

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 07:01 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 VI**

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

Alphabetical Index

Volume	Tab	Date Filed	Document	Bates
I	12.	10/8/2014	Affidavit of Publication	0054
I	2.	12/9/2013	Affidavit of Service	0008
I	3.	12/9/2013	Affidavit of Service	0009
I	4.	12/9/2013	Affidavit of Service	0010
I	5.	12/11/2013	Affidavit of Service	0011
I	6.	12/19/2013	Answer to Complaint	0012-0019
I	11.	6/18/2014	Answer to Counterclaim	0043-0053
VI	41.	12/20/2017	Association of Counsel	1038-1040
VI	46.	7/27/2018	Clerk's Certificate/Judgment (NVSC 70754)	1049-1062
I	1.	11/6/2013	Complaint	0001-0007
VI	60.	5/14/2019	Court Minutes (Calendar Call)	1114
VI	53.	2/28/2019	Court Minutes (Minute Order Advancing Calendar Call)	1077
VI	47.	8/29/2018	Court Minutes (Minute Order Resetting Status Check)	1063
VI	64.	5/28/2019	Court Minutes (Nationstar Mortgage LLC's Motion in Limine to Introduce into Evidence at Trial Documents Disclosed After the Close of Discovery)	1158
IX	107.	8/30/2019	Court Minutes (Nationstar Mortgage LLC's Motion to Retax)	1823
VI	52.	2/28/2019	Court Minutes (Status Check)	1076
VI	44.	3/20/2018	Court Minutes (Status Check: Status of Case)	1047
VI	45.	6/19/2018	Court Minutes (Status Check: Status of Case)	1048
VI	48.	10/15/2018	Court Minutes (Status Check: Status of Case)	1064-1065
VI	40.	9/19/2017	Court Minutes (Status Check: Stay)	1037
IV	22.	7/29/2015	Default Against New Freedom Mortgage Corporation	0790-0792
IV	21.	7/29/2015	Default Against Stephanie Tablante	0783-0789
II	14.	5/11/2015	Deposition of 30(b)(6) Designee Red Rock Financial Services Julia Thompson	0277-0301

Volume	Tab	Date Filed	Document	Bates
I, II	13.	5/11/2015	Deposition of 30(b)(6) Designee United Legal Services, LLC Robert Atkinson, Esq.	0055-0276
IX	93.	7/16/2019	Findings of Fact and Conclusions of Law	1737-1744
VI	49.	10/17/2018	First Amended Order Setting Civil Bench Trial and Calendar Call	1066-1068
VI	62.	5/22/2019	Joint PreTrial Memorandum	1129-1146
VII	69.		Joint Trial Exhibit 1 (Grant, Bargain and Sale Deed)	1380-1384
VII	70.		Joint Trial Exhibit 2 (Deed of Trust)	1385-1404
VII	71.		Joint Trial Exhibit 3 (Deed in Lieu of Foreclosure)	1405-1410
VII	72.		Joint Trial Exhibit 4 (Deed in Lieu of Foreclosure)	1411-1417
VII	73.		Joint Trial Exhibit 5 (Assignment of Deed of Trust)	1418-1420
VII	74.		Joint Trial Exhibit 6 (Substitution of Trustee)	1421-1422
VII	75.		Joint Trial Exhibit 7 (Lien for Delinquent Assessments)	1423-1424
VII	76.		Joint Trial Exhibit 8 (Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments)	1425-1426
VII	77.		Joint Trial Exhibit 9 (Corporation Assignment of Deed of Trust)	1427-1429
VII	78.		Joint Trial Exhibit 10 (Notice of Foreclosure Sale)	1430-1431
VII	79.		Joint Trial Exhibit 11 (Foreclosure Deed Upon Sale)	1432-1435
VII	80.		Joint Trial Exhibit 12 (Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust)	1436-1441
VII	81.		Joint Trial Exhibit 13 (ULS Documents from Deposition)	1442-1469
VIII	82.		Joint Trial Exhibit 14 (Red Rock Documents from Deposition)	1470-1523

Volume	Tab	Date Filed	Document	Bates
VIII	83.		Joint Trial Exhibit 15 (HOA and 1st 100 LLC Contracts)	1524-1564
VIII	84.		Joint Trial Exhibit 16 (ULS Auction Results)	1565-1567
VIII	85.		Joint Trial Exhibit 17 (ULS Emails)	1568-1611
VIII	86.		Joint Trial Exhibit 18 (John Peter Lee, Ltd.'s Subpoena <i>Duces Tecum</i> Response)	1612-1646
VIII	87.		Joint Trial Exhibit 19 (Title Policy)	1647-1663
VIII	88.		Joint Trial Exhibit 20 (Red Rock's Subpoena <i>Duces Tecum</i> Response)	1644-1711
VIII	89.		Joint Trial Exhibit 21 (Declaration of Julia Thompson in Support of Red Rock Financial Services, LLC's Limited Opposition to Motion for Summary Judgment)	1712-1718
IX	90.		Joint Trial Exhibit 27 (BANA Transfer Letter)	1719-1723
IX	91.		Joint Trial Exhibit 30 (Lease Agreement)	1724-1733
IX	98.	7/22/2019	Memorandum of Costs and Disbursements	1778-1781
V	33.	10/11/2016	Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal on and Order Shortening Time	0936-1007
I	10.	5/20/2014	Nationstar Mortgage LLC's Answer, Counterclaim Against West Sunset 2050 Trust and Cross-Claim Against Stephanie Tablante	0033-0042
IX	100.	7/22/2019	Nationstar Mortgage LLC's Case Appeal Statement	1785-1788
VI	56.	4/26/2019	Nationstar Mortgage LLC's First Amended PreTrial Disclosures	1086-1094
VI	61.	5/14/2019	Nationstar Mortgage LLC's Motion in Limine to Introduce into Evidence at Trial Documents Disclosed After the Close of Discovery	1115-1128
IX	102.	7/26/2019	Nationstar Mortgage LLC's Motion to Retax	1790-1796

Volume	Tab	Date Filed	Document	Bates
IX	99.	7/22/2019	Nationstar Mortgage LLC's Notice of Appeal	1782-1784
IX	95.	7/17/2019	Nationstar Mortgage LLC's Notice of Filing of Proposed Supplemental Findings of Fact, Conclusions of Law, and Judgment	1757-1771
IX	92.	7/15/2019	Nationstar Mortgage LLC's Notice of Voluntary Dismissal of Claims Against Stephanie Tablante Without Prejudice	1734-1736
IX	106.	8/22/2019	Nationstar Mortgage LLC's Reply in Support of its Motion to Retax	1819-1822
VI	58.	5/3/2019	Nationstar Mortgage LLC's Second Amended PreTrial Disclosures	1099-1108
IV	32.	7/1/2016	Notice of Appeal	0917-0935
VI	43.	1/30/2018	Notice of Association of Counsel for Bank of America, N.A.	1044-1046
VI	42.	1/18/2018	Notice of Change of Address	1041-1043
VI	54.	3/19/2019	Notice of Department Sealing and/or Redacting Procedures	1078-1079
VI	50.	11/2/2018	Notice of Disassociation of Counsel	1069-1071
IV	23.	7/29/2015	Notice of Entry of Default	0793-0798
IV	24.	7/29/2015	Notice of Entry of Default	0799-0808
IX	94.	7/17/2019	Notice of Entry of Findings of Fact and Conclusions of Law	1745-1756
I	9.	2/4/2014	Notice of Entry of Order	0029-0032
IV	26.	2/16/2016	Notice of Entry of Order	0813-0820
IV	31.	6/3/2016	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	0911-0916
IX	109.	10/4/2019	Notice of Entry of Order Granting in Part Nationstar Mortgage LLC's Motion to Retax Costs	1827-1833
V	36.	11/10/2016	Notice of Entry of Order Granting Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal	1015-1022

Volume	Tab	Date Filed	Document	Bates
VI	39.	7/3/2017	Notice of Entry of Stipulation and Order for Disclaimer of Interest and Dismissal of Bank of America, N.A.	1030-1036
IX	101.	7/26/2019	Notice of Hearing	1789
VI	51.	2/7/2019	Notice of Lis Pendens	1072-1075
IX	103.	7/30/2019	Notice of Posting of Bond on Appeal	1797-1801
IX	96.	7/17/2019	Notice of Voluntary Dismissal of Defendant New Freedom Mortgage Corporation Without Prejudice	1772-1774
IX	97.	7/17/2019	Notice of Voluntary Dismissal of Defendant Stephanie Tablante Without Prejudice	1775-1777
III, IV	17.	6/10/2015	Opposition to Motion for Summary Judgment and Countermotion for Summary Judgment	0600-0737
VI	63.	5/23/2019	Opposition to Motion in Limine	1147-1157
IV	28.	3/22/2016	Opposition to Plaintiff's Motion for Reconsideration and to Alter and Amend Order Granting Defendants Nationstar Mortgage LLC and Bank of America, N.A.'s Motion for Summary Judgment	0891-0898
IV	30.	5/31/2016	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	0909-0910
I	8.	2/3/2014	Order Granting Dismissal of the Cooper Castle Law Firm, LLP	0027-0028
IX	108.	10/2/2019	Order Granting in Part Nationstar Mortgage LLC's Motion to Retax Costs	1824-1826
V	35.	11/9/2016	Order Granting Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal	1010-1014
IV	25.	2/8/2016	Order Granting Nationstar Mortgage LLC's Countermotion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment	0809-0812

Volume	Tab	Date Filed	Document	Bates
IV	27.	3/4/2016	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	0821-0890
IV	29.	3/28/2016	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	0899-0908
VI	65.	5/31/2019	Plaintiff's Trial Brief	1159-1164
VI	57.	5/1/2019	Plaintiff, West Sunset 2050 Trust's Objections to Defendant Nationstar Mortgage LLC's First Amended PreTrial Disclosures	1095-1098
VI	59.	5/6/2019	Plaintiff, West Sunset 2050 Trust's Objections to Defendant Nationstar Mortgage LLC's Second Amended PreTrial Disclosures	1109-1113
IX	105.	8/9/2019	Plaintiff West Sunset 2050 Trust's Opposition to Nationstar Mortgage LLC's Motion to Retax	1805-1818
IV	20.	7/13/2015	Recorder's Transcript Re: Calendar Call	0778-0782
I	7.	1/15/2014	Recorder's Transcript Re: Defendant, The Cooper Castle Law Firm's LLP, Motion to Dismiss; Plaintiff's Opposition to Motion to Dismiss; Countermotion for Leave to Amend Complaint	0020-0026
V	34.	10/26/2016	Recorder's Transcript Re: Plaintiff/Counter Defendant, West Sunset 2050 Trust's Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal on an Order Shortening Time	1008-1009

Volume	Tab	Date Filed	Document	Bates
IV	19.	6/24/2015	Recorder's Transcript Re: West Sunset 2050 Trust's Motion for Summary Judgment; Opposition to Motion for Summary Judgment and Countermotion for Summary Judgment	0760-0777
IX	104.	8/8/2019	Request for Transcript of Proceedings	1802-1804
VI	38.	6/30/2017	Stipulation and Order for Disclaimer of Interest and Dismissal of Bank of America, N.A.	1027-1029
VI	37.	5/9/2017	Substitution of Attorneys	1023-1026
VI	66.	6/6/2019	Transcript of Proceedings (Bench Trial – Day 1)	1165-1260
VII	67.	7/3/2019	Transcript of Proceedings (Bench Trial – Day 2)	1261-1356
VII	68.	7/12/2019	Transcript of Proceedings (Bench Trial – Day 3)	1357-1379
II	15.	5/22/2015	West Sunset 2050 Trust's Motion for Summary Judgment	0302-0477
VI	55.	4/26/2019	West Sunset 2050 Trust's Pre-Trial Disclosures	1080-1085
IV	18.	6/18/2015	West Sunset 2050 Trust's Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment	0738-0759
III	16.	5/22/2015	West Sunset 2050 Trust's Request for Judicial Notice in Support of Motion for Summary Judgment	0478-0599

Chronological Index

Volume	Tab	Date Filed	Document	Bates
I	1.	11/6/2013	Complaint	0001-0007
I	2.	12/9/2013	Affidavit of Service	0008
I	3.	12/9/2013	Affidavit of Service	0009
I	4.	12/9/2013	Affidavit of Service	0010
I	5.	12/11/2013	Affidavit of Service	0011
I	6.	12/19/2013	Answer to Complaint	0012-0019
I	7.	1/15/2014	Recorder's Transcript Re: Defendant, The Cooper Castle Law Firm's LLP, Motion to Dismiss; Plaintiff's Opposition to Motion to Dismiss; Countermotion for Leave to Amend Complaint	0020-0026
I	8.	2/3/2014	Order Granting Dismissal of the Cooper Castle Law Firm, LLP	0027-0028
I	9.	2/4/2014	Notice of Entry of Order	0029-0032
I	10.	5/20/2014	Nationstar Mortgage LLC's Answer, Counterclaim Against West Sunset 2050 Trust and Cross-Claim Against Stephanie Tablante	0033-0042
I	11.	6/18/2014	Answer to Counterclaim	0043-0053
I	12.	10/8/2014	Affidavit of Publication	0054
I, II	13.	5/11/2015	Deposition of 30(b)(6) Designee United Legal Services, LLC Robert Atkinson, Esq.	0055-0276
II	14.	5/11/2015	Deposition of 30(b)(6) Designee Red Rock Financial Services Julia Thompson	0277-0301
II	15.	5/22/2015	West Sunset 2050 Trust's Motion for Summary Judgment	0302-0477
III	16.	5/22/2015	West Sunset 2050 Trust's Request for Judicial Notice in Support of Motion for Summary Judgment	0478-0599
III, IV	17.	6/10/2015	Opposition to Motion for Summary Judgment and Countermotion for Summary Judgment	0600-0737

Volume	Tab	Date Filed	Document	Bates
IV	18.	6/18/2015	West Sunset 2050 Trust's Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment	0738-0759
IV	19.	6/24/2015	Recorder's Transcript Re: West Sunset 2050 Trust's Motion for Summary Judgment; Opposition to Motion for Summary Judgment and Countermotion for Summary Judgment	0760-0777
IV	20.	7/13/2015	Recorder's Transcript Re: Calendar Call	0778-0782
IV	21.	7/29/2015	Default Against Stephanie Tablante	0783-0789
IV	22.	7/29/2015	Default Against New Freedom Mortgage Corporation	0790-0792
IV	23.	7/29/2015	Notice of Entry of Default	0793-0798
IV	24.	7/29/2015	Notice of Entry of Default	0799-0808
IV	25.	2/8/2016	Order Granting Nationstar Mortgage LLC's Countermotion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment	0809-0812
IV	26.	2/16/2016	Notice of Entry of Order	0813-0820
IV	27.	3/4/2016	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	0821-0890
IV	28.	3/22/2016	Opposition to Plaintiff's Motion for Reconsideration and to Alter and Amend Order Granting Defendants Nationstar Mortgage LLC and Bank of America, N.A.'s Motion for Summary Judgment	0891-0898

Volume	Tab	Date Filed	Document	Bates
IV	29.	3/28/2016	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	0899-0908
IV	30.	5/31/2016	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	0909-0910
IV	31.	6/3/2016	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	0911-0916
IV	32.	7/1/2016	Notice of Appeal	0917-0935
V	33.	10/11/2016	Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal on and Order Shortening Time	0936-1007
V	34.	10/26/2016	Recorder's Transcript Re: Plaintiff/Counter Defendant, West Sunset 2050 Trust's Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal on an Order Shortening Time	1008-1009
V	35.	11/9/2016	Order Granting Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal	1010-1014
V	36.	11/10/2016	Notice of Entry of Order Granting Motion for Final Judgment Pursuant to Rule 54(b) and to Stay Remaining Claims Pending Conclusion of Appeal	1015-1022
VI	37.	5/9/2017	Substitution of Attorneys	1023-1026

Volume	Tab	Date Filed	Document	Bates
VI	38.	6/30/2017	Stipulation and Order for Disclaimer of Interest and Dismissal of Bank of America, N.A.	1027-1029
VI	39.	7/3/2017	Notice of Entry of Stipulation and Order for Disclaimer of Interest and Dismissal of Bank of America, N.A.	1030-1036
VI	40.	9/19/2017	Court Minutes (Status Check: Stay)	1037
VI	41.	12/20/2017	Association of Counsel	1038-1040
VI	42.	1/18/2018	Notice of Change of Address	1041-1043
VI	43.	1/30/2018	Notice of Association of Counsel for Bank of America, N.A.	1044-1046
VI	44.	3/20/2018	Court Minutes (Status Check: Status of Case)	1047
VI	45.	6/19/2018	Court Minutes (Status Check: Status of Case)	1048
VI	46.	7/27/2018	Clerk's Certificate/Judgment (NVSC 70754)	1049-1062
VI	47.	8/29/2018	Court Minutes (Minute Order Resetting Status Check)	1063
VI	48.	10/15/2018	Court Minutes (Status Check: Status of Case)	1064-1065
VI	49.	10/17/2018	First Amended Order Setting Civil Bench Trial and Calendar Call	1066-1068
VI	50.	11/2/2018	Notice of Disassociation of Counsel	1069-1071
VI	51.	2/7/2019	Notice of Lis Pendens	1072-1075
VI	52.	2/28/2019	Court Minutes (Status Check)	1076
VI	53.	2/28/2019	Court Minutes (Minute Order Advancing Calendar Call)	1077
VI	54.	3/19/2019	Notice of Department Sealing and/or Redacting Procedures	1078-1079
VI	55.	4/26/2019	West Sunset 2050 Trust's Pre-Trial Disclosures	1080-1085
VI	56.	4/26/2019	Nationstar Mortgage LLC's First Amended PreTrial Disclosures	1086-1094
VI	57.	5/1/2019	Plaintiff, West Sunset 2050 Trust's Objections to Defendant Nationstar Mortgage LLC's First Amended PreTrial Disclosures	1095-1098

Volume	Tab	Date Filed	Document	Bates
VI	58.	5/3/2019	Nationstar Mortgage LLC's Second Amended PreTrial Disclosures	1099-1108
VI	59.	5/6/2019	Plaintiff, West Sunset 2050 Trust's Objections to Defendant Nationstar Mortgage LLC's Second Amended PreTrial Disclosures	1109-1113
VI	60.	5/14/2019	Court Minutes (Calendar Call)	1114
VI	61.	5/14/2019	Nationstar Mortgage LLC's Motion in Limine to Introduce into Evidence at Trial Documents Disclosed After the Close of Discovery	1115-1128
VI	62.	5/22/2019	Joint PreTrial Memorandum	1129-1146
VI	63.	5/23/2019	Opposition to Motion in Limine	1147-1157
VI	64.	5/28/2019	Court Minutes (Nationstar Mortgage LLC's Motion in Limine to Introduce into Evidence at Trial Documents Disclosed After the Close of Discovery)	1158
VI	65.	5/31/2019	Plaintiff's Trial Brief	1159-1164
VI	66.	6/6/2019	Transcript of Proceedings (Bench Trial – Day 1)	1165-1260
VII	67.	7/3/2019	Transcript of Proceedings (Bench Trial – Day 2)	1261-1356
VII	68.	7/12/2019	Transcript of Proceedings (Bench Trial – Day 3)	1357-1379
VII	69.		Joint Trial Exhibit 1 (Grant, Bargain and Sale Deed)	1380-1384
VII	70.		Joint Trial Exhibit 2 (Deed of Trust)	1385-1404
VII	71.		Joint Trial Exhibit 3 (Deed in Lieu of Foreclosure)	1405-1410
VII	72.		Joint Trial Exhibit 4 (Deed in Lieu of Foreclosure)	1411-1417
VII	73.		Joint Trial Exhibit 5 (Assignment of Deed of Trust)	1418-1420
VII	74.		Joint Trial Exhibit 6 (Substitution of Trustee)	1421-1422
VII	75.		Joint Trial Exhibit 7 (Lien for Delinquent Assessments)	1423-1424

Volume	Tab	Date Filed	Document	Bates
VII	76.		Joint Trial Exhibit 8 (Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments)	1425-1426
VII	77.		Joint Trial Exhibit 9 (Corporation Assignment of Deed of Trust)	1427-1429
VII	78.		Joint Trial Exhibit 10 (Notice of Foreclosure Sale)	1430-1431
VII	79.		Joint Trial Exhibit 11 (Foreclosure Deed Upon Sale)	1432-1435
VII	80.		Joint Trial Exhibit 12 (Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust)	1436-1441
VII	81.		Joint Trial Exhibit 13 (ULS Documents from Deposition)	1442-1469
VIII	82.		Joint Trial Exhibit 14 (Red Rock Documents from Deposition)	1470-1523
VIII	83.		Joint Trial Exhibit 15 (HOA and 1st 100 LLC Contracts)	1524-1564
VIII	84.		Joint Trial Exhibit 16 (ULS Auction Results)	1565-1567
VIII	85.		Joint Trial Exhibit 17 (ULS Emails)	1568-1611
VIII	86.		Joint Trial Exhibit 18 (John Peter Lee, Ltd.'s Subpoena <i>Duces Tecum</i> Response)	1612-1646
VIII	87.		Joint Trial Exhibit 19 (Title Policy)	1647-1663
VIII	88.		Joint Trial Exhibit 20 (Red Rock's Subpoena <i>Duces Tecum</i> Response)	1644-1711
VIII	89.		Joint Trial Exhibit 21 (Declaration of Julia Thompson in Support of Red Rock Financial Services, LLC's Limited Opposition to Motion for Summary Judgment)	1712-1718
IX	90.		Joint Trial Exhibit 27 (BANA Transfer Letter)	1719-1723
IX	91.		Joint Trial Exhibit 30 (Lease Agreement)	1724-1733

Volume	Tab	Date Filed	Document	Bates
IX	92.	7/15/2019	Nationstar Mortgage LLC's Notice of Voluntary Dismissal of Claims Against Stephanie Tablante Without Prejudice	1734-1736
IX	93.	7/16/2019	Findings of Fact and Conclusions of Law	1737-1744
IX	94.	7/17/2019	Notice of Entry of Findings of Fact and Conclusions of Law	1745-1756
IX	95.	7/17/2019	Nationstar Mortgage LLC's Notice of Filing of Proposed Supplemental Findings of Fact, Conclusions of Law, and Judgment	1757-1771
IX	96.	7/17/2019	Notice of Voluntary Dismissal of Defendant New Freedom Mortgage Corporation Without Prejudice	1772-1774
IX	97.	7/17/2019	Notice of Voluntary Dismissal of Defendant Stephanie Tablante Without Prejudice	1775-1777
IX	98.	7/22/2019	Memorandum of Costs and Disbursements	1778-1781
IX	99.	7/22/2019	Nationstar Mortgage LLC's Notice of Appeal	1782-1784
IX	100.	7/22/2019	Nationstar Mortgage LLC's Case Appeal Statement	1785-1788
IX	101.	7/26/2019	Notice of Hearing	1789
IX	102.	7/26/2019	Nationstar Mortgage LLC's Motion to Retax	1790-1796
IX	103.	7/30/2019	Notice of Posting of Bond on Appeal	1797-1801
IX	104.	8/8/2019	Request for Transcript of Proceedings	1802-1804
IX	105.	8/9/2019	Plaintiff West Sunset 2050 Trust's Opposition to Nationstar Mortgage LLC's Motion to Retax	1805-1818
IX	106.	8/22/2019	Nationstar Mortgage LLC's Reply in Support of its Motion to Retax	1819-1822
IX	107.	8/30/2019	Court Minutes (Nationstar Mortgage LLC's Motion to Retax)	1823

Volume	Tab	Date Filed	Document	Bates
IX	108.	10/2/2019	Order Granting in Part Nationstar Mortgage LLC's Motion to Retax Costs	1824-1826
IX	109.	10/4/2019	Notice of Entry of Order Granting in Part Nationstar Mortgage LLC's Motion to Retax Costs	1827-1833

DATED February 28, 2020.

AKERMAN LLP

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CERTIFICATE OF SERVICE

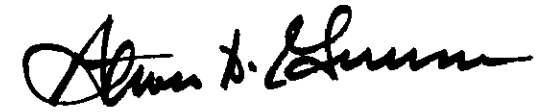
I certify that I electronically filed on February 28, 2020, the foregoing **APPENDIX TO OPENING BRIEF, VOLUME VI** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or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



CLERK OF THE COURT

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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.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

WEST SUNSET 2050 TRUST,

Counter-Defendant.

Case No.: A-14-691323-C
Dept. No.: 21

SUBSTITUTION OF ATTORNEYS

1 NATIONSTAR MORTGAGE, LLC,

2 Cross-Claimant,

3 vs.

4 STEPHANIE TABLANTE,

5 Cross-Defendant.
6

7
8 LUIS A. AYON, ESQ., of AYON LAW, PLLC, is hereby substituted in as the attorneys for
9 Plaintiff/Counter-Defendant, West Sunset 2050 Trust, in the above-entitled action, in the place and
10 stead of MAIER GUTIERREZ & ASSOCIATES.
11

12
13 Client

14 We hereby accept the above and foregoing substitution as attorneys for
15 Plaintiff/Counter-Defendant, West Sunset 2050 Trust.
16

17 DATED this 8 day of May, 2017.


18 AYON LAW, PLLC

19
20
21 LUIS A. AYON, ESQ.
22 Nevada Bar No. 9752
23 9205 W. Russell Road
24 Building 3, Suite 240
25 Las Vegas, Nevada 89148
26
27
28

1 We hereby consent to the above substitution.

2 DATED this 8 day of MAY, 2017.

3 MAIER GUTIERREZ & ASSOCIATES

4
5
6 
7 JASON D. MAIER, ESQ.
8 Nevada Bar No. 8557
9 8816 Spanish Ridge Ave
10 Las Vegas, Nevada 89148
11
12
13
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CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

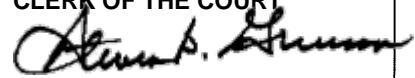
Electronically:

Akerman LLP		
Name		Email
Akerman Las Vegas Office		akermanlas@akerman.com
Ariel E. Stern, Esq.		ariel.stern@akerman.com
Elizabeth Streible		elizabeth.streible@akerman.com
Thera Cooper		thera.cooper@akerman.com
Maier Gutierrez Ayon PLLC		
Name		Email
Charity Johnson		cmj@mgalaw.com
Danielle Barraza		djb@mgalaw.com
Jason Maier		jrm@mgalaw.com
Joseph Gutierrez		jag@mgalaw.com
Natalie D. Vazquez		ndv@mgalaw.com

Dated: May 9, 2017

/s/ Luis Ayon

An Employee of Ayon Law, PLLC



1 **SAO**

2 ARIEL E. STERN, ESQ.

3 Nevada Bar No. 8276

4 THERA A. COOPER, ESQ.

5 Nevada Bar No. 13468

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: thera.cooper@akerman.com

13 *Attorneys for Defendant Bank of America, NA*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,

17 Plaintiff,

18 v.

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

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

NATIONSTAR MORTGAGE, LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant

Case No.: A-13-691323-C

Dept.: XXI

**STIPULATION AND ORDER FOR
DISCLAIMER OF INTEREST AND
DISMISSAL OF BANK OF AMERICA, NA**

PLEASE TAKE NOTICE that defendant Bank of America, NA disclaims any present interest in the property located at 7255 W. Sunset Rd., Unit 2050, Las Vegas, NV 89113, which property is the subject of this lawsuit.

IT IS HEREBY STIPULATED AND AGREED between the parties that Bank of America, NA shall be dismissed from this action with each party to bear its own attorneys' fees and costs. Defendants Cooper Castle Law Firm and Stephanie Tablante have not appeared in this action.

DATED May 22, 2017.

AKERMAN LLP

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

Attorneys for Bank of America, NA

DATED May 22, 2017.

AYON LAW, PLLC

LUIS A. AYON, ESQ.
Nevada Bar No. 9752
9205 W. Russell Road
Building 3, Suite 240
Las Vegas, Nevada 89148

Attorneys for Plaintiff

ORDER

Based on the stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED that defendant Bank of America, NA is dismissed from this action, with each party to bear its own fees and costs.

DATED ^{June} ~~May~~ 26, 2017


DISTRICT COURT JUDGE *Ky*

Submitted by:

AKERMAN LLP



DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

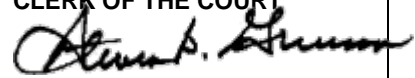
THERA A. COOPER, ESQ.

Nevada Bar No. 13468

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Bank of America, NA



NEOJ
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
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: thera.cooper@akerman.com

Attorneys for Defendant Bank of America, NA

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.

NATIONSTAR MORTGAGE, LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant.

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

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR DISCLAIMER OF
INTEREST AND DISMISSAL OF BANK OF
AMERICA, NA**

1 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER FOR DISCLAIMER OF**
2 **INTEREST AND DISMISSAL OF BANK OF AMERICA, NA** has been entered by this Court on
3 the 26th day of June, 2017, in the above-captioned matter. A copy of said Order is attached hereto as
4 **Exhibit A.**

5 Dated this 3rd day of July, 2017.

6 **AKERMAN LLP**

7 /s/ Thera Cooper

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

10 THERA A. COOPER, ESQ.

11 Nevada Bar No. 13468

12 1160 Town Center Drive, Suite 330

13 Las Vegas, Nevada 89144

14 *Attorneys for Defendant Bank of America, N.A*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 3rd day of July, 2017, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR DISCLAIMER OF INTEREST AND DISMISSAL OF BANK OF AMERICA, NA**, in the following manner:

(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 as follows:

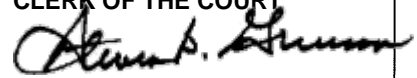
Luis A. Ayon, Esq. Ayon Law, PLLC 9205 W. Russell Road Building 3, Suite 240 Las Vegas, NV 89148 laa@ayonlaw.com	
--	--

Attorneys for West Sunset 2050 Trust

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



1 **SAO**

2 ARIEL E. STERN, ESQ.

3 Nevada Bar No. 8276

4 THERA A. COOPER, ESQ.

5 Nevada Bar No. 13468

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: thera.cooper@akerman.com

13 *Attorneys for Defendant Bank of America, NA*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,

17 Plaintiff,

18 v.

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

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

NATIONSTAR MORTGAGE, LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant

Case No.: A-13-691323-C

Dept.: XXI

**STIPULATION AND ORDER FOR
DISCLAIMER OF INTEREST AND
DISMISSAL OF BANK OF AMERICA, NA**

{41741745;1}

PLEASE TAKE NOTICE that defendant Bank of America, NA disclaims any present interest in the property located at 7255 W. Sunset Rd., Unit 2050, Las Vegas, NV 89113, which property is the subject of this lawsuit.

IT IS HEREBY STIPULATED AND AGREED between the parties that Bank of America, NA shall be dismissed from this action with each party to bear its own attorneys' fees and costs. Defendants Cooper Castle Law Firm and Stephanie Tablante have not appeared in this action.

DATED May 22, 2017.

AKERMAN LLP

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

Attorneys for Bank of America, NA

DATED May 22, 2017.

AYON LAW, PLLC

LUIS A. AYON, ESQ.
Nevada Bar No. 9752
9205 W. Russell Road
Building 3, Suite 240
Las Vegas, Nevada 89148

Attorneys for Plaintiff

ORDER

Based on the stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED that defendant Bank of America, NA is dismissed from this action, with each party to bear its own fees and costs.

DATED ^{June} ~~May~~ 26, 2017


DISTRICT COURT JUDGE *Kj*

Submitted by:

AKERMAN LLP



DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Bank of America, NA

Title to Property

COURT MINUTES

September 19, 2017

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

September 19, 2017 09:00 AM Status Check: Stay

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 15A

COURT CLERK: Perry, Sylvia

RECORDER: Vincent, Renee

REPORTER:

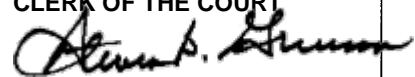
PARTIES PRESENT:

JOURNAL ENTRIES

Mr. Habdas stated confusion as to the caption of today's hearing as it is set for a status check: stay but the case is on appeal. Colloquy regarding the status of the case as Court advised the appellate record is briefed and waiting for a conference. Upon the Court's inquiry, Mr. Habdas advised a certification was granted last October leaving the HOA and trustee claims. COURT ORDERED, status check SET. If a decision is reached, parties may come together at a sooner date.

3/20/17 9:00 AM STATUS CHECK: STATUS OF CASE

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



ASSC

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: amaurice@klnevada.com

bwood@klnevada.com

ARIEL E. STERN, ESQ..

Nevada Bar No. 008276

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

E-Mail: ariel.stern@akerman.com

thera.cooper@akerman.com

Attorneys for Defendant,

NATIONSTAR MORTGAGE LLC

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, individual; DOES
I through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A-13-691323-C

DEPT NO. ~~XXI~~ VII

ASSOCIATION OF COUNSEL

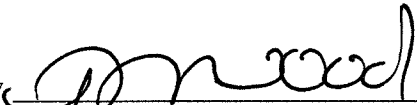
KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

ASSOCIATION OF COUNSEL

PLEASE TAKE NOTICE that Aaron R. Maurice and Brittany Wood of the law firm of Kolesar & Leatham have been associated as co-counsel for Defendant, Nationstar Mortgage, LLC, in the above-captioned matter.

DATED this 20th day of December, 2017.

KOLESAR & LEATHAM

By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

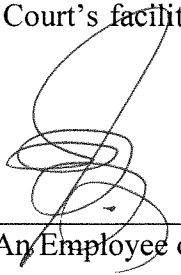
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Defendant,
NATIONSTAR MORTGAGE LLC

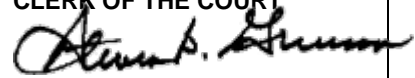
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 20th day of December, 2017, I caused to be served a true and correct copy of foregoing ASSOCIATION OF COUNSEL in the following manner:

(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.



An Employee of KOLESAR & LEATHAM



NCOA
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: thera.cooper@akerman.com

Attorneys for Defendant Bank of America, NA

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Case No.: A-13-691323-C

Dept.: VII

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,

NOTICE OF CHANGE OF ADDRESS

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

NATIONSTAR MORTGAGE, LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant

AKERMAN LLP

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

1 **TO: ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that the law firm of Akerman LLP has moved to **1635 Village**
3 **Center Circle, Suite 200. Las Vegas, Nevada 89134.** The phone number, facsimile number and email
4 addresses will all remain the same. Please revise your service lists accordingly:

5 DATED: this 18th day of January, 2018

7 **AKERMAN LLP**

8 /s/ Thera A. Cooper

9 **DARREN T. BRENNER, ESQ.**

Nevada Bar No. 8386

10 **THERA A. COOPER, ESQ.**

Nevada Bar No. 13468

11 1635 Village Center Circle, Ste. 200

12 Las Vegas, Nevada 89134

13 *Attorneys for Bank of America, NA*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th of January, 2018 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NOTICE OF CHANGE OF ADDRESS**, addressed to:

Kolesar and Leatham

Aaron R Maurice	amaurice@knevada.com
Susan Owens	sowens@knevada.com
Brittany N. Wood	bwood@knevada.com

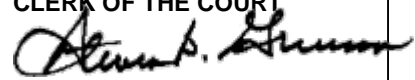
Maier Gutierrez & Associates

Charity Johnson	cmj@mgalaw.com
Jason Maier	jrm@mgalaw.com
Joseph Gutierrez	jag@mgalaw.com
Luis Ayon	laa@mgalaw.com
Natalie D. Vazquez	ndv@mgalaw.com

Luis A. Ayon, Esq.

Ayon Law, PLLC9205 W Russell Rd, Bldg. 3, Ste. 240
Las Vegas, Nevada 89148*/s/ Doug J. Layne*

An employee of AKERMAN LLP



1 **NOAC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 MELANIE D. MORGAN, ESQ.
5 Nevada Bar No. 8215
6 THERA A. COOPER, ESQ.
7 Nevada Bar No. 13468
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134
11 Telephone: (702) 634-5000
12 Facsimile: (702) 380-8572
13 Email: ariel.stern@akerman.com
14 Email: melanie.morgan@akerman.com
15 Email: theracooper@akerman.com

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

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 WEST SUNSET 2050 TRUST, a Nevada Trust,

20 Plaintiff,

21 v.

22 NEW FREEDOM MORTGAGE
23 CORPORATION, a Foreign Corporation;
24 BANK OF AMERICA, N.A., a National
25 Association; NATIONSTAR MORTGAGE,
26 LLC, a Foreign Limited Liability Company;
27 COOPER CASTLE LAW FIRM, LLP, a Nevada
28 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.

DOES I-X, inclusive and ROE
CORPORATIONS I-X, inclusive,

Counter-Defendant(s),

Case No.: A-13-691323-C

Dept.: ~~XXI~~ VII

**NOTICE OF ASSOCIATION OF
COUNSEL FOR BANK OF AMERICA,
N.A.**

AKERMAN LLP

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

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

7 Ariel E. Stern, Esq., of the law firm of Akerman LLP, hereby enters an appearance as
8 counsel of record for defendant Bank of America, N.A. in the above-entitled matter.

9 All items, including, but not limited to, pleadings, papers, correspondence, documents and
10 any other thing related to this matter can be forwarded to counsel at the below address.

11
12 DATED this 30th day of January, 2018.

13 **AKERMAN LLP**

14
15 /s/ Thera A. Cooper
16 ARIEL E. STERN, ESQ.
17 Nevada Bar No. 8276
18 MELANIE D. MORGAN, ESQ.
19 Nevada Bar No. 815
20 THERA A. COOPER, ESQ.
21 Nevada Bar No. 13468
22 1635 Village Center Circle, Suite 200
23 Las Vegas, Nevada 89134

24 *Attorneys for Defendants Bank of America, N.A.*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2018 and pursuant to FRCP 5, I served via CM/ECF and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF APPEARANCE**, postage prepaid and addressed to:

Kolesar and Leatham

Aaron R. Maurice	amaurice@klnevada.com
Susan Owens	sowens@klnevada.com
Brittany N. Wood	bwood@klnevada.com

Ayon Law, PLLC

Danielle Barraza	djb@mgalaw.com
Jason Maier	jrm@mgalaw.com
Joseph Gutierrez	jag@mgalaw.com
Luis Ayon	laa@mgalaw.com
Natalie D. Vazquez	ndv@mgalaw.com

/s/ Erin Spencer
An employee of AKERMAN LLP

Title to Property

COURT MINUTES

March 20, 2018

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

March 20, 2018 09:00 AM Status Check: Status of Case

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 15A

COURT CLERK: Pannullo, Haly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Donna Wittig, Esq., present.

Court noted the case was submitted to the Supreme Court after oral argument on February 26, 2018 and we are still waiting; therefore, COURT ORDERED, matter CONTINUED 90 days.

CONTINUED TO: 06/19/18 9:00 AM

Title to Property

COURT MINUTES

June 19, 2018

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

June 19, 2018 09:00 AM Status Check: Status of Case

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 15A

COURT CLERK: Kidd, Lauren

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Tenesa Scaturro, Esq. present for Nationstar Mortgage LLC. Ms. Scaturro advised the matter is on appeal with the Supreme Court. COURT ORDERED, matter CONTINUED for 120 days.

CONTINUED TO: 10/16/18 9:00 AM

IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST SUNSET 2050 TRUST, A NEVADA
TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A FOREIGN
LIMITED LIABILITY COMPANY,
Respondent.

Supreme Court No. 70754
District Court Case No. A691323

FILED

JUL 27 2018

CLERK'S CERTIFICATE

Elizabeth A. Brown
CLERK OF COURT

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded."

Judgment, as quoted above, entered this 28th day of June, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 23, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

A-13-691323-C
CCJR
NV Supreme Court Clerks Certificate/Judgr
4766648



134 Nev., Advance Opinion 47
IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST SUNSET 2050 TRUST, A
NEVADA TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY,
Respondent.

No. 70754

FILED

JUN 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from summary judgment in an action to quiet title.
Eighth Judicial District Court, Clark County; Valerie Adair, Judge.
Reversed and remanded.

Ayon Law, PLLC, and Luis A. Ayon and Stephen G. Clough, Las Vegas,
for Appellant.

Akerman LLP and Ariel E. Stern and Thera A. Cooper, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, STIGLICH, J.:

This appeal again requires us to consider the competing interests of the purchaser of property at an HOA foreclosure sale and the beneficiary of a deed of trust on that property at the time of the sale. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A. (SFR I)*, 130 Nev. 742, 758, 334

P.3d 408, 419 (2014) (holding that valid foreclosure of an HOA superpriority lien extinguishes a first deed of trust).

In this case, the district court determined that respondent Nationstar Mortgage LLC's deed of trust survived the HOA foreclosure sale because the HOA failed to provide statutorily required preforeclosure notice. Appellant West Sunset 2050 Trust argues that the district court erred in that determination. Nationstar counters that, even if the HOA fully complied with the notice requirements, the HOA lost its right to foreclose on the property because it sold its right to collect past-due assessments on that property to a third party. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 508-09, 286 P.3d 249, 252 (2012) (holding that a party cannot foreclose on a property if the foreclosing entity does not simultaneously possess a promissory note and a lien on the property securing that note).

We hold that the foreclosure sale was not invalid due to a lack of notice, and we reject Nationstar's *Edelstein* argument as inapplicable to this scenario. Accordingly, we reverse the district court's order and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

This case concerns competing rights to 7255 W. Sunset Road, Unit 2015 (the Property). In 2005, a homeowner purchased the Property with a home loan from New Freedom Mortgage Corporation in the amount of \$176,760. New Freedom secured that loan with a senior deed of trust on the Property. That deed of trust was recorded and subsequently assigned to an organization that merged with Bank of America. It was then reassigned to respondent Nationstar Mortgage, LLC.

The Property is within the Tuscano Homeowners Association (the HOA) and is subject to the HOA's covenants, conditions, and restrictions (CC&Rs). Those CC&Rs obligated the owner of the Property to pay monthly assessments and authorized the HOA to impose a lien upon the Property in the event of nonpayment. In 2012, the HOA recorded a lien for delinquent assessments on the Property and subsequently recorded a Notice of Default (NOD). When the HOA recorded the NOD, Bank of America was on record as the beneficiary of the deed of trust. The HOA mailed the NOD to New Freedom but not to Bank of America.

The HOA then sold to nonparty First 100, LLC, its "interest in any and all [proceeds on past income] arising from or relating to the [Property's] Delinquent Assessment[]." In the written contract memorializing that sale, the HOA promised to continue its efforts to collect on the Property's past-due assessments and to remit all such payments directly to First 100.

On May 29, 2013, the HOA recorded a Notice of Foreclosure Sale. The HOA mailed that notice to New Freedom, Bank of America, Nationstar, and other parties not relevant here. The Property's delinquent assessment remained unpaid, so the HOA proceeded with a nonjudicial foreclosure sale. Appellant West Sunset purchased the Property at that sale for \$7,800.

West Sunset sued to quiet title against Nationstar, Bank of America, and other parties not relevant here. Nationstar counterclaimed to quiet title, and both parties moved for summary judgment.

The district court granted summary judgment to Nationstar. In its written order, the court found that the HOA failed to provide "any foreclosure notices to the beneficiary of the senior deed of trust," so

Nationstar's deed of trust survived the foreclosure sale. The practical effect of the court's decision is to vest ownership of the Property in West Sunset while subjecting it to Nationstar's senior deed of trust.

DISCUSSION

Standard of review

This court reviews de novo a district court's order granting summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate upon a showing that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c).

In a quiet title action, "a plaintiff's right to relief . . . depends on superiority of title." *Chapman v. Deutsche Bank Nat'l Tr.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013) (internal quotation marks omitted). "[T]he burden of proof rests with the plaintiff to prove good title in himself." *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996), *abrogated on other grounds by Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009), *as recognized by In re Frei Irrevocable Tr.*, 133 Nev., Adv. Op. 8, 390 P.3d 646, 652 n.8 (2017).

Notice and due process

Nationstar's primary argument, both below and on appeal, is that the HOA failed to provide statutorily required notice of the impending

foreclosure sale on the property.¹ That is, Nationstar attempts to escape the holding of *SFR I* by arguing that a lack of notice rendered the foreclosure improper. 130 Nev. at 758, 334 P.3d at 419 (holding that “proper foreclosure” of an HOA superpriority lien “will extinguish a first deed of trust”).

To be clear, Nationstar does not allege that Nationstar itself was deprived of notice. It is undisputed that the HOA served Nationstar with notice of the foreclosure sale, and Nationstar does not argue that it was entitled to be served the NOD. *Cf. SFR Invs. Pool 1, LLC v. First Horizon Home Loans (SFR II)*, 134 Nev., Adv. Op. 4, 409 P.3d 891, 893-94 (2018) (holding that an HOA need not re-serve notices each time a property changes ownership). Rather, Nationstar’s argument is that the HOA sale must be invalidated because its predecessor in interest—Bank of America—was not mailed the NOD.

While Nationstar is correct that Bank of America was not served the NOD, Nationstar provides no explanation as to how Nationstar was affected—much less injured—by defective notice to Bank of America. The HOA properly recorded the NOD prior to the assignment, so that assignment put Nationstar on record notice of the NOD. *Id.* at 892

¹As a preliminary matter, the parties disputed at length whether Nationstar’s deed of trust was invalid because, years before Nationstar became its beneficiary, the homeowner appears to have unilaterally executed a deed in lieu of foreclosure to New Freedom. We decline to settle this dispute because its resolution will not affect the outcome of this case. *See First Nat. Bank of Nev. v. Ron Rudin Realty Co.*, 97 Nev. 20, 24, 623 P.2d 558, 560 (1981) (“In that our determination of the first issue is dispositive of this case, we do not reach the second issue . . .”).

("Because NRS 116.31162 requires a[n] [HOA] foreclosing on its interest to record its notice of foreclosure sale, we conclude that any subsequent buyer purchases the property subject to that notice that a foreclosure may be imminent."). Nationstar's failure to allege prejudice resulting from defective notice dooms its claim that the defective notice invalidates the HOA sale.² See *State, Dep't of Motor Vehicles & Pub. Safety v. Pida*, 106 Nev. 897, 899, 803 P.2d 227, 228-29 (1990) (upholding a revocation of driving privileges despite the State's failure to serve statutorily required notice to the driver because the driver was not prejudiced by the defective service); *Turner v. Dewco Servs., Inc.*, 87 Nev. 14, 17, 479 P.2d 462, 465 (1971) (holding that defective notice "was not sufficiently prejudicial to void" a foreclosure sale).

In sum, the evidence does not support the district court's finding that the HOA failed to provide "any foreclosure notices to the beneficiary of the senior deed of trust." Rather, the record conclusively reveals that the HOA served notice of the foreclosure sale to Nationstar. Nationstar has failed to show that it was prejudiced by the HOA's failure to serve the NOD to Bank of America. Therefore, the district court erred in

²Nationstar additionally argues that defective notice violated Bank of America's due process rights. We reject this argument as procedurally improper and substantively meritless. *Greene v. State*, 113 Nev. 157, 176, 931 P.2d 54, 66 (1997) ("Constitutional rights are personal and may not be asserted vicariously."), *receded from on other grounds by Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000); *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev., Adv. Op. 5, 388 P.3d 970, 975 (2017) ("[T]he Due Process Clauses of the United States and Nevada Constitutions are not implicated in an HOA's nonjudicial foreclosure of a superpriority lien.").

holding that Nationstar's deed of trust survived the foreclosure sale due to a lack of notice.

The Edelstein issue

Nationstar's second argument is that the foreclosure sale was invalid because the HOA lost standing to foreclose on the property when it entered into a "factoring agreement." A factoring agreement is "the sale of accounts receivable of a firm to a factor at a discounted price." *In re Straightline Invs., Inc.*, 525 F.3d 870, 876 n.1 (9th Cir. 2008) (internal quotation marks omitted). Such an agreement accords the seller "two immediate advantages: (1) immediate access to cash; and (2) the factor assumes the risk of loss." *Id.* (internal quotation marks omitted).

In this case, the HOA entered into a factoring agreement when it sold to nonparty First 100 its "interest in any and all [proceeds on past income] arising from or relating to the [Property's] Delinquent Assessment[]." That agreement indicates that the HOA sold for \$1,476 the right to receive \$4,279.86 in past-due assessments on the Property.

Nationstar contends that this factoring agreement deprived the HOA of standing to foreclose.³ A lack of standing, says Nationstar, would invalidate the foreclosure sale and allow Nationstar's deed of trust to escape the fate of subpriority interests on properties properly foreclosed upon pursuant to NRS Chapter 116. *See SFR I*, 130 Nev. at 758, 334 P.3d at 419 (extinguishing all junior interests, including a first deed of trust).

³Nationstar additionally argues that the factoring agreement's existence violates NRS 116.3102(1)(p) and the HOA's CC&Rs. We decline to consider this argument because resolving it will not affect the outcome of this case. That is, a declaration that the factoring agreement was invalid would not alter our conclusion that the valid HOA foreclosure sale extinguished Nationstar's deed of trust.

Nationstar's argument relies upon *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 508, 286 P.3d 249, 252 (2012). In that case, David Edelstein financed a home purchase by executing a promissory note in favor of a lender. *Id.* at 509, 286 P.3d at 252. That promissory note was secured by a deed of trust, which authorized the lender to foreclose on the house should Edelstein default on the note. *Id.* The note and the deed of trust were subsequently transferred to separate entities, but both ultimately fell under the control of Bank of New York Mellon (BNYM), which sought to foreclose on the house. *Id.* at 509-10, 286 P.3d at 252-53. Edelstein argued that BNYM could not foreclose because it failed to demonstrate that it simultaneously held both the promissory note and the deed of trust. *Id.* at 511-12, 286 P.3d at 253-54. While this court ultimately ruled against Edelstein, we agreed with his legal analysis regarding the foreclosure requirement:

To enforce the obligation by nonjudicial foreclosure and sale, [t]he deed and note must be held together because the holder of the note is only entitled to repayment, and does not have the right under the deed to use the property as a means of satisfying repayment. Conversely, the holder of the deed alone does not have a right to repayment and, thus, does not have an interest in foreclosing on the property to satisfy repayment.

Id. at 512, 286 P.3d at 254 (internal citation and quotation marks omitted) (alteration in original). In short: "to have standing to foreclose, the current

beneficiary of the deed of trust and the current holder of the promissory note must be the same.”⁴ *Id.* at 514, 286 P.3d at 255.

Nationstar analogizes the present situation to *Edelstein* by comparing the HOA’s superpriority lien to a deed of trust, and the HOA’s right to receive payment on past assessments to a promissory note. Therefore, Nationstar argues, in selling the right to collect past assessments on the Property, the HOA severed its lien from the underlying debt and lost its ability to foreclose until the two become reunified.

Nationstar accurately analogizes the HOA’s superpriority lien to a deed of trust, but the analogy collapses when Nationstar attempts to equate the HOA’s factoring agreement with *Edelstein*’s transfer of a promissory note. Unlike the transfer of a promissory note, the factoring agreement did not affect the relationship between debtor and lender. That is, the Property owner remained indebted to the HOA (as opposed to becoming indebted to First 100), and the HOA retained the exclusive right to collect that debt. Indeed, the factoring agreement obliges the HOA, through its agent, to continue its collection efforts on the past-due assessments. The agreement merely instructs that agent to remit all payments directly to First 100. In short, unlike the transfer of a promissory note in *Edelstein*, the factoring agreement at issue did not affect the HOA’s right to foreclose on the property.

⁴Nothing in this discussion affects our holding in *In re Montierth*, 131 Nev. 543, 547, 354 P.3d 648, 651 (2015) (“[F]oreclosure is not impossible if there is either a principal-agent relationship between the note holder and the mortgage holder, or the mortgage holder ‘otherwise has authority to foreclose in the [note holder]’s behalf.” (alteration in original) (quoting Restatement (Third) of Property: Mortgages § 5.4 cmts. c, e (1997))). To the extent that *In re Montierth* is relevant here, it indicates that Nevada disfavors an expansion of the *Edelstein* no-splitting rule.

While the foregoing is sufficient to reject Nationstar's *Edelstein* argument, we offer one final observation on this matter. Nationstar has provided no argument as to why, as a practical or policy matter, we should discourage HOAs from executing factoring agreements. Such agreements serve the valid purpose of providing HOAs with immediate access to cash, thus helping them meet their perpetual upkeep obligations. See *In re Straightline Invs.*, 525 F.3d at 876 n.1. Extending *Edelstein* to this situation would complicate HOAs' decisions to execute such agreements and thereby frustrate their efforts to attain cash needed to maintain their communities. Absent a theory as to how these factoring agreements result in harm, we are disinclined to so interfere with HOAs' financing practices.

CONCLUSION

Given that Nationstar's rights were not prejudiced by the HOA's failure to serve the NOD upon Bank of America, the district court erred in holding that defective notice allowed Nationstar's deed of trust to survive the HOA foreclosure sale. We reject Nationstar's *Edelstein* argument as inapplicable to this HOA-factoring agreement scenario. Accordingly, and having carefully considered the parties' remaining arguments,⁵ we reverse

⁵That is, we reject Nationstar's argument that "gross inadequacy of price" invalidated the HOA sale. See *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev., Adv. Op. 91, 405 P.3d 641, 643 (2017) ("[I]nadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale." (internal quotation marks omitted)). Moreover, because we conclude that the HOA sale was valid, we need not resolve the parties' additional dispute as to whether West Sunset was a *bona fide* purchaser.

the entry of summary judgment and remand for further proceedings consistent with this opinion.

Stiglich, J.
Stiglich

We concur:

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 7/23/18
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST SUNSET 2050 TRUST, A NEVADA
TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A FOREIGN
LIMITED LIABILITY COMPANY,
Respondent.

Supreme Court No. 70754
District Court Case No. A691323

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 23, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Valerie Adair, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Kolesar & Leatham, Chtd.

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 27 2018.

Deputy HEATHER UNGERMANN 
District Court Clerk

RECEIVED
APPEALS

JUL 26 2018

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 29, 2018

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

August 29, 2018 10:27 AM Minute Order Resetting Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, status check currently set on Tuesday, October 16, RESET on Monday, October 15, 2018.

10-15-18 9:00 AM STATUS CHECK: STATUS OF CASE

CLERK'S NOTE: Parties notified by distributing a copy of this minute order via the E-Service list. /
dr 8-29-18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****October 15, 2018**

A-13-691323-C

West Sunset 2050 Trust, Plaintiff(s)

vs.

New Freedom Mortgage Corporation, Defendant(s)

October 15, 2018**9:00 AM****Status Check: Status of Case****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES****PRESENT:**

Ayon, Luis A

Maurice, Aaron R.

Wittig, Donna

Attorney for Plaintiff

Attorney for Nationastar Mortgage

Attorney for Nationastar Mortgage

JOURNAL ENTRIES

- Ms. Wittig not present at call of case. Mr. Ayon advised he and Ms. Wittig discussed a briefing schedule and agreed to submit motions for summary judgment 60 days from today; they do not need additional discovery. Mr. Maurice stated he was not included in those discussions but will defer to the Akerman firm on the stipulations to a briefing schedule. Court inquired as to why the parties are not on its trial schedule. Mr. Ayon responded they just came back from a remand. Court stated it will not allow 60 more days. Matter TRALED for Ms. Wittig's appearance.

Matter recalled. Ms. Wittig present. Court inquired as to why they need 60 more days. Mr. Ayon advised he has a lot of appellate briefs due in November; secondly, there were a lot of documents produced at the time of the hearing on the motion for summary judgment which were not produced at the time of the disclosures, so he is planning a motion to strike those documents; he does not want additional discovery but the discovery that should have been done previously. Following further discussion, all counsel agreed they need 120 more days of discovery.

COURT ORDERED as follows:

Discovery cut-off SET for February 22, 2019;

PRINT DATE: 10/16/2018

Page 1 of 2

Minutes Date: October 15, 2018

Motions DUE April 5, 2019;

Bench Trial SET on the stack that begins on May 28, 2019.

New Trial Setting Order will ISSUE.

Steven D. Grierson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WEST SUNSET 2050 TRUST,

Plaintiff(s),

vs

NEW FREEDOM MORTGAGE CORP, ET AL,

Defendant(s),

AND ALL RELATED MATTERS.

Case No. 13 A 691323

Dept. No. XI

Date of Hearing: 10/15/18

Time of Hearing: 9:00a.m.

**1st AMENDED ORDER SETTING CIVIL BENCH TRIAL
AND CALENDAR CALL**

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to this Court on a **Five week stack** to begin,
May 28, 2019 at 1:30 p.m.

B. A calendar call will be held on **May 21, 2019 at 9:30 a.m.** Parties must bring to
Calendar Call the following:

- (1) Typed exhibit lists;
- (2) List of depositions;
- (3) List of equipment needed for trial, including audiovisual equipment;¹ and
- (4) Courtesy copies of any legal briefs on trial issues.

The Final Pretrial Conference will be set at the time of the Calendar Call.

¹ If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@ClarkCountyCourts.us

RECEIVED

23 OCT 17 2018

CLERK OF THE COURT

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1 C. Parties are to appear on **February 28, 2019 at 9:00 a.m.** for a Status Check on
2 the matter.

3
4 D. The Pre-Trial Memorandum must be filed no later than **May 15, 2019**, with a
5 courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper person) **MUST**
6 comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the
7 Memorandum an identification of orders on all motions in limine or motions for partial summary
8 judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of
9 the opinions to be offered by any witness to be called to offer opinion testimony as well as any
10 objections to the opinion testimony.

11
12 E. All motions in limine (*Omnibus Motions in Limine are not allowed*), must be in
13 writing and filed no later than **April 5, 2019. Orders shortening time will not be signed except in**
14 **extreme emergencies.**

15
16 F. All original depositions anticipated to be used in any manner during the trial must be
17 delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to
18 be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to
19 be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-
20 Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be
21 filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference
22 commencement. Counsel shall advise the clerk prior to publication.

23
24 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
25 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring
26 binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial
27 Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed
28 prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be
prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise
agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into
evidence.

1 Failure of the designated trial attorney or any party appearing in proper person to appear
2 for any court appearances or to comply with this Order shall result in any of the following: (1)
3 dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date;
4 and/or any other appropriate remedy or sanction.

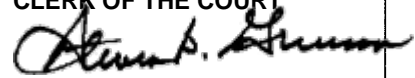
5 Counsel is required to advise the Court immediately when the case settles or is otherwise
6 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a
7 Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be
8 given to Chambers.
9 DATED this 17th day of October, 2018.

10
11 
12 Elizabeth Gonzalez, District Court Judge

13
14 **Certificate of Service**

15 I hereby certify that on the date filed, this Order was electronically served, pursuant to
16 N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic
17 Filing Program.

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19 Dan Kutinac
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NOTC

AARON R. MAURICE, ESQ.

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BRITTANY WOOD, ESQ.

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Attorneys for Defendant,

NATIONSTAR MORTGAGE LLC

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, individual; DOES
I through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A-13-691323-C

DEPT NO. XXI

**NOTICE OF DISASSOCIATION
OF COUNSEL**


NOTICE OF DISASSOCIATION OF COUNSEL

PLEASE TAKE NOTICE that Aaron R. Maurice, Esq. and Brittany Wood, Esq. of the law firm of Kolesar & Leatham, hereby disassociate from further representation of Defendant, Nationstar Mortgage LLC, in the above-captioned matter.

Ariel E. Stern, Esq. and Thera A. Cooper, Esq., of the law firm of Akerman LLP continue to represent Defendant Nationstar Mortgage LLC in this matter.

DATED this 2nd day of November, 2018.

KOLESAR & LEATHAM

By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

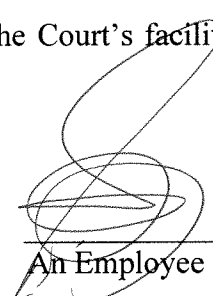
Las Vegas, Nevada 89145

Attorneys for Defendant,
NATIONSTAR MORTGAGE LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 2nd day of November, 2018, I caused to be served a true and correct copy of foregoing ASSOCIATION OF COUNSEL in the following manner:

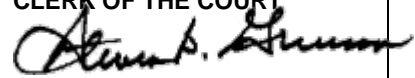
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.



An Employee of KOLESAR & LEATHAM

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Las Vegas, Nevada 89145
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NOLP
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Attorneys for Defendant Bank of America, NA

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.

NATIONSTAR MORTGAGE, LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant.

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

NOTICE OF LIS PENDENS

AKERMAN LLP

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

1 **NOTICE IS HEREBY GIVEN** that a Complaint for declaratory relief was filed by plaintiff
2 West Sunset 2050 Trust on November 6, 2013 against New Freedom Mortgage Corporation; Bank
3 of America, N.A.; Nationstar Mortgage LLC; Cooper Castle Law Firm, LLP; Stephanie Tablante;
4 DOES 1 through X; and ROE Corporations 1 through X.

5 The action is now pending in the above-entitled court and affects title of the real property
6 physically described as 7255 W. Sunset Road, Unit 2050, Las Vegas, Nevada 89113 and legally
7 described as follows:

8 **PARCEL ONE (1)- UNITS:**

9 **UNIT 2050 IN BUILDING 7 AS SHOWN ON THE FINAL PLAT OF**
10 **TUSCANO CONDOMINIUMS, A CONDOMINIUM COMMUNITY,**
11 **RECORDED JANUARY 31, 2005, IN BOOK 122, PAGE 11 OF PLATS, IN**
12 **THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,**
13 **NEVADA (THE "PLAT"), AND**

14 **PARCEL TWO (2) – COMMON ELEMENTS:**

15 **1/352 INTEREST AS A TENANT-IN-COMMON IN THE COMMON**
16 **ELEMENTS IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF**
17 **THE DECLARATION OF COVENANTS, CONDITIONS, AND**
18 **RESTRICTIONS FOR TUSCANO TOWNHOMES RECORDED APRIL 5,**
19 **2005 IN BOOK 20050405 AS DOCUMENT NO. 0002422 IN THE OFFICE OF**
20 **THE COUNTY RECORDER OF CLARK COUNTY, NEVADA (THE**
21 **"DECLARATION").**

22 **EXCEPTING THEREFROM, ALL UNITS SHOWN ON THE PLAN.**

23 **RESERVING THEREFROM, THE RIGHT TO USE ANY OF THOSE AREAS**
24 **DESIGNATED AS LIMITED COMMON ELEMENTS IN THE PLAT**
25 **AND/OR THE DECLARATION.**

26 **FURTHER RESERVING THEREFROM, FOR THE BENEFIT OF THE**
27 **OWNERS OF ALL UNITS SHOWN ON THE PLAN (EXCEPT THE UNIT**
28 **REFERRED TO IN PARCEL 1 ABOVE) NON-EXCLUSIVE EASEMENTS**
29 **FOR ACCESS, INGRESS, EGRESS USE, ENJOYMENT AND OTHER**
30 **PURPOSES ON, OVER AND ACROSS THE COMMON ELEMENTS, AS**
31 **DEFINED IN AND SUBJECT TO THE DECLARATION.**

32 **PARCEL THREE (3) – APPURTENANT EASEMENTS:**

33 **NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS USE,**
34 **ENJOYMENT AND OTHER PURPOSES ON, OVER AND ACROSS THE**
35 **COMMON ELEMENTS AS DEFINED IN AND SUBJECT TO THE**
36 **DECLARATION, WHICH EASEMENTS ARE APPURTENANT TO PARCELS**
37 **1, 2 ABOVE.**

38 ...

39 ...

and more particularly identified in the official records of the Clark County Recorder as Assessor's
Parcel Number: **176-03-510-102.**

Dated this 7th day of February, 2019.

AKERMAN LLP

/s/ Thera Cooper

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Defendant Bank of America, N.A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 7th day of February, 2019, I caused to be served a true and correct copy of the foregoing **NOTICE OF LIS PENDENS**, in the following manner:

(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 as follows:

Luis A. Ayon, Esq. Ayon Law, PLLC 9205 W. Russell Road Building 3, Suite 240 Las Vegas, NV 89148	
--	--

Attorneys for West Sunset 2050 Trust

/s/ Erin Surguy

An employee of AKERMAN LLP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****February 28, 2019**

A-13-691323-C

West Sunset 2050 Trust, Plaintiff(s)

vs.

New Freedom Mortgage Corporation, Defendant(s)

February 28, 2019**9:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES****PRESENT:**

Wittig, Donna

Attorney for Defendants

JOURNAL ENTRIES

- Plaintiff's counsel not present.

Upon Court's inquiry, Ms. Wittig advised that to her knowledge there is no discovery that has not been done and everything is on track. Court noted this is the oldest case on the stack and directed Ms. Wittig to tell Plaintiff's counsel his absence today is noted but the Court plans to proceed to trial.

5-21-19 9:30 AM CALENDAR CALL

5-28-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 28, 2019

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

February 28, 2019 9:00 AM Minute Order Advancing Calendar Call

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

JOURNAL ENTRIES

- Due to the Court's unavailability on May 21, 2019, Calendar Call is ADVANCED to Tuesday, May 14, 2019.

5-14-19 9:30 AM CALENDAR CALL

5-28-19 1:30 PM BENCH TRIAL

CLERK'S NOTE: A copy of this minute order was distributed to the parties via electronic mail. / dr 2-28-19


CLERK OF THE COURT

1 **ORDR**

3 **EIGHTH JUDICIAL DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 Plaintiff(s),
6 vs.

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

7 Defendant(s)

8 **NOTICE OF DEPARTMENTAL SEALING and/or REDACTING PROCEDURES**

9 This procedure applies to all cases pending in Department 11 and is being adopted due to the
10 inconsistent, and in some situations, improper procedures being undertaken by counsel and as a result of
11 the implementation of “autoaccept” by the clerk’s office filing system.

12 No documents may be submitted to the Court under seal based solely upon the existence of a
13 protective order.

14 Any sealing or redaction of information must be done by motion.

15 All motions to seal and/or redact and the potentially protected information must be filed at the
16 clerk’s office front counter during regular business hours 9 am to 4 pm.

17 In accordance with, Administrative Order 19-03, the motion to seal must contain the language
18 “Hearing Requested” on the front page of the motion under the Department number.

19 Pursuant to SRCR Rule 3(5)(b), redaction is preferred and sealing will be permitted only under
20 the most unusual of circumstances.

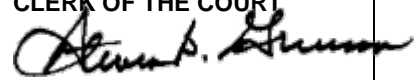
21 If a motion to seal and/or redact is filed concurrently with the potentially protected information,
22 the proposed redacted version of the document containing potentially protected information and/or with a
23 slip-sheet in the place of any exhibit or other attachment entitled “Exhibit ** Confidential Filed Under
24 Seal”, must be attached as an Exhibit to the motion to seal and/or redact.
25

1 The potentially protected information in unredacted and unsealed form must be filed at the same
2 time and a hearing on the motion to seal set. While the motion to seal is pending, the potentially
3 protected information will not be accessible to the public.

4 If the motion to seal is noncompliant, the motion to seal may be stricken and the potentially
5 protected information unsealed.

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7 Dated this 15 day of March, 2019.

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11 ELIZABETH GONZALEZ
12 DISTRICT COURT JUDGE
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LUIS A. AYON, ESQ.

Nevada Bar No. 9752

AYON LAW, PLLC

8716 Spanish Ridge, Suite 115

Las Vegas, Nevada 89148

Telephone: (702) 600-3200

Facsimile: (602) 900-9947

E-Mail: laa@ayonlaw.com

Attorneys for Plaintiff West Sunset 2050 Trust

EIGHT JUDICIAL 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 ACTIONS

Case No.: A-13-691323-C

Dept. No.: XI

**WEST SUNSET 2050 TRUST'S PRE-
TRIAL DISCLOSURES**

Plaintiff West Sunset 2050 Trust ("Plaintiff") and through its attorneys of record, the law firm of Ayon Law, PLLC, hereby submit the following pretrial disclosures in accordance with NRCP 16.1 (a) (3).

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I. WITNESSES

A. PLAINTIFF EXPECTS TO PRESENT THE FOLLOWING WITNESSES AT TRIAL:

1. Jacob Lefkowitz
West Sunset 2050 Trust
c/o Luis A. Ayon, Esq.
Ayon Law, PLLC
8716 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 629-7900
2. Person(s) Most Knowledgeable
Bank of America, N.A.
c/o Melanie Morgan, Esq.
Akerman, LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
(702) 634-5000
3. Stephanie Tablante
4. Person(s) Most Knowledgeable
New Freedom Mortgage Corporation
2363 South Foothill Drive
Salt Lake City, Utah 84109
5. Person(s) Most Knowledgeable
John Peter Lee, Ltd.
830 Las Vegas Blvd. South
Las Vegas, Nevada 89101
6. Person(s) Most Knowledgeable
Tuscano Homeowners' Association
c/o First Service Residential Nevada, LLC
8290 Arville Street
Las Vegas, Nevada 89139

Plaintiff reserves the right to call any witnesses named by defendants and reserves the right to call any witnesses as may be necessary for the purpose of impeachment. By listing witnesses, Plaintiff does not waive the right to object to any witnesses at the time of trial.

Plaintiff may utilize the deposition transcripts of witnesses in this matter, whether taken in this case or other cases, for the purposes of impeachment or any other purpose allowed by the Rules.

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B. PLAINTIFF WHO HAVE BEEN OR MAY BE SUBPOENAED FOR TRIAL

None at this time.

I. PLAINTIFF WILL PRESENT THE FOLLOWING DEPOSITION AT TRIAL PURSUANT TO NRCP 16.1 (A)(3)(B)

A. PLAINTIFF WILL PRESENT THE FOLLOWING DEPOSITIONS AS ALLOWED BY NEVADA LAW

None at this time.

B. PLAINTIFF WILL PRESENT THE FOLLOWING DEPOSITIONS AT TRIAL PURSUANT IF THE WITNESS IS UNAVAILABLE AT THE TIME OF TRIAL

None at this time.

C. THE FOLLOWING DEPOSITION TESTIMONY WILL BE PRESENTED FOR IMPEACHMENT IF THE NEED ARISES

None at this time.

II. LIST OF EXHIBITS

A. PLAINTIFF'S DOCUMENTS TO BE PRESENTED AT TRIAL

1. Grant, Bargain and Sale Deed recorded in the Official Records of the Clark County Recorder as Instrument No. 20051207-0002366; *See* Bates Stamped Nos. WS0001-4;
2. Deed of Trust recorded in the Official Records of the Clark County Recorder as Instrument No. 20051207-0002367; *See* Bates Stamped Nos. WS0005-23;
3. Declaration of Homestead recorded in the Official Records of the Clark County Recorder as Instrument No. 20060206-0002436; *See* Bates Stamped Nos. WS0024;
4. Deed in Lieu of Foreclosure recorded in the Official Records of the Clark County Recorder as Instrument No. 201103030003444 and re-recorded Deed in Lieu of Foreclosure recorded in the Official Records of the Clark County Recorder as Instrument No. 201106210002567; *See* Bates Stamped Nos. WS0025-35;
5. Assignment of Deed of Trust recorded in the Official Records of the Clark County Recorder as Instrument No. 201107290000895; *See* Bates Stamped Nos. WS0036-37;
6. Substitution of Trustee recorded in the Official Records of the Clark County Recorder as Instrument No. 201202020000943; *See* Bates Stamped Nos. WS0038;

1 7. Lien for Delinquent Assessments recorded in the Official Records of the Clark
2 County Recorder as Instrument No. 201204040001017; *See* Bates Stamped Nos. WS0039;

3 8. Notice of Default and Election to Sell Pursuant to the Lien for Delinquent
4 Assessments recorded in the Official Records of the Clark County Recorder as Instrument No.
5 201205290001690; *See* Bates Stamped Nos. WS0040;

6 9. Corporation Assignment of Deed of Trust recorded in the Official Records of the
7 Clark County Recorder as Instrument No. 201303200000887; *See* Bates Stamped Nos. WS0041-
8 42;

9 10. Notice of Foreclosure Sale recorded in the Official Records of the Clark County
10 Recorder as Instrument No. 201305290000306; *See* Bates Stamped Nos. WS0043;

11 11. Foreclosure Deed Upon Sale recorded in the Official Records of the Clark County
12 Recorder as Instrument No. 2013062400003127; *See* Bates Stamped Nos. WS0044-46;

13 12. Notice of Breach and Default and of Election to Cause Sale of Real Property
14 Under Deed of Trust recorded in the Official Records of the Clark County Recorder as
15 Instrument No. 2013091800002103; *See* Bates Stamped Nos. WS0047-0051;

16 13. Email correspondence dated July 9, 2013; *See* Bates Stamped Nos. WS0052-
17 WS0053;

18 14. Standard Residential Lease Agreement dated July 8, 2014; *See* Bates Stamped
19 Nos. WS0054-WS0062;

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1 Defendant incorporates by reference herein all documents and tangible things identified
2 by all other parties to this action. Defendant reserves the right to supplement and amend this list
3 as discovery continues.

4 DATED this 24th day of April, 2019

6 AYON LAW, PLLC

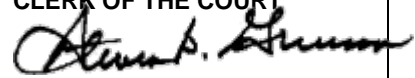
7 /s/ Luis A. Ayon
8 LUIS A. AYON, ESQ.
9 Nevada Bar No. 9752
8716 Spanish Ridge Avenue, Suite 115
Las Vegas, Nevada 89148
10 *Attorney for Plaintiff*
11 *West Sunset 2050 Trust*
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **PLAINTIFF WEST SUNSET 2050 TRUST PRE-TRIAL DISCLOSURES PURSUANT TO 16.1 (A)(3)** was made on this 24th day of April, 2019, via the Odyssey File and Serve system to all parties and counsel appearing in this case.

/s/Luis A. Ayon
An Employee of Ayon Law, PLLC



PTD

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: donna.wittig@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.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept.: XI

NATIONSTAR MORTGAGE LLC'S FIRST AMENDED PRETRIAL DISCLOSURES

Defendant Nationstar Mortgage LLC (**Nationstar**) submits its first amended pretrial disclosure of documents and witnesses as follows:

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I. LIST OF WITNESSES

Nationstar expects to call the following witnesses at trial.

1. Fay Janati, Simon Ward-Brown, Aaryn Richardson, Alan Blunt, Edward Hyne or another corporate representative(s) for Nationstar Mortgage LLC
c/o Melanie D. Morgan, Esq. and/or Donna M. Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000

This witness will testify regarding relevant facts and information relating to Nationstar lien on the subject property.

2. Shawn Look, Jessica Woodbridge, Diane Deloney, Matthew Labrie or another corporate representative(s) for Bank of America, N.A.¹
800 Samoset Drive
Mail Code DE5-024-02-08
Newark, Delaware 19713

This witness will testify regarding relevant facts and information relating to Nationstar's lien on the subject property.

3. Corporate representative(s) for New Freedom Mortgage Corp.
Address presently unknown

This witness will testify regarding relevant facts and information relating to Nationstar's lien on the subject property.

4. Kipp Greengrass or another corporate representative(s) for
Tuscano Homeowners Association
c/o Registered Agent: FirstService Residential, Nevada, LLC
8290 Arville Street
Las Vegas, Nevada 89139

This witness is expected to testify regarding relevant facts and information relating to the nonjudicial foreclosure sale relevant to this litigation.

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¹ No party is to engage in ex parte communications without Akerman's consent.

- 1 5. Julia Thompson or another corporate representative(s) for
2 Red Rock Financial Services, LLC
3 c/o Registered Agent: CSC Services Of Nevada, Inc.
 2215-B Renaissance Drive
 Las Vegas, Nevada 89119

4 This witness is expected to testify regarding relevant facts and information relating to the
5 nonjudicial foreclosure sale relevant to this litigation.

- 6 6. Rebecca Tom
7 c/o Red Rock Financial Services, LLC
8 c/o Registered Agent: CSC Services Of Nevada, Inc.
 2215-B Renaissance Drive
 Las Vegas, Nevada 89119

9 This witness is expected to testify regarding relevant facts and information relating to the
10 nonjudicial foreclosure sale relevant to this litigation.

- 11 7. Robert Atkinson or another corporate representative(s) for
12 United Legal Services, Inc.
13 c/o Atkinson Law Associates
 8965 South Eastern Avenue, Suite 260
 Las Vegas, Nevada 89123

14 This witness is expected to testify regarding relevant facts and information relating to the
15 nonjudicial foreclosure sale relevant to this litigation.

- 16 8. Mia Fregeau
17 c/o United Legal Services, Inc.
18 c/o Atkinson Law Associates
 8965 South Eastern Avenue, Suite 260
 Las Vegas, Nevada 89123

19 This witness is expected to testify regarding relevant facts and information relating to the
20 nonjudicial foreclosure sale relevant to this litigation

- 21 9. Robert Updyko, Esq.
22 c/o United Legal Services
23 c/o Atkinson Law Associates
 8965 South Eastern Avenue, Suite 260
 Las Vegas, Nevada 89123

24 This witness is expected to testify regarding relevant facts and information relating to the
25 nonjudicial foreclosure sale relevant to this litigation.

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1 10. Stephanie Tablante
2 Address presently unknown

3 This witness is expected to testify regarding the allegations asserted in the complaint,
4 counterclaim and crossclaim.

5 11. John Peter Lee, Esq.
6 830 South Las Vegas Boulevard
 Las Vegas, Nevada 89101

7 This witness is expected to testify regarding the allegations asserted in the complaint,
8 counterclaim and crossclaim.

9 12. Jay Bloom or another corporate representative(s) for First 100, LLC
10 c/o Registered Agent: Jay Bloom
 2485 Village View Drive
11 Henderson, Nevada 89074

12 This witness is expected to testify regarding the allegations asserted in the complaint,
13 counterclaim and crossclaim.

14 13. Kenneth Berberich or another corporate representative(s)
15 for West Sunset 2050 Trust
 c/o Luis A. Ayon, Esq.
16 Ayon Law PLLC
 8716 Spanish Ridge Avenue, Suite 115
17 Las Vegas, Nevada 89148

18 This witness is expected to testify regarding the allegations asserted in the complaint,
19 counterclaim and crossclaim.

20 14. Valbridge Property Advisors
21 Lubawy & Associates, Inc.
 3034 S. Durango Dr. #100
22 Las Vegas, NV 89117
 Matthew Lubawy, MAI, CVA, CMEA
23 Managing Director
 Tammy Howard, Senior Appraiser

24 Ms. Howard and/or Mr. Lubawy will provide expert opinions concerning the market value at
25 the time of the HOA's foreclosure sale in accordance with Defendant's Initial Expert Disclosure.

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15. Dean Meyer and/or other Corporate Representative of Federal Home Loan Mortgage Corporation (Freddie Mac)
c/o Melanie D. Morgan, Esq. or Donna Wittig, Esq.
AKERMAN LLP
1635 Village Center Cir., Suite 200
Las Vegas, NV 89134
Telephone: (702) 634-5000

This witness will testify regarding Freddie Mac's ownership of the loan and involvement with the property.

Defendant reserves the right to call any person listed by any other parties to testify at the trial of this action, and further reserves the right to supplement this list of witnesses as additional persons become known to Defendant

II. DOCUMENTS

Defendant experts to offer the following documents, data compilations, and tangible things:

1. Grant, Bargain and Sale Deed and DOV, instrument no. 200512070002366, Bates No. NSM00001-NSM00004.

2. Deed of Trust, instrument no 200512070002367, Bates No. NSM00000-NSM00023.

3. Declaration of Homestead, instrument no. 200602060002436, Bates No. NSM000024.

4. Deed in Lieu of Foreclosure and DOV, instrument no. 201103030003444, Bates No. NSM00025-NSM00029.

5. Deed in Lieu of Foreclosure and DOV (re-recorded), instrument no. 201106210002567, Bates No. NSM00030-NSM00035.

6. Assignment of Deed of Trust, instrument no. 201107290000895, Bates No. NSM00036-NSM00037.

7. Substitution of Trustee, instrument no. 20120202020000943, Bates No. NSM00038.

8. Lien for Delinquent Assessments, instrument number 201204040001017, Bates No. NSM00039.

9. Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments, instrument no. 201205290001690, Bates No. NSM00040.

///

10. Corporation Assignment of Deed of Trust, instrument number 201303200000887, Bates No. NSM00041-NSM00042.

11. Notice of Foreclosure Sale (HOA Lien), instrument no. 201305290000306, Bates No. NSM00043.

12. Foreclosure Deed Upon Sale and DOV, instrument no. 201306240003127, Bates No. NSM00044-NSM00046.

13. Notice of Breach and Election to Cause Sale of Real Property Under Deed of Trust, instrument no. 201309180002103, Bates No. NSM00047-NSM00051.

14. Deposition Transcript from Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000052 – NSM000125.

15. Documents Brought By ULS Witness (Emails, Statutes, Fee Schedules) produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services (Emails, Statutes, Fee Schedules), Bates No. NSM000126 – NSM000135.

16. ULS Documents produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000136 – NSM000179.

17. Documents from prior collections agency (Red Rock) produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000180 – NSM000285.

18. Contracts with HOA and First 100 produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000286 – NSM000365.

19. Auction Results produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000366 – NSM000369.

20. Emails produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000370 – NSM000455.

21. Affidavit and documents produced responsive to subpoena duces tecum served upon John Peter Lee, Ltd., Bates No. NSM000456 – NSM000489.

22. Policy of Title Insurance issued by First American Title Insurance Company, Bates No. NSM000490 – NSM000505.

23. Affidavit and documents produced responsive to subpoena duces tecum served upon Red Rock Financial Services, Bates No. NSM000506 – NSM000552.

24. Declaration Of Julia Thompson In Support Of Red Rock Financial Services, LLC's Limited Opposition To Motion For Summary Judgment; Eighth Judicial District Court Case A-14-704704-C, *KAL-MOR-USA, LLC v. Green Tree Servicing LLC et al.* (Filed January 12, 2017), Bates No. NSM000553 – NSM000558.

25. Transcript Of Proceedings – Bench Trial; Eighth Judicial District Court Case A-13-676349-C, *SFR Investments Pool 1, LLC v. Nationstar Mortgage LLC et al.* (June 26, 2017), Bates No. NSM000559 – NSM000684.

26. First 100, LLC Marketing Brochure, Bates No. NSM000685 – NSM000692.

27. Declaration Of Covenants, Conditions, And Restrictions And Grant And Reservation of Easements For Tuscano Townhomes (Instrument No. 20050405-0002422, Recorded April 5, 2005), Bates No. NSM000693 – NSM000747.

28. Affidavit and documents produced responsive to subpoena duces tecum served upon Tuscano Homeowners Association, Bates No. NSM000748-NSM000824.

29. Nationstar Mortgage LLC's Screen Shots, Bates No. NSM000825-NSM000826.

30. Bank of America, N.A.'s servicing transfer letter, Bates No. NSM000827-NSM000830.

31. Nationstar Mortgage LLC's welcome letter, Bates No. NSM000831-NSM000835.

32. Federal Housing Finance Agency's Statement on HOA Super-Priority Lien Foreclosures (Dated April 21, 2015), Bates No. NSM000836.

33. Promissory Note.

34. Screenshots for Freddie Mac's MIDAS System.

35. Loan Basic Inquiry

36. Seller/Service Profile Inquiry.

37. Transfer of Servicing Summary Report.

38. Mortgage Payment History.

39. Funding Details Report.

40. Securities Pool Information.

41. Nationstar/Freddie Mac ownership documents.

42. Federal Housing Finance Agency's Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeowner Associations (Dated August 28, 2015), Bates No. NSM000837.

43. Federal Home Loan Mortgage Corporation Single-Family Seller/Servicer Guide www.freddiemac.com/singlefamily/guide. Static PDF available at: <http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency>. Archived prior versions available at: www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html.

44. Freddie Mac's Single-Family Seller/Servicer Guide Sections 1101.2, 1201.9, 1301.10, 3302.5, 6301.6, 7101.6, 7101.15, 8105.3, 8107.1, 8107.2, 9301.1, 9301.11, 9301.12, 9401.1, 9402.2, 9501.1, 9501.3, 9501.4, 9501.5, 9501.6, 9501.7, 9501.8, 9501.9, 9501.10, 9501.11, 9501.12, 9501.13, 9501.14, 9501.15.

45. Archived version of Freddie Mac's Single-Family Seller/Servicer Guide Sections 1.2, 52.5, 6.6, 52.7, 22.14, 56.7, 56.15, 54.4, 18.4, 18.6, 66.1, 66.20, 66.17, 67.6, 67.17, 69.1, 69.2, 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10, 69.11, 69.12, 69.13, 69.14, 69.15.

46. Any and all witnesses and/or documents identified by any party to this litigation.

III. DEPOSITION TESTIMONY

Defendant expects that all witnesses will be available, but reserves the right to use deposition testimony if necessary for any and all purposes, including impeachment. The deposition transcripts include:

1. All deposition transcripts from other cases disclosed above.

DATED April 26th, 2019.

AKERMAN LLP

/s/ Donna M. Wittig

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Defendant Nationstar Mortgage LLC

CERTIFICATE OF SERVICE

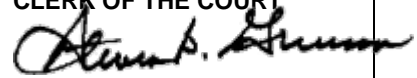
I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 26th day of April, 2019, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S FIRST AMENDED PRETRIAL DISCLOSURES**, in the following manner:

(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 as follows:

AYON LAW, PLLC

Luis Ayon	laa@ayonlaw.com
Charity Johnson	cmj@mgalaw.com
Danielle Barraza	djb@mgalaw.com
Jason Maier	jrm@mgalaw.com
Joseph Gutierrez	jag@mgalaw.com
Luis Ayon	laa@mgalaw.com
Natalie D. Vazquez	ndv@mgalaw.com

/s/ Carla Llarena
An employee of AKERMAN LLP



OBJ

LUIS A. AYON, ESQ.
Nevada Bar No. 9752
AYON LAW, PLLC
8716 Spanish Ridge Ave., Suite 115
Las Vegas, Nevada 89148
Telephone: (702) 600-3200
Facsimile: (702) 947-7110
E-Mail: laa@ayonlaw.com
Attorney for Plaintiff,
WEST SUNSET 2050 TRUST

**EIGHTH JUDICIAL DISTRICT COURT
DISTRICT OF NEVADA**

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,
vs.

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

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 ACTIONS

**PLAINTIFF, WEST SUNSET 2050 TRUST'S OBJECTIONS TO DEFENDANT
NATIONSTAR MORTGAGE LLC'S FIRST AMENDED PRETRIAL DISCLOSURES**

COMES NOW, Plaintiff, WEST SUNSET 2050 TRUST, (hereinafter referred to as
"Plaintiff" or "West Sunset") by and through its attorneys of record, LUIS A. AYON, ESQ., of
the law firm of AYON LAW, hereby submits its objections to Defendant, NATIONSTAR
MORTGAGE LLC'S FIRST AMENDED PRETRIAL DISCLOSURES as follows:

1 **I. LIST OF WITNESSES**

- 2 14. Valbridge Property Advisors
3 Lubawy & Associates, Inc.
4 Matthew Lubawy, MIA, CVA, CMEA, Managing Director
5 Tammy Howard, Senior Appraiser
6 3034 South Durango Drive, Suite 100
7 Las Vegas, Nevada 89117

8 OBJECTION: These expert witnesses were not disclosed as required by NRCIP 16.1(a)(2).
9 Furthermore, any alleged prior disclosure of these witnesses by Nationstar Mortgage are
10 insufficient and non-compliant with NRCP 16.1(a)(2)(B).

- 11 15. Dean Meyer and/or other Corporate Representative
12 Federal Loan Mortgage Corporation (Freddie Mac)
13 c/o Melanie D. Morgan, Esq.
14 Donna Wittig, Esq.
15 AKERMAN LLP
16 1635 Village Center Circle, Suite 200
17 Las Vegas, Nevada 89134

18 OBJECTION: These witnesses were not previously disclosed. Furthermore, any alleged
19 prior disclosure of these witnesses by Nationstar Mortgage are insufficient and non-compliant.

20 **II. DOCUMENTS**

- 21 26. First 100, LL marketing Brochure, Bates No. NSM000685-NSM000692

22 OBJECTION: inadmissible; not relevant.

- 23 29. Nationstar Mortgage LLC's screen shots, Bates No. NSM000825-NSM000826

24 OBJECTION: lacks authenticity; inadmissible hearsay; not relevant.

- 25 32. Federal Housing Finance Agency's Statement on HOA Super-Priority Lien
26 Foreclosures (Dated April 21, 2015), Bates No. NSM000836.

27 OBJECTION: not relevant, not disclosed timely

- 28 34. Screenshots for Freddie Mac's MIDAS System

 OBJECTION: lacks authenticity; inadmissible; not relevant.

40. Securities Pool Information

 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

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1 42. Federal Housing Finance Agency's Servicer Reliance on the Housing and Economic
2 Recovery Act of 2008 in Foreclosures Involving Homeowner Associations (Dated August 28,
3 2015), Bates No. NSM000837.

4 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

5 43. Federal Home Loan Mortgage Corporation Single-Family Seller/Servicer Guide
6 wwwfreddiemac.com/singlefamily/guide. Static PDF available at:
7 <http://www.allregs.com/tpl/Viewform.aspx?formid=00051575&formatype=agency>. Archived
8 prior versions available at: www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html.

9 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

10 44. Freddie Mac's Single-Family Seller/Servicer Guide Sections 111.1, 1201.9, 1301.10,
11 3302.5, 6301.6, 7101.6, 7101.15, 8105.3, 8107.1, 8107.2, 9301.1, 9301.11, 9301.12, 9401.1,
12 9402.2, 9501.1, 9501.3, 9501.4, 9501.5, 9501.6, 9501.7, 9501.8, 9501.9, 9501.10, 9501.11,
13 9501.12, 9501.13, 9501.14, 9501.15.

14 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

15 45. Archived version of Freddie Mac's Single-Family Seller/Servicer Guide Sections 1.2,
16 52.5, 6.6, 52.7, 22.14, 56.7, 56.15, 54.4, 18.4, 18.6, 66.1, 66.20, 66.17, 67.6, 67.17, 69.1, 69.2,
17 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10, 69.11, 69.12, 69.13, 69.14, 69.15.

18 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

19 DATED this 1st day of May, 2019.

20 **AYON LAW, PLLC**

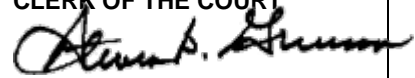
21 /s/ Luis A. Ayon, Esq.
22 LUIS A. AYON, ESQ.
23 Nevada Bar No. 9752
24 8716 Spanish Ridge Ave., Suite 115
25 Las Vegas, Nevada 89148
26 *Attorney for Plaintiff,*
27 *WEST SUNSET 2050 TRUST*
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of AYON LAW, PLLC, and that on this 1st day of May, 2019, I did cause a true and correct copy of **PLAINTIFF, WEST SUNSET 2050 TRUST'S OBJECTIONS TO DEFENDANT NATIONSTAR MORTGAGE LLC'S FIRST AMENDED PRETRIAL DISCLOSURES**, to be served via the Court's CM/ECF system and/or to be placed in the United States Mail, with first class postage prepaid thereon, to all parties and counsel appearing in this case.

Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
ACKERMAN LLP
1635 Village Center Circle, Suite 134
Las Vegas, Nevada 89134
Attorneys for Defendant,
NORTHSTAR MORTGAGE LLC

/s /Coreene Drose
An Employee of
AYON LAW, PLLC



PTD
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
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Email: donna.wittig@akerman.com

Attorneys for Defendant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

Case No.: A-13-691323-C

Dept.: XI

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,

**NATIONSTAR MORTGAGE LLC'S
SECOND AMENDED PRETRIAL
DISCLOSURES**

Defendants.

AND ALL RELATED CLAIMS.

Defendant Nationstar Mortgage LLC submits its second amended pretrial disclosure of documents and witnesses as follows:

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I. LIST OF WITNESSES

Nationstar expects to call the following witnesses at trial.

1. Simon Ward-Brown, Aaryn Richardson, Alan Blunt, Edward Hyne or another corporate representative(s) for Nationstar Mortgage LLC
c/o Ariel Stern, Esq., Melanie D. Morgan, Esq. and/or Donna M. Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000

This witness will testify regarding relevant facts and information relating to Nationstar's servicing of the loan involving the deed of trust at issue, Nationstar's status as servicer of the loan on behalf of Freddie Mac, and any other facts and circumstances relating to the deed of trust's lien position following the subject HOA foreclosure sale.

2. Shawn Look, Jessica Woodbridge, Diane Deloney, Matthew Labrie or another corporate representative(s) for Bank of America, N.A.¹
7266 West Sunset Road, Suite 2050
Las Vegas, Nevada 89113

This witness will testify regarding relevant facts and information relating to Bank of America's servicing of the loan involving the deed of trust at issue, Bank of America's status as servicer of the loan on behalf of Freddie Mac, and any other facts and circumstances relating to the deed of trust's lien position following the subject HOA foreclosure sale.

3. Corporate representative(s) for New Freedom Mortgage Corp.
Address presently unknown

This witness will testify regarding relevant facts and information relating to its origination of the loan secured by the subject deed of trust, Freddie Mac's ownership of the loan, the Deeds in Lieu of Foreclosure recorded against the subject property and any other facts and circumstances relating to the deed of trust's lien position following the subject HOA foreclosure sale.

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¹ No party is to engage in ex parte communications without Akerman's consent.

- 1 4. Kipp Greengrass or another corporate representative(s) for
2 Tuscano Homeowners Association
3 c/o Registered Agent: FirstService Residential, Nevada, LLC
 8290 Arville Street
 Las Vegas, Nevada 89139

4 This witness is expected to testify regarding relevant facts and information relating to the
5 nonjudicial foreclosure sale relevant to this litigation.

- 6 5. Julia Thompson or another corporate representative(s) for
7 Red Rock Financial Services, LLC
 c/o Registered Agent: CSC Services Of Nevada, Inc.
 2215-B Renaissance Drive
8 Las Vegas, Nevada 89119

9 This witness is expected to testify regarding relevant facts and information relating to the
10 nonjudicial foreclosure sale relevant to this litigation.

- 11 6. Rebecca Tom
12 c/o Red Rock Financial Services, LLC
13 c/o Registered Agent: CSC Services Of Nevada, Inc.
 2215-B Renaissance Drive
 Las Vegas, Nevada 89119

14 This witness is expected to testify regarding relevant facts and information relating to the
15 nonjudicial foreclosure sale relevant to this litigation.

- 16 7. Robert Atkinson or another corporate representative(s) for
17 United Legal Services, Inc.
 c/o Atkinson Law Associates
 376 E. Warm Springs Road, Suite 130
18 Las Vegas, Nevada 89119

19 This witness is expected to testify regarding relevant facts and information relating to the
20 nonjudicial foreclosure sale relevant to this litigation.

- 21 8. Mia Fregeau
22 c/o United Legal Services, Inc.
23 c/o Atkinson Law Associates
 376 E. Warm Springs Road, Suite 130
 Las Vegas, Nevada 89119

24 This witness is expected to testify regarding relevant facts and information relating to the
25 nonjudicial foreclosure sale relevant to this litigation.

26 ///

27 ///

28 ///

- 1 9. Robert Updyke, Esq.
2 c/o United Legal Services
3 c/o Atkinson Law Associates
 376 E. Warm Springs Road, Suite 130
 Las Vegas, Nevada 89119

4 This witness is expected to testify regarding relevant facts and information relating to the
5 nonjudicial foreclosure sale relevant to this litigation.

- 6 10. Stephanie Tablante
7 Address presently unknown

8 This witness is expected to testify regarding the allegations asserted in the complaint,
9 counterclaim and crossclaim.

- 10 11. John Peter Lee, Esq.
11 830 South Las Vegas Boulevard
 Las Vegas, Nevada 89101

12 This witness is expected to testify regarding the allegations asserted in the complaint,
13 counterclaim and crossclaim including, but not limited to, the Deeds in Lieu of Foreclosure recorded
14 against the subject property.

- 15 12. Jay Bloom or another corporate representative(s) for First 100, LLC
16 c/o Registered Agent: Jay Bloom
17 2485 Village View Drive
 Henderson, Nevada 89074

18 This witness is expected to testify regarding the allegations asserted in the complaint,
19 counterclaim and crossclaim.

- 20 13. Kenneth Berberich or another corporate representative(s)
21 for West Sunset 2050 Trust
22 c/o Luis A. Ayon, Esq.
23 Ayon Law PLLC
 8716 Spanish Ridge Avenue, Suite 115
 Las Vegas, Nevada 89148

24 This witness is expected to testify regarding the allegations asserted in the complaint,
25 counterclaim and crossclaim.

26 ///

27 ///

28 ///

- 1 14. Valbridge Property Advisors
2 Lubawy & Associates, Inc.
3 3034 S. Durango Dr. #100
4 Las Vegas, NV 89117
 Matthew Lubawy, MAI, CVA, CMEA
 Managing Director
 Tammy Howard, Senior Appraiser

5 Ms. Howard and/or Mr. Lubawy will provide expert opinions concerning the market value at
6 the time of the HOA's foreclosure sale in accordance with Defendant's Initial Expert Disclosure.

- 7 15. Dean Meyer and/or other Corporate Representative of Federal Home Loan Mortgage
8 Corporation (Freddie Mac)
9 c/o Ariel Stern, Esq., Melanie D. Morgan, Esq. or Donna Wittig, Esq.
 AKERMAN LLP
 1635 Village Center Cir., Suite 200
 Las Vegas, NV 89134
 Telephone: (702) 634-5000

11 This witness is expected to have knowledge concerning Freddie Mac's status as a corporation
12 organized and existing under the laws of the United States. This witness is expected to have
13 knowledge concerning certain Freddie Mac Systems that contain data regarding mortgage loans
14 acquired and owned by Freddie Mac, including the MIDAS system, which contains information
15 regarding mortgage loans acquired and owned by Freddie Mac. This witness is also expected to
16 have knowledge concerning when Freddie Mac acquired ownership of a mortgage loan secured by
17 real property located at 2634 Cimarron Cove St, Las Vegas, Nevada, and that Freddie Mac did not
18 subsequently sell that loan to any other entity.

- 19 16. Any and all witnesses identified by any other party to this litigation.

20 Defendant reserves the right to call any person listed by any other parties to testify at the trial
21 of this action, and further reserves the right to supplement this list of witnesses as additional persons
22 become known to Defendant.

23 **II. DOCUMENTS**

24 Defendant experts to offer the following documents, data compilations, and tangible things:

- 25 1. Grant, Bargain and Sale Deed and DOV, instrument no. 200512070002366, Bates
26 No. NSM00001-NSM00004.
27 2. Deed of Trust, instrument no 200512070002367, Bates No. NSM00000-NSM00023.

1 3. Declaration of Homestead, instrument no. 200602060002436, Bates No.
2 NSM000024.

3 4. Deed in Lieu of Foreclosure and DOV, instrument no. 201103030003444, Bates No.
4 NSM00025-NSM00029.

5 5. Deed in Lieu of Foreclosure and DOV (re-recorded), instrument no.
6 201106210002567, Bates No. NSM00030-NSM00035.

7 6. Assignment of Deed of Trust, instrument no. 201107290000895, Bates No.
8 NSM00036-NSM00037.

9 7. Substitution of Trustee, instrument no. 20120202020000943, Bates No. NSM00038.

10 8. Lien for Delinquent Assessments, instrument number 201204040001017, Bates No.
11 NSM00039.

12 9. Notice of Default and Election to Sell Pursuant to the Lien for Delinquent
13 Assessments, instrument no. 201205290001690, Bates No. NSM00040.

14 10. Corporation Assignment of Deed of Trust, instrument number 201303200000887,
15 Bates No. NSM00041-NSM00042.

16 11. Notice of Foreclosure Sale (HOA Lien), instrument no. 201305290000306, Bates No.
17 NSM00043.

18 12. Foreclosure Deed Upon Sale and DOV, instrument no. 201306240003127, Bates No.
19 NSM00044-NSM00046.

20 13. Notice of Breach and Election to Cause Sale of Real Property Under Deed of Trust,
21 instrument no. 201309180002103, Bates No. NSM00047-NSM00051.

22 14. Deposition Transcript from Deposition of Robert Atkinson as NRCP 30(B)(6)
23 designee for United Legal Services, Bates No. NSM000052 – NSM000125.

24 15. Documents Brought By ULS Witness (Emails, Statutes, Fee Schedules) produced
25 during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services
26 (Emails, Statutes, Fee Schedules), Bates No. NSM000126 – NSM000135.

27 16. ULS Documents produced during Deposition of Robert Atkinson as NRCP 30(B)(6)
28 designee for United Legal Services, Bates No. NSM000136 – NSM000179.

1 17. Documents from prior collections agency (Red Rock) produced during Deposition of
2 Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000180 –
3 NSM000285.

4 18. Contracts with HOA and First 100 produced during Deposition of Robert Atkinson as
5 NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000286 – NSM000365.

6 19. Auction Results produced during Deposition of Robert Atkinson as NRCP 30(B)(6)
7 designee for United Legal Services, Bates No. NSM000366 – NSM000369.

8 20. Emails produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee
9 for United Legal Services, Bates No. NSM000370 – NSM000455.

10 21. Affidavit and documents produced responsive to subpoena duces tecum served upon
11 John Peter Lee, Ltd., Bates No. NSM000456 – NSM000489.

12 22. Policy of Title Insurance issued by First American Title Insurance Company, Bates
13 No. NSM000490 – NSM000505.

14 23. Affidavit and documents produced responsive to subpoena duces tecum served upon
15 Red Rock Financial Services, Bates No. NSM000506 – NSM000552.

16 24. Declaration Of Julia Thompson In Support Of Red Rock Financial Services, LLC's
17 Limited Opposition To Motion For Summary Judgment; Eighth Judicial District Court Case A-14-
18 704704-C, *KAL-MOR-USA, LLC v. Green Tree Servicing LLC et al.* (Filed January 12, 2017), Bates
19 No. NSM000553 – NSM000558.

20 25. Transcript Of Proceedings – Bench Trial; Eighth Judicial District Court Case A-13-
21 676349-C, *SFR Investments Pool 1, LLC v. Nationstar Mortgage LLC et al.* (June 26, 2017), Bates
22 No. NSM000559 – NSM000684.

23 26. First 100, LLC Marketing Brochure, Bates No. NSM000685 – NSM000692.

24 27. Declaration Of Covenants, Conditions, And Restrictions And Grant And Reservation
25 of Easements For Tuscano Townhomes (Instrument No. 20050405-0002422, Recorded April 5,
26 2005), Bates No. NSM000693 – NSM000747.

27 28. Affidavit and documents produced responsive to subpoena duces tecum served upon
28 Tuscano Homeowners Association, Bates No. NSM000748-NSM000824.

- 1 29. Nationstar Mortgage LLC's Screen Shots, Bates No. NSM000825-NSM000826.
- 2 30. Bank of America, N.A.'s servicing transfer letter, Bates No. NSM000827-
- 3 NSM000830.
- 4 31. Nationstar Mortgage LLC's welcome letter, Bates No. NSM000831-NSM000835.
- 5 32. Federal Housing Finance Agency's Statement on HOA Super-Priority Lien
- 6 Foreclosures (Dated April 21, 2015), Bates No. NSM000836.
- 7 33. Federal Housing Finance Agency's Statement On Servicer Reliance On The Housing
- 8 And Economic Recovery Act Of 2008 In Foreclosures Involving Homeownership Association
- 9 (August 28, 2015), Bates No. NSM000837.
- 10 34. Federal Home Loan Mortgage Corporation Single-Family Seller/Servicer Guide
- 11 www.freddiemac.com/singlefamily/guide
- 12 Static PDF available at: [http://www.allregs.com/tpl/Viewform.aspx](http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency)
- 13 ?formid=00051757&formtype=agency
- 14 Archived prior versions available at:
- 15 www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html
- 16 Freddie Mac's Single-Family Seller/Servicer Guide Sections 1101.2, 1201.9, 1301.10,
- 17 3302.5, 6301.6, 7101.6, 7101.15, 8105.3, 8107.1, 8107.2, 9301.1, 9301.11, 9301.12, 9401.1,
- 18 9402.2, 9501.1, 9501.3, 9501.4, 9501.5, 9501.6, 9501.7, 9501.8, 9501.9, 9501.10, 9501.11,
- 19 9501.12, 9501.13, 9501.14, 9501.15,
- 20 Archived version of Freddie Mac's Single-Family Seller/Servicer
- 21 Guide Sections 1.2, 52.5, 6.6, 52.7, 22.14, 56.7, 56.15, 54.4, 18.4, 18.6, 66.1, 66.20, 66.17,
- 22 67.6, 67.17, 69.1, 69.2, 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10, 69.11, 69.12, 69.13,
- 23 69.14, 69.15
- 24 35. Redacted Freddie Mac Funding Details Report, Bates No. NSM000838-
- 25 NSM000841.
- 26 36. Redacted Midas Report, Bates No. NSM000842-NSM000843.
- 27 37. Redacted Mortgage Payment History Report, Bates No. NSM000844-NSM000849.
- 28 38. Redacted Securities Pool Information, Bates No. NSM000850-NSM000851.
39. Redacted Loan Status Manager—TOS Summary Report, Bates No. NSM000852.
40. Freddie Mac's Single-Family Seller/Servicer Guide Sections (Archived Version At
- The Time Of The HOA Foreclosure Sale), Bates No. NSM000853-NSM000912.
41. Freddie Mac's Single-Family Seller/Servicer Guide Sections, Bates No. NSM000913-
- NSM000964.

1 42. Note, Bates No. NSM000965-NSM000968.

2 43. Any and all witnesses and/or documents identified by any party to this litigation.

3 **III. DEPOSITION TESTIMONY**

4 Defendant expects that all witnesses will be available, but reserves the right to use deposition
5 testimony if necessary for any and all purposes, including impeachment. The deposition transcripts
6 include:

7 1. All deposition transcripts from other cases disclosed above.

8 DATED May 3, 2019.

9 **AKERMAN LLP**

10 /s/ Melanie D. Morgan

11 ARIEL E. STERN, ESQ.

12 Nevada Bar No. 8276

13 MELANIE D. MORGAN, ESQ.

14 Nevada Bar No. 8215

15 DONNA M. WITTIG, ESQ.

16 Nevada Bar No. 11015

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 *Attorneys for Defendant Nationstar Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 3rd day of May, 2019, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S SECOND AMENDED PRETRIAL DISCLOSURES**, in the following manner:

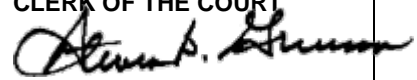
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

AYON LAW, PLLC

Luis Ayon	laa@ayonlaw.com
Charity Johnson	cmj@mgalaw.com
Danielle Barraza	djb@mgalaw.com
Jason Maier	jrm@mgalaw.com
Joseph Gutierrez	jag@mgalaw.com
Luis Ayon	laa@mgalaw.com
Natalie D. Vazquez	ndv@mgalaw.com

/s/ Carla Llarena

An employee of AKERMAN LLP



OBJ

LUIS A. AYON, ESQ.
Nevada Bar No. 9752
AYON LAW, PLLC
8716 Spanish Ridge Ave., Suite 115
Las Vegas, Nevada 89148
Telephone: (702) 600-3200
Facsimile: (702) 947-7110
E-Mail: laa@ayonlaw.com
Attorney for Plaintiff,
WEST SUNSET 2050 TRUST

**EIGHTH JUDICIAL DISTRICT COURT
DISTRICT OF NEVADA**

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,
vs.

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

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 ACTIONS

**PLAINTIFF, WEST SUNSET 2050 TRUST'S OBJECTIONS TO DEFENDANT
NATIONSTAR MORTGAGE LLC'S SECOND AMENDED PRETRIAL DISCLOSURES**

COMES NOW, Plaintiff, WEST SUNSET 2050 TRUST, (hereinafter referred to as
"Plaintiff" or "West Sunset") by and through its attorneys of record, LUIS A. AYON, ESQ., of
the law firm of AYON LAW, PLLC hereby submits its objections to Defendant, NATIONSTAR
MORTGAGE LLC'S SECOND AMENDED PRETRIAL DISCLOSURES as follows:

1 **I. LIST OF WITNESSES**

- 2
- 3 14. Valbridge Property Advisors
4 Lubawy & Associates, Inc.
5 Matthew Lubawy, MIA, CVA, CMEA, Managing Director
6 Tammy Howard, Senior Appraiser
7 3034 South Durango Drive, Suite 100
8 Las Vegas, Nevada 89117

9 OBJECTION: These expert witnesses were not disclosed as required by NRCIP 16.1(a)(2).
10
11 Furthermore, any alleged prior disclosure of these witnesses by Nationstar Mortgage are
12 insufficient and non-compliant with NRCP 16.1(a)(2)(B).

- 13 15. Dean Meyer and/or other Corporate Representative
14 Federal Loan Mortgage Corporation (Freddie Mac)
15 c/o Melanie D. Morgan, Esq.
16 Donna Wittig, Esq.
17 AKERMAN LLP
18 1635 Village Center Circle, Suite 200
19 Las Vegas, Nevada 89134

20 OBJECTION: These witnesses were not previously disclosed. Furthermore, any alleged
21 prior disclosure of these witnesses by Nationstar Mortgage are insufficient and non-compliant.

22 **II. DOCUMENTS**

- 23 26. First 100, LL marketing Brochure, Bates No. NSM000685-NSM000692

24 OBJECTION: inadmissible; not relevant.

- 25 29. Nationstar Mortgage LLC's screen shots, Bates No. NSM000825-NSM000826

26 OBJECTION: lacks authenticity; inadmissible hearsay; not relevant.

- 27 32. Federal Housing Finance Agency's Statement on HOA Super-Priority Lien
28 Foreclosures (Dated April 21, 2015), Bates No. NSM000836.

 OBJECTION: not relevant, not disclosed timely

33. (Previously listed as Paragraph 42 in Nationstar's First Amended Pretrial Disclosures)
Federal Housing Agency's Statement on Servicer Reliance On The Housing And Economic
Recovery Act Of 2008 In Foreclosures Involving Homeownership Association (August 28, 2015),
Bates No. NSM000837.

 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

1 34. (Previously listed as Paragraphs 43, 44 and 45 of Nationstar's First Amended Pretrial
2 Disclosures) Federal Home Loan Mortgage Corporation Single-Family Seller/Servicer Guide
3 www.freddiemac.com/singlefamily/guide. Static PDF available at:
4 <http://www.allregs.com/tpl/Viewform.aspx?formid=00051575&formatype=agency>. Archived
5 prior versions available at: www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html.

6 Freddie Mac's Single-Family Seller/Servicer Guide Sections 111.1, 1201.9, 1301.10,
7 3302.5, 6301.6, 7101.6, 7101.15, 8105.3, 8107.1, 8107.2, 9301.1, 9301.11, 9301.12, 9401.1,
8 9402.2, 9501.1, 9501.3, 9501.4, 9501.5, 9501.6, 9501.7, 9501.8, 9501.9, 9501.10, 9501.11,
9 9501.12, 9501.13, 9501.14, 9501.15.

10 Archived version of Freddie Mac's Single-Family Seller/Servicer Guide Sections 1.2,
11 52.5, 6.6, 52.7, 22.14, 56.7, 56.15, 54.4, 18.4, 18.6, 66.1, 66.20, 66.17, 67.6, 67.17, 69.1, 69.2,
12 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10, 69.11, 69.12, 69.13, 69.14, 69.15.

13 OBJECTION: lacks authenticity; inadmissible; not relevant, not timely.

14 35. Redacted Freddie Mac Funding Details Report, Bates No. NSM000840-NSM000841.

15 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

16 36. Redacted Midas Report, Bates No. NSM000842-NSM000843.

17 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

18 37. Redacted Mortgage Payment History Report, Bates No. NSM000844-NSM000849.

19 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

20 38. Redacted Securities Pool Information, Bates No. NSM000850-NSM000851.

21 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

22 39. Redacted Loan Status Manager – TOS Summary Report, Bates No. NSM000852/

23 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

24 40. Freddie Mac's Single-Family Seller/Servicer Guide Sections (Archived Version At The
25 Time Of The HOA Foreclosure Sale), Bates No. NSM000853-NSM000912.

26 OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

27 41. Freddie Mac's Single-Family Seller/Servicer Guide Sections, Bates No. NSM000912-
28 NSM000964.

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OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.
42. Note, Bates No. NSM000965-NSM000968.

OBJECTION: lacks authenticity; inadmissible; not relevant; not timely.

DATED this 6th day of May, 2019.

AYON LAW, PLLC

/s/ Luis A. Ayon, Esq.
LUIS A. AYON, ESQ.
Nevada Bar No. 9752
8716 Spanish Ridge Ave., Suite 115
Las Vegas, Nevada 89148
Attorney for Plaintiff,
WEST SUNSET 2050 TRUST

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of AYON LAW, PLLC, and that on this 6th day of May, 2019, I did cause a true and correct copy of **PLAINTIFF, WEST SUNSET 2050 TRUST'S OBJECTIONS TO DEFENDANT NATIONSTAR MORTGAGE LLC'S SECOND AMENDED PRETRIAL DISCLOSURES**, to be served via the Court's CM/ECF system and/or to be placed in the United States Mail, with first class postage prepaid thereon, to all parties and counsel appearing in this case.

Ariel E. Stern, Esq.
Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
ACKERMAN LLP
1635 Village Center Circle, Suite 134
Las Vegas, Nevada 89134
Attorneys for Defendant,
NORTHSTAR MORTGAGE LLC

/s /Coreene Drose
An Employee of
AYON LAW, PLLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

May 14, 2019

A-13-691323-C	West Sunset 2050 Trust, Plaintiff(s) vs. New Freedom Mortgage Corporation, Defendant(s)
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May 14, 2019 9:30 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

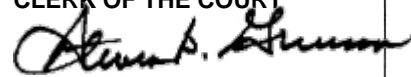
PRESENT:	Ayon, Luis A	Attorney for Plaintiff
	Stern, Ariel E.	Attorney for Defendants

JOURNAL ENTRIES

- Colloquy regarding potential witness issue and OST signed for motion submitted yesterday. COURT ORDERED, bench trial set to COMMENCE on Thursday, June 6, 2019. Non-jury trial hand-outs distributed. If trial is not done within a day it will be continued to another day for completion. Mr. Ayon noted the 5th and 14th of June will not work for him but any other day will.

5-28-19 9:00 AM NATIONSTAR MORTGAGE LLC'S MOTION IN LIMINE TO INTRODUCE INTO EVIDENCE AT TRIAL DOCUMENTS DISCLOSED AFTER THE CLOSE OF DISCOVERY

6-6-19 10:00 AM BENCH TRIAL



OST/MIL

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA WITTIG, ESQ.

Nevada Bar No. 11015

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Email: donna.wittig@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.

NATIONSTAR MORTGAGE LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant.

Case No.: A-13-691323-C

Dept.: XI

HEARING REQUESTED

NATIONSTAR MORTGAGE LLC'S
MOTION IN LIMINE TO INTRODUCE
INTO EVIDENCE AT TRIAL
DOCUMENTS DISCLOSED AFTER THE
CLOSE OF DISCOVERY

HEARING REQUESTED ON ORDER
SHORTENING TIME

Hearing Date: 5/28/19

Time: 9:00 a.m.

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200

LAS VEGAS, NEVADA 89134

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

Defendant Nationstar Mortgage LLC moves the Court *in limine* for an order permitting it to introduce evidence disclosed after the discovery period during the trial of this matter.

ORDER SHORTENING TIME

The Court, having reviewed Nationstar's motion for an order shortening time, and good cause appearing, it is hereby ordered that **NATIONSTAR MORTGAGE LLC'S MOTION IN LIMINE TO INTRODUCE INTO EVIDENCE AT TRIAL DOCUMENTS DISCLOSED AFTER THE CLOSE OF DISCOVERY HEARING REQUESTED ON ORDER SHORTENING TIME** will be heard on shortened time before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 28th day of May, 2019, at the hour of 9: 00 a.m./p.m. The time and place thereof shall be given to the remaining parties by serving them with a copy of this Motion and this order ~~by no later than~~ immediately.

IT IS FURTHER ORDERED any opposition to this Motion shall be filed no later than the ____ day of _____, 2019.

DATED May 13, 2019.


DISTRICT COURT JUDGE

AKERMAN LLP

/s/ Melanie D. Morgan

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA WITTIG, ESQ.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Defendant Nationstar Mortgage LLC

DECLARATION OF MELANIE D. MORGAN, ESQ.

I, Melanie D. Morgan, first being duly sworn, declare as follows:

1. I am a duly licensed attorney in the State of Nevada and a partner with the law firm of Akerman LLP. Akerman LLP is counsel for defendant/counterclaimant Nationstar in the above-entitled action.

2. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated on information and belief, and as to those, I believe them to be true.

3. The purposes of this declaration are to inform the Court of the need for an order shortening time pursuant to EDCR 2.34(d), and counsel's meet and confer efforts pursuant to EDCR 2.47(b).

4. West Sunset 2050 Trust filed its complaint in November 2013 asserting claims against Nationstar for declaratory relief/quiet title and preliminary and permanent injunction. Nationstar filed its answer, affirmative defenses, and counterclaims in May 2014 for quiet title, declaratory relief, and unjust enrichment. Following the close of discovery, West Sunset filed its motion for summary judgment. Nationstar filed its response and counter-motion for summary judgment on June 10, 2015. The Court entered an order on February 8, 2016 denying West Sunset's motion and granting Nationstar's counter-motion.

5. West Sunset appealed to the Nevada Supreme Court in July 2016. On June 28, 2018, the Supreme Court issued its opinion reversing the entry of summary judgment and remanding to this Court for further proceedings.¹ At the October 16, 2018 status check, the Court reopened discovery through February 22, 2019.² After the status check, the Court issued a first amended order setting civil bench trial. The order contains the follow deadlines:

- February 28, 2019 status check
- April 5, 2019 motions in limine deadline
- May 15, 2019 pre-trial memorandum deadline
- May 21, 2019 calendar call
- May 28, 2019 trial setting

¹ The case was transferred to Dept. XI on July 2, 2018.

² The only scheduling order entered is the September 2014 scheduling order.

1 6. In April 2019, Nationstar's counsel became aware of Freddie Mac's ownership of the
2 loan as a result of settlement discussions with West Sunset.

3 7. Nationstar immediately supplemented its NRCP 16.1 and pretrial disclosures to include
4 a corporate representative witness for Freddie Mac and documentation evidencing Freddie Mac's
5 ownership of the loan, including Freddie Mac business records.

6 8. I also promptly reached out to counsel for West Sunset, Luis Ayon, to discuss the
7 matter. Because Mr. Ayon and I have a number of active cases together, I knew he was out of the
8 country from April 8th through April 23rd.

9 9. On April 24, 2019, Mr. Ayon and I held a meet and confer. Specifically, I asked if Mr.
10 Ayon would agree to a brief reopening of the discovery period that had closed on February 22, 2019.
11 I offered to accommodate any discovery Mr. Ayon may need, including flying a Nationstar witness to
12 Las Vegas for a deposition and answering written discovery on a shortened timeframe. I also offered
13 to cover the costs of any discovery relating to Freddie Mac's ownership of the loan. I told Mr. Ayon
14 I would make any necessary accommodations to ensure the discovery was completed without
15 disturbing the current trial setting. Mr. Ayon indicated he could not agree because the evidence is
16 adverse to his client's position. Mr. Ayon did not elaborate further.

17 10. On May 2, 2019, I initiated a second meet and confer in order to clarify that Nationstar
18 would be filing a motion in limine to permit introduction of the evidence included in the supplemental
19 disclosures served after February 22, 2019. I reiterated Nationstar's offer to expeditiously
20 accommodate any discovery Mr. Ayon required in response to the disclosures, including our
21 willingness to pay for the associated costs. Again, Mr. Ayon indicated he could agree because the
22 evidence is adverse to his client's position.

23 11. Good cause exists for the Court to shorten the time in which to hear Nationstar's motion
24 in limine. Nationstar had not yet learned the evidence had not been disclosed at the time motions in
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1 limine were due. If the motion is heard in the normal course, it will not allow sufficient time for the
2 parties to conduct any discovery stemming from this motion. In addition, the ruling on the motion
3 will clarify how the parties prepare for trial, which is currently set on the May 28th stack.

4 12. Nationstar does not bring this motion for purposes of delay, bad faith, or other dilatory
5 motive. The motion is not submitted for any improper purpose.

6 13. I declare under penalty of perjury under the laws of the State of Nevada and United
7 States of America the foregoing is true and correct to the best of my knowledge.
8

9 Dated May 10, 2019.

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12 _____
13 Melanie D. Morgan, Esq.
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1 **I. INTRODUCTION**

2 This is a quiet title action following an HOA foreclosure. The purchaser at the sale, West
3 Sunset, claims ownership of the property free and clear of the senior deed of trust.³ After discovery
4 closed on February 22, 2019, Nationstar discovered it did not previously disclose evidence showing
5 that Federal Home Loan Mortgage Corporation (**Freddie Mac**) owned the deed of trust and
6 accompanying note in support of the Federal Foreclosure Bar defense to extinguishment. Nationstar
7 immediately supplemented its NRCP 16.1 disclosures and amended its pretrial disclosures to include
8 the documents and a Freddie Mac witness. Recognizing that the evidence should have been disclosed
9 prior to February 22, 2019, Nationstar offered to allow West Sunset to conduct any related discovery
10 on an expedited basis and at Nationstar's cost. Without offering any explanation other than the
11 evidence is adverse to its claims, West Sunset refused. Nationstar now asks this Court to allow it to
12 use the late-disclosed evidence at trial so that the matter is heard on its merits.

13 No doubt, West Sunset will claim prejudice as a result of the late disclosure. During the two
14 meet and confer discussions, the only "prejudice" articulated by West Sunset was that the evidence is
15 substantively adverse to its case. But the evidence would have gone to establish the same legal defense
16 regardless of its disclosure date. In other words, the evidence would have been equally harmful to
17 West Sunset's claims had it been disclosed on the first day of discovery. Prejudice is not established
18 simply because a late disclosure includes evidence adverse to a party's position. West Sunset must
19 demonstrate it has been harmed due to the timing of the disclosure. It cannot.

- 20 • West Sunset did not take any affirmative discovery either before or after the remand.⁴ It served
21 no written discovery and it didn't take a single depositions. At the depositions Nationstar
22 noticed, West Sunset did not ask one question.
- 23 • West Sunset summarily rejected Nationstar's offer to allow discovery on the issue of Freddie
24 Mac's ownership before trial at Nationstar's cost.

25
26
27 ³ The property at issue is located at 7255 W Sunset Rd Unit 2050, Las Vegas, NV 89113.

28 ⁴ Counsel for West Sunset typically does not take discovery from other parties or third parties in
Federal Foreclosure Bar cases or in any other type of HOA litigation cases.

- 1 • West Sunset does not raise prejudice objections to Nationstar's pretrial disclosures or late-
- 2 served supplemental disclosures.
- 3 • Evidence of Freddie Mac's ownership does not come out of left field. West Sunset's counsel
- 4 is experienced in HOA foreclosure litigation, including cases involving the Federal
- 5 Foreclosure Bar. The evidence itself and the manner in which the evidence will be used during
- 6 trial in this case is virtually identical.

7 The Nevada Supreme Court has long held that "justice is best served" by "the basic underlying
8 policy to have each case decided upon its merits." *Hotel Last Frontier Corp. v. Frontier Properties,*
9 *Inc.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963). West Sunset seeks to exclude the evidence not as a
10 result of unfair prejudice due to the late disclosure, but because a trial on the merits decreases its
11 chances of success.

12 **II. SUBSTANTIVE AND PROCEDURAL BACKGROUND**

13 **A. Relevant Facts**

14 Stephanie Tablante obtained a \$176,760 loan from New Freedom Mortgage Corporation in
15 December 2005, secured by a deed of trust. Shortly thereafter, Freddie Mac purchased the loan,
16 comprised of the note and deed of trust, and acquired ownership of the deed of trust. The Federal
17 Housing Financing Agency (FHFA) was created on July 30, 2008 pursuant to the Housing and
18 Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, codified at 12 U.S.C. §
19 4617 *et seq.*, to oversee Fannie Mae, Freddie Mac and the Federal Home Loan Banks. On September
20 6, 2008, the director of FHFA, authorized by HERA, placed Freddie Mac into conservatorship and
21 appointed FHFA as conservator.

22 In February 2013, Nationstar began servicing Ms. Tablante's loan on behalf of Freddie Mac,
23 having taken over servicing from Bank of America. Later that year, in June 2013, Tuscano
24 Homeowner's Association foreclosed on its lien for delinquent HOA dues. Freddie Mac owned Ms.
25 Tablante's loan at the time of the HOA sale. Nationstar was, and still is, the contractually authorized
26 servicer of the loan on Freddie Mac's behalf.

27 **B. Relevant Procedural History**

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1 West Sunset filed its complaint in November 2013, asserting claims against Nationstar for
2 declaratory relief/quiet title and preliminary and permanent injunction. Nationstar filed its answer,
3 affirmative defenses, and counterclaims against West Sunset in May 2014 for quiet title, declaratory
4 relief, and unjust enrichment. During discovery, West Sunset disclosed a few documents but otherwise
5 did not seek discovery from Nationstar or any third party.

6 West Sunset and Nationstar each filed summary judgment motions. The Court denied West
7 Sunset's summary judgment motion and granted Nationstar's countermotion. West Sunset appealed.⁵
8 On June 28, 2018, the Supreme Court reversed the district court's order and remanded to this Court
9 for further proceedings. A status check was held on October 16, 2018, and the Court reopened
10 discovery through February 22, 2019. West Sunset conducted no discovery.

11 On April 22, 2019, Nationstar first disclosed evidence relating to Freddie Mac's ownership of
12 the loan. Nationstar disclosed additional documents on April 23, 2019, and May 2, 2019.

13 C. Pretrial Disclosures and Objections

14 The parties' pretrial disclosures were due April 26, 2019.

15 West Sunset served its pretrial disclosures April 26, 2019.

16 Nationstar served its initial pretrial disclosures March 25, 2019. Freddie Mac's ownership
17 documents were not disclosed. Nationstar served first amended pretrial disclosures April 26, 2019,
18 listing evidence of Freddie Mac ownership. Nationstar served its second supplemental pretrial
19 disclosures May 3, 2019, which merely added in bates numbers.

20 West Sunset objected to Nationstar's disclosure of Freddie Mac's ownership documents on
21 timeliness grounds solely as to the following:

- 22 • FHFA's statement on HOA super-priority lien foreclosures
 - 23 • Securities pool information
 - 24 • FHFA's servicer reliance on HERA in foreclosures involving HOAs document
 - 25 • Freddie Mac Seller/Servicer Guide
- 26

27 _____
28 ⁵ Freddie Mac's ownership was not raised during discovery, in either party's summary judgment motion or in the appeal.

- Various Freddie Mac business records and other computer database printouts
- Promissory note

West Sunset did not object as untimely to the following of Nationstar's disclosures:

- Nationstar business records
- Bank of America servicing transfer letter
- Nationstar welcome letters

III. ARGUMENT

Nevada Rule of Civil Procedure 37(c)(1) governs appropriate sanctions for late disclosed evidence. Under NRCP 37(c) a party who fails to timely disclose evidence as required under NRCP 16.1 is not allowed to use that evidence at trial "**unless the failure . . . is harmless.**" NRCP 37(c)(1) (emphasis added).⁶ In the context of NRCP 37's federal counterpart, the Ninth Circuit has provided factors in determining whether a violation of a discovery deadline is justified or harmless: (1) prejudice or surprise to the party against whom the evidence is offered; (2) the ability of that party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or willfulness involved in not timely disclosing the evidence. *Lanard Toys Ltd. v. Novelty, Inc.*, 375 Fed.Appx. 705, 713 (9th Cir., 2010).

A. **West Sunset is not prejudiced by the late disclosure.**

West Sunset cannot show harm. But even if the Court believes West Sunset has been prejudiced in any way, exclusion of the late disclosed evidence is not a mandated sanction. Rule 37(c)(1) expressly permits alternative sanctions such as payment of the reasonable costs and fees caused by the late disclosure. The Nevada Supreme Court will not reverse a sanction imposed under Rule 37 absent a showing of abuse of discretion. *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev.

⁶ (c) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

(1) **Failure to Disclose or Supplement.** If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

- (A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;
- (B) may inform the jury of the party's failure; and
- (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).

1 188, 192, 606 P.2d 1089, 1092 (1980). The circumstances surrounding the late disclosure in this case
2 demonstrate no prejudice to West Sunset. At most, the circumstances mitigate against the harsh
3 sanction of exclusion of the evidence.

4 **1. West Sunset chose to forego discovery.**

5 West Sunset did not take any affirmative discovery either before or after the remand. It did not
6 serve any written discovery and did not depose a single witness. Although Nationstar deposed United
7 Legal Services and Red Rock Financial, West Sunset did not ask any questions. By choosing to forego
8 discovery, West Sunset cannot solely attribute any surprise to the late disclosure. Certainly, the
9 circumstance would be different if West Sunset inquired about ownership of the loan and Nationstar
10 responded by identifying an entity other than Freddie Mac. This isn't a case where Nationstar disclosed
11 inaccurate information. Rather, West Sunset never once inquired about *anything* in discovery,
12 including ownership of the loan. West Sunset decided to make no inquiry even though counsel knows
13 a substantial number of loans involved in HOA quiet title actions are owned by Fannie Mae or Freddie
14 Mac.

15 Of course, Rule 16.1(a) requires disclosure of relevant evidence without awaiting a discovery
16 request. But the fact that West Sunset took no discovery at all mitigates against exclusion of the
17 evidence.

18 **2. West Sunset cannot claim it had no opportunity to conduct discovery
19 specific to the late disclosed evidence.**

20 Because Nationstar recognized the disclosures should have been made on or before February
21 22, 2019, counsel immediately contacted West Sunset's counsel and offered expedited discovery in
22 order to mitigate any prejudice West Sunset may claim due to the timing. Even though a Nationstar
23 witness had been disclosed for years and West Sunset never noticed its deposition, counsel offered to
24 fly the witness to Las Vegas on an expedited basis for that purpose. Counsel even offered to cover the
25 costs of any discovery relating to Freddie Mac's ownership. West Sunset was uninterested. This
26 negates any claim of prejudice due to an inability to conduct discovery.
27
28

1 **3. The late disclosure does not impact the trial date or counsel's ability to**
2 **prepare for trial.**

3 West Sunset's counsel is well versed in the Federal Foreclosure Bar defense, including the
4 witnesses and documents supporting the defense. Counsel has numerous cases in state and federal
5 court involving the Federal Foreclosure Bar, including successfully trying a case involving this very
6 defense. Importantly, West Sunset's counsel routinely litigates these cases without deposing any
7 witnesses. As a practical matter, this case is postured for trial in the same manner as counsel's
8 numerous other Federal Foreclosure Bar cases. That the evidence was not disclosed by February 22,
9 2019 has no practical effect on West Sunset, other than providing it with a pretext for exclusion.

10 **B. Alternatively, the late disclosure was substantially justified.**

11 Rule 37 permits exclusion of evidence if the failure to timely disclose is harmless or
12 substantially justified. Although a showing of substantial justification is not required in this case due
13 to the absence of prejudice, Nationstar can demonstrate both. The *Lanard* factor relating to substantial
14 justification is whether there is bad faith or willfulness involved in not timely disclosing the evidence.
15 *Lanard*, 375 Fed.Appx. at 703. In contrast, the failure to timely disclose here is a product of excusable
16 neglect.

17 This case began in 2013. Since that time, the law concerning the effect of Nevada HOA
18 foreclosures has evolved dramatically. During the lifespan of this litigation alone, the Nevada
19 Supreme Court and the Ninth Circuit have issued a number of on-point rulings, substantially clarifying
20 the law in this area. When this case was initiated, there was no case law concerning whether the
21 Federal Foreclosure Bar prevented extinguishment of liens owned by Freddie Mac and Fannie Mae
22 following a Chapter 116 foreclosure. There was also no precedent concerning whether a servicer such
23 as Nationstar has standing to raise the Federal Foreclosure Bar or whether FHFA must appear and act
24 in a case. While this case was on appeal, the Nevada Supreme Court and the Ninth Circuit addressed
25 whether a servicer has standing to assert the Federal Foreclosure Bar. *Nationstar Mortg., LLC v. SFR*
26 *Investments Pool 1, LLC*, 396 P.3d 754, 756 (Nev. 2017) ("the servicer of a loan owned by [an
27 Enterprise] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [the
28 Enterprise] nor the FHFA need be joined as a party."); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699

1 F. App'x 658, 659 (9th Cir. 2017). These cases make clear a servicer of a loan owned by regulated
2 entity may assert and enforce the Federal Foreclosure Bar. The Nevada supreme court also recently
3 confirmed the Housing and Economic Recovery Act of 2008 preempts NRS 116. *Saticoy Bay LLC*
4 *Series 9641 Christine View v. Fed. Nat'l Mortgage Ass'n*, Case No. 69419 (Nev. March 21, 2018) ("the
5 Federal Foreclosure Bar implicitly preempts NRS 116.3116 to the extent that a foreclosure sale
6 extinguishes the deed of trust.").

7 Binding precedent making clear that the Federal Foreclosure Bar is a defense to extinguishment
8 and that servicers have standing did not exist until years after this case began. Nationstar discovered
9 Freddie Mac ownership documents were not disclosed during recent settlement talks and immediately
10 disclosed them.

11 Allowing Nationstar to introduce the Federal Foreclosure Bar defense is of great importance
12 and ensures all the facts are before the Court and the case is decided on its merits. Freddie Mac's
13 interest in the loan is dispositive to this case. In May 2018, the Nevada Supreme Court published an
14 opinion holding that the Federal Foreclosure Bar precludes the extinguishment of Freddie Mac's
15 property interest, and thus preempts the Nevada statute allowing an HOA superpriority foreclosure
16 sale to extinguish all junior interests, including deeds of trust. *Saticoy Bay LLC Series 9641 Christine*
17 *View v. Fed. Nat'l Mortgage Ass'n*, 417 P.3d 363; 134 Nev. Adv. Op. 36 (2018). Numerous federal
18 courts in the District of Nevada have similarly held that the Federal Foreclosure Bar protects Freddie
19 Mac property interests from extinguishment under materially identical facts to the facts in this case.
20 *See Berezovsky v. Moniz*, 869 F.3d 923, 930-31 (9th Cir. 2017); *Fed. Home Loan Mortg. Corp. v. SFR*
21 *Invs. Pool 1, LLC*, 893 F.3d 1136, 1146-47 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co., N.A.*,
22 707 F. App'x 426, 427-28 (9th Cir. 2017); *Saticoy Bay LLC Series 2714 Snapdragon v. Flagstar Bank,*
23 *FSB*, 699 F. App'x 658, 658 (9th Cir. 2017).

24 The documents disclosed supporting the Federal Foreclosure Bar as a defense to
25 extinguishment are not unique to this case. Counsel for West Sunset has litigated numerous cases
26 involving Fannie Mae or Freddie Mac ownership, including taking at least one to trial, successfully.
27 *See Nationstar Mort. LLC v. BDJ Inv. LLC*, No. 75480 (Nev.) (Mr. Ayon representing purchaser on
28

1 appeal following the district court finding Fannie Mae did not own the loan at the time of the HOA
2 sale). All parties are familiar with the issues involved. In fact, that familiarity is exactly why West
3 Sunset rejected additional discovery. West Sunset knows the defense is fatal to his quiet title claim.
4 The relief sought in this motion does not delay the trial or impair West Sunset's ability to conduct
5 discovery on Freddie Mac's interest in the property.

6 **IV. CONCLUSION**

7 Sound policy dictates a trial on the merits. Nationstar respectfully requests entry of an order
8 allowing Nationstar to introduce the evidence disclosed after the February 22, 2019 close of discovery
9 at the trial of this matter.

10 DATED May 10, 2019.

11 **AKERMAN LLP**

12 /s/ Melanie D. Morgan

13 ARIEL E. STERN, ESQ.

14 Nevada Bar No. 8276

15 MELANIE D. MORGAN, ESQ.

16 Nevada Bar No. 8215

17 DONNA WITTIG, ESQ.

18 Nevada Bar No. 11015

19 1635 Village Center Circle, Suite 200

20 Las Vegas, Nevada 89134

21 *Attorneys for Defendant Nationstar Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 14th day of May, 2019, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S MOTION FOR LEAVE TO AMEND PLEADINGS AND MOTION TO REOPEN AND EXTEND DISCOVERY**, in the following manner:

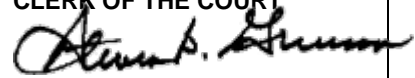
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Luis A. Ayon, Esq. Ayon Law, PLLC 9205 W. Russell Road Building 3, Suite 240 Las Vegas, NV 89148 laa@ayonlaw.com	
---	--

Attorneys for West Sunset 2050 Trust

/s/ Jill Sallade

An employee of AKERMAN LLP



JPTM
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
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Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: melanie.morgan@akerman.com
Attorneys for Defendant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

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

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,

JOINT PRETRIAL MEMORANDUM

Defendants.

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

NATIONSTAR MORTGAGE LLC,

Cross-Claimant,

v.

STEPHANIE TABLANTE,

Cross-Defendant.

AKERMAN LLP

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

1 The Parties, Plaintiff/Counter-Defendant, West Sunset 2050 Trust and Defendant/Counter-
2 Claimant, Nationstar Mortgage LLC hereby submit the following pretrial memorandum pursuant to
3 NRCP 16 and EDCR 2.67.

4 This matter is on remand following a June 28, 2018 order reversing the district court's order
5 granting summary judgment in Nationstar's favor and remanding for further proceedings. On May
6 20, 2019 the parties, through counsel Melanie Morgan, Esq. for Nationstar and Luis Ayon, Esq. for
7 West Sunset, met for their EDCR 2.67 conference and to discuss the contents of a joint pretrial
8 memorandum.

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

10 **A. Title History**

11 This action relates to the real property located in Clark County, Nevada, commonly known as
12 7255 West Sunset Road #2050, Las Vegas, Nevada 89113. On June 22, 2013, West Sunset obtained
13 title to the property by way of a foreclosure deed issued as a result of and HOA foreclosure conducted
14 under NRS Chapter 116. This deed was recorded on June 24, 2013.

15 On or about November 29, 2005, Stephanie Tablante financed purchase of the property
16 through a \$176,760 loan from New Freedom Mortgage Company (**Loan**). As security for repayment
17 of the Loan, Tablante executed a Deed of Trust listing New Freedom Mortgage Company as Lender
18 and Mortgage Electronic Registration Systems, Inc. (**MERS**) as the beneficiary, solely as nominee
19 for Lender and Lender's successors and assigns (the **Deed of Trust**). The Deed of Trust was recorded
20 with the Clark County Recorder on December 7, 2005 as instrument number 20051207-0002367.

21 On March 3, 2011, Tablante, through the law office of John Peter Lee, Ltd. recorded a Deed
22 in Lieu of Foreclosure whereby Tablante purported to convey any interest in the property to New
23 Freedom Mortgage. The Deed in Lieu states that "there are no agreements, oral or written, other than
24 this deed between the parties hereto with respect to the property hereby conveyed." The Deed in Lieu
25 is not signed by any party other than Tablante herself, and the cover page of the deed clearly indicated
26 the "deed in lieu" was to be returned to Tablante's counsel upon recording, *not* New Freedom
27 Mortgage Corporation.
28

1 On July 29, 2011, MERS, acting solely as nominee for Lender and Lender's successors and
2 assigns, recorded an assignment of the Deed of Trust to BAC Home Loans Servicing, LP.¹ On March
3 20, 2013, Bank of America, N.A. (**BANA**) assigned its interest in the deed of trust to Nationstar.
4 Nationstar is the current loan servicer.

5 **B. HOA foreclosure of its lien**

6 At all relevant times, Tuscano Homeowners Association (the **HOA**) charged assessments at
7 a rate of \$164 per month. Tablante became delinquent in her assessments, and Red Rock Financial
8 Services (**Red Rock**), as agent the HOA, recorded a Notice of Delinquent Assessment Lien on April
9 4, 2012. The notice states New Freedom Mortgage owed \$2,695.10 to the HOA. Red Rock, on the
10 HOA's behalf, recorded a Notice of Default and Election to Sell on May 29 2012, stating New
11 Freedom Mortgage owed \$4,018.40. Red Rock did not provide notice of the default to BAC Home
12 Loans Servicing, LP.²

13 Following notice of default, the HOA contracted to sell its right to payment on a number of
14 liens, including the lien foreclosed upon in this case, to First 100, LLC (**Factoring Agreement**).³
15 First 100 paid the association \$1,476 for the payment rights under the subject lien.

16 On May 29, 2013, United Legal Services, Inc. (**ULS**) on the HOA's behalf, recorded a Notice
17 of Foreclosure Sale, stating New Freedom Mortgage owed \$7,806.42 to the HOA. On June 22, 2013,
18 ULS foreclosed on the property at a public foreclosure sale auction. West Sunset was the highest
19 bidder at the foreclosure sale, and tendered payment of \$7,900. West Sunset recorded its foreclosure
20 deed upon sale on June 24, 2013.

21
22
23
24 ¹ BACHLS merged into Bank of America, N.A. in July 2011.

25 ² While the order reversing and remanding acknowledges the HOA did not serve the record beneficiary, BANA,
26 with the notice of default, the court held such defective notice did not invalidate the sale because the evidence
27 was insufficient to show Nationstar was prejudiced as a result.

28 ³ On appeal, Nationstar argued the Factoring Agreement violates the HOA's CC&Rs and Nevada's rules on lien
splitting announced in *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 258 (Nev. 2012). The Nevada
Supreme Court disagreed, finding the Factoring Agreement did not affect the HOA's right to foreclose on the
property.

C. The following are purported facts offered by Nationstar and are disputed or considered irrelevant by West Sunset:

1. In September 2008, the Federal Housing Finance Agency (**FHFA**) placed the Federal Home Loan Mortgage Corporation (**Freddie Mac**) and the Federal National Mortgage Association's (**Fannie Mae**, and together with Freddie Mac, **the Enterprises**) into conservatorships, where they remain today.

2. Freddie Mac purchased the Tablante Loan on January 5, 2005, and has never sold or transferred Tablante's Loan to any other entity.

3. On February 16, 2013, servicing of the Tablante Loan on Freddie Mac's behalf transferred from BANA to Nationstar.

4. Nationstar is the current servicer of the Tablante Loan on Freddie Mac's behalf.

5. The FHFA did not consent to the extinguishment of Freddie Mac's property.

6. The contractual relationship between Freddie Mac and its servicers nationwide, including, BANA, BACHLS and Nationstar is governed by the Single Family Servicing Guide, current and prior versions of the guide are available at <https://www.fanniemae.com/content/guide/servicing/index.html>.

7. The property had a fair market value of \$63,280 at the time of the HOA foreclosure.

List of Claims for Relief (EDCR 2.67(b)(2))

A. West Sunset's Causes of Action:⁴

1. Quiet Title/Declaratory Relief
2. Preliminary and Permanent Injunction

B. Nationstar's Causes of Action (Counterclaims):⁵

1. Quiet Title
2. Declaratory Relief
3. Unjust Enrichment

⁴ Defendant Cooper Castle Law Firm, LLP was dismissed by way of an order entered February 4, 2014. West Sunset entered a default against New Freedom Mortgage Corporation and Stephanie Tablante on July 29, 2015. Bank of America was dismissed by way of a stipulation and order and disclaimer of interest entered on July 3, 2017.

⁵ Nationstar is filing a notice of voluntary dismissal of its claims asserted against Stephanie Tablante.

List of Affirmative Defenses (EDCR 2.67(b)(3))

A. Nationstar's Affirmative Defenses:

1. Plaintiff fails to state claims upon which relief may be granted.
2. The foreclosure sale at issue cannot eliminate a senior deed of trust under NRS 116.311635 and NRS 21.130.
3. The foreclosure sale at issue cannot eliminate a senior deed of trust because it was commercially unreasonable.
4. The foreclosure sale at issue is void due to lack of proper notice.
5. Nationstar acted in good faith at all times.
6. Due to plaintiff's own actions, plaintiff is estopped from asserting the claims in the complaint.
7. Plaintiff's claims may be barred by applicable limitations on actions, including the statute of limitations.
8. The liability, if any, of Nationstar must be reduced by the percentage of fault of plaintiff and others.
9. Plaintiff's claims and causes of action are barred, in whole or in part, due to plaintiff's failure to mitigate, minimize, or otherwise avoid its alleged damages.
10. Plaintiff's claims are barred because any injury it suffered was the result of the actions of an intervening superseding cause over which Nationstar had no control.
11. Plaintiff's claims are barred pursuant to the laches doctrine.
12. Any act or omission on the part of Nationstar was not the proximate cause of the alleged injuries or damages, if any, sustained by plaintiff.
13. The liability of Nationstar, if any, is several and not joint and several, and based upon each defendant's own acts and not the acts of others.
14. Nationstar owed no duty to plaintiff.
15. Nationstar was unaware of any wrongdoing by any other defendant or third party.
16. Nationstar did not ratify the actions of any other defendant.

17. Plaintiff has waived any claims against Nationstar.
18. Plaintiff has released any claims against Nationstar.
19. Plaintiff has failed to do equity.
20. Plaintiff acted with unclean hands.
21. Plaintiff assumed the risks when it purchased the property.
22. Plaintiff has not stated any basis to rescind any instruments or liens encumbering the property.
23. Plaintiff is not a *bona fide* purchaser.
24. Nationstar reserves the right to assert additional affirmative defenses that become apparent during discovery.

B. West Sunset's Affirmative Defenses to Nationstar's Counterclaims:

1. Failure to state claim.
2. Proximate cause.
3. Third-Party liability.
4. Failure to mitigate damages.
5. Nationstar is barred by the doctrines of laches, estoppel and/or waiver.
6. The NRS 116.3115 foreclosure sale extinguished the First Deed of Trust.
7. Nationstar has failed to prove the existence of a valid security interest.
8. Nationstar has failed to meet its burden to recover attorney fees.
9. Nationstar is barred by the doctrines of rescission or frustration of purpose.
10. If the lien is valid, West Sunset is entitled to a set-off by any payments made towards the Deed of Trust.
11. The Deed of Trust is not a valid security interest and unenforceable.
12. Nationstar cannot foreclose on the property.
13. Nationstar was the owner of the property at the time of the HOA foreclosure sale and did not have a valid security interest.

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

A. Nationstar:

1. Affirmative Defense #8: The liability, if any, of Nationstar must be reduced by the percentage of fault of plaintiff and others.

2. Affirmative Defense #10: Plaintiff's claims are barred because any injury it suffered was the result of the actions of an intervening superseding cause over which Nationstar had no control.

3. Affirmative Defense #12: Any act or omission on the part of Nationstar was not the proximate cause of the alleged injuries or damages, if any, sustained by plaintiff.

4. Affirmative Defense #13: The liability of Nationstar, if any, is several and not joint and several, and based upon each defendant's own acts and not the acts of others.

B. West Sunset:

1. None at this time.

List of All Exhibits, Including Specific Objections Thereto (EDCR 2.67(b)(5))⁶

Ex #	Description	Objection
1.	Grant, Bargain and Sale Deed and DOV, instrument no. 200512070002366, Bates No. NSM00001 – NSM00004	
2.	Deed of Trust, instrument no 200512070002367, Bates No. NSM00000 – NSM00023	
3.	Deed in Lieu of Foreclosure instrument no. 201103030003444, Bates No. NSM00025 – NSM00029	
4.	Deed in Lieu of Foreclosure (re-recorded) instrument no. 201106210002567, Bates No. NSM00030 – NSM00035	
5.	Assignment of Deed of Trust, instrument no. 201107290000895, Bates No. NSM00036 – NSM00037	
6.	Substitution of Trustee, instrument no. 201202020000943, Bates No. NSM00038	

⁶ Within 7 days of the actual date of trial, the parties will agree to a joint list of exhibits.

Ex #	Description	Objection
7.	Lien for Delinquent Assessments, instrument number 201204040001017, Bates No. NSM00039	
8.	Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments, instrument no. 201205290001690, Bates No. NSM00040	
9.	Corporation Assignment of Deed of Trust, instrument number 201303200000887, Bates No. NSM00041 – NSM00042	
10.	Notice of Foreclosure Sale (HOA Lien), instrument no. 201305290000306, Bates No. NSM00043	
11.	Foreclosure Deed Upon Sale instrument no. 201306240003127, Bates No. NSM00044 – NSM00046	
12.	Notice of Breach and Election to Cause Sale of Real Property Under Deed of Trust, instrument no. 201309180002103, Bates No. NSM00047 – NSM00051	
13.	Documents Brought to deposition by Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services Bates No. NSM000126 – NSM000179	
14.	Documents from prior collections agency (Red Rock) produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000180 – NSM000285	
15.	Contracts with HOA and First 100 Bates No. NSM000286 – NSM000365	
16.	ULS Auction Results Bates No. NSM000366 – NSM000369	
17.	Emails produced during Deposition of Robert Atkinson as NRCP 30(B)(6) designee for United Legal Services, Bates No. NSM000370 – NSM000455	
18.	Affidavit and documents produced responsive to subpoena duces tecum served upon John Peter Lee, Ltd., Bates No. NSM000456 – NSM000489	

Ex #	Description	Objection
19.	Policy of Title Insurance issued by First American Title Insurance Company, Bates No. NSM000490 – NSM000505	
20.	Affidavit and documents produced responsive to subpoena duces tecum served upon Red Rock Financial Services, Bates No. NSM000506 – NSM000552	
21.	Declaration Of Julia Thompson In Support Of Red Rock Financial Services, LLC's Limited Opposition To Motion For Summary Judgment; Eighth Judicial District Court Case A-14-704704-C, <i>KAL-MOR-USA, LLC v. Green Tree Servicing LLC et al.</i> (Filed January 12, 2017), Bates No. NSM000553 – NSM000558	
22.	Transcript Of Proceedings – Bench Trial; Eighth Judicial District Court Case A-13-676349-C, <i>SFR Investments Pool 1, LLC v. Nationstar Mortgage LLC et al.</i> (June 26, 2017), Bates No. NSM000559 – NSM000684	
23.	First 100, LLC Marketing Brochure, Bates No. NSM000685 – NSM000692	
24.	Declaration Of Covenants, Conditions, And Restrictions And Grant And Reservation of Easements For Tuscano Townhomes (Instrument No. 20050405-0002422, Recorded April 5, 2005), Bates No. NSM000693 – NSM000747	
25.	Affidavit and documents produced responsive to subpoena duces tecum served upon Tuscano Homeowners Association, Bates No. NSM000748 – NSM000824	
26.	Nationstar Mortgage LLC LSAMS business records Bates No. NSM000825 – NSM000826	
27.	Bank of America, N.A. servicing transfer letter, Bates No. NSM000827 – NSM000830	
28.	Nationstar Mortgage LLC welcome letter, Bates No. NSM000831 – NSM000835	
29.	Federal Housing Finance Agency's Statement on HOA Super-Priority Lien Foreclosures (Dated April 21, 2015), Bates No. NSM000836	
30.	Federal Housing Finance Agency's Statement On Servicer Reliance On The Housing And Economic Recovery Act Of 2008 In Foreclosures Involving Homeownership Association (August 28, 2015), Bates No. NSM000837	

Ex #	Description	Objection
31.	Federal Home Loan Mortgage Corporation Single-Family Seller/Servicer Guide www.freddiemac.com/singlefamily/guide Static PDF available at: http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency Archived prior versions available at: www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html Freddie Mac's Single-Family Seller/Servicer Guide Sections 1101.2, 1201.9, 1301.10, 3302.5, 6301.6, 7101.6, 7101.15, 8105.3, 8107.1, 8107.2, 9301.1, 9301.11, 9301.12, 9401.1, 9402.2, 9501.1, 9501.3, 9501.4, 9501.5, 9501.6, 9501.7, 9501.8, 9501.9, 9501.10, 9501.11, 9501.12, 9501.13, 9501.14, 9501.15, Archived version of Freddie Mac's Single-Family Seller/Servicer Guide Sections 1.2, 52.5, 6.6, 52.7, 22.14, 56.7, 56.15, 54.4, 18.4, 18.6, 66.1, 66.20, 66.17, 67.6, 67.17, 69.1, 69.2, 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10, 69.11, 69.12, 69.13, 69.14, 69.15	
32.	Freddie Mac Funding Details Report, Bates No. NSM000838 – NSM000841	
33.	Midas Report, Bates No. NSM000842 – NSM000843	
34.	Mortgage Payment History Report, Bates No. NSM000844 – NSM000849	
35.	Securities Pool Information, Bates No. NSM000850 – NSM000851	
36.	Loan Status Manager—TOS Summary Report, Bates No. NSM000852	
37.	Freddie Mac's Single-Family Seller/Servicer Guide Sections (Archived Version At The Time Of The HOA Foreclosure Sale), Bates No. NSM000853 – NSM000912	
38.	Freddie Mac's Single-Family Seller/Servicer Guide Sections, Bates No. NSM000913 – NSM000964	
39.	Note, Bates No. NSM000965 – NSM000968	
40.	Email correspondence dated July 9, 2013; See Bates Stamped Nos. WS0052 – WS0053	
41.	Standard Residential Lease Agreement dated July 8, 2014; See Bates Stamped Nos. WS0054 – WS0062	

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

The parties agree to the authenticity and admissibility of Exhibits 1 through 16, 19, 20, 23 and 41. The parties agree to the authenticity, but not admissibility, of Exhibits 21 and 25.

List of Proposed Witnesses (Including Experts) and Their Addresses the Parties Intend to**Call (EDCR 2.67(b)(7))⁷****A. West Sunset's Witnesses:**

1. Jacob Lefkowitz or another corporate representative(s)
for West Sunset 2050 Trust
c/o Luis A. Ayon, Esq.
Ayon Law PLLC
8716 Spanish Ridge Avenue, Suite 115
Las Vegas, Nevada 89148
2. Simon Ward-Brown, Aaryn Richardson, Alan Blunt, Edward Hyne or another
corporate representative(s) for Nationstar Mortgage LLC
c/o Ariel Stern, Esq., Melanie D. Morgan, Esq. and/or Donna M. Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000

B. Nationstar's Witnesses:

1. Simon Ward-Brown, Aaryn Richardson, Alan Blunt, Edward Hyne or another
corporate representative(s) for Nationstar Mortgage LLC
c/o Ariel Stern, Esq., Melanie D. Morgan, Esq. and/or Donna M. Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000

This witness will testify regarding relevant facts and information relating to Nationstar's servicing of the loan involving the deed of trust at issue, Nationstar's status as servicer of the loan on behalf of Freddie Mac, and any other facts and circumstances relating to the deed of trust's lien position following the subject HOA foreclosure sale.

2. Shawn Look, Jessica Woodbridge, Diane Deloney, Matthew Labrie or another
corporate representative(s) for Bank of America, N.A.⁸
7266 West Sunset Road, Suite 2050
Las Vegas, Nevada 89113

⁷ In preparation for the 2.67 conference, the description of identities of witnesses have been updated.

⁸ No party is to engage in ex parte communications without Akerman's consent.

1 This witness will testify regarding relevant facts and information relating to Bank of America's
2 servicing of the loan involving the deed of trust at issue, Bank of America's status as servicer of the
3 loan on behalf of Freddie Mac, and any other facts and circumstances relating to the deed of trust's
4 lien position following the subject HOA foreclosure sale.

- 5 3. Kipp Greengrass, Ian Akeson or another corporate representative(s) for
6 Tuscano Homeowners Association
7 c/o Registered Agent: FirstService Residential, Nevada, LLC
8 8290 Arville Street
9 Las Vegas, Nevada 89139

10 This witness is expected to testify regarding relevant facts and information relating to the
11 nonjudicial foreclosure sale relevant to this litigation.

- 12 4. Julia Thompson or another corporate representative(s) for
13 Red Rock Financial Services, LLC
14 c/o Registered Agent: CSC Services Of Nevada, Inc.
15 2215-B Renaissance Drive
16 Las Vegas, Nevada 89119

17 This witness is expected to testify regarding relevant facts and information relating to the
18 nonjudicial foreclosure sale relevant to this litigation.

- 19 5. Robert Atkinson or another corporate representative(s) for
20 United Legal Services, Inc.
21 c/o Atkinson Law Associates
22 376 E. Warm Springs Road, Suite 130
23 Las Vegas, Nevada 89119

24 This witness is expected to testify regarding relevant facts and information relating to the
25 nonjudicial foreclosure sale relevant to this litigation.

- 26 6. Jay Bloom or another corporate representative(s) for First 100, LLC
27 c/o Registered Agent: Jay Bloom
28 2485 Village View Drive
Henderson, Nevada 89074

This witness is expected to testify regarding the allegations asserted in the complaint,
counterclaim and crossclaim.

7. Kenneth Berberich or another corporate representative(s)
for West Sunset 2050 Trust
c/o Luis A. Ayon, Esq.
Ayon Law PLLC
8716 Spanish Ridge Avenue, Suite 115
Las Vegas, Nevada 89148

1 This witness is expected to testify regarding the allegations asserted in the complaint,
2 counterclaim and crossclaim.

- 3
4 8. Valbridge Property Advisors
Lubawy & Associates, Inc.
3034 S. Durango Dr. #100
5 Las Vegas, NV 89117
Matthew Lubawy, MAI, CVA, CMEA
6 Managing Director
Tammy Howard, Senior Appraiser
7

8 Ms. Howard and/or Mr. Lubawy will provide expert opinions concerning the market value at
9 the time of the HOA's foreclosure sale in accordance with Defendant's Initial Expert Disclosure.

- 10 9. Dean Meyer and/or other Corporate Representative of Federal Home Loan Mortgage
Corporation (Freddie Mac)
11 c/o Ariel Stern, Esq., Melanie D. Morgan, Esq. or Donna Wittig, Esq.
AKERMAN LLP
12 1635 Village Center Cir., Suite 200
Las Vegas, NV 89134
Telephone: (702) 634-5000
13

14 This witness is expected to have knowledge concerning Freddie Mac's status as a corporation
15 organized and existing under the laws of the United States. This witness is expected to have
16 knowledge concerning certain Freddie Mac Systems that contain data regarding mortgage loans
17 acquired and owned by Freddie Mac, including the MIDAS system, which contains information
18 regarding mortgage loans acquired and owned by Freddie Mac. This witness is also expected to have
19 knowledge concerning when Freddie Mac acquired ownership of a mortgage loan secured by real
20 property located at 2634 Cimarron Cove St, Las Vegas, Nevada, and that Freddie Mac did not
21 subsequently sell that loan to any other entity.

- 22 10. Any and all witnesses identified by any other party to this litigation.

23 **Brief Statement of Each Principle Issue of Law Which May Be Contested at Trial (EDCR**

24 **2.67(b)(8))**

25 The Parties agree that the following are the disputed issues of law to be contested at trial:
26 (1) Whether the Deed of Trust bearing was extinguished by way of the HOA foreclosure sale;
27
28

Nationstar's position: (1) 12 U.S.C. § 4617(j)(3) preempts the State Foreclosure Statute, such that the HOA Sale did not extinguish Freddie Mac's interest; (2) the superpriority portion of the HOA's lien was discharged at the time of the HOA sale by way of a legally sufficient tender; i.e. First 100's payment of \$1,476, an amount equal to nine months of assessments; and (3) Red Rock's assurance that the HOA was not foreclosing on the superpriority portion of the lien, the representations in the CC&Rs that beneficiary of a first deed of trust would be provided notice of any action to enforce the HOA's lien, and the grossly inadequate sale price, among other things, justify a finding in equity that the HOA Sale did not extinguish the Deed of Trust.

West Sunset's position:

Nationstar failed to timely disclose any of these documents and is precluded from introducing these documents at trial. Pursuant to NRS 116.3115, et. seq., the Deed of Trust is extinguished.

- (2) Whether 12 USC 4617(j)(3) prevented West Sunset from taking title to the Property free and clear of any deed of trust;

Nationstar's position: 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar") preempts the NRS Chapter 116 (**State Foreclosure Statute**), such that the HOA sale did not extinguish Freddie Mac's interest. The Federal Foreclosure Bar works automatically by operation of law, protecting the Deed of Trust and thereby limiting the property rights West Sunset could have acquired in the HOA foreclosure sale. When the Federal Foreclosure Bar prevented the extinguishment of the t Deed of Trust, it did not merely preserve Freddie Mac's ownership interest; it also preserved Nationstar's parallel interests.

West Sunset's position:

Nationstar failed to timely disclose any of these documents and is precluded from introducing these documents at trial. Pursuant to NRS 116.3115, et. seq., the Deed of Trust is extinguished.

- (3) Whether 12 USC 4617 (j)(3) preempts the relevant provisions of NRS 111, NRS 106, NRS 104, and/or the bona fide purchaser doctrine;

Nationstar's position: 12 U.S.C. § 4617(j)(3) preempts the State Foreclosure Statute, such that the HOA Sale did not extinguish Fannie Mae's interest.

West Sunset's position:

Nationstar failed to timely disclose any of these documents and is precluded from introducing these documents at trial. Pursuant to NRS 116.3115, et. seq., the Deed of Trust is extinguished.

. . .
(4) Whether West Sunset is a *bona fide* purchaser;

Nationstar's position: Because the Deed of Trust survived the HOA sale through the automatic operation of the Federal Foreclosure Bar and/or First 100's payment, and the HOA's acceptance, of an amount equal to superpriority portion of the HOA's lien, as a matter of law there is no need for the court to reach equity. West Sunset's purported *bona fide* purchaser status is irrelevant. To the extent the court reaches equity, Nationstar contends West Sunset cannot meet its burden of proving itself as a *bona fide* purchaser. Should the court find West Sunset is a *bona fide* purchaser, Nationstar asserts that finding is not dispositive and is only one factor the court may consider when weighing the competing equities.

West Sunset's position:

Nationstar failed to timely disclose any of these documents and is precluded from introducing these documents at trial.

(5) Issues related to equitable balancing;

Nationstar's position: Because the Deed of Trust survived the HOA sale through the automatic operation of the Federal Foreclosure Bar and/or tender of an amount equal to the superpriority portion of the HOA's lien by First 100, as a matter of law there is no need for the court to reach equity. To the extent the court disagrees, the wide disparity between price paid by West Sunset and the property's fair market value at the time of the HOA foreclosure, coupled with evidence of oppression, unfairness, and/or fraud warrant setting aside the HOA sale on equitable grounds.

West Sunset's position:

Nationstar failed to timely disclose any of these documents and is precluded from introducing these documents at trial. Pursuant to NRS 116.3115, et. seq., the Deed of Trust is extinguished.

(6) Whether there was a sufficient tender to extinguish the portion of the HOA's lien which is described in NRS 116.3116(2) which would otherwise be prior to a first deed of trust (commonly referred to as the "superpriority" lien").

Nationstar's position:

1 The Nevada Supreme Court has repeatedly confirmed a mortgagee's tender of the superpriority
2 amount results in the foreclosure sale purchaser taking title subject to the deed of trust, even if
3 the tender is rejected. *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 116 (Nev.
4 2018). But an effective tender is not limited to funds received from the mortgagee. The source
5 of the funds is irrelevant. In *Golden Hill*, the Supreme Court affirmed summary judgment in the
6 lender's favor, finding the district court "correctly determined that at the time of the foreclosure
7 sale, there was no superpriority component of the HOA's lien that could have extinguished [the
8 lender's] deed of trust." *Saticoy Bay LLC Series 5141 Golden Hill v. JP Morgan Chase Bank*
9 *National Association*, 408 P.3d 558, 558 (Nev. Dec. 22, 2017) (Rehearing denied Feb. 26, 2018)
10 (unpublished) (***Golden Hill***). It reached this conclusion because the undisputed evidence showed
11 the former homeowner "made payments sufficient to satisfy the superpriority component of the
12 HOA's lien and that the HOA applied those payments to the superpriority component of the
13 former homeowner's outstanding balance." *Id.* Here, First 100 made a payment, which the HOA
14 accepted, sufficient to satisfy the superpriority component of the HOA's lien. Because the
15 superpriority portion of the lien had been satisfied prior to the foreclosure, the HOA could only
16 have foreclosed on the sub-priority portion of its lien.

17 **West Sunset's position:**

18 This issue was already decided by the Nevada Supreme Court and Nationstar should be precluded
19 from making this argument at trial.

20 **Estimate of Time Required for Trial (EDCR 2.67(b)(9))**

21 The parties believe the bench trial can be completed in three days, but recognize June 6, 2019
22 is the only day set aside for trial.

23 ...

24 ...

25 ...

26 ...

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28 ...

Matters To Be Addressed By the Court Prior to Trial (EDCR 2.67(b)(10))

The hearing on Nationstar's motion in limine to introduce at trial evidence disclosed after the close of discovery is scheduled to be heard on May 28, 2019.

Dated this 22 nd day of May, 2019.	Dated this 22 nd day of May, 2019.
AYON LAW, PLLC	AKERMAN, LLP
<u>Luis A. Ayon</u>	<u>/s/Melanie D. Morgan</u>
LUIS A. AYON, ESQ.	ARIEL E. STERN, ESQ.
Nevada Bar No. 9753	Nevada Bar No. 8276
8716 Spanish Ridge Ave., Suite 115	MELANIE D. MORGAN, ESQ.
Las Vegas, NV 89148	Nevada Bar No. 8215
<i>Attorneys for West Sunset 2050 Trust</i>	DONNA M. WITTIG, ESQ.
	Nevada Bar No. 11015
	1635 Village Center Circle, Suite 200
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	<i>Attorneys for Nationstar Mortgage LLC</i>

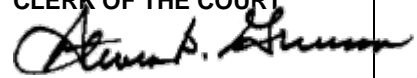
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 22nd day of May, 2019, I caused to be served a true and correct copy of the foregoing **JOINT PRETRIAL MEMORANDUM**, in the following manner:

(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 as follows:

<p>Luis A. Ayon, Esq. Ayon Law, PLLC 9205 W. Russell Road Building 3, Suite 240 Las Vegas, NV 89148 laa@ayonlaw.com</p> <p><i>Attorneys for West Sunset 2050 Trust</i></p>	
---	--

/s/Jill Sallade
An employee of AKERMAN LLP



OPP

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Attorney for Plaintiff
West Sunset 2050 Trust

**EIGHTH JUDICIAL DISTRICT COURT
DISTRICT OF NEVADA**

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,
vs.

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

OPPOSITION TO MOTION IN LIMINE

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.

Date of Hearing: May 28, 2019
Time of Hearing: 9 a.m.

AND ALL RELATED ACTIONS

Plaintiff West Sunset 2050 Trust (“West Sunset”) by and through its attorneys of record,
the law firm of AYON LAW, PLLC, hereby files this opposition to Nationstar’s motion in limine.

///

///

///

This opposition is made and based upon the following memorandum of points and authorities, the papers and pleadings on file, the exhibits attached hereto, and any argument of counsel at the time of hearing on this matter.

DATED this 23rd day of May, 2019.

AYON LAW, PLLC

/s/ Luis A. Ayon

LUIS A. AYON, ESQ.

Nevada Bar No. 9752

8716 Spanish Ridge Avenue, Suite 115

Las Vegas, Nevada 89148

Attorneys for Plaintiff

West Sunset 2050 Trust

1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Despite claiming Freddie Mac has owned the loan in question since 2005, Nationstar never
4 once pled 4617(j)(3) a/k/a the Federal Foreclosure Bar in this case or disclosed any timely
5 documents. This is true even though Nationstar claims it has serviced the subject loan on behalf
6 of Freddie Mac since February 2013, some five months prior to the Association sale and ten
7 months prior to West Sunset's filing of its complaint. After five years of litigation, which included
8 an appeal to the Nevada Supreme Court, and then an additional four months of discovery, after
9 remand, Nationstar now asks this Court to forgive its per se violation of NRCP 16.1 feigning
10 excusable neglect, and on the eve of trial to boot. Nationstar's motion is not even based on the
11 right standard. NRCP 37 does not govern this issue; instead, the appropriate analysis is under
12 *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev.Ct.App.2015). Yet, Nationstar's motion is
13 completely devoid of any mention of this case, let alone analysis under this case. What is more,
14 Nationstar ignores the utter futility of the late discovery it seeks to use at trial; having never pled
15 4617(j)(3), Nationstar is now time-barred under HERA from asserting such claim/defense. As
16 such, this Court should deny Nationstar's motion.

17 **II. RELEVANT FACTS**

18 On June 22, 2013, the Association foreclosed on the Property. Unlike typical properties in
19 these NRS 116 cases, this is not a situation where the homeowner became delinquent on the dues;
20 instead, the lender, by virtue of a deed in lieu, was the owner, and it failed to pay the association
21 dues. At the sale, West Sunset made the highest cash bid, and then on November 6, 2013, West
22 Sunset filed its complaint. On May 20, 2014, Nationstar filed its answer and counterclaim.
23 Nowhere did Nationstar allege Freddie Mac owned the loan or plead 4617(j)(3) as either a basis
24 for its "quiet title" claim or as a defense to West Sunset's quiet title claim. Thereafter, during
25 discovery and at the dispositive motion stage, Nationstar still never uttered the words "Freddie
26 Mac" or "4617(j)(3). Then on appeal, Nationstar never uttered a single word about Freddie Mac
27 or 4617(j)(3). Then after another four months of discovery, once the case was remanded, still
28 Nationstar never uttered one word about Freddie Mac and/or 4617(j)(3). It was not until pre-trial

disclosures, that Nationstar identified documents never before disclosed and witnesses never before identified regarding Freddie Mac's alleged ownership. Trial in this matter is set for June 6, 2019.

III. LEGAL ARGUMENT

A. NATIONSTAR RELIES ON THE WRONG STANDARD.

Nationstar's entire motion is premised on the wrong standard. Nationstar's per se violation of NRCP 16.1 is not governed by NRCP 37. Rather, NRCP 16.1(e)(3) mandates striking all the documents and witnesses never disclosed by Nationstar during the course of discovery. Further, under *Nutton*, Nationstar must move to amend the scheduling order to permit production of the document and witnesses it now seeks to use at trial, and Nationstar cannot meet the *Nutton* standard.

1. NRCP 16.1(e)(3) mandates striking the documents and witnesses Nationstar now seeks to use at trial.

Rule 16.1(a)(1) states in relevant part, "a party must, without awaiting a discovery request, provide to the other parties, (i) the name...of each individual likely to have information discoverable under Rule 26(b)..." and "(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses..." Rule 16.1(e)(3) provides, "[i]f an attorney fails to reasonably comply with any provision of this rule...the court...should impose upon a party...appropriate sanctions...including...an order prohibiting the use of any witness, document, or tangible thing that should have been disclosed...under Rule 16.1(a)."

Here, there is no dispute Nationstar failed to reasonably comply with NRCP 16.1. Nationstar admits as much. Additionally, NRCP 16.1(e)(3) is not discretionary and it involves no analysis as to prejudice. In mandating a sanction of prohibition, the rule acknowledges a per se violation cannot be cured. Of course, West Sunset would suffer prejudice as it was deprived of any discovery into the documents and witnesses Nationstar now seeks to use at trial. But this is not the question. The only question before this Court is did Nationstar reasonably comply. The answer is

1 a resounding no. Additionally, Nationstar’s offer to re-open discovery does not cure the per se
2 violation of NRCp 16.1. There is absolutely no excuse or explanation as to why Nationstar failed
3 to comply with NRCp 16.1 after years and years of litigation. And this Court need not worry about
4 imposing the sanction NRCp 16.1 mandates as the Nevada Supreme Court has upheld such
5 sanction, it in at least one NRS 116 case where GSE ownership was also alleged very late in the
6 game. *See Green Tree Servicing, LLC v. SFR Investments Pool 1, LLC*, No. 71248 (Nev. February
7 27, 2019) (order of affirmance) (holding “[w]e are not persuaded that the district court abused its
8 discretion in declining to consider John Curcio's declaration and supporting documentation
9 purporting to show that Fannie Mae owned the loan in question on the date of the foreclosure sale,
10 as that information was not provided during discovery.”)

11 Equally unavailing is Nationstar’s suggestion that West Sunset is at fault for not seeking
12 out this information. For one, West Sunset has zero burden to prove Nationstar’s claim/defenses.
13 *See Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 646
14 (Nev. 2017) (Nationstar has the burden to show that the sale should be set aside in light of Saticoy
15 Bay's status as the record title holder”) citing *Brelant v. Preferred Equities Corp.*, 112 Nev. 663,
16 669, 918 P.2d 314, 318 (1996) (“[T]here is a presumption in favor of the record titleholder.”);
17 *Resources Group, LLC v. Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019) (“the
18 burden of demonstrating that [a] delinquency was cured presale, rendering the sale void, was on
19 the party challenging the foreclosure...”) Moreover, it is absurd for Nationstar to suggest West
20 Sunset should have inquired as to information Nationstar had a duty to disclose, when there was
21 zero inclination after years and years of litigation Freddie Mac had any alleged interest in the
22 subject property.

23 All told, Nationstar cannot shift the burden to West Sunset. It was Nationstar’s obligation,
24 and Nationstar’s obligation alone, to disclose all witnesses and documents it intended to rely upon
25 to prove its claims/defenses. Having failed to fulfill this obligation, this Court should not save
26 Nationstar from its own per se violation of Rule 16.1, to the detriment of West Sunset.

27 ///

28 ///

1 2. Under *Nutton*, Nationstar cannot establish good cause.

2 Nationstar fails to acknowledge the real request it needs to make is a modification of the
3 scheduling order. But it does not do this, and even if it did, it could not meet the *Nutton* standard
4 for such a modification. In *Nutton*, the Nevada Court of Appeals held that when a party seeks to
5 do act, like amend a pleading, after the deadline has passed, it implicates NRCP 16(b), and under
6 NRCP 16(b) the party must show good cause for missing the deadline in the first place. *Id.* at 971.
7 The Court further noted that “[u]nlike Rule 15(a)’s liberal amendment policy which focuses on the
8 bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party,
9 Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the
10 amendment.” *Id.* quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609, (9th Cir.
11 1992). The Court further adopted a non-exclusive four-factor test to determine whether good cause
12 exists: “(1) the explanation for the untimely conduct; (2) the importance of the requested untimely
13 action; (3) the potential prejudice in allowing the untimely conduct; and (4) the availability of a
14 continuance to cure such prejudice.” *Id.* at 972 citing *S&W Enters., LLC v. SouthTrust Bank of*
15 *Ala., N.A.*, 315 F.3d 533, 536 (5th Cir. 2003). However, because the factors are non-exclusive,
16 “ultimately, if the moving party was not diligent in at least attempting to comply with the deadline,
17 ‘the inquiry should end.’” *Id.* citing *Johnson*, 975 F.2d at 609. *See also, Perfect Pearl Co. v.*
18 *Majestic Pearl & Stone, Inc.*, 889 F.Supp.2d 453, 457 (S.D.N.Y. 2012) (“A party fails to show
19 good cause when the proposed amendment rests on information that the party knew, or should
20 have known, in advance of the deadline.”). Additionally, “carelessness is not compatible with a
21 finding of diligence and offers no reason for a grant of relief.” *Johnson*, 975 F.2d at 609.

22 Here, Nationstar cannot establish good cause. Nationstar offers no explanation of any
23 diligence on its part in at least attempting to comply with the close of discovery deadline or Rule
24 16.1 for that matter. Essentially, Nationstar’s own motion reveals there is absolutely no
25 explanation as to why, despite Freddie Mac claiming an interest since 2005, and Nationstar
26 allegedly servicing on behalf of Freddie Mac since 2013, prior to the Association sale, that
27 Nationstar failed to apprise anyone of Freddie Mac’s alleged interest. There is also no explanation
28 as to why Nationstar failed to disclose any witnesses or documents necessary to prove this alleged

1 interest. This is a case that was litigated for three years, went up on appeal, was remanded, litigated
2 for another four months, and during all this time, not one mention of Freddie Mac's alleged
3 interest. If there was ever an example of the antithesis of good cause, this case is it.

4
5 **B. ANY CLAIM/DEFENSE OF 4617(J)(3) IS TIME-BARRED.**

6 The biggest flaw in Nationstar's motion is not its per se violation of NRCP 16.1 or its
7 complete lack of diligence, instead, the fatal flaw in Nationstar's motion is even if this Court were
8 to allow Nationstar to offer late disclosed documents and witnesses in an attempt to prove Freddie
9 Mac ownership, Nationstar's claim of 4617(j)(3) is time-barred. Thus, allowing Nationstar to offer
10 documents and witnesses that purport to prove Freddie Mac ownership and Nationstar's
11 contractual servicer relationship would be futile. Again, Nationstar never pled 4617(j)(3) as a claim
12 or a defense in this matter. Thus, in order to litigate this issue at trial, it would need to seek leave
13 to amend its pleadings because West Sunset is certainly not consenting to the trial of this unpled
14 claim/defense. Any such amendment would again need to pass the *Nutton* standard of review,
15 which Nationstar cannot satisfy. Nevertheless, "[l]eave to amend should not be granted if the
16 proposed amendment would be futile." *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398,
17 302 P.3d 1148, 1152 (2013) (citing *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d
18 297, 302 (1993)). "A proposed amendment may be deemed futile if the plaintiff seeks to amend
19 the complaint in order to plead an impermissible claim." *Id.* Here, any proposed amendment to
20 add a claim/defense under 4617(j)(3) is impermissible because Nationstar is beyond the statute of
21 limitations.

22 The statute that governs any claim/defense of 4617(j)(3) is HERA itself, specifically, 12
23 U.S.C. § 4617(12) which provides:

24 **(12) Statute of limitations for actions brought by conservator or receiver**

25 **(A) In general.** Notwithstanding any provision of any contract, the
26 applicable statute of limitations with regard to any action brought by the
Agency as conservator or receiver shall be—

27 (ii) in the case of any tort claim, the longer of—

- 28 (I) the 3-year period beginning on the date on which the
claim accrues; or
(II) the period applicable under State law.

1 12 U.S.C. 4617(12)

2 The Federal Housing Finance Agency (“FHFA”) has successfully argued and convinced
3 the 2nd Circuit to hold that, “Congress intended one statute of limitations – 4617(b)(12) of HERA
4 – to apply to *all* claims brought by the FHFA as conservator [and] supplant[s] any other limitations
5 that otherwise might have applied.” *Federal Housing Finance Agency v. UBS Americas Inc.*, 712
6 F.3d 136, 143-44 (2d Cir. 2013) (emphasis in original). Additionally, the FHFA/Freddie Mac
7 argued that “none of the statutory limitations found [under] Nevada laws apply here, as HERA
8 provides the applicable period for all actions brought by the FHFA as Conservator.” *Federal*
9 *Housing Finance Agency v. GR Investments, LLC*, United States District Court, District of Nevada,
10 2:17-cv-03005-JAD-CWH at ECF No. 35 at 3:22-23. Further, the FHFA/Freddie Mac argued that
11 there was no basis for the Court to “ignore the plain language of HERA and hold that any statute
12 of limitations prescribed by state law applies to actions brought by FHFA when acting as
13 Conservator.” In other words, the FHFA has conceded that the “extender” provisions within
14 4617(b)(12) are inoperative. This amounts to a judicial admission and is binding upon Nationstar
15 (as Nationstar is allegedly stepping into the shoes of FHFA). “Stipulations and admissions in the
16 pleadings are generally binding on the parties and the Court.” *American Title Ins. Co. v. Lacelaw*
17 *Corp.*, 861 F.2d 224, 225 (9th Cir.1988). Essentially, either the claim sounds in contract (6-years)
18 or non-contract i.e. tort (3-years). Because Nationstar’s claim against West Sunset does not sound
19 in contract, it necessarily falls in the tort category.

20 Additionally, the only reason Nationstar can even attempt to assert 4617(j)(3), is that the
21 Nevada Supreme Court recognized that a contractually authorized servicer could assert the right,
22 under a principal/agency relationship. *Nationstar, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d
23 754 (Nev. 2017). West Sunset does not concede this point, but for purposes of this argument only
24 assumes this fact for the sake of argument.

25 In other words, Nationstar does not have the right, it merely steps into the shoes of Freddie
26 Mac/FHFA and asserts the right. But Nationstar does not step only in to one shoe, it steps in both
27 shoes. In that regard, while it can assert the right, it is equally bound by the limitations that
28 Congress placed on that right. In short, Nationstar is bound by the statute of limitations set forth

1 in 4617(b)(12) just as Freddie Mac/FHFA would be if they themselves asserted the right. To hold
2 otherwise, would be absurd.

3 HERA itself provides the statutory period in which such a claim must be brought – three
4 years. Here, the Association foreclosure sale occurred on June 22, 2013 and presumptively
5 extinguished the deed of trust Nationstar now seeks to revive. Nationstar has never pled
6 4617(j)(3), thus any amendment would occur now in May 2019, nearly six years after the
7 Association foreclosure. Under HERA’s three-year statute of limitations, such claim is time-
8 barred.

9 Nationstar is equally time-barred from asserting 4617(j)(3) as a defense. *City of Saint Paul,*
10 *Alaska v. Evans*, 344 F.3d 1029, 1035-36 (9th Cir. 2003) (barring City’s defense under statute of
11 limitations because defenses were “mirror images of time-barred claims”). In *Evans*, the Ninth
12 Circuit, noted that a party cannot “engage in a subterfuge to characterize a claim as a defense in
13 order to avoid a temporal bar.” *Evans*, citing *Mobil Oil Corp. v. Dep’t of Energy*, 728 F.2d 1477,
14 1488 (1983) (holding that laches barred a pre-enforcement declaratory judgment action alleging
15 that a price regulation was invalid). *See also, Gilbert v. City of Cambridge*, 932 F.2d 51, 58 (1st
16 Cir. 1991) (holding that temporal bar cannot be sidestepped by asserting a defensive declaratory
17 judgment claim); *Clark v. Slack Steel & Supply Co.*, 611 P.2d 80, 83 (Alaska 1980) (dismissing,
18 as barred by statute of limitations, plaintiff’s affirmative claim that a contract be declared void
19 because it was formed under duress). At the end of the day, the statute of limitations applies
20 regardless of whether Nationstar couches its 4617(j)(3) assertion as a claim or defense. As the
21 *Evans* Court put it, “[n]o matter what gloss [Nationstar] puts on its defenses, they are simply time-
22 barred claims masquerading as defenses and are likewise subject to the statute of limitations bar.”
23 *Evans*, at 1036.

24 In short, this Court should deny Nationstar’s motion as any allowance of said
25 documents/witnesses would be futile in light of the yet pled claim/defense of 4617(j)(3) is time-
26 barred.

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IV. CONCLUSION

For all the reasons stated, West Sunset asks that this Court deny Nationstar's motion.

DATED this 23rd day of May, 2019.

AYON LAW, PLLC

/s/ Luis A. Ayon, Esq.
LUIS A. AYON, ESQ.
Nevada Bar No. 9752
8716 Spanish Ridge Ave., Suite 115
Las Vegas, Nevada 89148
Attorney for Plaintiff
West Sunset 2050 Trust

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of AYON LAW, PLLC, and that on this 23rd of May, 2019, I did cause a true and correct copy of **OPPOSITION TO MOTION IN LIMINE** to be served via the Court's electronic e-filing system to all parties registered.

Ariel E. Stern, Esq.
Melanie D. Morgan, Esq.
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Attorneys for Nationstar Mortgage LLC

/s/ Coreene Drose
An employee of AYON LAW, PLLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****May 28, 2019**

A-13-691323-C

West Sunset 2050 Trust, Plaintiff(s)

vs.

New Freedom Mortgage Corporation, Defendant(s)

May 28, 2019**9:00 AM**

**Nationstar Mortgage LLC's Motion in Limine to Introduce
into Evidence at Trial Documents Disclosed After the
Close of Discovery**

HEARD BY: Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES****PRESENT:**

Ayon, Luis A
Stern, Ariel E.

Attorney for Plaintiff
Attorney for Defendant Nationstar
Mortgage LLC

JOURNAL ENTRIES

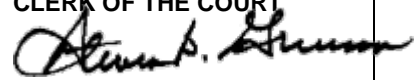
- Following arguments by counsel, COURT ORDERED, given the fact that information has been within the control of the servicer for the entire history of the litigation, the Court will DENY the request to admit this late disclosed information, as opposed to late discovered where substantial justification is the standard.

Upon Court's inquiry, Mr. Stern stated they would prefer to keep the current trial date due to witness issues. COURT SO ORDERED, noting that it may start earlier than 10 am depending on how light the motion calendar is.

6-6-19

10:00 AM

BENCH TRIAL



TB
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WEST SUNSET 2050 TRUST

EIGHTH JUDICIAL DISTRICT COURT
DISTRICT OF NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,
vs.

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

PLAINTIFF'S TRIAL BRIEF

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 ACTIONS

Pursuant to EDCR 7.27, Plaintiff, West Sunset 2050 Trust, submits its trial brief.

In Nevada, a homeowners association has a lien for delinquent assessments, a portion of which has priority over a first deed of trust. NRS 116.3116(2); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, ___, 334 P.3d 408, 419 (2014). The Association foreclosure sale

1 vested title in SFR “without equity or right of redemption.”¹ *SFR*, 334 P.3d at 419 *citing*
2 NRS116.31166(3). As the dissent in *SFR* explained, “the owner, as well as the first security, will
3 have no right to redeem the property under the majority's holding.” *Id.* (*citing* NRS 116.31166(3)
4 and *Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. ___, ___, 294 P.3d 1228, 1233 (Nev. 2013))
5 (recognizing that there is no right to redeem after a Chapter 107 non-judicial foreclosure sale
6 because a sale under that chapter ‘vests in the purchaser the title of the grantor and any successors
7 in interest without equity or right of redemption’ (*quoting* NRS 107.080(5)).

8 This is consistent with long-standing Nevada non-judicial foreclosure law that “[i]f the
9 sale is properly, lawfully and fairly carried out, [the Bank] cannot unilaterally create a right of
10 redemption in [itself].” *Golden v. Tomiyasu*, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963).

11 While the party seeking to quiet title must prove good title in his name,² the following
12 presumptions apply:

13 1. Recorded title is presumed valid. *See Breliant v. Preferred Equities Corp.*, 112
14 Nev. 663, 669, 918 P.2d 314, 319 (1996)(“[T]here is a presumption in favor of the record
15 titleholder.”)

16 2. Foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-
17 (18) (stating that there are disputable presumptions “that the law has been obeyed”; “that a trustee
18 or other person, whose duty it was to convey real property to a particular person, has actually
19 conveyed to that person, when such presumption is necessary to perfect the title of such person or
20 a successor in interest”; “that private transactions have been fair and regular”; and “that the
21 ordinary course of business has been followed.”);

22 _____
23 ¹ According to the Nevada Supreme Court, **sales without equity or right of redemption vest the**
purchaser with absolute title:

24 [T]he law authorizing the mortgagee to sell is, in our opinion, so thoroughly settled
25 that it cannot now admit of a question. Such being the right of the mortgagee, it
26 follows as a necessary consequence that the purchaser from him obtains an absolute
legal title as complete, perfect and indefeasible as can exist or be acquired by
purchase; and a sale, upon due notice to the mortgagor, whether at public or private
sale, forecloses all equity of redemption as completely as a decree of court.

27 *In re Grant*, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (*quoting* *Bryant v. Carson River Lumbering*
28 *Co.*, 3 Nev. 313, 317–18 (1867)) (emphasis added).

² *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 670, 918 P.2d 314, 319 (1996).

1 3. A foreclosure deed issued pursuant to NRS 116.31164 that “recit[es] compliance
2 with notice provisions of NRS 116.31162 through NRS 116.31168 “is conclusive” as to the
3 recitals “against the unit’s former owner, his or her heirs and assigns and all other persons.” *SFR*,
4 334 P.3d at 411-12 (*citing* NRS 116.31166(2)).

5 These presumptions “not only fix[] the burden of going forward with evidence, but it also
6 shifts the burden of proof.” *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d 1093,
7 1095 (1995) (*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).
8 “These presumptions impose on the party against whom it is directed the burden of proving that
9 the nonexistence of the presumed fact is more probable than its existence.” *Id.* (*citing* NRS
10 47.180.).

11 To overcome the presumption of validity, Nationstar must plead and prove a claim for
12 fraud with particularity or allege some unfairness or oppression that is not overshadowed by its
13 own bad acts.

14 Further, “[i]f the trustee's deed recites that all statutory notice requirements and procedures
15 required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption
16 arises that the sale has been conducted regularly and properly; this presumption is **conclusive** as
17 to a bona fide purchaser.” *Moeller v. Lien*, 25 Cal.App.4th 822, 831-832, 30 Cal.Rptr.2d 777, 783
18 (1994) (emphasis added); *see also*, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust
19 and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice
20 (Cont.Ed.Bar 2d ed. 1990) § 7:59, p. 476-477).

21 This conclusive proof is key because “[t]he conclusive presumption precludes an attack
22 by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully
23 rejected a proper tender of reinstatement by the trustor[,]” and even where “the sale price was
24 only 25 percent of the value of the property. . . .” *Moeller*, 25 Cal.App.4th at 831-833, 30
25 Cal.Rptr.2d at 783. **Put simply, where there were no irregularities in the proceedings of the**
26 **sale, the sale cannot be set aside.** *Id.* at 833. Further, in Nevada, unlike California, the conclusive
27 proof does not require that the purchaser be a BFP to rely on the recitals. *See Pro-Max Corp. v.*
28 *Feenstra*, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh’g (Jan. 31,

1 2001) (holding that no limitation of bonafide purchaser can be read into a statute providing a
2 conclusive presumption). There needs to be finality to a foreclosure sale, so that buyers will
3 attend and bid, without the continued threat of lawsuits challenging their title. There is a sanctity
4 and finality to foreclosure sales where the deed contains the conclusive recitals. *Cf. Moeller*, 25
5 Cal.App.4th at 833, 30 Cal.Rptr.2d at 784.

6 Nationstar has the burden to overcome the conclusive presumption of the foreclosure deed
7 recitals with evidence of fraud, unfairness and oppression. *Shadow Wood Homeowners*
8 *Association, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, ___, 366 P.3d 1105, 1112
9 (2016). See also, *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133
10 Nev. Adv. Op. 91 (November 22, 2017) (“Nationstar has the burden to show that the sale should
11 be set aside in light of Saticoy Bay’s status as the record title holder.”) citing *Breliant, supra*.

12 Here, Plaintiff has met its burden by producing the Foreclosure Deed. Nationstar cannot
13 meet its burden and will not be able to rebut the validity of the Foreclosure Deed and the
14 foreclosure sale. Plaintiff holds superior title because the Deed in Lieu of Foreclosure extinguished
15 the interests of Tablante and New Freedom under the merger doctrine. Merger may occur when
16 the fee interest and a charge, such as a deed of trust encumbrance, vest in the possession of one
17 person. *Anderson v. Starr*, 159 Wash. 641, 643, 294 P. 581 (1930). As the *Anderson* court
18 explained, “[t]he doctrine of merger springs from the fact that when the entire equitable and legal
19 estates are united in the same person, there can be no occasion to keep them distinct....”

20 In the present case, by virtue of the Deed in Lieu of Foreclosure, New Freedom became
21 both the fee simple owner of the Property and holder of the Deed of Trust. As such, the Deed of
22 Trust was extinguished by way of merger. See *Breliant, supra*. Even without the merger doctrine,
23 the Deed of Trust was extinguished by the foreclosure sale. The undisputed evidence will establish
24 the Association complied in all respects with NRS Chapter 116, and at the time of the foreclosure,
25 the lien contained amounts with super-priority status.
26
27
28

As such, under *SFR* the foreclosure sale was proper, and therefore extinguished the Deed of Trust.

Dated this 31st day of May, 2019.

AYON LAW, PLLC

/s/ Luis A. Ayon, Esq.

LUIS A. AYON, ESQ.

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Attorney for Plaintiff,

WEST SUNSET 2050 TRUST

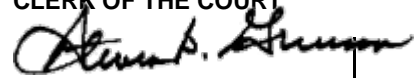
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2019, I served a true and correct copy of the foregoing **PLAINTIFF'S TRIAL BRIEF**, pursuant to NRCP 5(b) via the Court's designated electronic filing/service program and/or by U.S. Mail first class postage prepaid addressed to the following:

Ariel E. Stern, Esq.
Melanie D. Morgan, Esq.
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AKERMAN, LLP
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Attorneys for Nationstar Mortgage LLC

/s/ Coreene Drose
An Employee of Ayon Law, PLLC



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WEST SUNSET 2050 TRUST	.	
	.	
Plaintiff	.	CASE NO. A-13-691323-C
	.	
vs.	.	
	.	DEPT. NO. XI
NEW FREEDOM MORTGAGE	.	
CORPORATION, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1

THURSDAY, JUNE 6, 2019

APPEARANCES:

FOR THE PLAINTIFF: LUIS A. AYON, ESQ.

FOR THE DEFENDANTS: ARIEL E. STERN, ESQ.
MELANIE D. MORGAN, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 6, 2019, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: So while we're waiting for your client
4 to come in, I have joint trial exhibits that are identified as
5 Exhibits 1 through 30. Is there a stipulation to the
6 admission of any of those exhibits? And if you could give me
7 the numbers, please.

8 MS. MORGAN: There is, Your Honor. We have
9 stipulated as to authenticity and admissibility of 1 through
10 16, 19, 20 and 23.

11 MR. STERN: Not 23. We didn't.

12 THE COURT: Okay. So I've crossed 23 off my list.
13 I'm at 20.

14 MS. MORGAN: Okay. And then we stipulated to the
15 authenticity, but not the admissibility of --

16 THE COURT: I only want ones we're admitting.

17 MS. MORGAN: Okay. Then that's it.

18 THE COURT: Okay. So 1 through 16 and 19 and 20
19 will be admitted pursuant to stipulation.

20 MR. STERN: That's right, Your Honor.

21 (Joint Exhibits 1 through 16, 19, and 20 admitted)

22 THE COURT: All right. So we're waiting for your
23 client. Are there any other things we can do to get started?
24 I do have to leave about 11:45 to get to the airport for my
25 2:00 o'clock flight, so --

1 MR. STERN: Okay.

2 THE COURT: That's why I told we had the morning.

3 MR. STERN: And you meant it.

4 THE COURT: I did mean it, yes.

5 MR. STERN: So we need to call Mr. Atkinson.

6 (Pause in the proceedings)

7 MR. STERN: I think we can get everything done, Your
8 Honor, except for Mr. Atkinson. So we'll just have to resume
9 with him --

10 MR. AYON: Your Honor, we submitted a trial brief,
11 so, I mean, just in shortness of time I think I'd rather go
12 right into testimony.

13 MR. STERN: Rather than openings?

14 MR. AYON: Yeah.

15 MR. STERN: Yeah. We don't have to do openings.

16 THE COURT: Okay.

17 MR. AYON: And I think we can probably do closings
18 on another day just to save time.

19 THE COURT: Are we ready?

20 MR. STERN: Well, what I'm saying at least is that
21 we're going to have to call Atkinson. And since the Judge
22 basically has to wrap up by 11:45 --

23 MR. AYON: Yeah. Let's call him now, then.

24 MR. STERN: He's not available till 2:00.

25 MR. AYON: Oh.

1 MR. STERN: Can we have a minute, Your Honor?

2 THE COURT: You may.

3 (Pause in the proceedings)

4 MR. STERN: All right, Judge. So it sounds like

5 we're going to try and pack as much evidence in -- we'll skip

6 openings, but we will have to convene to finish the evidence

7 and do the closings.

8 THE COURT: Okay. Are you ready with the first

9 witness?

10 MR. AYON: Yes, Your Honor.

11 THE COURT: Okay. Who is it?

12 MR. AYON: Your Honor, at this time I'd like to call

13 Jacob Lefkowitz. Do we need to make appearances at all?

14 THE COURT: Dulce, do you need them to make

15 appearances?

16 THE CLERK: [Inaudible].

17 JACOB LEFKOWITZ, PLAINTIFF'S WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated. Please

19 state and spell your name for the record.

20 THE WITNESS: Yes. It's Jacob Lefkowitz, J-A-C-O-B

21 L-E-F-K-O-W-I-T-Z.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. AYON:

25 Q Good morning, Mr. Lefkowitz. How are you doing

1 today?

2 A Good, thank you.

3 Q Are you familiar with the property at West Sunset --
4 or 2050 West Sunset?

5 A Yes. It's a condo.

6 Q How are you familiar with that property?

7 A Originally I purchased it at a foreclosure sale
8 conducted by United Legal Services, and since that time we've
9 rented it to different tenants.

10 Q Okay. And can you speak up just a little bit. I'm
11 having a tough time hearing you.

12 But tell me exactly what is the West Sunset Trust,
13 West Sunset 2050 Trust.

14 A It's a Trust that I created with my business partner
15 to hold the ownership of the property.

16 Q And the property in question, how did you acquire
17 it?

18 A At the Condominium Association foreclosure sale.

19 Q What I'd like you to do -- is there an exhibit book
20 in front of you?

21 A Yes.

22 Q Okay. What I'd like you to do is turn to Exhibit
23 Number 11.

24 A Okay. Foreclosure deed.

25 Q Have you ever seen this document before?

1 A Yes.

2 Q Now, this document already has been admitted into
3 evidence. But tell me how you -- how you first saw this
4 document.

5 A It would have been created by United Legal Services
6 after the sale, and we would have taken it to the County
7 Recorder to record it.

8 THE COURT RECORDER: Your Honor, I can't hear him.

9 THE COURT: Sir, you're going to have to speak up.

10 THE WITNESS: Is the microphone working, or --

11 THE COURT: It is.

12 THE WITNESS: It is? Okay. All right. Let me --

13 THE COURT RECORDER: It's okay.

14 BY MR. AYON:

15 Q Down at the bottom -- if you look at Exhibit 11,
16 down on the bottom it mentions a foreclosure sale back on June
17 22nd, 2013. Do you see that?

18 A Yes.

19 Q And do you remember attending this foreclosure sale?

20 A Yes.

21 Q Can you tell me a little bit about it. Who
22 conducted this foreclosure sale?

23 A It was conducted at the offices of United Legal
24 Services by Robert Atkinson.

25 Q Okay. And fairly familiar how many people were

1 there?

2 A Yes. I would say somewhere between five and ten.

3 Q And do you remember how many bids were made?

4 A Well, the way those sales would be conducted is
5 Robert Atkinson would open the bidding at a hundred dollars,
6 and when a third party would bid on the property someone would
7 start bidding against -- against the third party. I think
8 that that was kind of related to the First 100. But -- so
9 someone was bidding against me. I don't remember who it was.
10 But ultimately we got up to a certain sale amount, which I
11 don't remember exactly, but it was probably somewhere around
12 \$7,000. And then that person stopped bidding against me, and
13 I won the sale.

14 Q So you won the auction; correct?

15 A Yes.

16 Q So if I understand your testimony correctly, there
17 was about five to ten people attending this public auction;
18 right?

19 A Yes.

20 Q And there was only two people bidding for this
21 property; is that fair to say?

22 A I think that's correct. And now that I'm thinking
23 of the number people there I'm not a hundred percent sure that
24 there were five to ten people. There may have been as few as
25 just Robert Atkinson, one other person, and myself. But I

1 can't recall.

2 Q How did you learn about this auction?

3 A I would have learned about it through public notices
4 filed with the Clark County recorder and/or contacting United
5 Legal Services for a list of the properties that they were
6 taking to sale.

7 Q Have you ever purchased a property of that --
8 through a foreclosure sale that was conducted by United Legal
9 Services?

10 A Prior to this one?

11 Q Yes.

12 A Yes. I believe so.

13 Q Do you remember which property that was?

14 A My mind is a little bit shaky on the dates for all
15 of these, but it could have been a property located at 2200
16 South Fort Apache.

17 Q And did you find out about that sale in the same
18 fashion that you found out about this sale?

19 A Yes.

20 Q Now, do you know -- at the time did you know Robert
21 Atkinson prior to this foreclosure sale?

22 A Well, only in a professional capacity for conducting
23 these sales.

24 Q You never met him outside of these sales?

25 A No.

1 Q Okay. Did you know he was an attorney?

2 A No, probably not. I may have assumed that, because
3 he was, you know, working in that law office; but I didn't
4 know whether he was an attorney or not.

5 Q Prior to this sale, to the West Sunset Trust sale
6 did you have any communications with anybody from United Legal
7 Services outside of just dates and time for a foreclosure
8 sale?

9 A Well, if we had purchased a property at a prior
10 sale, then there would have been administrative communications
11 regarding that.

12 Q Did you have anybody from United Legal Services ever
13 contact you directly to say, hey, Mr. Lefkowitz, there's a
14 sale of a property that you might be interested in attending
15 an auction?

16 A No.

17 Q Now, if you go back to Exhibit 11, it also says the
18 foreclosing entity or lienholder is Toscana Homeowners
19 Association. Do you see that?

20 A Yes.

21 Q Did you -- let me back up for a second.

22 You'd mentioned that your business partner also
23 owned this Trust; is that right?

24 A Yes.

25 Q And who is that?

1 A Kenneth Berberich.

2 Q Did you or Mr. Berberich ever know anybody from the
3 Toscana Homeowners Association board?

4 A No.

5 Q Either back in 2013 or even now?

6 A Certainly not back then. Now I'm not sure whether
7 we've had to deal with any, you know, homeowner-related
8 issues. But certainly not on a regular basis do we
9 communicate with them.

10 Q Back in 2013 did anybody from Toscana Homeowners
11 Association ever contact you directly, or Mr. Berberich, to
12 your knowledge, about foreclosure sales that were upcoming?

13 A No.

14 Q Can you briefly describe what kind of property is
15 this.

16 A It's a two-bedroom condo. It's located on the
17 second story. The general location of the complex is South
18 215 and Rainbow.

19 Q So when you purchased the property what kind of
20 condition was it in?

21 A It was in reasonable condition, but needed a fair
22 amount of cleanup. Like the carpets were dirty, there was
23 some, you know, some miscellaneous trash left inside, so it
24 wasn't in terrible condition, but it still required a bit of
25 work to get it ready to be habitable.

1 Q When you purchased the property did you -- was there
2 anybody living there?

3 A No.

4 Q Okay. Is it currently -- did you lease it?

5 A It's currently occupied, yes.

6 Q Does the Trust currently pay for all the current
7 homeowners association's assessments?

8 A Yes.

9 MR. AYON: That's all the questions, Your Honor.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. MORGAN:

13 Q Good morning.

14 A Good morning.

15 Q Mr. Lefkowitz, I don't believe we've met. My name
16 is Melanie Morgan, and I represent Nationstar Mortgage in this
17 case.

18 Have you had experience in real estate -- purchasing
19 real estate prior to purchasing the property that's at issue
20 in this case?

21 A Yes. I had purchased prior homeowners association
22 foreclosure properties.

23 Q Okay. And going beyond that, do you have
24 experience, professional experience in the real estate field?

25 A No professional experience or qualifications other

1 than purchasing foreclosures.

2 Q All right. Are you familiar with an entity called
3 LV Real Estate Strategies Investment Group LLC?

4 A Yes.

5 Q What kind of entity is that?

6 A That is a series LLC that we created with some other
7 business partners, myself included, to own certain investment
8 properties.

9 Q When you talk about business partners, is the
10 business you're referring to real estate investment?

11 A Yes.

12 Q Are you a licensed real estate agent?

13 A No.

14 Q Have you ever been a licensed real estate agent?

15 A No.

16 Q Are you an attorney?

17 A No.

18 Q What is Informessenger LLC?

19 A That is a company that I own for computer consulting
20 and telecommunications services.

21 Q What is BTK Properties LLC?

22 A That's a company that we own that kind of manages or
23 rental properties that are owned by Trusts.

24 Q Approximately how many properties have you been
25 involved with purchasing at HOA foreclosure sales?

1 A I would say approximately 75.

2 Q Seventy-five?

3 A Yes.

4 Q And did you have a comfort level in going to the
5 foreclosures and bidding on properties?

6 A Yes.

7 Q And what in your background or experience gave you
8 that comfort level?

9 A Just through the people that I knew their skill
10 sets, the amount of investment capital that we had, all of
11 those factors.

12 Q Okay. You've referenced your business partners a
13 few times. Are any of them real estate agents?

14 A No.

15 Q June Woo I believe had a license at one time, but
16 it's not currently active.

17 Q All right. And were those business partners -- did
18 you form relationships with those business partners only for
19 purposes of purchasing at HOA foreclosures?

20 A No. They were friends before doing these
21 investments.

22 Q And I guess my question wasn't very good. When we
23 talk about the investments relating to these business partners
24 are the investments we're talking about limited to purchasing
25 properties at HOA foreclosure sales?

1 A No. We purchase properties in other ways, too.

2 Q Okay. Do you purchase property at deeds of trust
3 foreclosure sales?

4 A Yes.

5 Q Okay. What about like tax sales, tax liens?

6 A We haven't purchased any of those.

7 Q All right. Are you familiar with the concept of due
8 diligence when purchasing real property?

9 A Yes.

10 Q What do you understand that to mean?

11 A It means reviewing all of the factors affecting a
12 property to make sure you're comfortable with background of
13 the property.

14 Q All right. And when we talk about real property
15 there's a physical component, there's the building, the
16 property itself, the house, the condo, whatever, and then
17 there's an intangible component, the legal rights you're
18 getting. So I'd like to talk about due diligence with the
19 physical component, the actual condo.

20 Did you drive by the condo prior to bidding at
21 foreclosure sale?

22 A For this one I don't believe so, no.

23 Q Did you see any pictures of it online?

24 A No.

25 Q Do you recall whether you Googled the address?

1 A I may have looked at a map to see the location, yes.

2 Q Did you look at Zillow or Redfin or Realtor.com or
3 any Website to get the estimated fair market value of the
4 property prior to bidding?

5 A I can't recall specifically for this property
6 whether I did that or not.

7 Q Do you recall whether that's something you generally
8 did before bidding at HOA foreclosure sales?

9 A It was probably about half and half, you know,
10 whether there was time to pull that information.

11 Q Did you purchase at HOA foreclosure sales only
12 conducted by United Legal Services, or did you go to sales
13 conducted by other foreclosing trustees?

14 A No. Many different trustees.

15 Q Okay. So is it fair to say that since you didn't
16 drive by or see any pictures of the property online you were
17 essentially buying it blind, you didn't know what you were
18 going to get?

19 A Yes.

20 Q And would you agree with me that that is a risk?

21 A Yes.

22 Q I will say that since this was a condo, in general
23 we're more comfortable buying condos sight unseen, because the
24 least the building has some kind of insurance to deal with any
25 types of issues, structural or otherwise. So --

1 THE COURT: Because you're only buying air space;
2 right?

3 THE WITNESS: Yes.

4 BY MS. MORGAN:

5 Q You don't have to worry about a lawn or a pool or
6 anything like that.

7 A Correct.

8 Q Okay. So now let's talk about more the intangible
9 aspects of buying real property. At the time that you bid at
10 the foreclosure sale what was your understanding of the type
11 of title you'd be receiving?

12 A Well, that's kind of a broad question. Could you be
13 a little bit more specific?

14 Q Sure. Let's look at the foreclosure date. I
15 believe Mr. Ayon had you look at it already in Exhibit 11.

16 A Yes.

17 Q And in the first paragraph there it says,
18 "Foreclosing lienholder Toscana Homeowners Association under
19 power of sale pursuant to NRS Chapter 116 does hereby sell
20 without warranty, express or implied, to," and this says "West
21 Sunset Trust." Did I read that correctly?

22 A Yes.

23 Q What's your understanding of what that phrase
24 "without warranty expressed or implied" means?

25 A It basically means that they don't represent what

1 this deed actually conveys, I guess. Because what I
2 understood at that time was that the homeowners association
3 foreclosures were still kind of foggy legal area and no one
4 was representing things one way or the other. But also all
5 foreclosures are done that way, even bank foreclosures. They
6 say that it's done without warranty, express or implied. And
7 basically the onus is on the purchaser to defend title in
8 whatever way they need to.

9 Q All right. And it looks like that's what you did in
10 this case by filing this lawsuit; is that right?

11 A Yes.

12 Q So is it fair to say that at the time that you bid
13 on this property you understood that there's a high
14 likelihood, maybe even a guarantee, that you'd have to end up
15 in some type of litigation in order to clarify the quality of
16 the title you're buying?

17 A Probably, yes.

18 Q And this case was filed approximately five months
19 after the HOA foreclosure sale?

20 A If you say so. I don't know.

21 Q All right. And you knew when you bid -- or when you
22 became the winning bidder did you have an understanding as to
23 whether you would immediately be able to secure title
24 insurance?

25 A We basically anticipated that we would not be able

1 to secure title insurance.

2 Q Okay. And you anticipated that prior to becoming
3 the winning bidder?

4 A Yes.

5 Q Do you recall the sale being held on a Saturday?

6 A Yes.

7 Q And you said you couldn't remember for sure the
8 approximately three people there?

9 A Yes. It could have either been as few as three, or
10 it could have been the five to ten. I just can't remember.

11 Q All right. But we know -- I'm just trying to narrow
12 it down, Mr. Atkinson, who was the one actually crying the
13 sale?

14 A Correct.

15 Q And yourself, and then another person that was
16 bidding against you?

17 A Correct.

18 Q And then I think you said you can't remember if
19 there was anybody else that bid.

20 A That's correct. As far as I recall, there was only
21 one other bidder against me. But that may not be accurate. I
22 just can't recall.

23 Q You mentioned first 100.

24 A Yes.

25 Q What is first 100?

1 A Well, it's an entity. I don't know too much about
2 it, but it --

3 MR. AYON: I'm going to object to that. It does
4 call for speculation.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: It was an entity that was created to
7 purchase liens from homeowners associations, I guess, to give
8 them money up front, and then they would do whatever they were
9 legally allowed to do with that lien. And I believe they were
10 then foreclosing on them, so, you know, they were the ones who
11 kind of brought this to sale, and we purchased that. But,
12 again, I have no affiliation with First 100. I don't know the
13 inner workings of it at all. That's all kind of speculation
14 on my part.

15 BY MS. MORGAN:

16 Q I understand. And I wasn't expecting -- I was just
17 asking essentially what your understanding was of what they
18 are.

19 And when you said they would take the property to
20 foreclosure, by they are you referring to First 100?

21 A Correct. In conjunction with United Legal, you
22 know, acting as the foreclosing agent.

23 Q Okay. Did you know before you bid on this property
24 about First 100?

25 A I don't -- I certainly didn't have as detailed an

1 understanding as I do now. I'm not sure if I knew about the
2 company, but I knew, you know, that these sales were slightly
3 different than other sales from other foreclosing agents.
4 Like I said, there would always be someone there that would --
5 you know, Robert Atkinson would open at a hundred dollars, and
6 then, you know, I would bid and someone would bid against me
7 up to a certain amount, and then they would stop. So --

8 Q So let's talk about the way that the sales involving
9 First 100 were different than other sales. Was the person
10 that would bid against you at the First 100 sales -- do you
11 recall whether it was always the same person?

12 A It was not. It was different people at different
13 times.

14 Q Okay. Was it -- do you have an understanding as to
15 whether someone from First 100 was doing bidding on the
16 property?

17 A My understanding as I sit here today is that, yes,
18 it was always someone from First 100. At the time I didn't
19 know, you know, who it was, what their relationship was.

20 Q Okay. Do you have any experience going to HOA
21 foreclosure sales conducted by a trustee other than ULS where
22 First 100 was involved?

23 A If there was, there were very few. I think that
24 they may have had NAS conduct some sales at some time, but it
25 was not very many.

1 Q Okay. Did you ever attend a sale at ULS where First
2 100 wasn't involved?

3 A No. I don't believe so.

4 Q I'd like to talk about some other ways that the
5 sales involving ULS and First 100 were different. The fact
6 that bidding started at \$99 or \$100, that's also something
7 that's different from sales conducted by other foreclosing
8 trustees; is that correct?

9 A Yes.

10 Q And it's different in that \$99 or \$100 even is
11 significantly lower than the opening bid at other sales; is
12 that correct?

13 A Correct.

14 Q Did you know when you were at the foreclosure sale
15 that the opening bid was below the lien amount?

16 A Yes. Because I would have reviewed the public
17 documents and seen that the lien was, you know, a certain
18 amount, and it was certainly more than a hundred dollars.

19 Q All right. And so you reviewed the publicly
20 recorded notices?

21 A Yes. Typically.

22 Q So if you'd look at Exhibit 10 in that book in front
23 of you. It's the notice of sale. Do you see there in the
24 first paragraph that's not all in caps, the left, and it's the
25 total amount necessary to satisfy the lien after the proposed

1 sale date is \$7,806.42?

2 A Yes.

3 Q And this would have been a document that you would
4 have reviews prior to bidding at the sale?

5 A Most likely, yes.

6 Q And do you recall -- or I'll represent to you that
7 the evidence in this case has indicated that West Sunset ended
8 up paying \$7,800. Does that sound right to you?

9 A I believe so, yes.

10 Q So it's correct that West Sunset paid an amount less
11 than the amount necessary to satisfy the HOA's lien as
12 reflected in the notice of sale?

13 A Possibly. I don't know all the details.

14 Q Well, 7800 is less than \$7,806; right?

15 A That's correct.

16 Q Yeah. So that's all I was trying to get at.

17 A Okay.

18 Q Did you review any other recorded documents prior to
19 bidding at the sale?

20 A I can't recall specifically.

21 Q Did you review the public records to see if there
22 was a deed of trust recorded against the property?

23 A Possibly. For this property I do recall that there
24 was a deed in lieu recorded, so I certainly would have looked
25 at that.

1 Q Okay. Why would you have certainly looked at that?

2 A Because anytime there's a property owned by a bank

3 already most likely the mortgage has been satisfied in one way

4 or another. So that's why this property was particularly

5 interesting to me.

6 Q All right. Did you review the assignments that were

7 recorded after the deed in lieu?

8 A I can't recall specifically.

9 Q Okay. Do you recall whether you knew that there

10 were assignments recorded after the deed in lieu?

11 A Again, I can't recall specifically.

12 Q Did you pull the deed in lieu -- I know it's

13 recorded twice, it was re-recorded. Did you pull that

14 document and look at it?

15 A Yes. That one, you know, would have been available

16 publicly on the Assessor's Site, so I'm sure I would have

17 looked at that.

18 Q All right. So let's take a look at Exhibit, really

19 doesn't matter, 3 or 4. We'll do 4. On page -- at the bottom

20 right-hand corner there's Bate numbers, NSM00034.

21 A Okay.

22 Q Do you see a signature there in the middle of the

23 page for a Stephanie Tablante?

24 A Yes.

25 Q Do you recall see a signature from New Freedom

1 Mortgage anywhere?

2 A No.,

3 Q And then if we look at the entirety of Exhibit 4,
4 anywhere in Exhibit 4 do you see a signature from anyone at
5 New Freedom Mortgage.?

6 A No.

7 Q On the first page of Exhibit 4 at the top right in
8 the that recorder's stamp it says, "Requestor John Peter Lee
9 Limited." Do you see that?

10 A Yes.

11 Q And then it says, "Return to John Peter Lee
12 Limited"?

13 A Yes.

14 Q Did you have an understanding when you reviewed this
15 recorded document who John Peter Lee was, what his role was?

16 A Not in detail. I may have Googled his name to see,
17 you know, who he was, but nothing beyond that.

18 Q Okay. Did you make any effort to contact anyone at
19 New Freedom Mortgage about this deed in lieu?

20 A No.

21 Q Remind me again -- I know I asked you this question.
22 I don't remember the answer. Did you look at the assignments
23 that were recorded after the deed in lieu?

24 A My answer was that I couldn't recall.

25 Q Okay.

1 A Typically I didn't place too much weight on
2 assignments.

3 Q Okay. If you -- well, let me ask it differently.
4 Let's turn to Exhibit 5. And just for some context
5 here, New Freedom Mortgage, you understand that they were the
6 originating lender under the deed of trust we're talking
7 about; right?

8 A Yes.

9 Q Okay. So this is an assignment from Mortgage
10 Electronic Registration Systems to BAC Home Loan Servicing.
11 Do you see that?

12 A Yes.

13 Q Did you make any effort to contact anyone at BAC
14 Home Loan Servicing about the deed in lieu?

15 A No. It would have been futile for us to try to
16 contact these lenders. They wouldn't provide with any
17 information.

18 Q Okay. So you didn't contact them?

19 A No.

20 Q All right. What about -- and I guess it's the same
21 answer for -- in Exhibit 9 there's another assignment. Did
22 you make any effort to contact anyone at Nationstar Mortgage
23 LLC prior to bidding?

24 A Well, no. Because this was recorded after the sale,
25 I think. Wasn't it?

1 Q No. The sale was June 22nd, 2013. But you're
2 correct in that it was very close in time.

3 A Okay.

4 Q So no effort to contact Nationstar Mortgage?

5 A No.

6 Q Did you make any effort to contact Stephanie
7 Tablante about the deed in lieu?

8 A No.

9 Q Did you -- and I'm not asking for the contents of
10 any communications, but did you seek legal advice about
11 anything related to the property, including the deed in lieu,
12 prior to bidding at the sale?

13 MR. AYON: Objection.

14 THE COURT: It's a yes or no. Overruled.

15 THE WITNESS: No.

16 BY MS. MORGAN:

17 Q Did it necessarily matter to you whether or not
18 there was a deed of trust recorded against the property prior
19 to bidding?

20 A Yes. I would say that it did.

21 Q Okay. And is that because, what we were talking
22 about earlier, you weren't there as to exactly the type, the
23 nature of title you were getting and it would take litigation,
24 and if there's a deed of trust, that would be something that
25 would have to be sorted out in that litigation?

1 A Well, correct. I mean, the value of the property
2 would be much more, obviously, if -- even at that time before
3 the original SFR decision the property would have been worth
4 much more if there was no deed of trust encumbering it.

5 Q Do you know why if -- whether there's a deed of
6 trust encumbering that impacted value that you just testified
7 and this one had a deed in lieu on it, why would other
8 properties also start at \$99?

9 A I'm a little bit confused about the question,
10 because there's the component of First 100 being involved, you
11 know, starting the bid at a hundred dollars. So can you be
12 more specific?

13 Q Sure. Is it your understanding that the opening bid
14 amount in any way correlates to the property's value?

15 A No. Not for these. You know, they would open the
16 bidding at hundred dollars, you know, whether it was a
17 \$500,000 or a \$30,000 property.

18 Q And I'm assuming that made it attractive as an
19 investment opportunity.

20 A Well, again, someone would always be bidding
21 against, so you couldn't buy a property for a hundred dollars
22 at the sale even though they opened the bid at that amount.

23 Q Okay. So you never had an instance where it just
24 went for \$99?

25 A Correct. I'm not sure -- I'm not sure if the First

1 100 representative, if no one else bid against them if they
2 would then acquire the property for a hundred. Which they may
3 have. But it was never possible for someone who was an
4 outsider, shall we say, to buy a property for a hundred
5 dollars.

6 Q Got it.

7 Q You wouldn't order a title report prior to bidding;
8 is that correct?

9 A That's correct. I would just review either the
10 Recorder's Index or any specific documents on my own.

11 Q Did you contact Red Rock to see who they provided
12 the notices of -- or the notice of default to?

13 A No.

14 Q Did you ask anyone at ULS who they provided the
15 notice of sale?

16 A No.

17 Q Did you review the HOA CC&Rs prior to bidding?

18 A No.

19 Q So let's look at Exhibit 11 one more time, the
20 declaration of value.

21 A Yes.

22 Q All right. So this document, this foreclosure deed
23 upon sale, West Sunset was responsible for recording that;
24 right?

25 A Yes.

1 Q Before recording it where did you get the number
2 there on 3A, \$63,280?

3 A That would have been taken from the Assessor, the
4 current assessed value.

5 Q Okay. So \$63,280 was the assessed value as of Jun
6 2013?

7 A I believe so, yes.

8 Q And West Sunset has been in continual possession of
9 the property since 2013?

10 A Yes.

11 Q And you testified you've rented the property out?

12 A Yes.

13 Q If you'll flip to page -- or, I'm sorry, Exhibit 30.
14 THE CLERK: Proposed.

15 MS. MORGAN: Yes. This is an exhibit that wasn't
16 stipulated to, but it was an exhibit presented by the
17 plaintiff. And I don't have an objection if you want to --

18 THE COURT: Mr. Ayon, any objection to admission of
19 30?

20 MR. AYON: No. But I do want to offer proof as far
21 as how the exhibits --

22 THE COURT: I'm only on the objection to the
23 admission of 30.

24 MR. AYON: No objections, Your Honor.

25 THE COURT: Okay. Be admitted.

1 (Joint Exhibit 30 admitted)

2 THE COURT: Now keep going.

3 BY MS. MORGAN:

4 Q Do you recognize Exhibit 30?

5 A Yes.

6 Q What is it?

7 A It's our lease for the tenant.

8 Q All right. And almost to the bottom of page 1 it
9 references BTK Properties LLC. We talked about that at the
10 beginning of your cross-examination. It's an entity you have
11 an interest in?

12 A Yes.

13 Q Is that the property management company for this
14 property?

15 A Yes. I mean, it's not -- it's not a property
16 management company per se. It's one of our companies that we
17 use to collect rent payments just to make it easier for
18 ourselves and for the tenants.

19 Q Okay. And then this particular lease was for
20 12 months; is that correct?

21 A Correct. With renewal on a month-to-month basis
22 thereafter.

23 Q All right. And the date on the top is July 8th,
24 2014; is that correct?

25 A Yes.

1 Q So that seems to be about two or three weeks after
2 you purchased the property?

3 A No. I don't believe so. I believe it would be more
4 than a year.

5 Q Oh. Sorry. You're right. You purchased the
6 property in June of '13; right?

7 A I think so, yes.

8 Q All right. So this is July of '14?

9 A Correct.

10 Q Was there a lease agreement before this one?

11 A I believe so, yes.

12 Q And this leased at a rate of what, \$850 a month?

13 A Yes.

14 Q Do you know what it leases for currently?

15 A I believe it's still the same. I'm not a hundred
16 percent sure, but it's somewhere between 850 and \$900.

17 Q All right. So from 2014 through today have there
18 been any gaps in time where there has been no tenant, like
19 gaps over -- let's say over a three-month period?

20 MR. AYON: Objection. Relevance, Your Honor.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: I don't believe so. I believe this
23 person, Spencer Schofield, he still lives there. You know,
24 he's a friend of Kenneth Berberich and mine, so --
25 //

1 BY MS. MORGAN:

2 Q Is he a good tenant?

3 A Yes. You know, we are a little bit more lenient
4 with him with not paying, because he's a friend. But in
5 general, you know, friends make good tenants, so --

6 Q Okay. So we had -- I just want to recap. We had a
7 lease before this one, and then this one, Mr. Schofield, has
8 occupied and been paying rent, maybe not as timely as he
9 should, but been paying rent since July of 2014?

10 MR. AYON: Your Honor, I would like an offer of
11 proof on this line of questioning. She's asking about rental
12 payments, which this is post --

13 THE COURT: So, Ms. Morgan, why is the rental income
14 important for me in making the decision in this case regarding
15 the validity of the foreclose?

16 MS. MORGAN: I think it goes to a balancing of the
17 equities. And at the end of the day, when Mr. Stern, who's
18 wonderful closing argument will be talking about balancing --
19 among other things, balancing the equities. And it goes to
20 what West Sunset bought, what they received, how they've used
21 it during the time in their possession, and if they've been
22 damaged in any way.

23 THE COURT: So I think the fact that we've already
24 had testimony that they rented it, it's been rented the whole
25 time, and that there's not an issue with it because of that

1 you've established. So if you feel like we need to go
2 further, I need some more reasons. But you've established
3 that already, that they've made commercial use of this
4 property by renting it to a friend who pays rent most of the
5 time.

6 MS. MORGAN: Okay. I don't have any more questions
7 about that, then. That's all I have.

8 THE COURT: Thank you.

9 Redirect, Mr. Ayon?

10 MR. AYON: Just a couple questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. AYON:

13 Q Mr. Lefkowitz, do you have -- you were asked a
14 couple questions about the deed in lieu. Do you remember
15 that?

16 A Yes.

17 MR. AYON: Your Honor, I'm not going to go into too
18 much, because Mr. Stern and I did take some -- we've labored
19 the Supreme Court argument and they asked us a lot of
20 questions in a footnote to say it doesn't really matter. So
21 I'm not going to into that, which was kind of annoying.

22 BY MR. AYON:

23 Q But nonetheless, what was your perception of just
24 this deed in lieu that was in there?

25 A Well, I thought that there was a fairly good chance

1 that the mortgage was no longer encumbering the property as a
2 result of the deed in lieu.

3 Q So by that assessment would you have been willing to
4 pay more for this property had it been bid higher?

5 A Slightly, but not a lot, yes.

6 Q Fair enough. Now, at the time also the deed in lieu
7 had mentioned New Freedom Mortgage. Do you remember seeing
8 that?

9 A Yes.

10 Q What was your understanding of why that was there?

11 A I really didn't know. I believe it was the original
12 lender on the -- when the deed of trust was recorded. But at
13 the same time I knew that typically the -- whoever originated
14 the mortgage was not typically the bank or the servicer on the
15 loan, so I found it a little bit unusual.

16 Q So you also got asked a couple questions about these
17 assignments. So going back to that deed in lieu
18 [unintelligible], at the time this deed in lieu was recorded
19 was New Freedom Mortgage, according to the chain of title, the
20 holder of the deed of trust, to your understanding?

21 A Again, I wasn't sure. I mean, I saw evidence that
22 there were assignments recorded prior to the sale, so if I had
23 seen those, then I probably would have questioned why it was
24 back to New Freedom.

25 Q Now, earlier you were asked some questions and you

1 testified about First 100, your understanding of that. Where
2 did get this understanding of First 100?

3 A Just from observations of what was happening, you
4 know, talking with other investors, you know, kind of
5 speculating about what was going on, those kind of things.

6 Q Now, when did you get this understanding? Was this
7 around the time of the foreclose sale, or is this many years
8 afterwards?

9 A Well, there was, you know, talk and speculation
10 around the time of the foreclosure sale, so we were forming,
11 you know, an opinion of what was going on. It wasn't until
12 years later that, you know, a lot of details started to come
13 out with, you know, the litigation that we really began to
14 understand how it worked.

15 Q But at the time of this foreclose sale for this
16 property did you have any understanding about what First 100
17 was?

18 A Again, not very much. It would have been just been
19 through observation and speculation, talking with other
20 investors.

21 Q Do you know who Jay Bloom is?

22 A Yes.

23 Q Okay. At the time of this foreclosure sale did you
24 know Jay Bloom?

25 A I did not know him. I mean, he was one of the

1 people that would bid against third-party investors. So, you
2 know, I would have seen him at the sale. But I didn't really
3 know who he was or, you know, what his relationship was to
4 First 100.

5 Q Did you ever have lunch or dinner with him?

6 A No.

7 Q Had you ever had any prior business dealings with
8 Jay Bloom?

9 A No.

10 Q What about any of the other principals at First 100?

11 A No.

12 Q Robert Cardanius?

13 A No.

14 Q Carlos Cardenas. I'm sorry.

15 A Correct. Carlos. You know, he was one of the other
16 people that might have bid against me. But I had no other
17 meetings with him other than at the sale.

18 MR. AYON: That's all the questions I have, Your
19 Honor.

20 THE COURT: Any further cross-examination, Ms.
21 Morgan?

22 MS. MORGAN: Very brief.

23 RE-CROSS-EXAMINATION

24 BY MS. MORGAN:

25 Q Did Jay Bloom bid at this sale?

1 A I can't recall whether it was Jay Bloom or Carlos
2 Cardenas at this one.

3 Q Either way, it was someone from First 100?

4 A Yeah. It would have been one of those two, yeah.

5 MS. MORGAN: Okay. That's all I have.

6 THE COURT: Next witness?

7 MR. AYON: Your Honor, may we have a minute to
8 confer with counsel?

9 THE COURT: You can.

10 (Pause in the proceedings)

11 MR. STERN: So, Judge, we had a little
12 miscommunication. Mr. Atkinson is going to be part of Mr.
13 Ayon's case in chief, which I did not realize. But I already
14 told him not to come.

15 THE COURT: He's not here yet.

16 MR. STERN: He was going to be here at 2:00, and --

17 THE COURT: Well, I will be on an airplane.

18 MS. MORGAN: Right.

19 MR. STERN: And so I told him that. So he's not
20 coming at all.

21 THE COURT: Today.

22 MR. AYON: That's probably the best place to listen
23 to his testimony, Your Honor, though.

24 THE COURT: Today. There's no place that he's
25 coming today.

1 MR. STERN: He's not coming today.

2 THE COURT: Okay. So do you have a second witness
3 we can call today of anyone's?

4 MR. STERN: Yes, Your Honor. It require us going a
5 little bit out of order, because it's not part of Mr. Ayon's
6 case.

7 THE COURT: That's okay. I'm happy to take a
8 witness out of order.

9 MR. STERN: Okay. Let's do that, then.

10 THE COURT: Who do you want to call?

11 MR. STERN: Mr. Kipp Greengrass.

12 (Pause in the proceedings)

13 THE COURT: Sir, if you'd come forward, please, and
14 remain standing when you get to the witness stand so we can
15 swear you in, please. Keep coming. You're almost there. And
16 raise your right hand, please.

17 MR. GREENGRASS: The second version, please.

18 THE COURT: So you want to affirm.

19 KIPP GREENGRASS, DEFENDANTS' WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Please
21 state and spell your name for the record.

22 THE WITNESS: Name is Kipp, K-I-P-P, Greengrass,
23 G-R-E-E-N-G-R-A-S-S.

24 THE COURT: Okay. You may proceed.

25 MR. STERN: Thank you, Judge.

1 DIRECT EXAMINATION

2 BY MR. STERN:

3 Q Good morning, Mr. Greengrass. Can you tell us where
4 are you employed.

5 A I'm employed by First Service Residential --

6 Q And how long have you --

7 A -- at Toscana Condominiums.

8 Q I'm sorry.

9 A At Toscana Condominiums. I'm the onsite manager.

10 Q Okay. And how long have you been there?

11 A Almost 13 years.

12 Q All right. And can you tell us First Residential
13 does.

14 A It's a management company.

15 Q Okay. And apart from Toscana Homeowners Association
16 does it have other clients?

17 A Couple hundred.

18 Q Okay. And can you tell us what your involvement is
19 with clients other than Toscana?

20 A I'm an onsite manager. I deal with nothing else but
21 Toscana.

22 Q Okay. And during the time frame of 2012-2013 were
23 you assigned to Toscana?

24 A That's correct.

25 Q And are you assigned to Toscana today?

1 A Yes.

2 Q All right. And can you tell us briefly what your
3 day-to-day responsibilities as the onsite manager are.

4 A I take care of all the day-to-day running of the
5 association.

6 Q Okay. And what kinds of things does that entail?

7 A Repairs, maintenance, landscaping, painting,
8 anything that goes wrong in the place, any kind of problems
9 with tenants or owners.

10 Q Okay. And what kinds of problems generally do you
11 encounter with tenants or homeowners?

12 A Not clean up after dog, argue with neighbors,
13 cigarette butts, lot of pot --

14 Q Okay. Let's --

15 A -- beating each other up.

16 Q I'm sorry?

17 A Beating each other up. Bum domestics.

18 THE COURT: Sorry to hear that.

19 THE WITNESS: It's a lot of fun, yeah.

20 BY MR. STERN:

21 Q Sounds like a lot of it is hands-on type of things;
22 right?

23 A That's correct.

24 Q What about back office type of things, dealing with
25 the accounting, the books and ledgers? Do you have any

1 involvement in that?

2 A I send things to the appropriate people to take care
3 of those things.

4 Q Okay. And are you familiar with a company called
5 Red Rock Financial Services?

6 A That's correct. That's our collection company.

7 Q Okay. How long have they been your collection
8 company?

9 A All 13 years I've been there.

10 Q Okay. And give us a brief description of what Red
11 Rock does when a homeowner becomes delinquent on assessments.

12 A They try to collect what's owed.

13 Q And how do they do that? Do you know how they do
14 that?

15 A No. Not at all.

16 Q Okay. In other words, give us a description of what
17 you as the onsite manager would do as part of the collection
18 process when Red Rock is involved.

19 A When someone has not paid for 60 days it disappears
20 from my calendar or my computer, and they take it over, and
21 that's the end of it.

22 Q Okay. So when it disappears it then goes over to
23 their computer?

24 A That's correct.

25 Q Okay. And what do you do or somebody else at

1 Toscana, what do you all do to help Red Rock?

2 A We wait for the money to come in.

3 Q Other than wait?

4 A No.

5 Q So after the referral is made to Red Rock they take

6 care of it?

7 A That's correct.

8 Q Do you have to give them any information to help

9 them out with that?

10 A No. They have access to our computers. They can

11 see everything that's there.

12 Q All right. So they need to know what the monthly

13 assessment is. They already know that?

14 A They already know that.

15 Q Okay. All right. So -- and I think you mentioned

16 that Red Rock has been the collection company for the 13 years

17 you've been there; correct?

18 A That's correct.

19 Q So we're here today to discuss one of the properties

20 in your community.

21 A Uh-huh.

22 Q If you could take a look at the exhibit book, which

23 I think should be in front of you. I would first ask you to

24 turn to Exhibit Number 5 -- excuse me, Number 7.

25 THE COURT: 7?

1 MR. STERN: 7.

2 THE COURT: There are little tabs on the side, sir,

3 that should help you get to the exhibit numbers.

4 BY MR. STERN:

5 Q And let us know when you've got that.

6 A All right.

7 Q All right. So have you seen this document before,

8 or a document like this?

9 A Lien for delinquent assessments?

10 Q Yes.

11 A I've seen them come through.

12 Q Okay. And you can see that this one is executed by

13 Red Rock; right?

14 A That's correct.

15 Q So if we could compare that to Exhibit Number 10.

16 Can you go to Exhibit Number 10, please. And let us know if

17 you've seen either does document or a document like this

18 before.

19 A Nothing about it real familiar. I don't deal with

20 anything like this.

21 Q Okay. Understanding that, I do have a couple of

22 followup questions for you.

23 Look at the upper left-hand corner there where it

24 says, "When reporting mail to." Do you see that?

25 A To United Legal Services; right?

1 Q Yeah. Are you familiar with that company, United
2 Legal Services?

3 A Only because I've been what we're doing right now
4 many times. I've heard the name, but I've never dealt with
5 them. I have no idea who they are.

6 Q Okay. Are they -- hang on a second. You're the
7 manager of Toscana; right?

8 A That is correct.

9 Q But you have no idea who United Legal Services is?

10 A No idea.

11 Q And in your day-to-day involvement as the onsite
12 manager over the years, that experience did not give you any
13 knowledge as to who they are?

14 A No. Like I said, this is about the fifteenth time
15 I've been through this, so the name has come up a number of
16 times. But I've never dealt with anyone over there. I have
17 no idea who they are.

18 Q All right. So let me ask it this way. Outside of
19 litigation when you're dealing with us pleasant lawyers either
20 here or in depositions, you've had no involvement with them?

21 A No. Not at all.

22 Q Okay. So you mentioned a few minutes ago that
23 during the 13 years you've been there Red Rock has been the
24 collection company for Toscana.

25 A That's correct.

1 Q Has United Legal Services ever been the collection
2 company for Toscana?

3 A Not that I know of.

4 Q Okay. You would know; right? You're the manager.

5 A Oh, I would think so.

6 Q Yeah. Okay. All right. So let's go down to the
7 bottom of page -- actually, it's just one page. Exhibit 10.
8 There's a signature there?

9 A On this page, in 10?

10 Q Yeah. Exhibit 10, sir.

11 A Yeah. There's a squiggle there, yes.

12 Q Yeah. So that squiggle, if you read the three lines
13 -- actually two lines below that there's a person's name;
14 right? And then it reads, "An employee of United Legal
15 Services, Inc." I think that just means that that's Mia
16 Fridow or -- if I'm pronouncing it right -- is an employee,
17 and then under that it says, "Authorized agent for and on
18 behalf of Toscana Homeowners Association." Do you see that?

19 A I sure do.

20 Q Do you have any idea why that document would claim
21 that United Legal Services is an authorized agent for --

22 A No idea whatsoever. Never dealt with them.

23 Q As you sit here today can you tell us whether that
24 is a correct statement, that United Legal Services is the
25 authorized agent?

1 A I would have no way of knowing.

2 Q As far as you know.

3 A Far as I know, never heard of them.

4 Q So have you ever heard of a company called First 100
5 LLC?

6 A Oh, absolutely.

7 Q Oh. You're pretty emphatic about that. How do you
8 know about them?

9 A We sold our collections to them.

10 Q Okay. Do you recall when that was?

11 A I'd have to look at papers. Back in -- during the
12 recession.

13 Q All right. Well, actually do have some papers. And
14 they're not very legible, so I'll warn you ahead of time. But
15 if you could turn to Tab 15.

16 MR. AYON: Your Honor, I do want an offer of proof
17 on these questions, because the Supreme Court was pretty clear
18 as far as the content of these agreements were fine, they were
19 not -- there was no -- didn't have any trouble with the
20 foreclosure sales. I mean, we're kind of relitigating the
21 same issue that the Nevada Supreme Court has already decided.

22 MR. STERN: Response, Your Honor?

23 THE COURT: Okay. Yes.

24 MR. STERN: That is not correct. It's the Supreme
25 Court basically said that there's no Edelstein issue here,

1 that there is no impermissible split between the obligation
2 and the lien. But these questions have a lot to do with
3 whether the superpriority component of the lien even existed
4 at that time.

5 THE COURT: So the objection's overruled, and you
6 can continue.

7 MR. STERN: Thank you, Your Honor.

8 BY MR. STERN:

9 Q So I warn you that these will not be very legible,
10 so do your best with me.

11 A It's okay. I know these.

12 Q And turn to page -- you've done -- you've been
13 deposed; right? You've been through this?

14 A Uh-huh.

15 Q So you're familiar with Bates labelling.

16 A With what?

17 Q Bates numbers.

18 THE COURT: The little numbers on the bottom.

19 THE WITNESS: I can figure that out. Okay.

20 BY MR. STERN:

21 Q Yeah. Okay. So all of these documents, they have
22 their own -- when they were created they had their own numbers
23 on them. The lawyers put these bigger numbers to identify
24 them.

25 A Okay. So this one is 287 on top.

1 Q Right. There you go. So if you could take a look
2 at that. Does that help you remember when --

3 A Oh, sure.

4 Q So with that in mind tell us approximately when
5 First 100 -- let me rephrase that -- when your community,
6 Toscana, sold their receivables to First 100.

7 A This is not dated at all.

8 THE COURT: Sir, we're asking for your best
9 recollection. If you don't know, that's okay. If you refresh
10 your memory with the documents, that's okay, too.

11 THE WITNESS: No. Since it's not dated, I would
12 just say this is during the recession -- or right after the
13 recession, I mean.

14 BY MR. STERN:

15 Q Let me try and help you out just a tad there. If
16 you look at page 287 --

17 A Correct.

18 Q -- you see that it says -- it's not very -- are you
19 able to read any of this? This is the best copy we could get.

20 A It's pretty legible. Yeah.

21 Q All right. So you can see on the first page, page
22 287, it says, "This is an offer for purchase of proceeds." Do
23 you see that?

24 A Yes.

25 Q And right after that there's a date that says March

1 26, 2013.

2 A Yeah. That sounds perfect.

3 Q Would that be around the time?

4 A Absolutely.

5 Q Okay. So tell us, why did Toscana sell these rights
6 to First 100?

7 A At this time a lot of -- let's say 15 to 20 units
8 were far, far behind in assessments, delinquent assessments.
9 First 100 came around to us, explained that they will buy the
10 debt from us, pay the super lien, which is nine months -- a
11 lot of these people owed thousands and thousands of dollars if
12 we wanted to collect anything more than nine months, and they
13 would also pay whatever our collection costs for Red Rock was
14 if we would sign off and let them do the collection on these.
15 And since the association will not foreclose, because we have
16 no way of selling them and we don't want to become the manager
17 of them, we sold it to First 100.

18 Q Okay. And you mentioned the nine months
19 [unintelligible]. What is that?

20 A Nine months' worth of assessments, the most we could
21 collect. So a lot of these people owed a couple years' worth
22 of assessments, but the -- I guess the Supreme Court said you
23 can only collect nine months.

24 Q Okay. And back in 2013, this is when you were
25 dealing with First 100. And you told us that they were paying

1 the nine months component. Can you tell us how you know that?

2 A How do I know it?

3 Q Yeah.

4 A They broke it down just in this table right here

5 what they owed for nine months plus what we owed Red Rock,

6 because what they would also pay, the total of those two is

7 what they paid Red Rock, and that was the last time we dealt

8 with them.

9 Q Okay. Now, if you could turn, please, to -- we're

10 still in Exhibit 15. Give me a second, sir.

11 A No problem.

12 Q Page 309. Bates Label 309.

13 A Okay.

14 Q And see there's a table there with three properties

15 listed?

16 A That's correct.

17 Q And the third one is the one we're discussing here

18 today, the one at --

19 A 2050.

20 Q 2050. You're familiar with that property?

21 A Well, I know the unit, yes. It's one of the 352,

22 yes.

23 Q It's in your community and you've worked there for

24 13 years; right?

25 A Yeah.

1 Q Okay. So can you tell us whether that purchase
2 price there for \$1,476 -- does that constitute nine months of
3 assessments? Do you know that?

4 A It would be nine months of assessments plus the
5 collection fees.

6 Q The collection fees are on the last column; right?

7 A Right.

8 Q Okay. Can you tell us whether your community,
9 Toscana, accepted the offer reflected on this page?

10 A Yes.

11 Q Okay. And once you accepted that offer what
12 happened next in terms of dealing with this property's
13 receivables?

14 A Soon as they took whatever on that particular page,
15 they sent the check for the total amount to Red Rock, Red Rock
16 took that amount, and we got the nine months that they owed us
17 and that was the end of that.

18 Q Okay. And after you got paid what role, if any, did
19 Toscana have with respect to foreclosure on the property?

20 A None whatsoever.

21 Q Okay. What expectation did you have -- by you I
22 mean --

23 A [Unintelligible] nine months.

24 Q Okay. But after you got your nine months.

25 A That was it.

1 Q That was it? Did you have any expectation that the
2 property would foreclose?

3 A They were taking over. They said some of the
4 properties they might convert and put tenants in there, fix
5 up. They didn't come through on too many of those.

6 Q Okay. You mentioned that on the back office part of
7 it, the accounting, that you have some folks help you with
8 that?

9 A There's an accounting department, yes.

10 Q Okay. Do you know what the accounting department
11 would have done after receiving the check from First 100 for
12 the nine months?

13 A It would have zeroed out. We would have written off
14 the rest of the debt and start fresh with whoever now owes it,
15 which would have been First 100, and they would start paying
16 the monthly assessment.

17 Q So it's fair to say as far as Homeowner Association
18 was concerned you got paid your superpriority lien and then
19 closed to account?

20 MR. AYON: Objection. Calls for a legal conclusion.

21 THE COURT: Overruled.

22 BY MR. STERN:

23 Q And your answer was yes?

24 A I do believe that's what would happen. We wrote off
25 the difference.

1 MR. STERN: Okay. I don't have any more questions,
2 Your Honor.

3 THE COURT: Cross-examination
4 CROSS-EXAMINATION

5 BY MR. AYON:

6 Q Good morning.

7 A Good morning.

8 Q You had said that -- you testified earlier that
9 First Service uses Red Rock as its collection agency for about
10 13 years; right?

11 A That's correct.

12 Q Okay. So First Service does it actually conduct any
13 foreclose sales themselves?

14 A No.

15 Q In the time that you were using Red Rock collection
16 do you know whether they did their own foreclosure sales for
17 Toscana Apartments?

18 A They couldn't do that without permission from us.

19 Q But do you know that or not?

20 A I know that we haven't done any until just recently.

21 Q Just recently. So back in 2013 --

22 A We did none.

23 Q Let me finish my question.

24 A Oh. I'm sorry.

25 Q It's okay. We always -- so backing up for a second,

1 so back in 2013 Red Rock Financial Services was not conducting
2 foreclosure sales on behalf of First Service; is that right?

3 A That is correct.

4 Q So you wouldn't -- so Mr. Stern over here asked you
5 a question about this notice of foreclosure sale. And I'll
6 give you the exhibit just so we're on the same page. Number
7 10. So back in 2013 you would have never seen a notice of
8 foreclose sale from Red Rock or anybody else?

9 A No.

10 Q Thank you. Now, you also testified that First 100
11 came in and purchased -- or did something with -- or paid some
12 money to the association; right?

13 A Paid some money to Red Rock.

14 Q To Red Rock.

15 A Yeah.

16 Q And also to the association or to you?

17 A To Red Rock.

18 Q Just to Red Rock?

19 A Just to Red Rock.

20 Q So the association didn't get any money?

21 A Association got nine months superpriority from Red
22 Rock.

23 Q From Red Rock. And how do you know that?

24 A Because we wrote off the difference and started
25 over.

1 Q Okay. And the amount, that nine months, was that
2 amount still owed by the homeowner?

3 A No.

4 Q So the homeowner didn't have to pay that amount?

5 A First 100 took care of that. That ended it. There
6 was no other collections going on with that -- whoever was the
7 owner at that time.

8 Q And so there was no -- but to your understanding did
9 the homeowner still owe that amount to the association?

10 MR. STERN: Objection. Asked and answered.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: Okay. No. As far as I know, there
13 was -- no, there was no other collection of debt. It was
14 taken care of.

15 BY MR. AYON:

16 Q So if it was taken care of, why would it be
17 foreclosed on? Isn't there an amount that is owed by the
18 homeowner, or they haven't paid so he foreclosed on?

19 A You would have to ask First 100 how they handled
20 that after that.

21 Q Well, I'm not asking First 100. I'm asking you.
22 You guys are the managing company right now of that apartment
23 complex.

24 A When First 100 took over property for us they paid
25 us -- they paid the collection agency the amount of money that

1 would take care of the debt to Red Rock, the nine months for
2 the priority to us, and at that point they would start paying
3 the monthly assessment.

4 Q So -- but this property was foreclosed upon; right?

5 A I have no idea what happens after.

6 THE COURT: The one that's in this litigation?

7 MR. AYON: Yes.

8 THE COURT: If you don't know, sir, that's okay.
9 Just tell us.

10 THE WITNESS: Don't know.

11 BY MR. AYON:

12 Q You don't know whether this property was foreclosed
13 upon or not?

14 A No.

15 Q I'll represent to you since this is admitted
16 testimony that there's a foreclosure deed and this property
17 ultimately was foreclosed upon. Now, if -- do you understand
18 how a homeowners foreclose sale works?

19 A No. I don't get involved in that at all.

20 Q Do you have any general understanding of it?

21 A I know things go to get sold at auction for
22 foreclosure.

23 Q Okay. And then somebody purchases it and they're
24 the new owner.

25 A They're the new owner, that's correct.

1 Q And you've been doing management services for about
2 200 HOAs?

3 A No. I do for one.

4 Q For one. I'm sorry. 200 units in this one; right?

5 A 352.

6 Q Okay. Does First Service manage any other HOAs?

7 A Hundreds.

8 Q Hundreds.

9 A Right.

10 Q So the -- so I think I heard 200. So you do --

11 A No. I said hundreds.

12 Q Hundreds. Got it. And are you aware whether any of
13 those other associations foreclose on their properties?

14 A I've been onsite manager for one place since I
15 started work for the company. I don't deal with any other
16 associations.

17 Q Okay. So my question is that if -- your testimony
18 says that the homeowner's debt was wipe out, zero, right, by
19 First 100.

20 A That's correct.

21 Q Okay. Then why did the property still go to
22 foreclosure sale?

23 MR. STERN: Objection. Lacks foundation on
24 knowledge.

25 THE WITNESS: I have no idea.

1 THE COURT: Overruled. If you know, that's great.
2 You said you don't know.

3 THE WITNESS: I don't know.

4 THE COURT: He doesn't know.

5 MR. AYON: Court's indulgence. I'm just going
6 through my notes.

7 THE COURT: Okay.

8 (Pause in the proceedings)

9 BY MR. AYON:

10 Q Mr. Stern asked you this term "superpriority lien."

11 A Uh-huh.

12 Q When did you first hear that term?

13 A Back during the recession. We were told that the
14 most we can collect on anything would be nine months' worth.

15 Q And when was that? Can you give us an idea?

16 A 2012, 2011.

17 Q And where did you get that knowledge?

18 A Managers sit around and talk to each other.

19 Q And you said the most that we can ever collect is
20 nine months?

21 A Nine months, that's correct.

22 Q And when they say most collection, how does that
23 mean? Is that the most that we can collect on foreclosure
24 sale, is that the most that we can collect from the homeowner?
25 Can you explain that to me.

1 A Whoever owed the debt, the most we can collect --
2 when we sold to First 100 they told us the most we could
3 collect on any debt would be nine months plus collection
4 costs.

5 Q So you're the management company for this apartment
6 complex. Why not then go to the homeowner and say, hey,
7 listen, if you give us nine months, then you're wiped clear?

8 A Two things. One, it went to a collection company.
9 They take care of collections, not the association.

10 Q Okay. But your testimony is saying that the most we
11 can collect is nine months. So why not just you not have to
12 go through Red Rock --

13 A I'm not a collection company.

14 Q Let me finish.

15 A Okay.

16 Q But you do collect assessments, right, on behalf of
17 the association?

18 A The association -- people send in money to the
19 management company, yes.

20 Q Okay.

21 A I do not collect.

22 Q Why not have the board and First Service then go to
23 the homeowner and say, listen, I know you owe two years of
24 assessments, but if you just pay us nine months, your debt's
25 wiped clear?

1 MR. STERN: Objection. Relevance.
2 THE WITNESS: That's why we have a collection
3 company.
4 THE COURT: Overruled. And he answered.
5 MR. AYON: I'm sorry. I didn't hear his answer.
6 THE WITNESS: I said, that's why we have a
7 collection company.
8 BY MR. AYON:
9 Q Okay. But you just said that they can't collect
10 more than nine months. So to your knowledge --
11 A It's not money coming out of my pocket.
12 Q Let finish my question. To your knowledge was Red
13 Rock collecting more than nine months after it went to
14 collections?
15 A I have no knowledge what Red Rock was doing.
16 Q You have no idea what Red Rock -- even though you've
17 worked with them for 13 years, you don't know whether they
18 were collecting nine months or more than nine months?
19 A At that time all I know is they couldn't collect
20 more than nine months.
21 Q They were just collecting money; right?
22 A That's correct.
23 Q Okay. So was Red Rock an effective debt collector?
24 A I think so.
25 Q Was there ever a time when they collected money from

1 a homeowner that was more than nine months?

2 A I don't know that.

3 Q You don't know that?

4 A No.

5 Q Okay. Well, okay. So in this case let's say that
6 they collected 15 months of assessments. Was there ever a
7 time that First Service turned around and gave them back the
8 six extra assessments or only collected nine months?

9 A I would have no way of knowing that.

10 Q You've been doing this for 13 years and you have no
11 way of knowing that?

12 A I would have no way of knowing. I know what shows
13 on my computer.

14 Q Was there any policy that First Service had that
15 said, we're only going to take nine months an the homeowner is
16 clear?

17 A I would have no idea.

18 Q You have no idea?

19 A No idea whatsoever. I don't get involved in that.

20 Q I know. But you just said -- you just testified
21 that if nine months was paid, the homeowner was relieved of
22 it, didn't have to pay anything else.

23 A That's correct. To all the ones that we sold to
24 First 100.

25 Q So my question is was there ever a situation where

1 you got nine months and wiped out the rest of it? So if I'm
2 the homeowner -- just for an example, if I'm a homeowner in
3 this community, I'm behind two years and I go -- and Red Rock
4 is trying to collect, and I pay the two years of past
5 assessments. Would Red Rock then turn around and give me back
6 everything except nine months?

7 A You'd have to ask Red Rock.

8 Q But you don't know this?

9 A I would not know, no.

10 MR. AYON: That's all the questions.

11 THE COURT: Any further direct?

12 REDIRECT EXAMINATION

13 BY MR. STERN:

14 Q All right. Mr. Greengrass, it sounds like there's
15 things that you deal with hands on and things that you rely on
16 others.

17 A That's correct.

18 Q Okay. So it's fair to say that you know more about
19 some things than others?

20 A That's correct.

21 Q I just want to confirm this. You testified that
22 after Toscana received the payment from First 100 for the nine
23 months at that point the association wrote off the rest and
24 basically closed the account, starting with zero. Remember
25 that?

1 A That's correct.

2 Q You know -- that you know happened; right?

3 A Yes.

4 MR. STERN: Nothing further.

5 THE WITNESS: Because it had to be approved by the
6 board to write off a certain amount of money.

7 BY MR. STERN:

8 Q Say it again.

9 A It had to be approved by the board to write off
10 whatever amount the money was left over.

11 Q And did the board in fact make that approval?

12 A That is correct.

13 MR. STERN: Thank you. Nothing further, Judge.

14 THE COURT: Anything further, Mr. Ayon?

15 MR. AYON: No, Your Honor.

16 THE COURT: Thank you, Mr. Greengrass. Have a nice
17 day.

18 (Pause in the proceedings)

19 THE COURT: Next witness.

20 MR. STERN: We have to continue to go out of order.
21 Is that all right?

22 MR. AYON: That's fine.

23 MR. STERN: We're going to call another witness out
24 of order, Your Honor.

25 THE COURT: That's okay. I'm used to witnesses out

1 of order.

2 (Pause in the proceedings)

3 THE COURT: If you'd come forward, please. Remain
4 standing when you get to my witness stand so we can swear you
5 in.

6 JULIA THOMPSON, DEFENDANTS' WITNESS, SWORN

7 THE CLERK: Thank you. Please be seated. Please
8 state and spell your name for the record.

9 THE WITNESS: Julia Thompson, T-H-O-M-P-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. STERN:

12 Q Ms. Thompson?

13 A Yes.

14 Q Can you tell us where you work.

15 A Red Rock Financial Services.

16 Q Okay. And how long have you been there?

17 A About eleven and a half years.

18 Q What do you do for Red Rock?

19 A I am currently a supervisor.

20 Q Okay. You say currently. How long have you been a
21 supervisor?

22 A I've been a supervisor probably about five or six
23 years total.

24 Q And during the five or six years before that what
25 was your job?

1 A I had several.

2 Q Okay. Give us a brief description of what they
3 were.

4 A So I was a -- I started as a mail clerk, file clerk,
5 handling mail, filing. I was an account coordinator, so
6 that's preparing letters, drafting response letters to
7 homeowners disputes, payment plans, bankruptcy monitoring. I
8 also spent some time as the training coordinator, so training
9 new hires and ongoing training for existing employees.

10 Q Okay. So it sounds like you've gone through a
11 progression of responsibilities there.

12 A Yes.

13 Q And it's fair to say that you've learned a thing or
14 two about Red Rock's operations during that time?

15 A Yes.

16 Q Okay. So can you describe for us what Red Rock's
17 business is.

18 A We are a third-party debt collector for homeowners
19 associations.

20 Q Is Toscana Homeowners Association one of your
21 clients?

22 A Yes. I believe so.

23 Q And what's that belief based on?

24 A Well, I review the file, and we have active accounts
25 -- or we had active accounts for this association.

1 Q Okay. You mentioned you reviewed I think you said
2 the file. Did you review any documents in connection with
3 your testimony here today?

4 A I've reviewed the property file that we have for
5 this account.

6 Q Okay. When did you review it?

7 A This morning prior to coming here.

8 Q Oh. Appreciate that. Thank you for preparing for
9 this.

10 If you can just give us a description generally
11 speaking -- actually, before we do that let's turn to
12 Exhibit 20.

13 A Okay. Can you let us know if you've seen the
14 documents that we have here in Exhibit 20 before.

15 A I believe so, yes.

16 Q Are these the same files that you reviewed this
17 morning?

18 A It appears so.

19 Q Okay. And on page [unintelligible], which is the
20 first -- the Bates page, which is the first page of Exhibit 20
21 there's a signature. Is that your signature?

22 A Yes, I believe so.

23 Q Okay. And can you confirm that what we see here in
24 Exhibit 20 is the entirety of Red Rock's file with respect to
25 the property we're dealing with here, which is 7255 West

1 Sunset Road, Unit 2050.

2 A It's mostly -- I believe it's -- the only thing that
3 I don't see is the paperwork from First 100.

4 Q Okay. When you were reviewing this file -- or the
5 file this morning did you see additional paperwork from First
6 100 that we don't see in Exhibit 20?

7 A Yes.

8 Q And can you describe what those additional documents
9 are.

10 A It was just -- I believe it was just an agreement
11 between First 100 and the association to purchase -- or take
12 over the file.

13 Q Okay. If you could just briefly turn to Exhibit 15.
14 And let us know whether these documents are in fact a copy of
15 the contract you saw in the file this morning. Assuming that
16 you can read these. Some of them are not the best copy.

17 A I believe page 309 and 310 are what I saw in our
18 collection file.

19 Q Okay. And you're familiar with First 100; is that
20 fair?

21 A Somewhat.

22 Q Tell us what you know about them.

23 A I know they were an entity that had a relationship
24 with some associations and we sent collection files to them
25 under the direction of the association.

1 Q Okay. Do you know for what purpose you had to send
2 your collection files to First 100?

3 A Ny understanding is they were taking over the
4 collection process for those files.

5 Q Okay. And are you familiar with a company called
6 United Legal Services?

7 A Somewhat.

8 Q Have you dealt with them?

9 A I believe so.

10 Q Okay. What's your best recollection of how you
11 dealt with them?

12 A In the same manner as First 100. They were part or
13 affiliated with First 100 somehow.

14 Q Okay. And you say somehow. You're not entirely
15 sure how?

16 A I'm not, no.

17 Q Okay. So what would happen -- before I ask that, in
18 the time frame of 2012-2013 can you remind us what you were
19 doing for First 100 -- excuse me, for Red Rock.

20 A What I was doing?

21 Q Yes. What was your role during that time frame,
22 2012-2013?

23 A 2012 I was a supervisor. In 2013 I actually took a
24 step down and was working from home for a couple months.

25 Q Okay. And during that time period were you, as far

1 as your day-to-day responsibilities, dealing with the transfer
2 of files to either First 100 or United Legal?

3 A In 2012 before I took a step down I did work with
4 First 100 a few times.

5 Q Okay. So describe what was the process when Red
6 Rock received notice that a file is being transferred to
7 First 100. What would you have to do?

8 A We would stop collections.

9 Q Okay.

10 A We would stop any activity on that account, notate
11 it, and then we would send the file or certain documents from
12 the file to First 100.

13 Q Okay. And once those files were sent to First 100
14 can you tell us whether First 100 -- excuse me, whether Red
15 Rock took any further collection or foreclosure activities
16 with respect to the file?

17 A We did not, as far as I understand.

18 Q Okay. If you could turn back to Exhibit 20. And
19 what I'd like to do is turn to page 507, Bates Label 507.

20 A Okay.

21 Q Can you tell us what this is.

22 A It is a payment allocation report.

23 Q What's its -- is it generated by Red Rock?

24 A Yes, it is.

25 Q And what information does it give us?

1 A It shows that a payment was received and it was
2 posted to the account and how the funds were distributed
3 between Red Rock and the association.

4 Q Okay. So what can we tell from here in terms of how
5 the funds were distributed?

6 A That this basically paid only the Red Rock
7 collection fees.

8 Q Okay. And if we could turn to page 509.

9 A Okay.

10 Q Looks like this is a check from First 100 to Red
11 Rock; correct?

12 A Yes.

13 Q The fact that it's part of your file, that means you
14 received it; right?

15 A Yes.

16 Q Okay. And it's for \$1,755.82. That's the same
17 amount listed on page 507; right?

18 A Correct.

19 Q Okay. Now, would this have satisfied the entirety
20 of Red Rock's fees and costs?

21 A I believe so.

22 Q And why do you believe it?

23 A Because I believe I saw an invoice in here that
24 reflected that amount.

25 Q Could you take a minute and find that invoice.

1 A And I don't see it in this file. I believe it was
2 part of the -- it was with the First 100 documents that were
3 sent.

4 ' Q That's part of what you reviewed this morning?

5 A Yes.

6 Q So let's turn back to that real briefly. That was
7 on page -- excuse me, Exhibit 15, I believe page 309. Is that
8 it?

9 A Yeah, that's the First 100 papers. But I don't see
10 the invoice in there.

11 Q Okay.

12 A It was a Red Rock Financial Services invoice.

13 Q So there's an additional invoice that just didn't
14 make it into this file on Exhibit 20?

15 A It looks like that.

16 Q Okay. But even though we don't see it as part of
17 Exhibit 20, can you tell us how confident you are that that
18 check was for the entirety of Red Rock's fees and costs?

19 A I'm confident.

20 Q All right. What was the reason that First 100 would
21 have paid Red Rock all of the fees and costs that you had
22 incurred up to that point?

23 A Well, the association was billed for the collection
24 fees and costs when they pulled the account from our office
25 as part of our agreement. So I believe they had some

1 agreement with First 100 that First 100 was paying it on
2 behalf of the association.

3 Q Real briefly I'd like to go through Red Rock's
4 practices in 2012 and 2013 for forecloses a property where
5 there were delinquent assessments.

6 A Okay.

7 Q Would you be able to give us a brief description of
8 what the steps in the process were?

9 A Yes.

10 Q Go ahead and do that.

11 A Okay. So the first step in the collection process
12 would be to send the initial notice that we call the intent to
13 lien letter.

14 Q And to whom is that sent?

15 A The homeowner.

16 Q And looking -- I'm going to interrupt your flow a
17 little bit here. Looking at Exhibit 20, can you tell who,
18 according to Red Rock's records, was the homeowner?

19 A It appears to be New Freedom Mortgage Corporation.

20 Q Okay. And so that notice of intent to lien letter
21 would go to the New Freedom?

22 A Yes.

23 Q Okay. Now if you can take a look at Exhibit 20,
24 page 510. Can you tell us what that is.

25 A It looks like it is a return -- a return letter that

1 we sent.

2 Q Okay. And it looks like it had been sent to New
3 Freedom. Would you agree with that?

4 A Yes.

5 Q And it was returned to Red Rock?

6 A Yes.

7 Q And what does that mean when Red Rock would send a
8 letter to an address and it came back like this? What
9 conclusion would draw from that?

10 A That they did not receive this specific notice.

11 Q Okay. So I interrupted you. You were telling us
12 that there was a notice of intent to lien. What happens next
13 -- I should say what happened back in 2012-2013?

14 A The next step in the process would be to prepare and
15 record the claim of lien.

16 Q Okay. Do we see a claim of lien in Exhibit 20?

17 A Yes.

18 Q Where is it?

19 A Page 539.

20 Q And how would Red Rock prepare this?

21 A How would we prepare it?

22 Q Let me be a little more specific. From where would
23 you pull the information that goes on here?

24 A The information on here is pulled from the
25 Assessor's page and information from the association, such as

1 accounting information and CC&R information.

2 Q Okay. And this is recorded; correct?

3 A Yes, it is.

4 Q And after it's recorded would Red Rock do anything
5 else with it?

6 A We would mail it to the homeowner.

7 Q Okay. And again, in this case that was who?

8 A New Freedom Mortgage Corporation.

9 Q Okay. And if we could just keep marking down the
10 process there, after mailing of the notice of delinquent
11 assessment what was the next step?

12 A We would send a courtesy letter called the intent to
13 notice a default letter

14 Q Okay. And to whom would that letter go?

15 A That would also go to the homeowner, who in this
16 case was New Freedom Mortgage Corporation.

17 Q Okay. And tell us whether that letter would go to
18 the holder of the mortgage.

19 A Not at that time -- not at this time, no.

20 Q Okay. In Red Rock's process when was the first time
21 that you would have any communication with the holder of any
22 mortgage or deed of trust?

23 A It would be at the default stage.

24 Q Okay. Do we in Exhibit 20 see a notice of default?

25 A Yes.

1 Q All right. I may have overlooked it. Can you show
2 us where it is.

3 A There's a copy on page 535.

4 Q Okay. I see that. So this would be recorded, as
5 well; correct?

6 A Yes.

7 Q And to whom would you send a copy of this?

8 A That would be sent to the homeowner, New Freedom
9 Mortgage Corporation, as well as any parties who appeared on
10 our 10-day mailing list from our trustee sale guarantee.

11 Q Okay. And looking at what you can see there in
12 Exhibit 20 or the documents you reviewed this morning in
13 preparing for testimony today can you confirm whether a copy
14 of this mailed to the mortgage holder?

15 A I believe it was sent to New Freedom Mortgage
16 Corporation.

17 Q Other than New Freedom? Because we understand that
18 New Freedom is on the records as the owner; right?

19 A Correct. I don't see that it was sent to any other
20 parties.

21 Q And would the reason -- do you know why it would not
22 have been sent to the holder of the -- who appeared on record
23 as the holder of the mortgage?

24 A Well, it would only be sent to the parties who
25 appeared on our mailing list from our title company. So if

1 there were no other parties who appeared on that list, the
2 notice wouldn't be sent.

3 Q Okay. Understood. Apart from the notice of intent
4 to lien that we saw that there was a return from New Freedom
5 Mortgage Corporation, was other mail returned from -- that had
6 been sent to New Freedom?

7 A Other than what's in the file I'm not sure.

8 Q So let's go through what's in the file again. Looks
9 like on page 510 there was something that was returned. On
10 page 512 there's something else. Am I right?

11 A Yes.

12 Q Based on the date can you tell us what was mailed in
13 the envelope that we're looking at here in page 512?

14 A It looks like it was the final notice, what we call
15 the intent to conduct foreclosure notice.

16 Q Okay. And then if we look at page 514, are you able
17 to tell us what that is?

18 A It would appear to be the same notice, the final
19 notice.

20 Q Okay. Do you know why we see several copies of
21 that?

22 A There were probably several copies mailed. There's
23 also -- page 514 is the copy of the notice that was sent via
24 First Class Mail, and the copy on page 512 was sent via
25 certified mail.

1 Q I see. Okay. Thank you. Okay. If we could turn
2 to page 526. Can you identify what we're looking at here. It
3 looks like it continues on to page 527.

4 A This is an accounting ledger from Red Rock Financial
5 Services.

6 Q Okay. And could you tell us based on this during
7 2012 what the monthly assessment for this association was.

8 A The monthly assessments were \$164 per month.

9 Q Okay. If we could turn to Exhibit 21.

10 THE CLERK: Proposed.

11 MR. STERN: Right.

12 BY MR. STERN:

13 Q If you could turn to page -- and this is not
14 admitted yet, so don't quite read from this. But if you could
15 turn to page 556 and tell us whether that's your signature.

16 MR. AYON: Objection, Your Honor. This is a
17 declaration from another case.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Yes, that is my signature.

20 BY MR. STERN:

21 Q Okay. And then if we could flip over to page 558,
22 can you tell us if this is a document that you recognize.

23 A Yes.

24 Q So you know what it is?

25 A Yes. I believe so.

1 Q Without [unintelligible].

2 THE COURT: Hold on a second. I'm only, is this
3 something you recognize.

4 MR. AYON: I do want an offer of proof as far as --

5 THE COURT: I'm not there yet, Mr. Ayon.

6 MR. AYON: Okay.

7 BY MR. STERN:

8 Q Okay. Without reading the content of the letter can
9 you tell us how you know what it is.

10 A I've seen them before in various cases, and I helped
11 put the words onto the paper.

12 Q Okay. So this is -- can you tell us whether this
13 letter that we're looking at on page 558 is a letter that was
14 generated by Red Rock?

15 A Yes, it is.

16 Q And without reading the content of the letter can
17 you tell us why Red Rock prepared this letter.

18 MR. AYON: Objection, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: We prepared it in response to letters
21 that we had received.

22 BY MR. STERN:

23 Q Okay. And from whom had you received those letters?

24 A Miles Bauer Bergstrom & Winters, I believe was the
25 name.

1 Q Okay. And are you familiar with that entity, Miles
2 Bauer Bergstrom & Winters?

3 A Somewhat.

4 Q Okay. What's your best recollection of them?

5 A We received letters from them.

6 Q Do you know what kind of company they were?

7 MR. AYON: Objection, Your Honor. Relevance at this
8 point.

9 THE COURT: Overruled.

10 THE WITNESS: They were a law firm.

11 BY MR. STERN:

12 Q Okay. And do you know they claimed to represent
13 when they communicated with you?

14 A I believe Bank of America.

15 Q Okay. And so the purpose of this letter was to give
16 Miles Bauer information regarding something?

17 A Yes.

18 Q What was that something?

19 A It was regarding our understanding of the current
20 laws at the time that they were referencing in their letter.

21 Q Okay. And what was the subject matter of those
22 laws, if you recall?

23 A I believe it was the superpriority.

24 MR. STERN: Okay. Your Honor, at this point I would
25 move for the admission of Exhibit 20.

1 THE COURT: For what purpose?

2 MR. STERN: As we will establish later on, Your
3 Honor, Bank of America was the servicer of this loan prior to
4 its transfer. Actually, it has been established. There was
5 the notice -- there's assignments. And so the understanding
6 of the prior servicer on behalf of the investor is relevant to
7 reasons for payment or nonpayment attempts of the
8 superpriority lien.

9 THE COURT: Mr. Ayon.

10 MR. AYON: Objection. Well, Your Honor, that falls
11 under the Wells Fargo-Ridowski case where the Supreme Court
12 basically says [unintelligible] has no meaning whatsoever in
13 this case. Now, we're talking about evidence now from an
14 entity that we're not even -- Miles Bauer is not even involved
15 with this case. There's no evidence that Miles Bauer is in
16 here, there's no evidence that --

17 THE COURT: But Mr. Stern's going to argue because
18 of all of the other cases where Rock Young sent letters to Red
19 Rock and other people this is what they thought would happen.

20 Right? Isn't that what you're going to argue?

21 MR. STERN: Correct, Your Honor.

22 THE COURT: Okay.

23 MR. AYON: We're so [unintelligible], because that's
24 not actually what happened. We're now using evidence from
25 another case --

1 THE COURT: Oh, I understand, Mr. Ayon. But it's
2 marginal evidence.

3 So I will admit the document for --

4 MR. AYON: Well, Your Honor, I still have another
5 objection here.

6 THE COURT: Okay.

7 MR. AYON: It's not authentic, because that's not --
8 that's not her letter. That's not even her signature. It's
9 Red Rock's letter. So they still haven't laid the foundation
10 of her knowledge. That might be subjective knowledge --

11 THE COURT: Okay. So if we could lay some
12 additional foundation, please.

13 BY MR. STERN:

14 Q Ms. Thompson, you looked at page 558; right?

15 A Yes.

16 Q You told us that you knew what it was; remember?

17 A Yes.

18 Q Were you making that up?

19 A No.

20 Q So you actually knew what it was?

21 A Yes. I believe so.

22 Q Okay. And so tell us have you seen it in Red Rock's
23 files?

24 A Yes, I have.

25 Q Did you participate in -- I think you said you

1 participated in putting the words that we find on this letter;
2 do you remember that?

3 A Yes.

4 Q Would it be fair to say that you are the partial
5 author of this letter?

6 A Perhaps. Possibly.

7 Q Well, some of the words here came from you? Didn't
8 you just tell us that?

9 MR. AYON: Leading, Your Honor.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Yes. I typed up the letter under
12 direction from my superiors and our attorney at the time.

13 BY MR. STERN:

14 Q So you typed this letter.

15 A I did.

16 Q So if you typed this letter, pretty safe to assume
17 that you know what it is?

18 A Correct.

19 MR. STERN: Your Honor --

20 THE COURT: Be admitted.

21 (Joint Exhibit 21 admitted)

22 MR. AYON: I'd like to -- no. I'd like to voir dire
23 the witness on this one.

24 THE COURT: No. Be admitted. Thank you. I
25 understand your position, Mr. Ayon. We're not there yet.

1 MR. AYON: I know. But we're way off base as far as
2 what this is. It's not even --

3 THE COURT: Mr. Ayon, I've already ruled. Thank
4 you.

5 Did you have any additional questions for this
6 witness?

7 MR. STERN: Yes, Your Honor.

8 BY MR. STERN:

9 Q If you could take a look at page 558, fourth
10 paragraph down, where it starts "The industry standard." See
11 that?

12 A Yes.

13 Q So this question will be real easy. You just have
14 to check and see how skillful I am at reading. It reads, "The
15 industry standard interpretation of NRS 116.3102 and our
16 interpretation are as follows. The first mortgage is,
17 'senior' to the homeowner association. Therefore, when the
18 first mortgage foreclosed as according to NRS 116.3102, the
19 first mortgage is responsible to pay six months of extra
20 assessments from the time the first mortgage foreclosed.
21 Therefore, NRS 116.3102 only applies when someone is -- only
22 applies when some who is 'senior' to the homeowner association
23 forecloses on the property in question. Please note that as
24 of October 1st, 2009, it is a nine-month superpriority lien on
25 it."

1 Did I read that correctly?

2 A Yes.

3 Q Okay. And can you just confirm that this letter
4 would have been sent to Miles Bauer Bergstrom & Winters?

5 A Yes, it was.

6 MR. STERN: Thank you. I have nothing further,
7 Judge.

8 THE COURT: Cross-examination.

9 MR. AYON: Thank you, Your Honor. Just for
10 clarification, only the letter is being admitted?

11 THE COURT: No. I admitted all of 21.

12 MR. AYON: 21 is the -- there's declaration. That
13 wouldn't be the best evidence for her testimony. There's a
14 declaration and a letter.

15 MR. STERN: That was waived, Your Honor. There was
16 no objection.

17 MR. AYON: It's been objected at least --

18 THE COURT: Mr. Ayon, your objection was not based
19 on -- there's no -- the declaration is admitted, but it
20 doesn't matter.

21 Okay. Go. Because it's from a custodian of
22 records. Go.

23 CROSS-EXAMINATION

24 BY MR. AYON:

25 Q Ms. Thompson, I'd like you to turn to Exhibit 20,

1 please.

2 A Okay.

3 Q So earlier you testified that the -- that you saw
4 some documents -- you reviewed this file before your testimony
5 today; right?

6 A Yes.

7 Q And you said that there was documents in the file
8 that were not in Exhibit 20; is that correct?

9 A There were documents that I reviewed in our file
10 that are not in Exhibit 20, yes.

11 Q Okay. So what I'm going to have you do is turn to
12 the Bates Number 506.

13 A Okay.

14 Q And it's numbered 1, 2, 3, 4. There's a third
15 paragraph, you see that right there?

16 A Third paragraph?

17 Q Yes.

18 A Yes.

19 Q It starts with "I and/or persons acting...."

20 A Yes.

21 Q Okay. And I'm going to read the rest of it,
22 "...under my supervision has examined the information and/or
23 records requested and have made a true representation of the
24 information and/or exact copy of the records." Do you see
25 that?

1 A Yes.

2 Q So that statement's false?

3 A At the time it was true.

4 Q So did records then magically appear into your file?

5 A We located the records.

6 Q You located the records.

7 A They were not part of the file at the time.

8 Q I am not done with my question.

9 THE COURT: Wait. Only one at a time, please.

10 Ma'am, you said they were not part of the file at

11 the time?

12 THE WITNESS: Correct.

13 THE COURT: Okay.

14 BY MR. AYON:

15 Q So you testified about these other documents. Did

16 you bring them with you at all?

17 A No, I didn't.

18 Q Where are they at now?

19 A They're in the file at Red Rock Financial Services.

20 Q Okay. So is it fair to say that back in 2015 there

21 were documents that you kept separately? So there wasn't one

22 file. You had documents in one section versus another

23 section; right?

24 A There was a folder for First 100.

25 Q Okay. So my question is that there was -- the file

1 consists of documents in two different places?

2 A Only the First 100 documents were housed elsewhere.

3 Q It's a yes or no question. You had documents for
4 this file that were housed in two different folders?

5 A The First 100 documents were, yes.

6 Q Okay. So two different locations.

7 A Only with the First 100 documents, yes.

8 MR. AYON: Your Honor, can you instruct --

9 THE COURT: Overruled. Anything else?

10 MR. AYON: Yes, Your Honor.

11 BY MR. AYON:

12 Q So at the time that you submitted this you did not
13 look for any documents that were part of the First 100 file
14 [unintelligible]?

15 A If we did look, we did not locate them. I don't
16 recall specifically.

17 Q Are there any other documents besides that that you
18 saw in here that weren't what you referenced here and to this
19 exhibit?

20 A Not that I'm aware of.

21 Q Is this with all your files that you would keep
22 separate documents in other places to produce subpoenas?

23 A I'm sorry. What was -- I don't understand the
24 question.

25 Q So it was just the first instance where this

1 custodian of records isn't correct, where you'd have different
2 documents that you didn't produce as part of a court order?

3 A I don't know.

4 Q You don't know? Do you know who Joel Just is?

5 A Yes, I do.

6 Q Who is he?

7 A I believe he's currently the owner of some
8 collection companies and a management company.

9 Q Are you aware that he owned Red Rock?

10 A He did not own Red Rock, no.

11 Q Was he -- did he have an interest in Red Rock?

12 A He worked for Red Rock, is my understanding.

13 Q And are you aware that First 100 had sued Joel Just
14 in the past?

15 A No, I'm not.

16 Q If you'd go back to -- and I'm just jumping around,
17 since it's cross-examination. I'm going to have you turn back
18 to 535. Mr. Stern had --

19 A Okay.

20 Q Mr. Stern had asked you if the -- if this notice of
21 default had been sent to the holder of the first deed of
22 trust. Do you remember that testimony?

23 A I believe so.

24 Q Okay. And if you flip to 534 -- I'm sorry. Court's
25 indulgence. I lost my page number.

1 537. I'm sorry.

2 A Okay.

3 Q The address up top there is New Freedom Mortgage

4 Corporation. Do you see that?

5 A Yes.

6 Q Okay. Then it has a Utah address; is that right?

7 A Yes.

8 Q Is it your understanding that this notice was sent

9 to this address?

10 A Yes.

11 Q And why was it sent there?

12 A Because that is the address we had for that company,

13 I believe.

14 Q And at the time that was the holder of the first

15 deed of trust?

16 A I don't know.

17 Q And you also sent this -- if you'd go to 534 now.

18 You also sent it in the name of New Freedom Mortgage

19 Corporation to 7255 West Sunset Road, 2050. You see that?

20 A Yes.

21 Q Okay. And that's the address of this unit?

22 A Yes.

23 Q Okay. Why did you send it there?

24 A Because that was the mailing address, and my

25 understanding is we're required to send it to all known

1 addresses.

2 Q And you earlier testified that it was your
3 understanding that they were the owner of the property.

4 A I believe so.

5 Q You testified a little bit about First 100. Did the
6 nine months -- well, let me ask this question. If I'm a
7 homeowner hypothetically and I owed 24 months of assessments
8 and this collection file went to Red Rock, could I pay just
9 nine months of those assessments and then my debt be wiped
10 clear?

11 A No.

12 Q I would still owe the full amount?

13 A Correct.

14 Q Would I owe collection costs?

15 A Yes. If there are collection costs incurred.

16 Q Late fees?

17 A Yes.

18 Q Intent to lien letters?

19 A If they have been posted to the account, yes.

20 Q Okay. So -- but I couldn't just pay nine months and
21 the collection -- my account would be wiped clean?

22 A Not typically, no.

23 Q Are you aware of whether that's happened here,
24 whether nine months were paid and -- well, let me ask another
25 question. I'm sorry. Strike that.

1 Are you aware that First 100 paid Red Rock a certain
2 amount for -- you know, 1735 I think was the amount in this
3 case?

4 A We did receive a payment from First 100, yes.

5 Q And what was that for?

6 A That was for the collection fees and costs incurred.

7 Q Okay. Assessments wasn't included in that?

8 A No.

9 Q Back in 2012-2013 was Red Rock conducting homeowner
10 foreclosure sales on behalf of this association?

11 A I'm not sure specifically.

12 Q I'm going to have to go back to this letter, 558,
13 which I believe was 21, Exhibit 21.

14 A Okay.

15 Q Do you know if this letter was actually sent or not?

16 A I believe it was.

17 Q Do you know to which file?

18 A Not off the top of my head, no.

19 Q How many homeowners associations does Red Rock do
20 the collection work for?

21 A Hundreds.

22 Q And how many property are in those hundreds of
23 associations?

24 A Hundreds, thousands. I don't know.

25 Q Now, this letter here is unsigned. Do you see that?

1 A Yes.

2 Q So are you certain that this was actually sent at
3 one point?

4 A Yes.

5 Q Now, Mr. Stern said that you authored this letter.
6 Is that right, or just typed it?

7 THE COURT: Actually the witness testified she
8 authored the letter.

9 MR. AYON: Correct. That was Mr. Stern's --

10 THE COURT: The witness testified.

11 BY MR. AYON:

12 Q You testified that you had authored this letter.

13 A I did type the letter.

14 Q You typed the letter. So it wasn't your -- did you
15 have any input into creating this letter?

16 A No. I was told what to type.

17 Q So you didn't research NRS 116 or anything like
18 that?

19 A I have read NRS 116.

20 Q That's not exactly the question I have. Let me --
21 and I'll back up a little bit. Did you research NRS 116 when
22 you typed up this letter?

23 A Well, I read it.will

24 Q Who created -- who provided you the contents of this
25 letter?

1 A My superiors at the time and our attorney.

2 Q And who was that?

3 A At the time, I'm not sure.

4 Q So other than just typing this letter, you didn't

5 have any kind of legal input or any input as far as the

6 contents of what these words were?

7 A I don't recall.

8 Q So the paragraph that Mr. Stern had read to you, the

9 industry standard interruption, it's paragraph -- it's starts

10 with the industry standard?

11 A Uh-huh. Yes. I see that.

12 Q And you're aware that that statement is incorrect?

13 A No.

14 MR. AYON: Thank you, Your Honor.

15 THE COURT: Any redirect?

16 MR. STERN: Nothing further, Your Honor.

17 THE COURT: Thank you.

18 Now Mr. Scow I'll see on Monday. Be on time,

19 because I have to start the other part of the case as soon as

20 you're done.

21 All right. Counsel, be in recess. We'll have a

22 conference call what day next week?

23 MR. AYON: Probably Monday would be the best day.

24 Monday afternoon.

25 MR. STERN: We'll be available whenever, Your Honor.

1 THE COURT: How about Monday at 1:00 o'clock?
2 MR. AYON: That'll work.
3 THE COURT: Dulce, you need to set up a conference
4 call.
5 THE CLERK: Yes, Your Honor.
6 THE COURT: Tell Dani.
7 Sorry that we didn't get through the one witness.
8 Is that all that's left?
9 MR. STERN: We have three witnesses left.
10 THE COURT: So you need a half day.
11 MR. STERN: Afternoon. And then closings.
12 THE COURT: How long are the closings, 15 minutes,
13 20 minutes?
14 MR. STERN: We always underestimate. About an hour.
15 (Court recessed at 11:43 a.m., until
16 Wednesday, July 3, 2019, at 9:36 a.m.)
17 * * * * *
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25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESSES

Jacob Lefkowitz	4	11	33	36
Kipp Greengrass	39			

* * *

DEFENDANTS' WITNESSES

Kipp Greengrass	39	53	62	
Julia Thompson	64	84		

* * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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JOINT EXHIBIT NO.

1 - 16, 19, 20	2
21	82
30	30

* * *

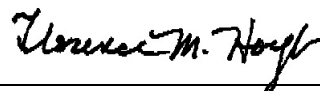
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

9/5/19

DATE