20 severely delinquent on the deed of trust, were terribly
21 underwater. A lot of these condos had a market value of
22 \$40,000 or \$60,000 and the deed of trust was for
23 \$210,000 because it was bought in 2005, and the last
24 thing anybody wanted to do was cough up \$7,000 to save
25 it from an HOA foreclosure auction, because they knew

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1 the foreclosure date was coming at some point. They
2 just didn't know who was going to be first: the deed of
3 trust beneficiary or the HOA. So they had rode it out
4 sometimes for years before something got foreclosed on.

5 Q. On the properties where there was an agreement
6 with First 100 and the HOA, would First 100 have any say
7 over whether or not a payment plan could be entered
8 into?

9 A. I inquired with Mr. Jay Bloom early on as to what
10 his perspectives and views were under the three-way
11 contract, and his perspective was, for example, the
12 Purchase and Sale Agreement had as a large component of
13 it the cash flow of the receivables, and so First 100
14 would typically pay the HOA nine-months worth of
15 assessments in order to receive all cash flows that
16 would arise from any monetization event that might occur
17 on the property that arose as a result of United Legal
18 Services posting and serving out the Notice of
19 Foreclosure Sale.

20 So as a result, First 100 was a third-party
21 beneficiary of any payment stream that would come in off
22 of a payment plan because those payments would go to
23 First 100, not to the HOA. So I felt it proper to ask
24 First 100, "Hey if somebody calls in and wants a \$100 a
25 month payment plan, what do you say," and the answer

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1 came back, "No payment plans unless the HOA requests it.
2 Otherwise march it to sale."

3 I believe -- I don't know for sure, but I believe
4 that it was the concept of: Anybody that's behind on
5 their deed of trust and the HOA foreclosure would have
6 said anything to eek out another few months on the
7 property, and these guys were already horribly behind,
8 and if they could now live in the property and pay only
9 \$300 a month, which effectively would have been rent
10 because you can make \$300 a month for years on a \$7,000
11 lien, that this was rewarding bad behavior.

12 There was also, I believe, a concept of: Let's
13 try to flush out the people who actually have money and
14 do, in fact, want to stay there, and then, Hey, if those
15 guys cough up 8 grand, then fine. We did see that
16 occasionally on the few single-family homes we did. All
17 of a sudden a check for \$12,000 would come in because
18 people had been living there for four years and had not
19 paid the deed of trust and actually had the money. But
20 it was rare.

21 Q. When there was proceeds from a foreclosure sale,
22 would United Legal Services be responsible for the
23 application of those proceeds?

24 A. Yes. Correct.

25 Q. And how were the proceeds applied in this case?

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1 A. On the last page of Section 4.

2 Q. Okay. Let me make sure I write this down.

3 A. We produced a Proceeds Reconciliation Report.
4 United Legal Services would get proceeds in. This is
5 the Proceeds Reconciliation Report for the subject
6 property, as well as other activity. So we would
7 receive money in from auction sales, and then we were to
8 remit back to First 100 the proceeds, because by
9 contract we were required to.

10 Now, before we did that, though, we were allowed
11 to apply the foreclosure sales collections costs
12 provided in the NAC document that would include
13 conducting the foreclosure sale and so forth. Do you
14 see that?

15 Q. Yes.

16 A. So you see \$7,800 came in, and then there were no
17 excess proceeds because this, as usual, came in less
18 than the lien amount. And so we would deduct \$125 to
19 conduct the foreclosure sale. Then \$125 to prepare the
20 deed. And then there was also something called a
21 foreclosure fee that was permitted in NAC. Now, I'm in
22 business to make a buck, so I, of course, charge all of
23 them, and you can see this is a debits and credits. So
24 every few days we would remit a chunk of change over to
25 First 100 as we were required to by contract. So...

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1 Q. In the event that there were excess proceeds,
2 would United Legal Services be responsible for paying
3 those out or would First 100?

4 A. Yes. United Legal Services. We did not give any
5 excess proceeds to First 100. They were not entitled to
6 it under the law. They were only entitled to the cash
7 flow up to the lien amount.

8 Q. In the case where there were excess proceeds, how
9 would those be paid out?

10 A. Typically, we started off by just giving
11 checks -- very rare by the way. It usually only
12 happened on Fannie Mae properties where it had already
13 been foreclosed on. And so in those instances, we would
14 remit it to Fannie Mae. After awhile, once I began
15 realizing there was a fight as to whether the deed of
16 trust -- you know, if there was any dispute as to what
17 it was, then generally we would just hold on to it as
18 opposed to remitting it, because it was unclear as a
19 matter of law as to who was the proper recipient of any
20 excess proceeds, which there were very, very few of
21 these.

22 Q. Does United Legal Services -- or I should say did
23 United Legal Services have a position on what it
24 believed the amount of the superpriority lien was?

25 A. We had absolutely no legal position on the legal

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1 effect of an NRS 116 foreclosure.

2 MS. SCHMIDT: Can we go off the record
3 again?

4 ***

5 (RECESS TAKEN FROM 12:00 P.M. TO 12:08 P.M.)

6 ***

7 MS. SCHMIDT: We'll mark as Exhibit C what
8 is labeled as Section 1, Documents From Prior Collection
9 Agencies, Red Rock Financial Services. Also mark as
10 Exhibit D what's labeled as Section 2, Documents From
11 Land Records. And we'll label as Exhibit E Section 4,
12 Contracts with HOA and First 100. And as Exhibit F,
13 Section 5. What's marked as Auction Results. And
14 Exhibit G, what's marked as Section 6, Emails.

15 THE WITNESS: And under the assumption that
16 those are true and correct copies of the documents so
17 provided to you, I hereby authenticate at this time.

18 MS. SCHMIDT: Thank you.

19 Do you have any questions that you wanted to
20 ask?

21 MS. BUTLER: I do not.

22 MS. SCHMIDT: I think we are done here.
23 (Exhibits C, D, E, F, and G were marked.)
24 (Proceedings concluded at 12:20 p.m.)
25

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CERTIFICATE OF REPORTER

1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

4 I, KELE R. SMITH, a duly commissioned
5 Notary Public, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition
7 of ROBERT ATKINSON, ESQ., commencing on Monday, May 11,
8 2015, at 10:14 a.m.

9 That prior to being deposed, the witness was by
10 me duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript is a
13 complete, true, and accurate transcription of said
14 shorthand notes and that witness waived review and
15 correction of the transcript.

16 I further certify that I am not a relative or
17 employee of counsel of any of the parties, nor a
18 relative or employee of the parties involved in said
19 action, nor a person financially interested in the
20 action.

21 IN WITNESS WHEREOF, I have set my hand in my
22 office in the County of Clark, State of Nevada, this
23 12th day of May, 2015.
24

25 KELE R. SMITH, NV CCR #672, CA CSR #13405

Section 3

United Legal Services documents

EXHIBIT B
DATE 5-11-19
BY Attorney
PAGE(S)
B. Smith, CCR No. 672

APN: 176-03-510-102

ULS#: NV-TU3-03

When recorded mail to:
United Legal Services Inc.
A Nevada Law Firm
9484 South Eastern Ave. #163
Las Vegas, NV 89123
Phone: (702) 617-3263

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

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 UNITED LEGAL SERVICES INC. AT (702) 617-3263. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907.

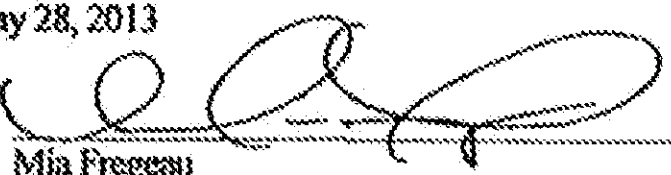
YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS, notice of which was recorded on April 4, 2012 as instrument 201204040001017 in the Official Records of the Recorder of Clark County, Nevada ("Official Records"), by the Tuscano Homeowners Association. The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on May 29, 2012 as instrument 201205290001690 in the Official Records. The property owner(s) of record is/are: New Freedom Mortgage Corporation. The total amount necessary to satisfy the lien as of the proposed sale date is \$7,806.42.

UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT WILL BE SOLD AT PUBLIC SALE. United Legal Services Inc. ("ULS") has the collections file on this account. Any payments to satisfy the lien must be in cash, cashier's check, or wire transfer, and must be actually received by ULS prior to the sale. If payment in full is not received prior to the date/time below, the property will be auctioned. All auction sales are final and late payments will be returned. If you need an explanation of this notice or its contents, you should contact an attorney.

NOTICE IS HEREBY GIVEN THAT on June 22, 2013 at 9:00 AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123, United Legal Services Inc., as duly authorized agent for sale pursuant to NRS 116, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the property commonly known as: 7255 W Sunset Unit 2050, Las Vegas, Nevada 89113. Payment by the winning bidder must be made at the conclusion of the auction and in cash or a cashier's check drawn on a bank or credit union authorized to do business in the State of Nevada. The sale will be made without covenant or warranty, expressed or implied, regarding, but not limited to, title, possession, encumbrances, or obligations to satisfy any secured or unsecured liens.

Date: May 28, 2013

By:


Mia Fregeau

An employee of United Legal Services Inc.

As authorized agent for, and on behalf of, Tuscano Homeowners Association

APN: 176-03-510-102
ULS#: NV-TU3-03

When recorded mail to:
United Legal Services Inc.
A Nevada Law Firm
9484 South Eastern Ave. #163
Las Vegas, NV 89123
Phone: (702) 617-3263

Inst #: 201305290000306
Fees: \$17.00
N/C Fee: \$0.00
05/29/2013 08:03:04 AM
Receipt #: 1632393
Requestor:
UNITED LEGAL SERVICES INC.
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

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Date: May 28, 2013

By: 
Mia Fregeau
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Tuscano Homeowners Association

NOTICE TO TENANTS OF THE PROPERTY

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

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

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

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

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

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

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

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

- (1) Delivering a copy to you personally in the presence of a witness;
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.

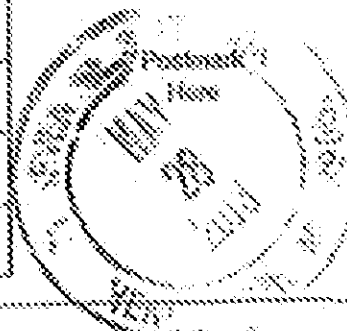
If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of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

Under the Justice Court Rules of Civil Procedure:

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

7012 2210 0001 6534 1010
0707 4539 1000 0723 2107

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To	
OWNER OR OCCUPANT	
Street, Apt. No., or PO Box No.	7255 W SUNSET RD APT 2050
City, State, ZIP+4	LAS VEGAS NV 89113-1911
PS Form 3800, October 2005	



U.S. Postal Service[™]

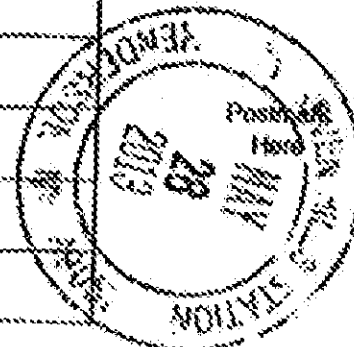
CERTIFIED MAIL[™] RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
Certified Fee
Return Receipt Fee
(Endorsement Required)
Restricted Delivery Fee
(Endorsement Required)
Total Postage & Fees \$



Sent To

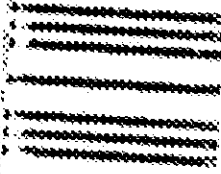
NEW FREEDOM MORTGAGE CORPORATION
Street, Apt. No., 2393 S FOOTHILL DR
or PO Box No. SALT LAKE CITY UT 84109-1458
City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

2012 2210 0001 6534 1000 0122 2102

UNITED LEGAL SERVICES INC.
9484 SOUTH EASTERN AVE #163
LAS VEGAS, NV 89123



06250008443722
\$0.460
US POSTAGE
FIRST-CLASS
FROM 89123
MAY 28 2013
stamps.com

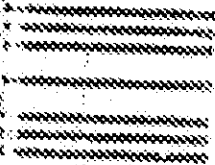
THE COOPER CASTLE LAW FIRM
820 S. VALLEY VIEW BLVD
LAS VEGAS NV 89107-4411

FORWARD X 891 N7E 1 3121 00 05/29/13
TIME EXP RTN TO SEND
THE COOPER CASTLE LAW FIRM
820 S. VALLEY VIEW BLVD
LAS VEGAS NV 89107-4411

8912303987

RETURN TO SENDER

UNITED LEGAL SERVICES INC.
9484 SOUTHEASTERN AVE #163
LAS VEGAS, NV 89123



\$0.46
US POSTAGE
FIRST-CLASS
FROM 89123
MAY 28 2013

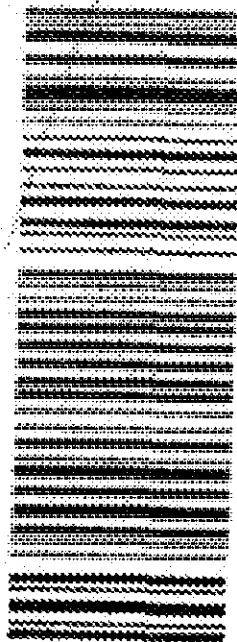
stamps

NEW FREEDOM MORTGAGE CORPORATION
2363 S FOOTHILL DR
SALT LAKE CITY UT 84109-1458

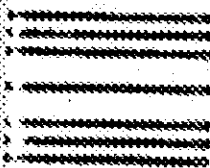
09123003987
NIXIE 841 52 1 00 05/30/13
RETURN TO SENDER
REFUSED
UNABLE TO FORWARD
RC: 09123003784 *079-03344-28-39

UNITED LEGAL SERVICES INC.
9484 SOUTH EASTERN AVE #163
LAS VEGAS, NV 89123

CERTIFIED MAIL

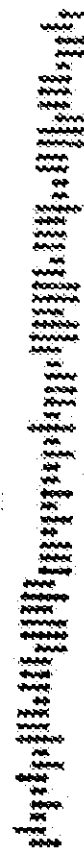


7012 2210 0001 6534 1010



\$6.11
US POSTAGE
FIRST-CLASS
FROM 89123
MAY 28 2013
stamps.com

00790008443722



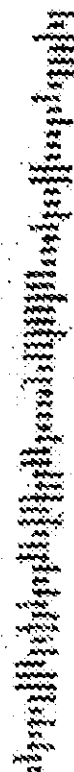
OWNER OR OCCUPANT
7255 W SUNSET RD APT 2050
LAS VEGAS NV 89113-1911

Handwritten signature

**RETURN RECEIPT
REQUESTED**

<input checked="" type="checkbox"/> RETURN TO SENDER
<input type="checkbox"/> ATTEMPTED
<input type="checkbox"/> NOT RECOVERED

95113191100

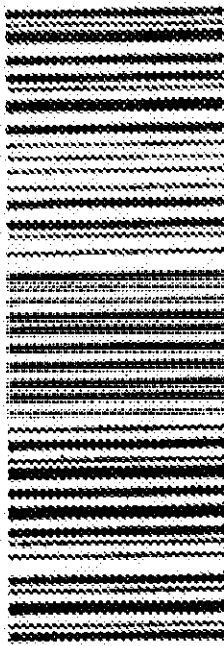


PS Form 3811, February 2004
Domestic Return Receipt

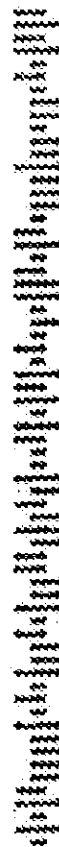
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"><p>OWNER OR OCCUPANT 7255 W SUNSET RD APT 2050 LAS VEGAS NV 89113-1911</p></div>		<p>A. Signature X</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> G.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7012 2210 0001 6534 3010</p>			
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

UNITED LEGAL SERVICES INC.
9484 SOUTHEASTERN AVE #163
LAS VEGAS, NV 89123

CERTIFIED MAIL



7012 2210 0001 6534 1003

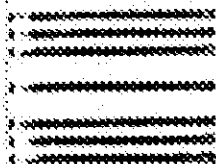


NEW FREEDOM MORTGAGE CORPORATION
2363 S FOOTHILL DR
SALT LAKE CITY UT 84109-1458

**RETURN RECEIPT
REQUESTED**

06260008443722

\$6.11
US POSTAGE
FIRST-CLASS
FROM 89123
MAY 28 2013
stamps.com

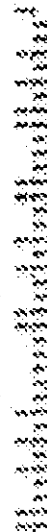


NIXIE 841 DE 1040 REF

RETURN TO SENDER
REFUSED
UNABLE TO FORWARD

SC: 89123398784 *25P

891233987





SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print name and address on the reverse so the carrier can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article processed for:

NEW FREEDOM MORTGAGE CORPORATION
2363 S FOOTHILL DR
SALT LAKE CITY UT 84109-1458

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Address

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2210 0001 6534 1003

aka Return Receipt

102606-09-M-1540

AFFIDAVIT OF POSTING

STATE OF NEVADA)
COUNTY OF CLARK) ss:

Mia Fregeau, being duly sworn, says: That at all times herein affiant was and is over 18 years of age.
That on May 29, 2013, affiant posted a copy of the below listed documents:

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 7255 W. Sunset Rd Unit 1173, Las Vegas, Nevada 89113
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 7255 W. Sunset Rd Unit 2018, Las Vegas, Nevada 89113
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 7255 W. Sunset Rd Unit 2050, Las Vegas, Nevada 89113

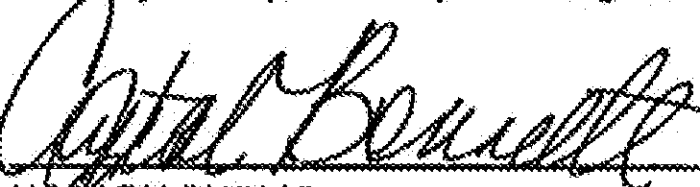
In each the following locations:

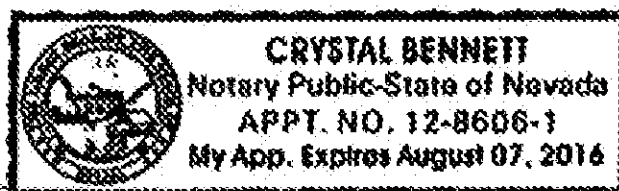
- The public board located near the elevators on the first floor of the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89101
- The public board located in the Clerk of Court's office for the Eighth Judicial District, located on the third floor of the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89101
- The public board located on the first floor of the Grant Sawyer Building, 555 East Washington Ave., Las Vegas, Nevada 89101

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


MIA FREGEAU

SIGNED and SWORN to before me on
29th day of May, 2013, by Mia Fregeau


NOTARY PUBLIC



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
COUNTY OF CLARK)

ss:

Mia Fregeau, being duly sworn, says: That at all times herein affiant was and is over 18 years of age. That on May 29, 2013, affiant served the below listed documents at the addresses and in the manner stated:

7255 W. Sunset Rd Unit 1173, Las Vegas, Nevada 89113

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the front door of the residence.

7255 W. Sunset Rd Unit 2018, Las Vegas, Nevada 89113

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the front door of the residence.

7255 W. Sunset Rd Unit 2050, Las Vegas, Nevada 89113

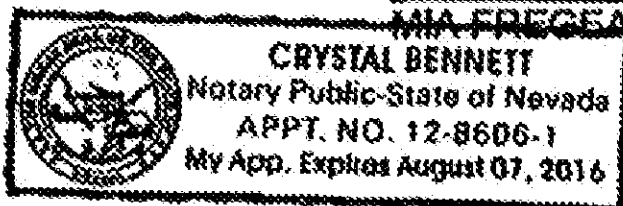
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the front door of the residence.

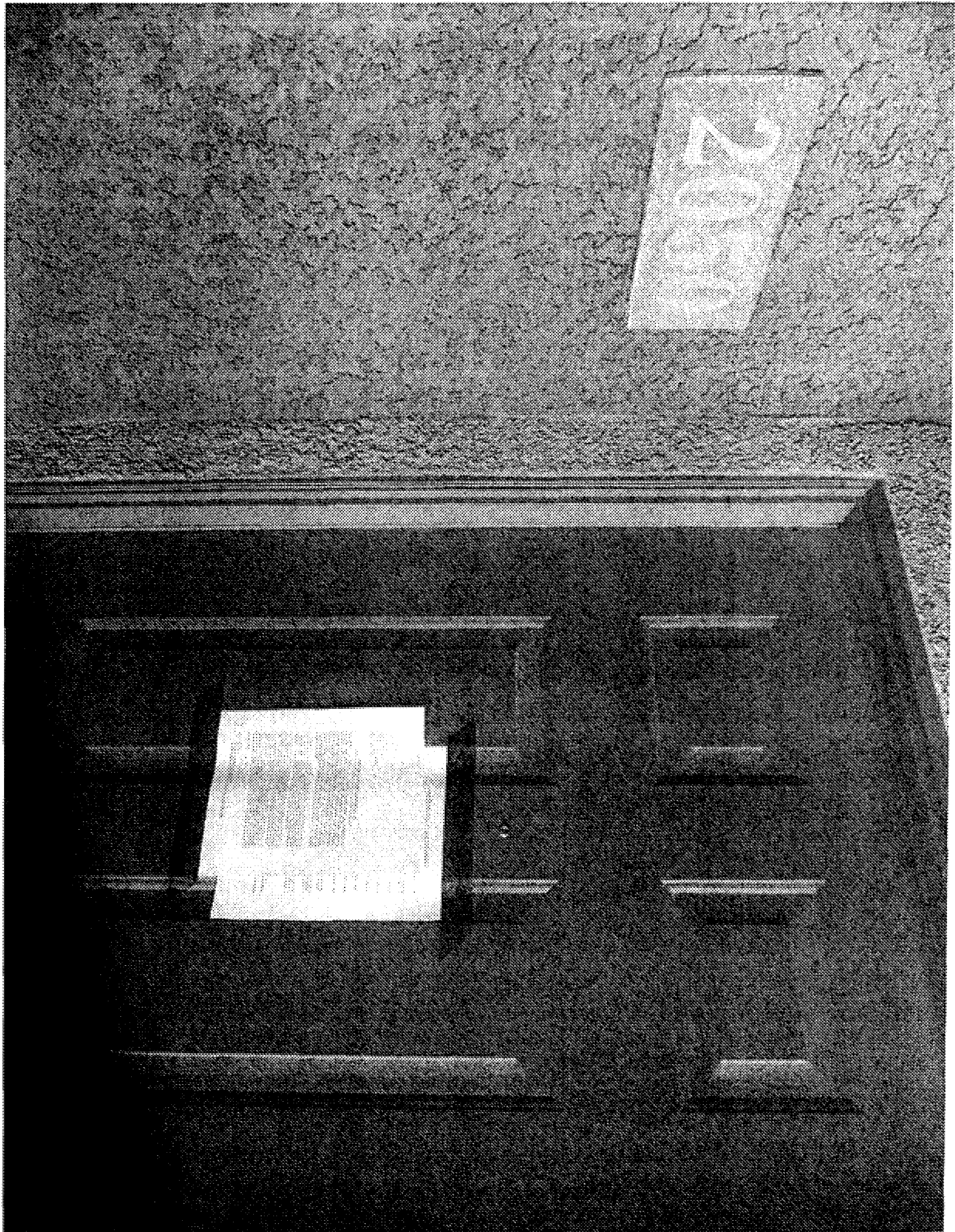
I declare under penalty of perjury under the law,
of the State of Nevada that the foregoing is true and correct

SIGNED and SWORN to before me on
29th day of May 2013, by Mia Fregeau

NOTARY PUBLIC



MIA FREGEAU



NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR
DELINQUENT ASSESSMENTS

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APN: 176-03-510-102
ULS# NV-TU3-03

NOTICE IS HEREBY GIVEN THAT on June 22, 2013 at 10:00 AM at 8985 S. Eastern Ave, Suite 350, Las Vegas, NV 89123, United Legal Services Inc., as duly authorized agent for sale pursuant to NRS 118, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the property commonly known as: 7255 W Sunset Unit 2050, Las Vegas, Nevada 89113. Payment by the winning bidder must be made at the conclusion of the auction and in cash or a cashier's check drawn on a bank or credit union authorized to do business in the State of Nevada. The sale will be made without covenant or warranty, expressed or implied, regarding, but not limited to, title, possession, encumbrances, or obligations to satisfy any secured or unsecured liens.

Date: May 28, 2013

By: Mia Frigoau
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Tuscans Homeowners Association

PUBLISHED
05/31/2013, 06/07/2013 & 06/14/2013

CLARK COUNTY LEGAL NEWS
CLARK & NYE COUNTY, NEVADA
CCLN FILE 130531c.wps


Affidavit of Publication

This is to confirm that, on the aforementioned dates, the attached Legal Notice was published in the Clark County Legal News newspaper, a newspaper of general and subscription circulation in both Clark County, Nevada and Nye County, Nevada.

Per NRS 238.030, the Clark County Legal News newspaper is printed and published in whole or in part in both Clark County and Nye County, Nevada.

WITNESS my hand on this

06-14-13


MIRANDA DONOVAN,
legal notice director,
Clark County Legal News newspaper

STATE OF NEVADA

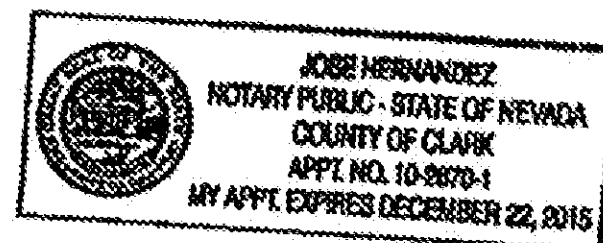
COUNTY OF CLARK

On June 14, 2013, before me,
the undersigned, a Notary Public in and for
said State, personally appeared;

Miranda Donovan,
personally known to me (or proved to me on
the basis of satisfactory evidence) to be the
person whose name is subscribed to the
within instrument, and acknowledged to me
that it was executed by said person.

WITNESS my hand and official seal:


Notary Public in and for said State



RECEIPT OF SALE

United Legal Services Inc.

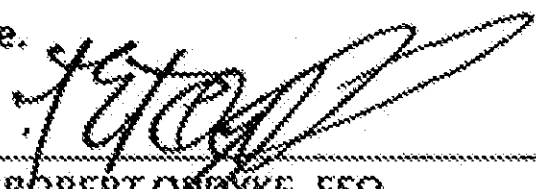
(702) 617-3263

PROPERTY INFORMATION:	
APN	PROPERTY STREET ADDRESS
176-03-510-102	7255 W SUNSET RD UNIT 2050, LAS VEGAS NV 89113

SALE INFORMATION:	
SALE DATE	WINNING BID AMOUNT (\$):
6/22/13	\$7,800

BUYER INFORMATION:	
BUYER (OR REPRESENTATIVE'S) NAME	CONTACT INFORMATION
Kenneth Berberich	P.O. Box 530541 Henderson NV 89053
VESTING -- RECORD TITLE AS SHOWN	West Sunset 2050 Trust

PAYMENT INFORMATION:			
AMOUNT	DRAWN ON (or WIRE FROM)	DATE RECEIVED by AGENT	INITIALS
\$7,800	Ch. Bank	6/24/13	REO

CERTIFICATION OF AGENT:	
I hereby certify that the information above is accurate.	
Signature:	 ROBERT ODDYKE, ESQ.

**ALL SALES OF PROPERTY ARE ON ANY "AS IS" BASIS, WITH NO WARRANTIES,
EXPRESS OR IMPLIED.**

APN: 176-03-510-102

Return document and mail tax statements to:

West Sunset 2050 Trust
P.O. Box 530541
Henderson NV 89053

FORECLOSURE DEED UPON SALE

Foreclosing lienholder **TUSCANO HOMEOWNERS ASSOCIATION**, under power of sale pursuant to NRS Chapter 116, does hereby sell, without warranty, expressed or implied, to:

WEST SUNSET 2050 TRUST

the real property situated in Clark County, Nevada legally described as:

SEE EXHIBIT A ATTACHED FOR LEGAL DESCRIPTION

and commonly known as 7255 W SUNSET RD UNIT 2050, LAS VEGAS NV 89113.

This conveyance is made pursuant to the powers conferred upon Agent by NRS Chapter 116, the foreclosing Association's governing documents (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded on April 4, 2012 as instrument 201204040001017 in the Official Records of the Recorder of Clark County, Nevada. Default occurred as set forth in the Notice of Default and Election to Sell, recorded on May 29, 2012 as instrument 201205290001690 in the Official Records of the Recorder of Clark County, Nevada. All requirements of law have been complied with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing, posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164, sold the property at public auction on June 22, 2013.

By: _____
Robert Opdyke, Esq.
United Legal Services Inc.
As authorized agent for, and on behalf of, foreclosing Association

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me
on June _____, 2013, by: Robert Opdyke.

NOTARY PUBLIC

EXHIBIT A

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

PARCEL ONE (1) - UNITS:

UNIT 2050 IN BUILDING 7 AS SHOWN ON THE FINAL PLAT OF TUSCANO CONDOMINIUMS, A CONDOMINIUM COMMUNITY, RECORDED JANUARY 31, 2005, IN BOOK 122, PAGE 11 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA (THE "PLAT"), AND

PARCEL TWO (2) - COMMON ELEMENTS:

1/352 INTEREST AS A TENANT-IN-COMMON IN THE COMMON ELEMENTS IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TUSCANO TOWNHOMES RECORDED APRIL 5, 2005 IN BOOK 20050405 AS DOCUMENT NO. 0002422 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA (THE "DECLARATION").

EXCEPTING THEREFROM, ALL UNITS SHOWN ON THE PLAT.

RESERVING THEREFROM, THE RIGHT TO USE ANY OF THOSE AREAS DESIGNATED AS LIMITED COMMON ELEMENTS IN THE PLAT AND/OR THE DECLARATION.

FURTHER RESERVING THEREFROM, FOR THE BENEFIT OF THE OWNERS OF ALL UNITS SHOWN ON THE PLAT (EXCEPT THE UNIT REFERRED TO IN PARCEL 1 ABOVE) NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS USE, ENJOYMENT AND OTHER PURPOSES ON, OVER AND ACROSS THE COMMON ELEMENTS, AS DEFINED IN AND SUBJECT TO THE DECLARATION.

PARCEL THREE (3) - APPURTENANT EASEMENTS:

NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS USE, ENJOYMENT AND OTHER PURPOSES ON, OVER AND ACROSS THE COMMON ELEMENTS AS DEFINED IN AND SUBJECT TO THE DECLARATION, WHICH EASEMENTS ARE APPURTENANT TO PARCELS 1,2 ABOVE.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 176-03-510-102
b. _____
c. _____
d. _____

2. Type of Property:

a. <input type="checkbox"/> Vacant Land	b. <input type="checkbox"/> Single Fam. Res.
c. <input checked="" type="checkbox"/> Condo/Twnhse	d. <input type="checkbox"/> 2-4 Plex
e. <input type="checkbox"/> Apt. Bldg	f. <input type="checkbox"/> Comm'l/Ind'l
g. <input type="checkbox"/> Agricultural	h. <input type="checkbox"/> Mobile Home
<input type="checkbox"/> Other	

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

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

4. If Exemption Claimed:

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

5. Partial Interest: Percentage being transferred: _____ %
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: _____

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: United Legal Services Inc.
Address: 9484 S. Eastern Ave. #163
City: Las Vegas
State: NV Zip: 89123

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: West Sunset 2050 Trust
Address: P.O. Box 530541
City: Henderson
State: NV Zip: 89053

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

Print Name: _____	Escrow #: _____
Address: _____	
City: _____	State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 5

EXHIBIT 5

Inst #: 201303200000887
Fees: \$18.00
N/C Fee: \$0.00
03/20/2013 08:28:50 AM
Receipt #: 1541118
Requestor:
CASTLE STAWIARSKI, LLC - NE
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Tax Parcel: 176-03-510-102

Recording requested by:
BANK OF AMERICA N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS
SERVICING, LP

When recorded mail to:
NATIONSTAR MORTGAGE, LLC
350 HIGHLAND DRIVE
LEWISVILLE, TX 75067
Attn: MOSAIC

Mail tax statement to:
Bank of America, N.A.
1757 Tapo Canyon Road, #300
Simi Valley, CA 93063

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 95010692327170532
Commitment# A41682

For value received, the undersigned, BANK OF AMERICA N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING,
LP, 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063, hereby grants, assigns and
transfers to:

NATIONSTAR MORTGAGE, LLC
350 HIGHLAND DRIVE, LEWISVILLE, TX 75067

All beneficial interest under that certain Deed of Trust dated 11/29/05,
executed by: STEPHANIE TABLANTE, Trustor as per TRUST DEED recorded as
Instrument No. 20051207-0002367 on 12/07/05 in Book _____ Page _____
of official records in the County Recorder's Office of CLARK County,
NEVADA.

The Trustee is FIRST AMERICAN TITLE CO OF NEV.
Original Mortgage \$176,760.00
7255 W SUNSET ROAD #2050, LAS VEGAS, NV 89113

Together with the Note or Notes therein described or referred to, the money
due and to become due thereon with interest, and all rights accrued or to
accrue under said Deed of Trust.

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 95010692327170532
Commitment# A41682

Dated: FEB 28 2013

BANK OF AMERICA N.A., SUCCESSOR BY MERGER TO BAC HOME
LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS
SERVICING, LP

By 
CARMEN DENA, ASSISTANT VICE PRESIDENT

State of California
County of Ventura

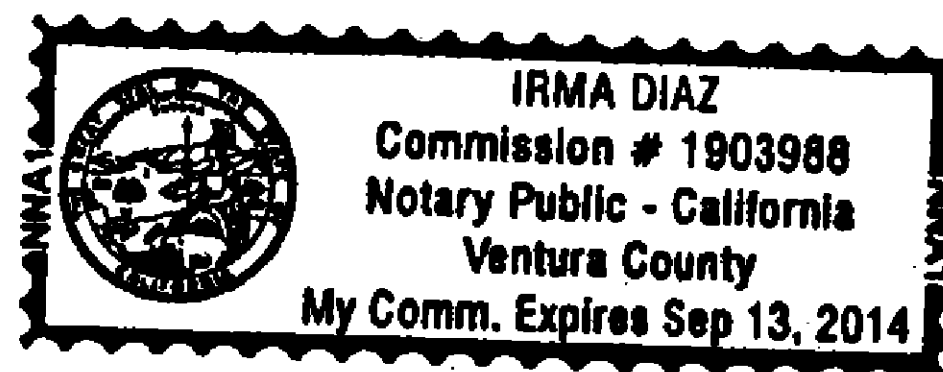
On FEB 28 2013 before me, IRMA DIAZ, Notary Public, personally appeared CARMEN DENA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

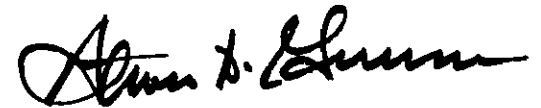
Witness my hand and official seal.

Signature: 

IRMA DIAZ



Prepared by: THANIA ORNELAS
1800 TAPO CANYON ROAD
SIMI VALLEY, CA 93063
Phone#: (213) 345-0979



CLERK OF THE COURT

OPPS

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

ALLISON R. SCHMIDT, ESQ.

Nevada Bar No. 10743

AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, NV 89144

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: allison.schmidt@akerman.com

Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National Association;
NATIONSTAR MORTGAGE, LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada Limited Liability Partnership;
STEPHANIE TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X, inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C

Dept.: XXI

**OPPOSITION TO PLAINTIFF'S MOTION
FOR RECONSIDERATION AND TO
ALTER AND AMEND ORDER GRANTING
NATIONSTAR MORTGAGE LLC AND
BANK OF AMERICA, N.A.'S MOTION
FOR SUMMARY JUDGMENT**

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6
7 Defendants Nationstar Mortgage, LLC (**Nationstar**) and Bank of America, N.A. (**BANA**,
8 and collectively with Nationstar **Defendants**) hereby submit this Opposition to plaintiff's Motion for
9 Reconsideration and to alter or amend the order granting summary judgment in favor of defendants

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Defendants respectfully request that this Court deny Plaintiff's motion for reconsideration.
13 Defendants' motion for summary judgment provided a number of bases upon which this court could
14 grant summary judgment in defendants' favor. The motion for reconsider provides no new evidence
15 or change in law that would disrupt the judgment of this court.

16 **STANDARD OF REVIEW**

17 A motion for reconsideration is appropriate only in very narrow circumstances. The Nevada
18 Supreme Court in *Moore v. Las Vegas* explicitly stated, "[o]nly in very rare instances in which **new**
19 **issues of fact or law are raised** supporting a ruling contrary to the ruling already reached should a
20 motion for rehearing be granted." 92 Nev. 402, 405 (1976) (emphasis added). The same court in
21 *Masonry & Tile Contrs. V. Jolley, Urga & Wirth Ass'n* added, "[a] district court may reconsider a
22 previously decided issue if substantially different evidence is subsequently introduced or [if] the
23 decision is clearly erroneous." 113 Nev. 737, 741 (1997). A finding is only "clearly erroneous"
24 where, "although there is evidence to support it, the reviewing court on the entire evidence is left
25 with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. &*
26 *Equity Trust v. McDonald*, 97 Nev. 210, 211-12 (1981). Points or contentions not raised at the
27 original hearing cannot be maintained or considered on rehearing. *Edward J. Achrem, Chtd. v.*
28 *Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742 (1996).

1 As discussed below, Plaintiff's motion for reconsideration should be denied for at least three
2 reasons: (1) Defendants did not receive the statutorily required notice of the foreclosure sale and the
3 arguments raised regarding the deed in lieu were not raised at the original hearing, and are inapposite
4 to the court's ruling; (2) plaintiff produced no admissible evidence that it was a bona fide purchaser
5 and (3) the recent *Shadow Wood* decision only supports summary judgment in favor of Defendants.

6 **II. ARGUMENT**

7 **A. DEFENDANTS DID NOT RECEIVE THE STATUTORILY REQUIRED NOTICES.**

8 As raised in Defendants' motion for summary judgment, the HOA failed to provide the
9 statutorily required notices of foreclosure to the beneficiary of the deed of trust. Plaintiff does not
10 dispute that defendants did not receive all the required notices. Rather, plaintiff argues that the deed
11 in lieu conveyed absolute title to New Freedom Mortgage. *See* Mot. at 8:11-14. First, plaintiff did
12 not raise this argument at the initial hearing on the motion for summary judgment, and is therefore
13 barred from raising it on a motion to reconsider, alter or amend. *Edward J. Achrem, Chtd. v.*
14 *Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742 (1996). Second, even if the plaintiff was not
15 barred from making the new argument, the case law cited by plaintiff is inapposite to the Court's
16 ruling in favor of defendants. Plaintiff quotes *Maloney v. Boston Five Cents Sav. Bank FSB*, 422
17 Mass. 431., 433 (1996) which states, in relevant part "[t]he lender *accepting* a deed in lieu , just like
18 the lender exercising strict foreclosure, has the security interest mature into real ownership without
19 any requirement of public sale." *Id.* (emphasis added). The *Maloney* case only serves to further
20 support defendants' case. A deed in lieu must be accepted by the lender. Defendants produced
21 admissible evidence in their motion for summary judgment that the deed in lieu was a rogue
22 document, and not accepted by the lender. Specifically: New Freedom was no longer the lender at
23 the time of the purported conveyance; New Freedom was no longer in existence at the time of the
24 purported conveyance; the offices of John Peter Lee, under duty of subpoena, was required to
25 produce any evidence of acceptance of the deed in lieu by the lender and could not produce
26 anything; and the deed in lieu (which is subject to the statute of frauds) was not signed by New
27 Freedom or any other lender. This Court did not commit clear error in finding that the deed in lieu
28

1 was a rogue document, and that the required notices were not provided to the correct parties in
2 interest.

3 **B. PLAINTIFF PRESENTED NO EVIDENCE THAT IT WAS A BONA FIDE PURCHASER**

4 The status of an individual as a *bona fide* purchaser for value is an affirmative defense, which
5 plaintiff had the burden of asserting and proving in this case. *See* NRS 111.325; *see also Berge v.*
6 *Fredericks*, 95 Nev. 183, 188, 591 P.2d 246, 248 (Nev. 1979) ("In order to be entitled to the status of
7 a bona fide purchaser without notice under NRS 111.325, respondent Valdez was required to show
8 that legal title had been transferred to her before she had notice of the prior conveyance to
9 appellant.") West Sunset failed to plead the affirmative defense of *bona fide* purchaser in its answer
10 to Defendants' counterclaim. Therefore, the defense was waived.

11 Even if the defense was not waived, plaintiff presented no admissible evidence that it was a
12 *bona fide* purchaser for value. Under Nevada law, for a buyer to qualify as a bona fide purchaser,
13 that buyer cannot have notice, actual or constructive, of another party's unrecorded interest in the
14 property. *Huntington v. Mila, Inc.*, 119 Nev. 355, 356, 75 P.3d 354, 357 (2003). A duty of inquiry
15 arises where circumstances put a reasonable person on notice of another's rights in the property. *Id.*

16 In fact, the only admissible evidence demonstrates that plaintiff is not a *bona fide* purchaser
17 for value. First, plaintiff paid bid \$7,800 for the property. *See* Plaintiff's Motion for Summary
18 Judgment at Ex. 10 at 30:21-22. By plaintiff's own admission in recording the declaration of value
19 together with the trustee's deed upon sale, the property was worth at least \$63,280. *Id.* at Ex. 9. At
20 the time of the foreclosure sale, there was an assignment of the first deed of trust to Nationstar,
21 putting plaintiff on both record and inquiry notice that the first deed of trust was still an active lien
22 on the property. *See* Plaintiff's Motion for Summary Judgment at Ex. 11. Plaintiff's motion for
23 summary judgment did not contain so much as a self-serving affidavit by an officer, manager or
24 employee of plaintiff to assert that it had no notice of Nationstar's interest or any of the other defects
25 in the sale. There is no evidence whatsoever to support plaintiff's claim of the *bona fide* purchaser
26 affirmative defense. Therefore, plaintiff's motion for reconsideration should be denied.

1 **C. *SHADOW WOOD* SUPPORTS THIS COURT'S RULING.**

2 This court should deny plaintiff's motion because the only new law on the issue of HOA lien
3 foreclosure actually supports judgment in favor of Defendants. The recently issued *shadow Wood*
4 decision holds that the HOA's sale of the Property for approximately 12% of what plaintiff, on their
5 declaration of value, claimed the market value of the property was, was grossly inadequate, and thus
6 commercially unreasonable, as a matter of law. The *Shadow Wood* Court explained that inadequate
7 price alone can be sufficient to set aside an HOA foreclosure sale if the price is “grossly inadequate.”
8 *Shadow Wood*, 132 Nev. Adv. Op. 5, at 15. Adopting the Restatement approach, the Nevada
9 Supreme Court held: “[w]hile gross inadequacy cannot be precisely defined in terms of a specific
10 percentage of fair market value, generally a court is **warranted in invalidating a sale where the**
11 **price is less than 20 percent of fair market value[.]**” *Id.*, at 15 (emphasis added) (quoting the
12 Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (1997)).

13 In explaining when a foreclosure sale is defective, the Restatement (Third) of Property
14 (Mortgages) § 8.3 (1997) provides:

15 (a) A foreclosure sale price obtained pursuant to a foreclosure
16 proceeding that is otherwise regularly conducted in compliance with
17 applicable law does not render the foreclosure defective **unless the**
18 **price is grossly inadequate.**

19 (b) Subsection (a) applies to both power of sale and judicial
20 foreclosure proceedings.

21 (emphasis added). The Restatement authors defined what “grossly inadequate” means:

22 “Gross inadequacy” cannot be precisely defined in terms of a specific
23 percentage of fair market value. Generally, however, a court is
24 warranted in invalidating a sale where the price is less than 20 percent
25 of fair market value and, absent other foreclosure defects, is usually
26 not warranted in invalidating a sale that yields in excess of that
27 amount. See Illustrations 1-5. **While the trial court's judgment in**
28 **matters of price adequacy is entitled to considerable deference, in**
extreme cases a price may be so low (typically well under 20% of
fair market value) that it would be an abuse of discretion for the
court to refuse to invalidate it.

29 *Id.*, at cmt. b. (emphasis added). Finally, the Restatement authors address the method of proving
30 gross inadequacy:

31 This section articulates the traditional and widely held view that a
32 foreclosure proceeding that otherwise complies with state law may not
33 be invalidated because of the sale price unless that price is grossly
34 inadequate. **The standard by which “gross inadequacy” is**
measured is the fair market value of the real estate. For this
35 purpose the latter means, not the fair “forced sale” value of the real

estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

Id. (emphasis added).

Under the Restatement approach—adopted in *Shadow Wood*—a **grossly inadequate price** itself is the proof of unfairness required to set aside a foreclosure sale. *In re Krohn*, 52 P.3d 774, 781 (Ariz. 2002). In *Krohn*, the Court explained that a contrary rule that allowed grossly inadequate sales prices to stand would only benefit speculators at the expense of homeowners and the mortgage-lenders that make owning a home possible. *Id.*, at 779 (“Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators.”). The *Krohn* Court thus adopted the same Restatement test adopted by the Nevada Supreme Court in *Shadow Wood*, which is meant to protect individual homeowners’ equity from grossly inadequate and unfair foreclosure sale prices. *Id.*, at 780 (noting that foreclosure-sale “bidders can reasonably expect to get bargains because of the nature of foreclosure sales, but public policy and the courts should not endorse extraordinary bargains at the expense of already troubled debtors.”).

Here, the HOA sold the Property for approximately 12% of its fair market value at the time of the foreclosure sale, far less than the 20% fair-market-value threshold that would qualify as “grossly inadequate as a matter of law” under *Shadow Wood*. *Id.* Plaintiff listed the value of the property on their declaration of value as \$63,280.00. The HOA sale price was \$7,800.00. Dividing the sales price by the fair market value of the Property at the time of the sale shows that the Property was sold for approximately 12% of its fair market value, a grossly inadequate price that renders the foreclosure sale invalid.

The *Shadow Wood* Court held the “conclusive” deed recitals found in HOA foreclosure deeds do not bar mortgagees or homeowners from challenging the validity of an HOA foreclosure sale. *Shadow Wood*, 132 Nev. Adv. Op. 5, at 21. The court found held that the recitals are not conclusive to even the matters recited, like whether the homeowner was in default. *Id.*, at 11 (“[W]hile it is possible to read a conclusive recital statute like NRS 116.31166 as conclusively establishing a default justifying a foreclosure when, in fact, no default occurred, such a reading

1 would be breathtakingly broad and is probably legislatively unintended.”). Thus the only new case
2 law also bars plaintiff's from asserting the deed recitals as barring any review of the defective sale.
3 *Shadow Wood* support's this court's ruling, and the plaintiff's motion should be denied.

4 **III. CONCLUSION**

5 The Court should deny Plaintiff's motion for reconsideration and to alter or amend judgment.
6 This sale was defective for a number of reasons, set forth in Defendants' Motion for Summary
7 Judgment. Plaintiff offers no new factual evidence in their motion and the only new case law cited
8 in the motion actually provides additional bases upon which the Court could have granted judgment
9 in favor of defendants. The motion must be denied.

10 DATED this 22nd day of March 2016

11 **AKERMAN LLP**

12 /s/ Allison R. Schmidt, Esq.

13 ALLISON R. SCHMIDT, ESQ.

14 Nevada Bar No. 10743

15 1160 Town Center Drive, Suite 330

16 Las Vegas, Nevada 89144

17 *Attorneys for Defendant Nationstar Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on March 22, 2015 be served a true and correct copy of foregoing **OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT**

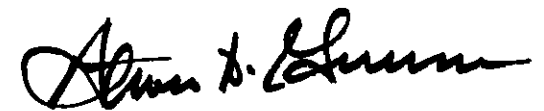
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Luis A. Ayon, Esq.
Margaret E. Schmidt, Esq.
MAIER GUTIERREZ AYON
2500 W. Sahara Ave., Ste. 106
Las Vegas, NV 89102

Attorneys for Plaintiff

/s/ Allison R. Schmidt

An employee of AKERMAN LLP



CLERK OF THE COURT

RPLY

LUIS A. AYON, ESQ.

Nevada Bar No. 9752

MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

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mes@mgalaw.com

Attorneys for Plaintiff/Counterdefendant

West Sunset 2050 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION AND
TO ALTER AND AMEND ORDER
GRANTING DEFENDANTS NATIONSTAR
MORTGAGE LLC AND BANK OF
AMERICA, N.A.'S COUNTERMOTION
FOR SUMMARY JUDGMENT**

Hearing Date: April 4, 2016

Hearing Time: In Chambers

Plaintiff/Counterdefendant West Sunset 2050 Trust ("Plaintiff" or "West Sunset"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, hereby files this reply in support of Plaintiff's motion for reconsideration of the order granting defendants Nationstar Mortgage LLC ("Nationstar") and Bank of America, N.A. ("BANA") summary judgment entered on February 8, 2016.

This reply is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument of counsel at the time of the hearing.

DATED this 28th day of March, 2016.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ Luis A. Ayon

LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Nationstar Mortgage LLC (“Nationstar”) and Bank of America, N.A. (“BANA”) (collectively “Defendants”) oppose Plaintiff’s motion for reconsideration largely by insisting that the Deed in Lieu to New Freedom Mortgage Corporation (“New Freedom”) was a “rogue document” not accepted by New Freedom – even though the evidence showed that New Freedom was notified of the recording of the Deed in Lieu and provided with a copy of the document and still took no action to indicate that it did not accept the Deed in Lieu. Defendants also complain that they did not receive statutorily required notices, but the Nevada Supreme Court’s decision in *Shadow Wood Homeowners Ass’n, Inc., et al. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (2016) (“*Shadow Wood*”) definitively reaffirmed that the recitals in an Association’s deed are “conclusive” as to default, notice, and publication of the Notice of Sale, thus Defendants cannot argue that the Court’s decision was correct merely because they allegedly did not receive the statutory notices of the HOA sale.

Defendants also strangely argue that Plaintiff presented no evidence of its bona fide purchaser status, but the recorded Property documents themselves serve as evidence that Plaintiff purchased the Property in good faith for valuable consideration and could not have possibly known

1 of any defects in the HOA sale. This alone should merit Plaintiff's request for reconsideration.

2 Finally, Defendants largely distort the *Shadow Wood* decision by claiming that "the *Shadow*
3 *Wood* Court explained that inadequate price alone can be sufficient to set aside an HOA foreclosure
4 sale if the price is 'grossly inadequate,'" when in fact the *Shadow Wood* decision indicates no such
5 thing, as it specifically states that a sale may be set aside "upon a showing of grossly inadequate
6 **plus** 'fraud, unfairness, or oppression'" and Defendants do not dispute that Plaintiff was neither
7 involved in nor aware of any fraud, unfairness, or oppression surrounding the HOA foreclosure sale
8 in June of 2013. *Id.* at 9-10 (emphasis added).

9 Accordingly, the Court should grant Plaintiff's motion and reconsider its Order granting
10 Defendants summary judgment.

11 **II. LEGAL ARGUMENT**

12 **A. DEFENDANTS CANNOT DISPUTE THE DEED IN LIEU BY RELYING ON UNDISCLOSED** 13 **EVIDENCE**

14 Defendants' Opposition offers nothing to refute that the Court erred in its analysis of the
15 Deed in Lieu recording, and simply urges this Court to continue to excuse Defendants for ignoring
16 the recorded notices which indicated that not only was a Deed in Lieu recorded conveying the
17 Property to New Freedom, but an HOA sale was imminent based on New Freedom's failure to pay
18 the Property's HOA dues. Defendants cling to their specious arguments that 1) the Deed in Lieu
19 was a fraudulently recorded "rogue" document not accepted by the lender, and 2) Defendants did
20 not receive the required statutory notices. *Opp.* at 3. The Opposition also claims that Plaintiff failed
21 to raise its argument that the Deed in Lieu conveyed title to New Freedom at the initial hearing on
22 the motion for summary judgment. *Opp.* at 3. However, Plaintiff's entire Reply in support of its
23 motion for summary judgment and opposition to Defendants' countermotion is based on the
24 argument that there is no evidence to refute that New Freedom accepted the Deed in Lieu and
25 therefore title was conveyed to New Freedom, thus any argument that Plaintiff is now raising new
26 issues is meritless. *See* Plaintiff's Reply in Support of Motion for Summary Judgment and
27 Opposition to Countermotion for Summary Judgment, *on file*.

1. The Deed in Lieu was Accepted by New Freedom

Defendants insist that “New Freedom was no longer the lender at the time of the purported conveyance” and “New Freedom was no longer in existence at the time of the purported conveyance.” Opp. at 3. As Defendants are aware, the only “evidence” that loosely supports Defendants’ theory that New Freedom did not accept the conveyance are documents which went undisclosed by Defendants during the discovery period and which were unilaterally attached to Defendants’ opposition to Plaintiff’s motion for summary judgment and countermotion for summary judgment. (“Opp’n and Countermotion”). See Exhibits A, B, and E of Defendants’ Opp’n and Countermotion, *on file*. Exhibit A consists of several documents, which Defendants implied constitute the entire records of John Peter Lee, Ltd., regarding the Deed in Lieu. See Opp’n and Countermotion at 3; Opp’n and Countermotion, Ex. A. Exhibit B consists of a printout of a webpage, which Defendants claimed demonstrates that New Freedom Mortgage merged into iFreedom Direct Corporation in 2008. Opp’n and Countermotion, Ex. B. That assertion is not supported by the printout; but in any case, Defendants never previously asserted that New Freedom ceased to exist in 2008 or that it merged into iFreedom Direct Corporation in that year. Exhibit E consists of a two-page document purporting to be Red Rock Financial Services Records, along with a custodian’s certificate. See Opp’n and Countermotion, Ex. E.

Defendants also attempt to revive their failing arguments that John Peter Lee did not produce any evidence of acceptance of the Deed in Lieu pursuant to a subpoena and the Deed in Lieu was not signed by New Freedom. Opp. at 3. The Court should give no credence to such arguments, as Plaintiff has previously addressed those issues and explained that 1) the nonappearance of a witness for a deposition does not signify fraud in the underlying subject of the deposition, and 2) the Deed in Lieu, pursuant to NRS 111.105, did not require New Freedom’s signature. See Plaintiff’s Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment, *on file*.

In actuality, Defendants’ own documents showed that the Clark County Assessor’s Office sent a copy of the Deed in Lieu to New Freedom by letter dated March 18, 2011. See Opp’n and Countermotion, Ex. A. New Freedom received a copy of the recording and would have received

copies of tax bills, as well as HOA notices; yet, New Freedom never once contested the validity of the Deed in Lieu by notifying the Assessor's Office of any fraud or other error relating to the Deed in Lieu.

Thus, aside from the improperly submitted documents which the Court should not have considered, Defendants produced absolutely no evidence indicating that New Freedom did not accept the Deed in Lieu. Accordingly, pursuant to *Moloney v. Boston Five Cents Sav. Bank FSB*, 422 Mass. 431, 433, 663 N.E.2d 811, 813 (1996), because it is undisputed that the Deed in Lieu was accepted by the lender, the Court erred in not concluding that the recording of the Deed in Lieu stripped Defendants of their interest in the Property and should reconsider its Order granting summary judgment in favor of Defendants.

2. Defendants' Argument Regarding Statutory Notice is Irrelevant

Defendants also briefly raise their argument that the "required notices were not provided to the correct parties in interest." Opp. at 4. However, NRS 116 clearly establishes that a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons.'" *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) (citing NRS 116.3116.31166(2)). This sentiment was recently reaffirmed in *Shadow Wood*, wherein the Court stated that the deed recitals are conclusive as to "default, notice, and publication of the [Notice of Sale], all statutory prerequisites to a valid HOA lien foreclosure sale as stated in NRS 116.31162 through NRS 116.31164" *Shadow Wood* at 10.

Thus, notwithstanding Defendants' baseless allegations that they did not receive statutory notice of the HOA sale¹, the recitals in the HOA foreclosure deed are conclusive as to notice, and Plaintiff had a right to rely on their accuracy when purchasing the Property at the public auction.

B. PLAINTIFF CLEARLY ESTABLISHED ITS BONA FIDE PURCHASER STATUS

Defendants' Opposition claims that because Plaintiff did not specifically plead a bona fide

¹ Plaintiff has previously established that the foreclosure agent mailed notice of the foreclosure sale to New Freedom, BANA, Nationstar, and Cooper Castle. See Plaintiff's Motion for Summary Judgment at Ex. 10, Deposition of Robert Atkinson, at 23; Exhibit B to Deposition of Robert Atkinson, at 6, 9, 14. See also, Plaintiff's Motion for Reconsideration at Ex. 4.

1 purchaser affirmative defense, such a claim is waived. Opp. at 4. However, Defendants fail to cite
2 any case law indicating that it is a requirement to plead bona fide purchaser status as an affirmative
3 defense, and the case law cited by Defendants on this issue actually supports reconsideration.
4 Defendants cite to *Berge v. Fredericks*, 95 Nev. 183, 188, 591 P.2d 246, 248 (1979) for the notion
5 that “[i]n order to be entitled to the status of a bona fide purchaser without notice, respondent . . .
6 was required to show that legal title had been transferred to her before she had notice of the prior
7 conveyance to appellant.”

8 In *Berge*, the Court held that respondent could not have purchased the property at issue for
9 value because respondent’s marriage to seller (which respondent was claiming was the
10 consideration) was consummated prior to any agreement to grant the property to respondent. *Id.* at
11 187. Here, there is no question that Plaintiff’s \$7,800 payment for the Property was only conveyed
12 to the HOA’s agent after Plaintiff was designated as the highest bidder for the Property, thus the
13 \$7,800 was clearly consideration for the Property.

14 The *Berge* Court also held that it was not clear whether respondent purchased the property
15 without notice of the prior conveyance, as respondent was under a duty of inquiry based on her
16 intimate relationship with the seller. *Id.* at 188-89. Here, there is absolutely no evidence that
17 Plaintiff – who showed up at a publicly-noticed auction to bid on the Property – was in any way
18 colluding with the HOA or its agent, thus Plaintiff was not on constructive notice of any errors with
19 the HOA sale and the only duty Plaintiff had was to review the Property’s recorded documents,
20 which included the Deed in Lieu to New Freedom showing that Defendants had no interest in the
21 Property regardless of the HOA foreclosure. Defendants suggest that the “assignment of the first
22 deed of trust to Nationstar” put Plaintiff on record and inquiry notice that the first deed of trust was
23 still an active lien on the property. Opp. at 4. However, Plaintiff had a right to rely on the Deed in
24 Lieu (recorded before the Assignment), which satisfied all obligations secured by the Deed of Trust
25 and made invalid any subsequent purported assignments on the Deed of Trust. Thus, despite
26 Defendants’ creative efforts to convince this Court to ignore the recorded documents themselves and
27 the order in which they were recorded, such documents verify Plaintiff’s bona fide purchaser status
28 and Defendants produced *no evidence whatsoever* refuting that status.

Defendants also attempt to argue that because Plaintiff only paid \$7,800 for the Property, Plaintiff cannot qualify as a bona fide purchaser. Opp. at 4. Although Defendants may believe that the property was actually worth more than the purchase price, that Plaintiff paid “valuable consideration” cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) (“The question is not whether the consideration is adequate, but whether it is valuable.”); see also *Poole v. Watts*, 139 Wash.App. 1018, 2007 WL 1733130 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale purchaser purchased the property for a “low price” did not in itself put the purchaser on notice that anything was amiss with the sale). Defendants claim that in recording the foreclosure deed, Plaintiff “admitted” that the property was worth \$63,280. Opp. at 4. However, this valuation on the foreclosure deed is not dispositive, as it was not accompanied by any expert report justifying the value, and Plaintiff was taking a risk by purchasing the Property before the Nevada Supreme Court issued *SFR Investments*, thus “a large discrepancy between the purchase price a buyer would be willing to pay and the assessed value of the property is to be expected,” even if Plaintiff believed the value of the property was higher than the purchase price. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1136 (D. Nev. 2015).

C. THE *SHADOW WOOD* DECISION DOES NOT SUPPORT THE COURT’S RULING

Finally, Defendants’ Opposition distorts the *Shadow Wood* decision and attempts to convince this Court that the decision supports summary judgment in favor of Defendants. Opp. at 5-8. Defendants claim that *Shadow Wood* “holds that the HOA’s sale of the Property for approximately 12% of what plaintiff, on their declaration of value, claimed the market value of the property was, was grossly inadequate, and thus commercially unreasonable, as a matter of law.” Opp. at 5. Defendants also claim that *Shadow Wood* explained that “inadequate price alone can be sufficient to set aside an HOA foreclosure sale if the price is ‘grossly inadequate.’” Opp. at 5. Unfortunately for Defendants, *Shadow Wood* contains no such holdings.

In reality, *Shadow Wood* provides welcome clarity on the subject of “commercial unreasonableness,” and entirely forecloses any chance of Defendants’ success. As the *Shadow Wood* Court specifically held, “demonstrating that an association sold a property at its foreclosure sale for an inadequate price *is not enough to set aside that sale*; there must also be a showing of

1 fraud, unfairness, or oppression.” *Id.* at 15 (emphasis added). Accordingly, there can be no
2 question that price alone is insufficient reason to set aside a sale, and a party hoping to resist
3 summary judgment on these grounds must present some evidence of fraud, unfairness, or
4 oppression. Indeed, the *Shadow Wood* decision mentioned the Nevada Supreme Court’s previous
5 decision in *Long v. Towne*, 98 Nev. 11 (1982) in specifically holding that in order to set aside a sale,
6 there must be “a showing of grossly inadequate price **plus** ‘fraud, unfairness, or oppression.’”
7 *Shadow Wood* at 9-10 (emphasis added). Defendants’ opposition fails to cite any Nevada law which
8 indicates that grossly inadequate price alone is evidence of the unfairness required to set aside the
9 sale, and such a finding would go against *Shadow Wood*’s indications that courts should consider
10 factors other than the sale price, such as the actions of the HOA and the purchaser, along with the
11 inactions of the lender. *Id.* at 16-20.

12 While the *Shadow Wood* decision did cement the need for more than an inadequate price to
13 set aside a sale, it also lent credence to the suggestion in the Restatement (Third) of Property:
14 Mortgages, that “gross inadequacy” of price (which merely triggers an inquiry into the possibility
15 of fraud, unfairness, or oppression) can generally be considered as less than 20 percent of fair
16 market value. *Shadow Wood* at 15–16. However, in a footnote to that statement, the Court cited
17 the same comment to the Restatement as advising that “courts can properly take into account the
18 fact that the value shown on a recent appraisal is not necessarily the same as the property’s fair
19 market value on the foreclosure sale date.” *Id.* at 16. The Court thus acknowledges that a “fair
20 market” appraisal should consider the property’s value at the time of foreclosure, including the
21 detrimental effect of defects on title and uncertainty of the law. Accordingly, any argument by
22 Defendants that the HOA Sale should remain invalidated based on the HOA Sale price alone is
23 misguided and in direct conflict with the *Shadow Wood* decision.

24 Thus, because the Court neglected to consider Plaintiff’s bona fide purchaser status and
25 erroneously concluded that Nationstar was a legitimate holder of the First Deed of Trust based on a
26 mistaken finding that the Deed in Lieu was “rogue,” Plaintiff is entitled to reconsideration of the
27 Court’s Order granting Defendants summary judgment.

28 ///

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that the Court grant Plaintiff's motion
3 in its entirety and reconsider its Order denying Plaintiff's motion for summary judgment and
4 granting Nationstar and BANA's countermotion for summary judgment.

5 DATED this 28th day of March, 2016.

6 Respectfully submitted,

7 **MAIER GUTIERREZ AYON**

8 /s/ Luis A. Ayon

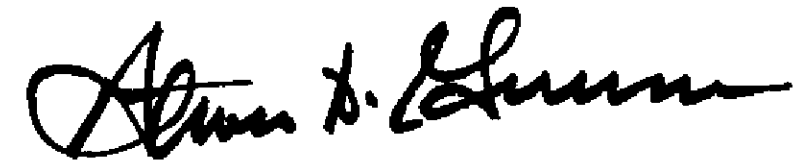
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14 Las Vegas, Nevada 89101
15 Attorneys for Plaintiff/Counterdefendant West
16 Sunset 2050 Trust

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **PLAINTIFF'S REPLY IN**
3 **SUPPORT OF MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND**
4 **ORDER GRANTING DEFENDANTS NATIONSTAR MORTGAGE LLC AND BANK OF**
5 **AMERICA, N.A.'S COUNTERMOTION FOR SUMMARY JUDGMENT** was electronically
6 filed on the 28th day of March, 2016 and served through the Notice of Electronic Filing
7 automatically generated by the Court's facilities to those parties listed on the Court's Master
8 Service List and by depositing a true and correct copy of the same, enclosed in a sealed envelope
9 upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed
10 as follows (*Note: All Parties Not Registered Pursuant to Administrative Order 14-2 Have Been*
11 *Served By Mail.*):

12
13 Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
AKERMAN LLP
14 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
15 *Attorneys for Defendant Bank of America, N.A., and Nationstar Mortgage LLC*

16
17
18 */s/ Charity Barber*
19 An Employee of MAIER GUTIERREZ AYON
20
21
22
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24
25
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28



CLERK OF THE COURT

ORDR

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Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C

Dept.: XXI

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AND
TO ALTER AND AMEND ORDER
GRANTING NATIONSTAR MORTGAGE
LLC AND BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT**

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TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,

2 Cross-Claimant,

3 v.

4 STEPHANIE TABLANTE,

5 Cross-Defendant.

6
7 On March 4, 2016, plaintiff West Sunset 2050 trust filed a motion to reconsider and amend
8 this court's order granting summary judgment in favor of Nationstar Mortgage, LLC and denying
9 plaintiff's motion for summary judgment. Nationstar filed an opposition on March 22, 2016.

10 This matter came before the court on April 4, 2016 in chambers. Having reviewed the papers
11 filed by both parties, and good cause appearing:

12 IT IS HEREBY ORDERED that plaintiff's motion for Reconsideration and to Alter and Amend
13 Order Granting Nationstar Mortgage LLC and Bank of America, N.A.'s Motion For Summary
14 Judgment is DENIED.

15 DATED this 23rd day of May, 2016

16 
17 DISTRICT COURT JUDGE 

18 Submitted by:

19 **AKERMAN LLP**

20 
21 ALLISON R. SCHMIDT, ESQ.

22 Nevada Bar No. 10743

23 1160 Town Center Drive, Suite 330

24 Las Vegas, Nevada 89144

25 *Attorneys for Nationstar Mortgage LLC*
26 *and Bank of America, NA*

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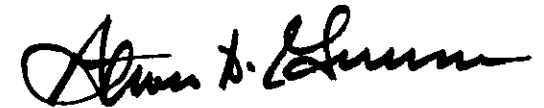
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32 Las Vegas, NV 89102

33 *Attorneys for Plaintiff*



CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-13-691323-C
Dept.: XXI

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
AND AMEND ORDER GRANTING
NATIONSTAR MORTGAGE LLC AND
BANK OF AMERICA, N.A.'S MOTION FOR
SUMMARY JUDGMENT.**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,
v.
WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

NATIONSTAR MORTGAGE, LLC,
Cross-Claimant,
v.
STEPHANIE TABLANTE,
Cross-Defendant.

PLEASE TAKE NOTICE that the **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR SUMMARY JUDGMENT** has been entered on the 31st day of May, 2016, in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

DATED this 3rd day of June, 2016.

AKERMAN LLP

/s/ Allison R. Schmidt

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*Attorneys for Nationalstar Mortgage LLC
and Bank of America, NA*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR SUMMARY JUDGMENT** postage prepaid and addressed to:

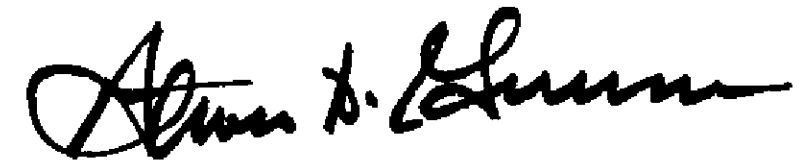
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/s/ Doug J. Layne

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



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Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C

Dept.: XXI

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AND
TO ALTER AND AMEND ORDER
GRANTING NATIONSTAR MORTGAGE
LLC AND BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT**

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1 NATIONSTAR MORTGAGE, LLC,

2 Cross-Claimant,

3 v.

4 STEPHANIE TABLANTE,

5 Cross-Defendant.

6
7 On March 4, 2016, plaintiff West Sunset 2050 trust filed a motion to reconsider and amend
8 this court's order granting summary judgment in favor of Nationstar Mortgage, LLC and denying
9 plaintiff's motion for summary judgment. Nationstar filed an opposition on March 22, 2016.

10 This matter came before the court on April 4, 2016 in chambers. Having reviewed the papers
11 filed by both parties, and good cause appearing:

12 IT IS HEREBY ORDERED that plaintiff's motion for Reconsideration and to Alter and Amend
13 Order Granting Nationstar Mortgage LLC and Bank of America, N.A.'s Motion For Summary
14 Judgment is DENIED.

15 DATED this 23rd day of May, 2016

16 
17 DISTRICT COURT JUDGE 

18 Submitted by:

19 **AKERMAN LLP**

20 
21 ALLISON R. SCHMIDT, ESQ.

22 Nevada Bar No. 10743

23 1160 Town Center Drive, Suite 330

24 Las Vegas, Nevada 89144

25 *Attorneys for Nationstar Mortgage LLC*
26 *and Bank of America, NA*

27 Approved as to form and content, all rights reserved:

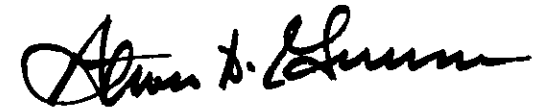
28 **MAIER GUTIERREZ AYON**

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Attorneys for Plaintiff



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*Attorneys for Plaintiff/Counter-Defendant
West Sunset 2050 Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust
Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C
Dept. No.: XXI

NOTICE OF APPEAL

Notice is hereby given that plaintiff West Sunset 2050 Trust ("Plaintiff"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, appeals to the Supreme Court of Nevada from an order granting defendant Nationstar Mortgage LLC's ("Nationstar") countermotion for summary judgment, rendered by the Eighth Judicial District Court, Clark County, Nevada on February 8, 2016 and noticed on February 16, 2016, which is attached hereto as **Exhibit 1**.

1 Pursuant to Nevada Rule of Appellate Procedure 4(a)(4), the time to file a notice of appeal
2 was tolled by Plaintiff's timely filed Rule 59 motion to alter or amend the judgment. The order
3 denying Plaintiff's motion was entered on May 31, 2016 and noticed on June 3, 2016, a copy of
4 which is attached hereto as **Exhibit 2**.

5 DATED this 1st day of July, 2016.

6 Respectfully submitted,

7 **MAIER GUTIERREZ AYON**

8 /s/ Luis A. Ayon

9 LUIS AYON, ESQ.
10 Nevada Bar No. 9752
11 MARGARET E. SCHMIDT, ESQ.
12 Nevada Bar No. 12489
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14 Las Vegas, Nevada 89101
15 *Attorneys for Plaintiff/Counter-Defendant West*
16 *Sunset 2050 Trust*
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27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF APPEAL** was
3 electronically filed on the 1st day of July, 2016 and served through the Notice of Electronic Filing
4 automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List and by depositing a true and correct copy of the same, enclosed in a sealed envelope
6 upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed
7 as follows (*Note: All Parties Not Registered Pursuant to Administrative Order 14-2 Have Been*
8 *Served By Mail.*):

9
10 Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
11 AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
12 *Attorneys for Defendant Bank of America, N.A., and*
Defendant/Counterclaimant/Cross-Claimant Nationstar Mortgage LLC
13
14
15

16 /s/ Charity Barber
17 An Employee of MAIER GUTIERREZ AYON
18
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27
28

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

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13 *Attorneys for Defendant Nationstar Mortgage, LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,
17
18 Plaintiff,

19 v.

20 NEW FREEDOM MORTGAGE
21 CORPORATION, a Foreign Corporation;
22 BANK OF AMERICA, N.A., a National
23 Association; NATIONSTAR MORTGAGE,
24 LLC, a Foreign Limited Liability Company;
25 COOPER CASTLE LAW FIRM, LLP, a Nevada
26 Limited Liability Partnership; STEPHANIE
27 TABLANTE, an individual; DOES I through X;
28 and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

NOTICE OF ENTRY OF ORDER

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6 PLEASE TAKE NOTICE that the Order has been entered on the 8th day of February, 2016,
7 in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

8 DATED this 16th day of February, 2016.

9 **AKERMAN LLP**

10 */s/ Allison R. Schmidt*

11 ARIEL E. STERN, ESQ.

12 Nevada Bar No. 8276

13 ALLISON R. SCHMIDT, ESQ.

14 Nevada Bar No. 10743

15 1160 Town Center Drive, Suite 330

16 Las Vegas, Nevada 89144

17 *Attorneys for Defendant Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

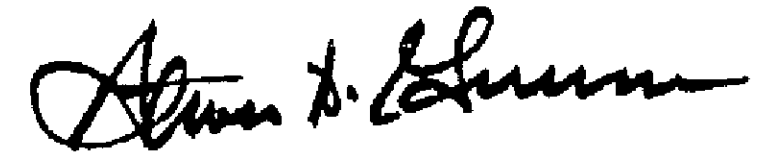
I HEREBY CERTIFY that on this 16th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed to:

Luis A. Ayon, Esq.
MAIER GUTIERREZ AYON PLLC
cmb@mgalaw.com
djb@mgalaw.com
dtr@mgalaw.com
jrm@mgalaw.com
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ndv@mgalaw.com
Attorneys for West Sunset 2050 Trust

/s/ Brieanne Siriwan
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

ORDR

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*Attorneys for Defendant Nationstar
Mortgage, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.

6. The deed in lieu that was recorded by Tablante is not signed by either New Freedom Mortgage Corporation or Bank of America, NA.

7. The cover page of the deed in lieu recorded by Tablante indicated the documents was to be returned to the offices of John Peter Lee, Esq. upon recording.

8. Red Rock Financial Services (**RRFS**) recorded a notice of delinquent assessment lien on April 4, 2012.

9. Later, RRFS recorded a Notice of Default on May 29, 2013.

10. RRFS did not provide any foreclosure notices to Bank of America, which was the record beneficiary of the senior deed of trust.

11. Prior to the foreclosure sale, the senior deed of trust was assigned to Nationstar.

12. A foreclosure sale was held by United Legal Services on June 22, 2013, where the property was sold to Plaintiff for \$7,800.

13. The declaration of value recorded with the trustee's deed lists the value of the property at the time of the sale as \$63,280.00.

CONCLUSIONS OF LAW

1. Under Nev. R. Civ. P. 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029; NRCP 56(c).

2. Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.* All evidence and inferences are viewed in a light most favorable to the non-moving party on a summary judgment motion. *Id.*

3. Nationstar and its predecessor in interest, Bank of America, was entitled to receive the foreclosure notices as the senior deed of trust could be effected by the foreclosure sale. NRS 116.31168, NRS 116.31163(2); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

4. Tablante's recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust of its property rights.

1 5. RRFS failed to provide any foreclosure notices to the beneficiary of the senior deed
2 of trust. As a result, the beneficiary had no opportunity to cure the delinquency in assessment
3 payments.

4 6. Because of the failure to provide the required notices to the beneficiary of the senior
5 deed of trust, the foreclosure sale did not extinguish the senior deed of trust.

6 ORDER

7 IT IS HEREBY ORDERED that Nationstar's Countermotion for Summary Judgment is
8 GRANTED;

9 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

10 DATED this 4th day of February, 2016.

11 Valerie Adams
12 District Court Judge atw

13 Submitted by:

14 A. Stern
15 ARIEN E. STERN, ESQ.
16 Nevada Bar No. 8276
17 ALLISON R. SCHMIDT, ESQ.
18 Nevada Bar No. 10743
19 1160 Town Center Drive, Suite 330
20 Las Vegas, Nevada 89144
21 Attorneys for Defendant Nationstar Mortgage, LLC


22 Approved as to form and content:

23 (provided to plaintiff's counsel but did not sign)

24 Luis A. Ayon, Esq.
25 Margaret E. Schmidt, Esq.
26 2500 W. Sahara Ave., Ste. 106
27 Las Vegas, NV 89102
28 Attorneys for Plaintiff

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

NEOJ
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Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-13-691323-C
Dept.: XXI

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
AND AMEND ORDER GRANTING
NATIONSTAR MORTGAGE LLC AND
BANK OF AMERICA, N.A.'S MOTION FOR
SUMMARY JUDGMENT.**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,
v.
WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

NATIONSTAR MORTGAGE, LLC,
Cross-Claimant,
v.
STEPHANIE TABLANTE,
Cross-Defendant.

PLEASE TAKE NOTICE that the **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR SUMMARY JUDGMENT** has been entered on the 31st day of May, 2016, in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

DATED this 3rd day of June, 2016.

AKERMAN LLP

/s/ Allison R. Schmidt

ARIEL E. STERN, ESQ.
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ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
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Las Vegas, Nevada 89144
*Attorneys for Nationalstar Mortgage LLC
and Bank of America, NA*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR SUMMARY JUDGMENT** postage prepaid and addressed to:

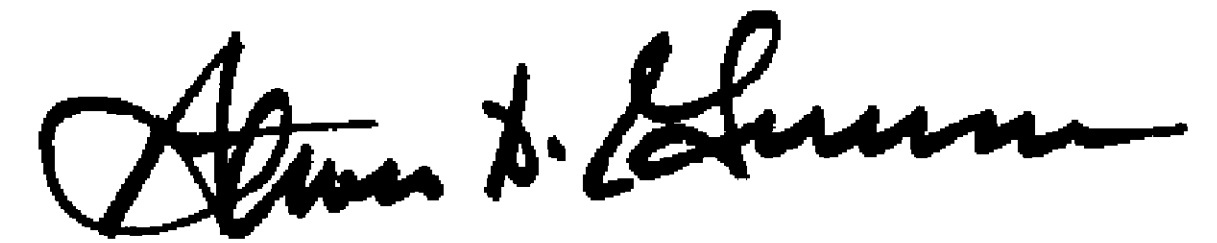
Charity Barber
Danielle Barraza
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mes@mgalaw.com
ndv@mgalaw.com

/s/ Doug J. Layne

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

ORDER

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Nevada Bar No. 8276

ALLISON R. SCHMIDT, ESQ.

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Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C

Dept.: XXI

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AND
TO ALTER AND AMEND ORDER
GRANTING NATIONSTAR MORTGAGE
LLC AND BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT**

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1 NATIONSTAR MORTGAGE, LLC,
2
3 Cross-Claimant,
4
5 v.
6
7 STEPHANIE TABLANTE,
8
9 Cross-Defendant.

10 On March 4, 2016, plaintiff West Sunset 2050 trust filed a motion to reconsider and amend
11 this court's order granting summary judgment in favor of Nationstar Mortgage, LLC and denying
12 plaintiff's motion for summary judgment. Nationstar filed an opposition on March 22, 2016.


13 This matter came before the court on April 4, 2016 in chambers. Having reviewed the papers
14 filed by both parties, and good cause appearing:

15 IT IS HEREBY ORDERED that plaintiff's motion for Reconsideration and to Alter and Amend
16 Order Granting Nationstar Mortgage LLC and Bank of America, N.A.'s Motion For Summary
17 Judgment is DENIED.


18 DATED this 23rd day of May, 2016

19 
20 _____
21 DISTRICT COURT JUDGE 

22 Submitted by:
23 **AKERMAN LLP**

24 
25 _____
26 ALLISON R. SCHMIDT, ESQ.
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28 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
*Attorneys for Nationstar Mortgage LLC
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Approved as to form and content, all rights reserved:
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