



## In the Supreme Court of the State of Nevada

Electronically Filed  
Sep 08 2019 12:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DANIEL LAKES,

Appellant,

v.

U.S. BANK TRUST, Trustee for LSF9  
Master Participation Trust,

Respondent.

No. 79324

**DOCKETING STATEMENT  
CIVIL APPEAL  
For Appellant, Daniel Lakes**

### GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 28 County Clark  
Judge Ronald Israel District Ct. Docket No. A-17-759016-C

2. **Attorney filing this docket statement:**

Attorney Doreen Spears Hartwell, Esq. Telephone (702) 850-1074  
Firm Hartwell Thalacker, Ltd.  
Address 11920 Southern Highlands Parkway, Suite 201  
Las Vegas, NV 89141  
Client(s) Daniel Lakes

Attorney Laura J. Thalacker, Esq. Telephone (702) 850-1074  
Firm Hartwell Thalacker, Ltd.  
Address 11920 Southern Highlands Parkway, Suite 201  
Las Vegas, NV 89141  
Client(s) Daniel Lakes

**If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.**

3. **Attorney(s) representing respondent(s):**

Attorney Joel E. Tasca, Esq. Telephone (702) 471-7000  
Firm Ballard Spahr  
Address 1980 Festival Plaza Drive, # 900  
Las Vegas, NV 89135  
Client(s) U.S. Bank Trust, Trustee for LSF9 Master Participation Trust

Attorney Joseph P. Sakai, Esq. Telephone (702) 471-7000  
Firm Ballard Spahr  
Address 1980 Festival Plaza Drive, # 900  
Las Vegas, NV 89135  
Client(s) U.S. Bank Trust, Trustee for LSF9 Master Participation Trust

4. **Nature of disposition below (check all that apply)**

<input type="checkbox"/> Judgment after bench trial	<input type="checkbox"/> Grant/Denial of NRCP 60(b) relief
<input type="checkbox"/> Judgment after jury verdict	<input type="checkbox"/> Grant/Denial of injunction
<input checked="" type="checkbox"/> Summary judgment	<input type="checkbox"/> Grant/Denial of declaratory relief
<input type="checkbox"/> Default judgment	<input type="checkbox"/> Review of agency determination
<input type="checkbox"/> Dismissal	<input type="checkbox"/> Divorce decree
<input type="checkbox"/> Lack of jurisdiction	<input type="checkbox"/> Original <input type="checkbox"/> Modification
<input type="checkbox"/> Failure to state a claim	<input type="checkbox"/> Other disposition (specify) _____
<input type="checkbox"/> Failure to prosecute	_____
<input type="checkbox"/> Other (specify) _____	_____

5. **Does this appeal raise issues concerning any of the following: N/A**

<input type="checkbox"/> Child custody	<input type="checkbox"/> Termination of parental rights
<input type="checkbox"/> Venue	<input type="checkbox"/> Grant/denial of injunction or TRO
<input type="checkbox"/> Adoption	<input type="checkbox"/> Juvenile matters

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Not applicable.

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Quiet title action regarding a subsequent bona fide purchaser.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Whether the district court erred as a matter of law when ruling that Respondent U.S. Bank Trust's deed of trust was enforceable under against subsequent home buyer Appellant Daniel Lakes despite U.S. Bank Trust's failure to record its assignment of the deed of trust as required by NRS 111.325.
2. Whether the district court erred as a matter of law in granting summary judgment in favor of Respondent U.S. Bank Trust when a genuine issue of material fact existed regarding both the payment and the amount of the super priority lien.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

Not applicable.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130.?

N/A

If not, explain \_\_\_\_\_

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain.

This appeal involves the public policy behind the purpose of the recording statute.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? n/a

Was it a bench or jury trial? \_\_\_\_\_

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

Not applicable.

#### **TIMELINESS OF NOTICE OF APPEAL**

15. **Date of entry of written judgment or order appealed from** July 17, 2019. **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

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16. **Date written notice of entry of judgment or order served** July 18, 2019. **Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery X or by mail \_\_\_\_\_ (specify).

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP50(b)	_____	Date served	_____	By delivery	_____	or by mail	_____	Date of filing	_____
NRCP52(b)	_____	Date served	_____	By delivery	_____	or by mail	_____	Date of filing	_____
NRCP59	_____	Date served	_____	By delivery	_____	or by mail	_____	Date of filing	_____

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal**

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving motion served N/A.

(i) Was service by delivery \_\_\_\_\_ or by mail \_\_\_\_\_ electronic \_\_\_\_\_ (specify).

18. **Date notice of appeal was filed** July 29, 2019.

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other** NRAP 4(a)

///

## SUBSTANTIVE APPEALABILITY

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1)   X   NRS 155.190 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(2) \_\_\_\_\_ NRS 38.205 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(3) \_\_\_\_\_ NRS 703.376 \_\_\_\_\_  
Other (specify) \_\_\_\_\_

Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from an order granting summary judgment resulting in the termination of the case.

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**21. List all parties involved in the action in the district court:**

Plaintiff/Counter-defendant Daniel Lakes, c/o Doreen Spears Hartwell, Esq., Hartwell Thalacker, Ltd., 11920 Southern Highlands Parkway, Suite 201, Las Vegas, Nevada 89141.

Defendant/Counterclaimant U.S. Bank Trust, Trustee for LSF9 Master Participation Trust, Joseph Sakai, Esq. Ballard Spahr, 1980 Festival Plaza Dr. #900, Las Vegas, NV 89135.

Defendant Bank of America, N.A., successor-by- merger to Countrywide Mortgage Ventures, LLC

Defendant Rogelio Cedillo, an individual

Defendant Parcelnomics, LLC, a Nevada limited liability company d/b/a Investment Deals

Defendant Noun Graeff, an individual

Third-Party Defendant/Counter- Defendant Liberty at Huntington Homeowners' Association, Sean Anderson, Esq., Leach, Kern, Gruchow, Anderson, Song, 2525 Box Canyon Dr., Las Vegas, NV 89128.

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Bank of America was formally dismissed. Rogelio Cedillo, Parcelnomics and Noun Graeff were never served. Liberty at Huntington Homeowners' Association was sued by U.S. Bank Trust and has no interest in the quiet title action.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counter claims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attached a copy of each disposition.**

Lakes brought a quiet title action regarding his personal residence seeking a declaration that he was a bona fide purchaser. U.S. Bank Trust filed a counterclaim for quiet title regarding the enforceability of a deed of

trust against the subject property. The district court granted U.S. Bank Trust's motion for summary judgment on its counterclaim for quiet title finding that Lakes' quiet title claim was moot.

U.S. Bank also brought a third-party claim against Liberty Homeowners' Association for wrongful foreclosure. However, the claim was dismissed as moot based on the district court's determination that the first deed of trust was not extinguished by the foreclosure sale.

All of the claims were addressed in the Findings of Fact, Conclusions of Law on Motion for Summary Judgment entered on 7/7/19 and attached as Tab 15.

**23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

Complaint and Amended Answer and Counterclaims attached as 23-A and 23-B.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes   X   No           

**25. If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)

Yes            No            **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service**

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes            No           

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**


VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Daniel Lakes  
Name of appellant

Doreen Spears Hartwell, Esq.  
Name of counsel of Record

September 8, 2019  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 8th day of September 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es); or
- ☒ By email to the following email addresses:

***tasca@ballardspahr.com***

***sakaij@ballardspahr.com***

Joel E. Tasca, Esq.

Joseph P. Sakai, Esq.

Ballard Spahr

1980 Festival Plaza Dr. #900

Las Vegas, NV 89135

*U.S. Bank Trust,*

*Trustee for LSF9 Master Participation Trust*

***kkuzemka@armadr.com***

Kristine M. Kuzemka, Esq.

Supreme Court Settlement Judge

Advanced Resolution Management

6980 S. Cimarron Road, Ste. 210

Las Vegas, NV 89113

Dated this 8th day of September 2019.

/s/Doreen Spears Hartwell

Doreen Spears Hartwell, Esq.



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Nevada Bar No. 14124  
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*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DANIEL LAKES, an Individual;  
Plaintiff,

Case No.: A-17-759016-C

Dept. No.: 28

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

7/18/19



1                    FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR  
2                    SUMMARY JUDGMENT

3                    Defendant/Counter-Claimant/Cross-Claimant U.S. Bank Trust, Trustee for  
4 LSF9 Master Participation Trust's (U.S. Bank) motions for summary judgment  
5 against Plaintiff, Daniel Lakes (Lakes) and Defendant/Cross-Defendant Liberty At  
6 Huntington Homeowners' Association (HOA), and the HOA's motion for summary  
7 judgment against U.S. Bank came for hearing on June 4, 2019. Doreen Spears  
8 Hartwell, Esq. appeared on behalf of Plaintiff, Chase Pittsenbarger, Esq. appeared on  
9 behalf of the HOA, and Joseph P. Sakai, Esq. appeared on behalf of U.S. Bank. The  
10 Court, having reviewed the motions, the responses in opposition, and the replies in  
11 support, and good cause appearing, makes the following findings of fact and  
12 conclusions of law.

13                    FINDINGS OF FACT

14                    *The Subject Property, Note, and Deed of Trust*

- 15                    1.        Lakes filed suit for quiet title alleging that he was a bona fide purchaser  
16                    who purchased the real property located at 548 Primrose Hill Ave., Las  
17                    Vegas, NV without notice of, and not subject to, an interim assignment  
18                    of a Deed of Trust from Freddie Mac to U.S. Bank.
- 19                    2.        A deed of trust listing Rogelio Cedillo as the borrower ("Borrower");  
20                    Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC  
21                    series as the lender ("Lender"); and MERS, as beneficiary solely as  
22                    nominee for Lender and Lender's successors and assigns, was executed  
23                    on April 12, 2007, and recorded on April 16, 2007 ("Deed of Trust"). The  
24                    Deed of Trust granted Lender a security interest in real property known  
25                    as 548 Primrose Hill Ave in Las Vegas (the "Property") to secure the  
26                    repayment of a loan in the original amount of \$213,121.00 to the  
27                    Borrower (the promissory note and Deed of Trust together are the  
28                    "Loan").

2. On August 19, 2009, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Ocwen.

At the time of the HOA Sale on August 25, 2015, Ocwen was the servicer of the Loan for Freddie Mac.

3. On December 6, 2015, U.S. Bank acquired the Loan from Freddie Mac. On May 27, 2016, Ocwen recorded an assignment of the Deed of Trust to U.S. Bank. U.S. Bank is currently the beneficiary of record of the Deed of Trust and owner of the Loan.

*The HOA Foreclosure Sale and Plaintiff's Acquisition of the Property*

4. In July 2008 through April 2015, the HOA recorded a Lien for Delinquent Assessments concerning past due assessments, followed by a Notice of Default and Election to Sell, and a Notice of Foreclosure Sale against the Property.

5. On August 25, 2015, the HOA foreclosed on its lien and sold the Property to Parcelnomics, LLC, which paid \$4,470.00 according to the Foreclosure Deed recorded on September 1, 2015.

6. On September 1, 2015, Parcelnomics recorded a Grant, Bargain, Sale Deed purporting to convey its interest in the property to Investment Deals.

7. On October 23, 2015, Noune Graeff purchased the property from Investment Deals pursuant to a recorded Grant, Bargain, Sale Deed.

8. Lakes purchased the property for Noune Graeff for \$112,000 on January 20, 2016.

9. Lakes recorded the Grant, Bargain, Sale Deed for the property on January 20, 2016, without knowledge of U.S. Bank's unrecorded 12/6/15 assignment of Deed of Trust.,

*Ocwen's Superpriority Tender to the HOA*

8. After the HOA recorded its notice of default and prior to the foreclosure sale, Ocwen, then servicer of the Loan, tendered the super-priority portion of the HOA lien to the HOA.

### Standard of Proof

2. While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, "that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

3. The HOA Sale did not extinguish the Deed of Trust because Ocwen, which was servicing the Loan at the time of the HOA sale, tendered the superpriority portion of the Lien prior to the sale. Under NRS § 116.3116(1), an HOA has a statutory lien for unpaid assessments. Also by statute, only nine-months of HOA

assessments are entitled to this “super-priority” status. NRS § 116.3116(2)(b)-(c). The Nevada Supreme Court in *SFR Investments*, applying the plain language of the statute, explained “[a]s to first deeds of trust, NRS § 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece.” *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014). As explained by the *SFR* Court, “NRS 116.3116 gives a homeowners’ association (HOA) a superpriority lien on an individual homeowners’ property for up to nine months of unpaid HOA dues.” *Id.* at 409 (emphasis added). The *SFR* Court further provides the beneficiary of record of a deed of trust can preserve its interest by “determining the precise superpriority amount” and tendering it “in advance of the sale.” *Id.* at 418.

4. Since the *SFR Investments* decision, the Nevada Supreme Court held—again as a matter of statutory interpretation—the superpriority portion of an HOA lien does *not* include collection fees and foreclosure costs incurred by an HOA. *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings*, 373 P.3d 66, 71–72 (Nev. 2016). The *Ikon Holdings* court confirmed the superpriority amount is “limited to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Id.*

5. Here, Ocwen tendered 9 months of monthly assessments – the full superpriority debt - entitled to superpriority protection which totaled \$3241.52. Upon receipt of the check from Ocwen, the HOA, through it’s agent, Red Rocks, accepted Ocwen’s tender and negotiated the check. It cannot be disputed that U.S. Bank’s predecessor in interest, Ocwen, did exactly what it was required to under Nevada law to protect the Deed of Trust.

#### *The HOA Conducted a Sub-Priority Sale*

6. Because Ocwen satisfied the superpriority debt, the HOA foreclosed a subpriority lien and passed title subject to the Deed of Trust.

7. Under NRS 116.3116, an association's lien is split "into two pieces, a superpriority piece and a sub-priority piece.” *SFR Investments Pool 1, LLC v. U.S.*

1 *Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 410 (2014). "The superpriority piece"  
2 is "prior to a first deed of trust." *Id.* "The subpriority piece, consisting of all other  
3 HOA fees or assessments, is subordinate to a first deed of trust." *Id.*

4 8. The Nevada supreme court has made clear an association can choose to  
5 foreclose on either the subpriority or superpriority portion of its lien. *See Shadow*  
6 *Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
7 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority lien  
8 portion, the sale also would extinguish other subordinate interests in the property.")  
9 (emphasis added); *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 382 P.3d 911  
10 (Table), 2016 WL 4543202 (Nev. 2016) (vacated on other grounds) (*Stone Hollow II*).  
11 An association's foreclosure of its subpriority lien does not extinguish a senior deed of  
12 trust. *See Stone Hollow*, 382 P.3d at 911.

13 9. The Nevada supreme court's holding in *SFR Investments* that an  
14 association's foreclosure of its superpriority lien could extinguish a senior deed of  
15 trust does not mean every association's foreclosure has such an effect – only proper  
16 superpriority foreclosures do.

17 10. Here, the evidence shows the HOA conducted a subpriority foreclosure,  
18 which could not extinguish the Deed of Trust. Accordingly, Plaintiff purchased the  
19 Property subject to BANA's Deed of Trust.

20 11. Lakes argument that U.S. Bank's interest in the Deed of Trust is void  
21 and unenforceable as to him pursuant to N.R.S. § 111.325 is without merit because  
22 the timing of the Assignment is immaterial to the HOA Sale not extinguishing the  
23 Deed of Trust. .

#### 24 *Remaining Issues*

25 12. U.S. Bank dropped its federal foreclosure bar arguments as being not  
26 applicable based on the chronology of events in this matter.

27 13. Any remaining issues raised in U.S. Bank's motion for summary  
28 judgment against Plaintiff are moot.

1 14. U.S. Bank's motion for summary judgment against the HOA is also  
2 moot.

3 15. The HOA's motion for summary judgment against U.S. Bank is also  
4 moot.

5 *The Deed of Trust Remains a Valid, Secured Encumbrance*

6 16. The HOA Sale did not extinguish the Deed of Trust.

7 17. The Deed of Trust remains a valid, secured encumbrance against the  
8 Property.

9 18. All persons or entities whom were granted title or an interest in the  
10 Property through the HOA Sale took such title or interest subject to the Deed of  
11 Trust.

12 19. U.S. Bank's Motion for Summary Judgment against Plaintiff is granted.


13 20. U.S. Bank's Motion for Summary Judgment against the HOA is denied  
14 as moot.

15 21. The HOA's Motion for Summary Judgment against U.S. Bank is denied  
16 as moot.

17 *Rule 54(b) Certification*

18 There being no reason for delay, this Order should be certified as final  
19 pursuant to NRCP 54(b). Accordingly, this Order is a final judgment for purposes of  
20 appeal.

21 DATED: this 12 day of July, 2019.

22   
23 DISTRICT COURT JUDGE MF  
24 RONALD J. ISRAEL  
25 A-17-759016-C  
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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP

By: \_\_\_\_\_  
Joel E. Tasca, Esq.  
Joseph P. Sakai, Esq.  
1980 Festival Plaza Drive, Suite 900  
Las Vegas, Nevada 89134

*Attorneys for U.S. Bank Trust,  
Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

  
DOREEN SPEARS HARTWELL, ESQ.  
Hartwell Thalacker, Ltd.  
11920 Southern Highlands Pkwy., #201  
Las Vegas, NV 89141

*Attorney for Plaintiff/Counter-  
Defendant,, Daniel Lakes*

*Approved as to form by:*

Dated this \_\_\_\_ day of July 2019:

LEACH KERN GRUCHOW  
ANDERSON SONG

\_\_\_\_\_  
SEAN L. ANDERSON, ESQ.  
T. CHASE PITTSBARGER, ESQ.  
2525 Box Canyon Drive  
Las Vegas, NV 89128

*Attorney for Cross-Defendant Liberty at  
Huntington Homeowners' Association*

1  
2 *Respectfully submitted by:*

3 Dated this \_\_\_\_ day of July, 2019

4 Ballard Spahr LLP

5 By:

6 Joel E. Tasca, Esq.

7 Joseph P. Sakai, Esq.

1980 Festival Plaza Drive, Suite 900

Las Vegas, Nevada 89134

8 *Attorneys for U.S. Bank Trust,*  
9 *Trustee for LSF9 Master Participation*  
10 *Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

DOREEN SPEARS HARTWELL, ESQ.

Hartwell Thalacker, Ltd.

11920 Southern Highlands Pkwy., #201

Las Vegas, NV 89141

*Attorney for Plaintiff/Counter-*  
*Defendant,, Daniel Lakes*

*Approved as to form by:*

Dated this 10 day of July 2019:

LEACH KERN GRUCHOW  
ANDERSON SONG



SEAN L. ANDERSON, ESQ.

T. CHASE PITTSBARGER, ESQ.

2525 Box Canyon Drive

Las Vegas, NV 89128

*Attorney for Cross-Defendant Liberty at*  
*Huntington Homeowners' Association*

1  
2 *Respectfully submitted by:*

3 Dated this 10<sup>th</sup> day of July, 2019

4 Ballard Spahr LLP

5 By: 

Joel E. Tasca, Esq.

6 Joseph P. Sakai, Esq.

1980 Festival Plaza Drive, Suite 900

7 Las Vegas, Nevada 89134

8 *Attorneys for U.S. Bank Trust,*  
9 *Trustee for LSF9 Master Participation*  
10 *Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

DOREEN SPEARS HARTWELL, ESQ.

Hartwell Thalacker, Ltd.

11920 Southern Highlands Pkwy., #201

Las Vegas, NV 89141

*Attorney for Plaintiff/Counter-*  
*Defendant,, Daniel Lakes*

*Approved as to form by:*

Dated this \_\_\_\_ day of July 2019:

LEACH KERN GRUCHOW  
ANDERSON SONG

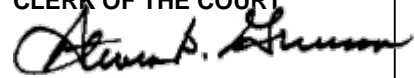
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*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL LAKES, an Individual;

Plaintiff,

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

Case No.: A-17-759016-C

Dept. No.: 28

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON  
MOTIONS FOR SUMMARY JUDGMENT**

1 PLEASE TAKE NOTICE that on the 17<sup>th</sup> day of July, 2019, the Clerk of the  
2 Court entered a **Findings of Fact and Conclusions of Law on Motions for Summary**  
3 **Judgment**, a copy of which is attached hereto.

4 DATED this 18<sup>th</sup> day of July, 2019.

5  
6 BALLARD SPAHR LLP

7 By: /s/ Joseph Sakai  
8 Joel E. Tasca  
9 Nevada Bar No. 14124  
10 Joseph P. Sakai  
11 Nevada Bar No. 13578  
12 1980 Festival Plaza Drive, Suite 900  
13 Las Vegas, Nevada 89135

14 *Attorneys for Defendant U.S. Bank Trust, Trustee*  
15 *for LSF9 Master Participation Trust*  
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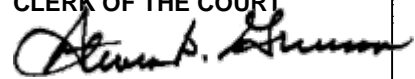
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of July, 2019, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR SUMMARY JUDGMENT**, was served via the Court's Odyssey E-File and Serve system to the following parties:

Sean L. Anderson, Esq.  
T. Chase Pittsenbarger, Esq.  
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Las Vegas, Nevada 89128  
*Attorneys for Liberty at Huntington HOA*

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/s/ M. Carlton  
An Employee of BALLARD SPAHR LLP



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Trustee for LSF9 Master Participation Trust*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DANIEL LAKES, an Individual;  
Plaintiff,

Case No.: A-17-759016-C

Dept. No.: 28

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

7/18/19



1                    **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR**  
2                    **SUMMARY JUDGMENT**

3                    Defendant/Counter-Claimant/Cross-Claimant U.S. Bank Trust, Trustee for  
4 LSF9 Master Participation Trust's (U.S. Bank) motions for summary judgment  
5 against Plaintiff, Daniel Lakes (Lakes) and Defendant/Cross-Defendant Liberty At  
6 Huntington Homeowners' Association (HOA), and the HOA's motion for summary  
7 judgment against U.S. Bank came for hearing on June 4, 2019. Doreen Spears  
8 Hartwell, Esq. appeared on behalf of Plaintiff, Chase Pittsenbarger, Esq. appeared on  
9 behalf of the HOA, and Joseph P. Sakai, Esq. appeared on behalf of U.S. Bank. The  
10 Court, having reviewed the motions, the responses in opposition, and the replies in  
11 support, and good cause appearing, makes the following findings of fact and  
12 conclusions of law.

13                    **FINDINGS OF FACT**

14                    ***The Subject Property, Note, and Deed of Trust***

- 15                    1.        Lakes filed suit for quiet title alleging that he was a bona fide purchaser  
16                    who purchased the real property located at 548 Primrose Hill Ave., Las  
17                    Vegas, NV without notice of, and not subject to, an interim assignment  
18                    of a Deed of Trust from Freddie Mac to U.S. Bank.
- 19                    2.        A deed of trust listing Rogelio Cedillo as the borrower ("Borrower");  
20                    Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC  
21                    series as the lender ("Lender"); and MERS, as beneficiary solely as  
22                    nominee for Lender and Lender's successors and assigns, was executed  
23                    on April 12, 2007, and recorded on April 16, 2007 ("Deed of Trust"). The  
24                    Deed of Trust granted Lender a security interest in real property known  
25                    as 548 Primrose Hill Ave in Las Vegas (the "Property") to secure the  
26                    repayment of a loan in the original amount of \$213,121.00 to the  
27                    Borrower (the promissory note and Deed of Trust together are the  
28                    "Loan").

2. On August 19, 2009, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Ocwen.

At the time of the HOA Sale on August 25, 2015, Ocwen was the servicer of the Loan for Freddie Mac.

3. On December 6, 2015, U.S. Bank acquired the Loan from Freddie Mac. On May 27, 2016, Ocwen recorded an assignment of the Deed of Trust to U.S. Bank. U.S. Bank is currently the beneficiary of record of the Deed of Trust and owner of the Loan.

*The HOA Foreclosure Sale and Plaintiff's Acquisition of the Property*

4. In July 2008 through April 2015, the HOA recorded a Lien for Delinquent Assessments concerning past-due assessments, followed by a Notice of Default and Election to Sell, and a Notice of Foreclosure Sale against the Property.

5. On August 25, 2015, the HOA foreclosed on its lien and sold the Property to Parcelnomics, LLC, which paid \$4,470.00 according to the Foreclosure Deed recorded on September 1, 2015.

6. On September 1, 2015, Parcelnomics recorded a Grant, Bargain, Sale Deed purporting to convey its interest in the property to Investment Deals.

7. On October 23, 2015, Noune Graeff purchased the property from Investment Deals pursuant to a recorded Grant, Bargain, Sale Deed.

8. Lakes purchased the property for Noune Graeff for \$112,000 on January 20, 2016.

9. Lakes recorded the Grant, Bargain, Sale Deed for the property on January 20, 2016, without knowledge of U.S. Bank's unrecorded 12/6/15 assignment of Deed of Trust.,

*Ocwen's Superpriority Tender to the HOA*

8. After the HOA recorded its notice of default and prior to the foreclosure sale, Ocwen, then servicer of the Loan, tendered the super-priority portion of the HOA lien to the HOA.

### Standard of Proof

2. While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, "that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

3. The HOA Sale did not extinguish the Deed of Trust because Ocwen, which was servicing the Loan at the time of the HOA sale, tendered the superpriority portion of the Lien prior to the sale. Under NRS § 116.3116(1), an HOA has a statutory lien for unpaid assessments. Also by statute, only nine-months of HOA

1 assessments are entitled to this “super-priority” status. NRS § 116.3116(2)(b)-(c). The  
2 Nevada Supreme Court in *SFR Investments*, applying the plain language of the  
3 statute, explained “[a]s to first deeds of trust, NRS § 116.3116(2) thus splits an HOA  
4 lien into two pieces, a superpriority piece and a subpriority piece.” *SFR Investments*  
5 *Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014). As explained by the  
6 *SFR* Court, “NRS 116.3116 gives a homeowners’ association (HOA) a superpriority  
7 lien on an individual homeowners’ property for up to nine months of unpaid HOA  
8 dues.” *Id.* at 409 (emphasis added). The *SFR* Court further provides the beneficiary of  
9 record of a deed of trust can preserve its interest by “determining the precise  
10 superpriority amount” and tendering it “in advance of the sale.” *Id.* at 418.

11 4. Since the *SFR Investments* decision, the Nevada Supreme Court held—  
12 again as a matter of statutory interpretation—the superpriority portion of an HOA  
13 lien does *not* include collection fees and foreclosure costs incurred by an HOA.  
14 *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings*, 373 P.3d 66, 71–72  
15 (Nev. 2016). The *Ikon Holdings* court confirmed the superpriority amount is “limited  
16 to an amount equal to the common expense assessments due during the nine months  
17 before foreclosure.” *Id.*

18 5. Here, Ocwen tendered 9 months of monthly assessments – the full  
19 superpriority debt - entitled to superpriority protection which totaled \$3241.52. Upon  
20 receipt of the check from Ocwen, the HOA, through it’s agent, Red Rocks, accepted  
21 Ocwen’s tender and negotiated the check. It cannot be disputed that U.S. Bank’s  
22 predecessor in interest, Ocwen, did exactly what it was required to under Nevada law  
23 to protect the Deed of Trust.

#### 24 *The HOA Conducted a Sub-Priority Sale*

25 6. Because Ocwen satisfied the superpriority debt, the HOA foreclosed a  
26 subpriority lien and passed title subject to the Deed of Trust.

27 7. Under NRS 116.3116, an association's lien is split "into two pieces, a  
28 superpriority piece and a sub-priority piece.” *SFR Investments Pool 1, LLC v. U.S.*

1 *Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 410 (2014). "The superpriority piece"  
2 is "prior to a first deed of trust." *Id.* "The subpriority piece, consisting of all other  
3 HOA fees or assessments, is subordinate to a first deed of trust." *Id.*

4 8. The Nevada supreme court has made clear an association can choose to  
5 foreclose on either the subpriority or superpriority portion of its lien. *See Shadow*  
6 *Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
7 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority lien  
8 portion, the sale also would extinguish other subordinate interests in the property.")  
9 (emphasis added); *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 382 P.3d 911  
10 (Table), 2016 WL 4543202 (Nev. 2016) (vacated on other grounds) (*Stone Hollow II*).  
11 An association's foreclosure of its subpriority lien does not extinguish a senior deed of  
12 trust. *See Stone Hollow*, 382 P.3d at 911.

13 9. The Nevada supreme court's holding in *SFR Investments* that an  
14 association's foreclosure of its superpriority lien could extinguish a senior deed of  
15 trust does not mean every association's foreclosure has such an effect – only proper  
16 superpriority foreclosures do.

17 10. Here, the evidence shows the HOA conducted a subpriority foreclosure,  
18 which could not extinguish the Deed of Trust. Accordingly, Plaintiff purchased the  
19 Property subject to BANA's Deed of Trust.

20 11. Lakes argument that U.S. Bank's interest in the Deed of Trust is void  
21 and unenforceable as to him pursuant to N.R.S. § 111.325 is without merit because  
22 the timing of the Assignment is immaterial to the HOA Sale not extinguishing the  
23 Deed of Trust. .

#### 24 ***Remaining Issues***

25 12. U.S. Bank dropped its federal foreclosure bar arguments as being not  
26 applicable based on the chronology of events in this matter.

27 13. Any remaining issues raised in U.S. Bank's motion for summary  
28 judgment against Plaintiff are moot.

1 14. U.S. Bank's motion for summary judgment against the HOA is also  
2 moot.

3 15. The HOA's motion for summary judgment against U.S. Bank is also  
4 moot.

5 *The Deed of Trust Remains a Valid, Secured Encumbrance*

6 16. The HOA Sale did not extinguish the Deed of Trust.

7 17. The Deed of Trust remains a valid, secured encumbrance against the  
8 Property.

9 18. All persons or entities whom were granted title or an interest in the  
10 Property through the HOA Sale took such title or interest subject to the Deed of  
11 Trust.

12 19. U.S. Bank's Motion for Summary Judgment against Plaintiff is granted.


13 20. U.S. Bank's Motion for Summary Judgment against the HOA is denied  
14 as moot.

15 21. The HOA's Motion for Summary Judgment against U.S. Bank is denied  
16 as moot.

17 *Rule 54(b) Certification*

18 There being no reason for delay, this Order should be certified as final  
19 pursuant to NRCP 54(b). Accordingly, this Order is a final judgment for purposes of  
20 appeal.

21 DATED: this 12 day of July, 2019.

22   
23 DISTRICT COURT JUDGE MF  
24 RONALD J. ISRAEL  
25 A-17-759016-C  
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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP

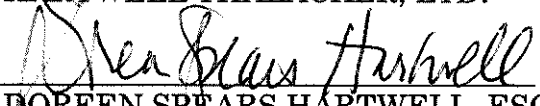
By: \_\_\_\_\_  
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Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

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*Attorney for Plaintiff/Counter-  
Defendant,, Daniel Lakes*

*Approved as to form by:*

Dated this \_\_\_\_ day of July 2019:

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ANDERSON SONG

\_\_\_\_\_  
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*Attorney for Cross-Defendant Liberty at  
Huntington Homeowners' Association*

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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP

By:

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Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

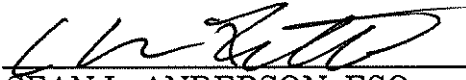
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*Attorney for Plaintiff/Counter-  
Defendant,, Daniel Lakes*

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Dated this 10 day of July 2019:

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*Approved as to form by:*

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10 *Attorney for Plaintiff*

11 **EIGHT JUDICIAL DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 DANIEL LAKES, an individual;

14 Plaintiff,

15 v.

16 BANK OF AMERICA N.A., successor-by-  
17 merger to Countrywide Mortgage Ventures,  
18 LLC; U.S. BANK TRUST, Trustee for LSF9  
19 Master Participation Trust; ROGELIO  
20 CEDILLO, an individual; PARCELNOMICS,  
21 LLC, a Nevada limited liability company d/b/a  
22 INVESTMENT DEALS; NOUNE GRAEFF,  
23 an individual; DOES 1-10, inclusive; and ROE  
24 CORPORATIONS 1-10, inclusive;

25 Defendants.

Case No.: A-17-759016-C

Dept. No.:

Department 28

**Arbitration Exemption Requested:  
Interest or Estate In Real Property  
Claimed NRS 40.010**

26 **COMPLAINT**

27 COMES NOW, the Plaintiff, DANIEL LAKES, individually, by and through his counsel,  
28 Lauren A. Davis, Esq. of the law firm of the Southern Nevada Senior Law Program, and hereby  
29 against the Defendants, herein, alleges as follows:

30 **JURISDICTION**

31 1. Plaintiff, DANIEL LAKES, is and was at all times relevant herein a resident of Clark  
32 County Nevada.

270.00 CHECK# 953220519  
CLERK #57

RECEIVED

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CLERK OF THE COURT

1 2. Upon information and belief, Defendant, BANK OF AMERICA, N.A. (hereinafter  
2 "BOA") is a national banking association headquartered in Charlotte, North Carolina and in or  
3 around 2011, BOA acquired Countrywide KB Home Loans, a Countrywide Mortgage Ventures,  
4 LLC series (hereinafter "Countrywide") by merger. Thus, upon information and belief, BOA is  
5 the successor in interest to Countrywide, which was at all times relevant herein authorized to do  
6 business and did in fact do business in Clark County, Nevada. Upon information and belief BOA  
7 is the current beneficiary under the Line of Credit Deed of Trust described below.

9 3. Upon information and belief Defendant, U.S. BANK TRUST, Trustee for LSF9 Master  
10 Participation Trust, is and was at all times relevant herein authorized to do business and did in  
11 fact do business in Clark County, Nevada. U.S. BANK TRUST is the current beneficiary under  
12 the Deed of Trust described below.

14 4. Upon information and belief Defendant, ROGELIO CEDILLO, an individual, is and was  
15 at all times relevant herein a resident of Clark County, Nevada. ROGELIO CEDILLO was the  
16 borrower under the Deed of Trust and the Line of Credit Deed of Trust described below as well  
17 as the former owner of the Property.

18 5. Upon information and belief Defendant, PARCELNOMICS, LLC d/b/a/ INVESTMENT  
19 DEALS, a Nevada limited liability company, was at all times relevant herein authorized to do  
20 business and did in fact do business in Clark County, Nevada. PARCELNOMICS, LLC d/b/a/  
21 INVESTMENT DEALS is a former owner of the Property described below.

23 6. Upon information and belief Defendant, NOUNE GRAEFF, an individual, is and was at  
24 all times relevant herein a resident of Clark County, Nevada. NOUNE GRAEFF is a former  
25 owner of the Property described below.

26 7. That the true names and capacities, whether individual, corporate, associate, or otherwise,  
27 of Defendants DOES I through X and ROE CORPORATIONS I through X inclusive, are  
28

1 unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. When the  
2 true names and capacities are discovered, Plaintiff will seek leave to amend this Complaint and  
3 proceedings herein to substitute the true names and capacities of said Defendants. Plaintiff is  
4 informed and believes, and thereon alleges, that each of the Defendants designated herein as  
5 DOE and ROE CORPORATION have claims that are inferior to Plaintiff's ownership of the  
6 Property.  
7

8 8. This Complaint concerns a certain parcel of real estate situate in the City of Las Vegas,  
9 County of Clark, and commonly known as 548 Primrose Hill Avenue, more particularly  
10 described as: APN 176-18-516-089, Huntington Village B in Unit 3 at Rhodes Ranch, Plat Book  
11 129 Page 58, Lot 120 (hereinafter the "Property").  
12

### 13 VENUE

14 9. This Complaint concerns a certain parcel of real estate situate in Clark County, Nevada,  
15 namely, the Property. Therefore, venue properly lies in the Eighth Judicial District Court of  
16 Clark County, Nevada.  
17

### 18 FACTS

19 10. Plaintiff, DANIEL LAKES, is the current owner of the Property.

20 11. Prior to Plaintiff's acquisition of title, ROGELIO CEDILLO took title to the Property via  
21 a Grant, Bargain, Sale Deed executed on April 12, 2007 and recorded on April 16, 2007  
22 (Instrument No. 20070416-0001096).

23 12. On April 16, 2007, Countrywide recorded a Deed of Trust against the Property naming  
24 ROGELIO CEDILLO as borrower; naming First American Title Company of Nevada as Trustee;  
25 naming Countrywide as Lender and the Mortgage Electronic Registration Systems, Inc., solely  
26 as a nominee for Countrywide, as Beneficiary; and listing a principal amount of \$213,121.00  
27 (Instrument No. 20070416-0001097) (hereinafter the "Deed of Trust").  
28

1 13. Also on April 16, 2007, Countrywide recorded a Deed of Trust (Line of Credit) against  
2 the Property naming ROGELIO CEDILLO as borrower; naming First American Title Company  
3 of Nevada as Trustee; naming Countrywide as Lender and the Mortgage Electronic Registration  
4 Systems, Inc., solely as a nominee for Countrywide, as Beneficiary; and listing a principal  
5 amount of \$53,281.00 (Instrument No. 20070416-0001098) (hereinafter the "Line of Credit Deed  
6 of Trust").  
7

8 14. The Line of Credit Deed of Trust dictates that it is "subject and subordinate to" the Deed  
9 of Trust.

10 15. On July 9, 2008, Red Rock Financial Services (hereinafter "RRFS"), in its capacity as  
11 agent for Liberty at Huntington Homeowners Association (hereinafter "LHHOA") recorded a  
12 Lien for Delinquent Assessments against the Property for past due HOA assessments in the  
13 amount of \$625.04 (Instrument No. 20080709-0001377).  
14

15 16. On August 29, 2008, RRFS, in its capacity as agent for LHHOA, recorded a Notice of  
16 Default and Election to Sell Pursuant to the Lien for Delinquent Assessments claiming a total  
17 amount owed of \$1,668.57 (Instrument No. 20080829-0002732) (hereinafter the "HOA Notice  
18 of Default").  
19

20 17. On August 19, 2009, Mortgage Electronic Registration Systems, Inc., solely as a nominee  
21 for Countrywide, as Beneficiary, assigned the Deed of Trust to Ocwen Loan Servicing, LLC  
22 (Instrument No. 20090819-0003864).  
23

24 18. On August 19, 2009, Ocwen Loan Servicing, LLC substituted Cooper Castle Law Firm,  
25 LLP in place of First American Title Company of Nevada as Trustee under the Deed of Trust  
26 (Instrument No. 20090819-0003865).  
27

28 19. On August 19, 2009, Cooper Castle Law Firm, LLP recorded a Notice of Breach and  
Default and of Election to Cause Sale of Real Property Under Deed of Trust, in response to the

1 default under Deed of Trust (Instrument No. 20090819-0003866) (hereinafter the "Mortgage  
2 Notice of Default")

3 20. Upon information and belief, in or around 2011, Defendant, BOA acquired Countrywide  
4 by merger. Thus, upon information and belief BOA NA is the successor in interest to  
5 Countrywide. The business of BOA and its subsidiaries and affiliates includes origination and  
6 servicing of mortgage loans.

7  
8 21. Upon information and belief, as successor-by-merger, BOA became the Beneficiary  
9 under the Line of Credit Deed of Trust.

10 22. On October 27, 2014, Ocwen Loan Servicing, LLC substituted Quality Loan Service  
11 Corporation in place of Cooper Castle Law Firm, LLP as Trustee under the Deed of Trust  
12 (Instrument No. 20141027-0000511).

13  
14 23. On April 24, 2015, RRFS, in its capacity as agent for LHHOA, recorded a Notice of  
15 Foreclosure Sale Under the Lien for Delinquent Assessments listing a lien amount owed of  
16 \$7,161.36 (Instrument No. 20150424-0002386).

17 24. On August 18, 2015 Quality Loan Servicing Corporation recorded a Notice of Rescission  
18 of Notice of Default applicable to the Mortgage Notice of Default referenced in Paragraph 19 of  
19 this Complaint (Instrument No. 20150818-0000220).

20  
21 25. On August 25, 2015, the PARCELNOMICS, LLC purchased the Property at the  
22 foreclosure sale for a purchase price of \$4,470.00.

23 26. Following the foreclosure sale, PARCELNOMICS, LLC acquired title to the Property via  
24 a Foreclosure Deed executed on August 27, 2015 and recorded on September 1, 2015  
25 (Instrument No. 20150901-0000488).

26  
27 27. Also on September 1, 2015, for no consideration, PARCELNOMICS, LLC executed and  
28 recorded a Grant, Bargain, Sale Deed conveying the Property to Investment Deals, which

1 according to Clark County records is the fictitious firm name for PARCELNOMICS, LLC  
2 (Instrument No. 20150901-0000516).

3 28. For valuable consideration, Investment Deals conveyed title to NOUNE GRAEFF, a  
4 single woman, via a Grant, Bargain, Sale Deed executed and recorded on October 23, 2015  
5 (Instrument No. 20151023-0000841).

6 29. For valuable consideration, NOUNE GRAEFF conveyed title to Plaintiff, DANIEL  
7 LAKES, a single man, via a Grant, Bargain, Sale Deed executed and recorded on January 20,  
8 2016 (Instrument No. 20160120-0001525).

9 30. On May 27, 2016 Owen Loan Servicing Corporation assigned the Deed of Trust to U.S.  
10 Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust (Instrument No. 20160527-  
11 0002171).

12 31. In July of 2016, Plaintiff received in the mail an unrecorded copy of a "Notice of Breach  
13 and Election to Cause Sale of Real Property under Deed of Trust" (hereinafter the "Notice of  
14 Default") threatening foreclosure against the Property in relation to the debt secured by the Deed  
15 of Trust.

16 32. This Notice of Default was never recorded against the Property.

17 33. The interest of each of the Defendants has been extinguished by reason of the foreclosure  
18 sale resulting from a delinquency in assessments owed to LHHA by former owner, ROGELIO  
19 CEDILLO, and subsequent voluntary title transfers.

20 34. Upon information and belief, the foreclosure on the delinquent assessments was  
21 conducted pursuant to NRS Chapter 116, and upon information and belief, complied with all  
22 legal requirements, including, but not limited to, recording and mailing the HOA Notice of  
23 Default, and recording, posting and publication of the Notice of Foreclosure Sale.

24 35. Upon information and belief, prior to the LHHA foreclosure sale, no individual or  
25

1 entity with an interest in the Property paid the super-priority portion of the LHHOA lien  
2 representing 9 months of delinquent assessments.

3  
4 **CLAIMS FOR RELIEF**  
5 **FIRST CAUSE OF ACTION**  
6 **(Quiet Title as to all Defendants)**

7 36. Plaintiff realleges and incorporates by reference all the allegations of paragraphs 1  
8 through 35 above in their entirety.

9 37. Upon information and belief, LHHOA properly noticed and conducted a foreclosure of  
10 the Property.

11 38. Plaintiff purchased the Property and shortly thereafter was threatened with a foreclosure  
12 action as to the debts that were extinguished pursuant to the foreclosure sale.

13 39. Pursuant to NRS 40.010 Plaintiff is entitled to a declaratory judgment from this Court  
14 establishing him as the legal owner of the Property, free and clear from all encumbrances and  
15 liens.

16 40. In rendering such judgment, Plaintiff requests the Court declare that none of the  
17 Defendants herein named has any right, title, or interest in the property and that Defendants are  
18 forever enjoined from asserting any right, title, interest, or claim in the Property.

19 41. As a result of Defendants' conduct, Plaintiffs have been forced to retain counsel to  
20 prosecute this action and are entitled to recover reasonable attorney's fees and costs of suit.

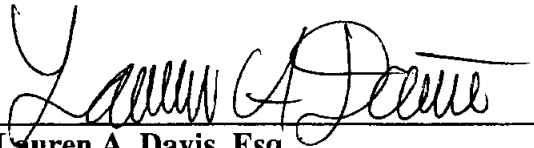
21  
22 **PRAYER FOR RELIEF**

23 42. WHEREFORE, Plaintiff prays judgment against the Defendants, each of them, singularly  
24 and together, as follows:

- 25 A. For quiet title of the Property, granting clear title to Property to DANIEL LAKES;  
26 B. For a declaratory judgment from this Court establishing him as the legal owner of the  
27 Property, free and clear from all encumbrances and liens.

- 1 C. For a determination and declaration that Defendants have no estate, right, title,  
2 interest, or claim in the Property;  
3 D. For a judgment forever enjoining Defendants from asserting any right, title, interest,  
4 or claim in the Property;  
5 E. For Plaintiff's costs of this lawsuit;  
6 F. For reasonable court costs, legal fees, and attorney's fees incurred herein, as  
7 permitted by law;  
8 G. For compensatory and special damages in excess of \$15,000; and  
9 H. For such other and further relief as this court deems appropriate.

10 Dated this day, July 25, 2017.



**Lauren A. Davis, Esq.**

Nevada Bar No. 13471

Southern Nevada Senior Law Program

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ldavis@snsnp.org

*Attorney for Plaintiff*

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**VERIFICATION OF COMPLAINT**

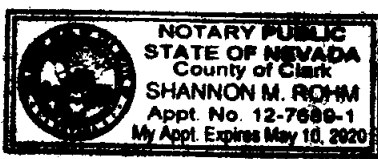
State of Nevada                    )  
  )  
County of Clark                    )

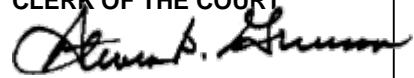
I, DANIEL LAKES, the Complainant named in the foregoing Complaint being duly sworn, say that the facts and allegations contained therein are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, I believe them to be true.

*Daniel Lakes*  
DANIEL LAKES

Taken, sworn to and subscribed before me this 15<sup>th</sup> day of June, 2017.

*Shannon M. Rohm*  
NOTARY PUBLIC





1 **AACC**  
2 Abran E. Vigil  
3 Nevada Bar No. 7548  
4 Joel E. Tasca  
5 Nevada Bar No. 14124  
6 Holly Ann Priest  
7 Nevada Bar No. 13226  
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15 priesth@ballardspahr.com  
16  
17 *Attorneys for Defendant U.S. Bank Trust,*  
18 *Trustee for LSF9 Master Participation Trust*

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

13 DANIEL LAKES, an Individual;

14 Plaintiff,

15 v.

16 BANK OF AMERICA, N.A., successor-by-  
17 merger to Countrywide Mortgage  
18 Ventures, LLC; U.S. BANK TRUST,  
19 TRUSTEE FOR LSF9 MASTER  
20 PARTICIPATION TRUST; ROGELIO  
21 CEDILLO, an individual;  
22 PARCELNOMICS, LLC, a Nevada limited  
23 liability company d/b/a INVESTMENT  
24 DEALS; NOUNE GRAEFF, an individual;  
25 DOES I-X, inclusive; and ROE  
26 CORPORATIONS, I-X, inclusive,

27 Defendants.

Case No.: A-17-759016-C

Dept. No.: 28

BALLARD SPAHR LLP  
1980 FESTIVAL PLAZA DRIVE, SUITE 900  
LAS VEGAS, NEVADA 89135  
(702) 471-7000 FAX (702) 471-7070

1 U.S. BANK TRUST, TRUSTEE FOR  
2 LSF9 MASTER PARTICIPATION  
TRUST;

3 Counter-claimant

4 v.

5 DANIEL LAKES, an individual;  
6 PARCELNOMICS, LLC; NOUNE  
7 GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

8 Counter-defendants.

9 **U.S. BANK TRUST'S AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND**  
10 **AMENDED COUNTERCLAIM**

11 U.S. Bank Trust, Trustee for LSF9 Master Participation Trust ("U.S. Bank")  
12 answers Plaintiff Daniel Lakes' ("Plaintiff") Complaint and submits a counterclaim  
13 as follows:

14 1. U.S. Bank is without sufficient knowledge or information to form a  
15 belief as to the truth of the allegations contained in Paragraph 1 and therefore denies  
16 them.

17 2. U.S. Bank is without sufficient knowledge or information to form a  
18 belief as to the truth of the allegations contained in Paragraph 2 and therefore denies  
19 them.

20 3. US Bank admits that it is the current beneficiary under the Deed of  
21 Trust as set forth herein. Except as admitted, the allegations of Paragraph 3 are  
22 denied.

23 4. U.S. Bank is without sufficient knowledge or information to form a  
24 belief as to the truth of the allegations contained in Paragraph 4 and therefore denies  
25 them.

26 5. U.S. Bank is without sufficient knowledge or information to form a  
27 belief as to the truth of the allegations contained in Paragraph 5 and therefore denies  
28 them.

7. U.S. Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies them.

7           8.       The allegations contained in Paragraph 8 state legal conclusions for  
8       which no response is required, but to the extent they call for a response, they are  
9       denied. To the extent the allegations of Paragraph 8 reference written documents  
10      that speak for themselves, no response is required. To the extent that the allegations  
11      of Paragraph 8 are inconsistent with the written documents or in any way attempt to  
12      characterize such documents, U.S. Bank denies the allegations.

9. The allegations contained in Paragraph 9 state legal conclusions for which no response is required; to the extent that the allegations of Paragraph 9 require a response, the allegations are denied.

18 10. U.S. Bank denies the allegations in Paragraph 10.

11. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent therewith. The remaining allegations contained in Paragraph 11 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 11 does require a response, the U.S. Bank denies the remaining allegations contained in Paragraph 11 of the Complaint.

24           12.    U.S. Banks states that the recorded document speaks for itself and  
25   denies any allegation inconsistent with this record.

13. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent with this record.

1           14. U.S. Bank states that the recorded document speaks for itself and  
2 denies any allegation inconsistent with this record. The remaining allegations  
3 contained in Paragraph 14 state legal conclusions for which no response is required;  
4 provided however, that to the extent Paragraph 14 does require a response, U.S.  
5 Bank denies the remaining allegations contained in Paragraph 14 of the Complaint.

6           15. U.S. Bank states that the recorded document speaks for itself and  
7 denies any allegation inconsistent with this record. The remaining allegations  
8 contained in Paragraph 15 state legal conclusions for which no response is required;  
9 provided however, that to the extent Paragraph 15 does require a response, U.S.  
10 Bank denies the remaining allegations contained in Paragraph 15 of the Complaint.

11           16. U.S. Bank states that the recorded document speaks for itself and  
12 denies any allegation inconsistent with this record. The remaining allegations  
13 contained in Paragraph 16 state legal conclusions for which no response is required;  
14 provided however, that to the extent Paragraph 16 does require a response, U.S.  
15 Bank denies the remaining allegations contained in Paragraph 16 of the Complaint.

16           17. U.S. Bank states that the recorded document speaks for itself and  
17 denies any allegation inconsistent with this record. The remaining allegations  
18 contained in Paragraph 17 state legal conclusions for which no response is required;  
19 provided however, that to the extent Paragraph 17 does require a response, U.S.  
20 Bank denies the remaining allegations contained in Paragraph 17 of the Complaint.

21           18. U.S. Banks states the recorded document speaks for itself and denies  
22 any allegation inconsistent with this record.

23           19. U.S. Bank states that the recorded document speaks for itself and  
24 denies any allegation inconsistent with this record. The remaining allegations  
25 contained in Paragraph 19 state legal conclusions for which no response is required;  
26 provided however, that to the extent Paragraph 19 does require a response, U.S.  
27 Bank denies the remaining allegations contained in Paragraph 19 of the Complaint.

28

20. U.S. Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 and therefore denies them.

21. U.S. Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 therefore denies them.

22. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent with this record.

23. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent with this record. The remaining allegations contained in Paragraph 23 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 23 does require a response, U.S. Bank denies the remaining allegations contained in Paragraph 23 of the Complaint.

24. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent with this record. The remaining allegations contained in Paragraph 24 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 24 does require a response, U.S. Bank denies the remaining allegations contained in Paragraph 24 of the Complaint.

25. U.S. Bank denies the allegations in Paragraph 25.

26. U.S. Bank denies the allegations of Paragraph 26.

27. U.S. Bank states that the recorded document speaks for itself and denies any allegation inconsistent with this record. U.S. Bank lacks sufficient information to admit or deny the remaining allegations of Paragraph 27 and therefore denies them.

28. U.S. Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 and therefore denies them.

1           29. U.S. Bank states that the recorded document speaks for itself and  
2 denies any allegation inconsistent with this record. U.S. Bank lacks sufficient  
3 information to admit or deny the remaining allegations of Paragraph 29 and  
4 therefore denies them.

5           30. U.S. Bank states that the recorded document speaks for itself and  
6 denies any allegation inconsistent with this record.

7           31. U.S. Bank is without sufficient knowledge or information to form a  
8 belief as to the truth of the allegations contained in Paragraph 31 and therefore  
9 denies them.

10          32. U.S. Bank is without sufficient knowledge or information to form a  
11 belief as to the truth of the allegations contained in Paragraph 32 and therefore  
12 denies them.

13          33. To the extent to the allegations in Paragraph 33 pertain to U.S. Bank,  
14 U.S. Bank denies the allegations. U.S. Bank lacks sufficient information to admit or  
15 deny the remaining allegations of Paragraph 33 and therefore denies them.

16          34. The allegations contained in Paragraph 34 state legal conclusions for  
17 which no response is required; provided however, that to the extent Paragraph 34  
18 does require a response, U.S. Bank denies the allegations contained in Paragraph 34  
19 of the Complaint.

20          35. U.S. Bank lacks sufficient information to admit or deny the allegations  
21 of Paragraph 35 and therefore denies them.

22                                   **CLAIMS FOR RELIEF**  
23                                   **FIRST CAUSE OF ACTION**  
                                  **(Quiet Title as to All Defendants)**

24          36. Answering Paragraph 36, U.S. Bank repeats, re-alleges and  
25 incorporates each of its admissions, denials, or other responses to the Paragraphs 1  
26 through 35, referenced therein as if set forth at length and in full.

1 37. U.S. Bank is without sufficient knowledge or information to form a  
2 belief as to the truth of the allegations contained in Paragraph 32 and therefore  
3 denies them.

4 38. U.S. Bank is without sufficient knowledge or information to form a  
5 belief as to the truth of the allegations contained in Paragraph 38 and therefore  
6 denies them.

7 39. U.S. Bank denies the allegations in Paragraph 39.

8 40. U.S. Bank admits that Plaintiff is seeking a declaration from the Court.  
9 U.S. Bank denies that Plaintiff is entitled to such relief.

10 41. U.S. Bank is without sufficient knowledge or information to form a  
11 belief as to the truth of the allegations contained in Paragraph 41 and therefore  
12 denies them.

13 U.S. Bank reserves the right to amend this Answer under the Nevada Rules of  
14 Civil Procedure as further facts become known. Every allegation not expressly  
15 admitted herein is denied.

16 **AFFIRMATIVE DEFENSES**

17 U.S. Bank continues to investigate Plaintiff's claims and does not waive any  
18 affirmative defenses. U.S. Banks reserves its right to amend this Answer to  
19 Plaintiff's Complaint and add any subsequently discovered affirmative defenses or  
20 claims. Without assuming the burden of proof where it otherwise rests with Plaintiff,  
21 U.S. Bank asserts the following affirmative defenses:

22 **FIRST AFFIRMATIVE DEFENSE**

23 Plaintiff failed to state facts sufficient to constitute any cause of action against  
24 U.S. Bank.

25 **SECOND AFFIRMATIVE DEFENSE**

26 Plaintiff's claims are barred in whole or in part because of the Plaintiff's  
27 failure to take reasonable steps to protect itself from harm and to mitigate its alleged  
28 damages, if any.

**THIRD AFFIRMATIVE DEFENSE**

U.S. Bank avers the affirmative defense of unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116, are void for vagueness as applied to this matter.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff purchased an interest in the property with notice of the valid interest of the Senior Deed of Trust recorded against the property and/or of sale improprieties, and is not a *bona fide* purchaser for value.

**SIXTH AFFIRMATIVE DEFENSE**

The super-priority lien was satisfied prior to the Liberty at Huntington Homeowners Association's (the "HOA") foreclosure under the doctrines of tender, estoppel, laches, or waiver.

**SEVENTH AFFIRMATIVE DEFENSE**

The HOA foreclosure sale was not reasonable, and the circumstances of the sale of the Property breached the Association's obligation of good faith under NRS 116.1113 and duty to act in a reasonable manner.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to bring some or all of its claims and causes of action.

**NINTH AFFIRMATIVE DEFENSE**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

**TENTH AFFIRMATIVE DEFENSE**

The Association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to provide sufficient notice of the "super-priority" assessment amounts in accordance with the requirements of NRS Chapter 116, federal law, or constitutional law.

**ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that this defense may become applicable after discovery, U.S. Bank asserts that the HOA foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to provide proper notice of the sale in accordance with the requirements of NRS Chapter 116.

**TWELFTH AFFIRMATIVE DEFENSE**

The HOA foreclosure sale is void or voidable because the price paid at the sale was grossly inadequate.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To the extent that this defense may become applicable after discovery, U.S. Bank asserts that the HOA foreclosure sale is void, voidable, or otherwise insufficient to extinguish the Deed of Trust because the sale was tainted by fraud, oppression, or unfairness.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff acquired only the HOA's interest, not the prior homeowners' interest, through the HOA foreclosure sale.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

To the extent that U.S. Bank has continued to expend funds and resources to maintain and preserve the Property after the alleged HOA foreclosure sale, it is entitled to recoup those amounts.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim that he has free and clear title to the Property is barred by 12 U.S.C. Section 4617(j)(3), which precludes a homeowners association sale from extinguishing the Federal Home Loan Mortgage Corporation's ("Freddie Mac") interest in the property and preempts any state law to the contrary.

**NINETEENTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, U.S. Bank reserves its right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

**COUNTERCLAIM AND CROSS-CLAIMS**

The Counter-Claimant/Cross-Claimant, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank") states as follows:

**INTRODUCTION**

1. This action concerns the parties' rights to real property located at 548 Primrose Hill Ave., Las Vegas, Nevada 89178, APN 176-18-516-089 (the "Property").

2. Counterclaimant U.S. Bank seeks declaratory judgment and to quiet title. U.S. Bank seeks a declaratory judgment that a homeowner's association ("HOA") foreclosure sale did not extinguish its first lien deed of trust owned by Freddie Mac at the time of the HOA foreclosure sale because a federal statute prevents an HOA foreclosure sale from extinguishing a lien owned by Freddie Mac while Freddie Mac is under the conservatorship of the Federal Housing Finance Agency ("FHFA" or "Conservator").

3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 et seq. HERA includes an array of broad privileges, immunities, and exemptions from otherwise applicable law that facilitate the Conservator's exercise of its statutory powers. Here, 12 U.S.C. § 4617(j)(3) mandates that while Freddie Mac is in conservatorship, none of its property "shall be subject to . . . foreclosure[] . . . without the consent of [FHFA]."

4. A Nevada statute provides HOAs with superpriority liens that HOAs may foreclose to recover up to nine months of delinquent HOA dues. NRS 116.3116(2). The Nevada Supreme Court has held that a foreclosure authorized and properly conducted under NRS 116.3116 can extinguish other interests in the

underlying property, including prior recorded deeds of trust. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014).

5. The Conservator has not consented to the extinguishment of Freddie Mac's interest in any property that has been the subject of an HOA foreclosure sale.

6. Because Section 4617(j)(3) preempts NRS 116.3116, HOA foreclosure sales did not extinguish the Deed of Trust encumbering the subject property, and, therefore the HOA foreclosed subject to that Deed of Trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortgage Ass'n*, 414 P.3d 813 (Nev. 2018).

### **PARTIES**

7. U.S. Bank is a national banking association organized and existing under the laws of the United States of America and sometimes doing business in the State of Nevada.

8. Based upon information and belief, Plaintiff, Daniel Lakes ("Lakes") is a citizen and resident of the State of Nevada.

9. Based on information and belief, Rogelio Cedillo ("Borrower") is a citizen and resident of the State of Nevada.

10. Based upon information and belief, Noune Graeff is a citizen and resident of the State of Nevada.

11. Parcelnomics, LLC ("Parcelnomics") is a Nevada Limited Liability Company formed under the laws of the State of Nevada and at all times herein was doing business in the State of Nevada.

12. Liberty at Huntington Homeowners Association (the "HOA") conducted the HOA sale complained of herein as is joined as a party pursuant to N.R.C.P. 19(a).

13. Investment Deals is joined as a party pursuant to N.R.C.P. 19(a).

### **JURISDICTION AND VENUE**

14. The Court has personal jurisdiction over the Counter-Defendants and the Cross-Defendants because this lawsuit arises out of and is connected with the purposeful purchase of interests in property sited in Nevada. Moreover, the Counter-

1 Defendant and the Cross-Defendants are Nevada citizens with a principal place of  
2 business in Nevada or foreign citizens doing business in Nevada.

3 **GENERAL ALLEGATIONS**

4 **A. The Property and the Loan**

5 15. On or about April 16, 2017, Rogelio Cedillo ("Borrower") obtained a loan  
6 from Countrywide KB Home Loan, a Countrywide Mortgage Ventures, LLC in the  
7 amount of \$213,121.00, secured by a deed of trust recorded against real property  
8 commonly known as 548 Primrose Hill Ave., Las Vegas, Nevada 89178 (the  
9 "Property") as Document No. 200704160001097 in the office of the Clark County  
10 Recorder (the "Deed of Trust"; the promissory note and Deed of Trust together are  
11 the "Loan").

12 16. On August 19, 2009, the Deed of Trust was assigned to Ocwen Loan  
13 Servicing, LLC ("Ocwen") via an Assignment of Deed of Trust, which was recorded  
14 against the Property as Document No. 200908190003864 in the office of the Clark  
15 County Recorder.

16 17. At all times relevant hereto, including the date of the HOA Foreclosure  
17 Sale, Freddie Mac was the owner of the Loan, including the Note and Deed of Trust,  
18 and remained so until May 27, 2016, when U.S. Bank acquired the Loan.

19 18. On September 6, 2008, the Director of FHFA, exercising the authority  
20 conferred on the Director in HERA, placed Freddie Mac into conservatorship and  
21 appointed FHFA as Conservator. In that capacity, FHFA has succeeded to "all  
22 rights, titles, powers, and privileges of [Freddie Mac]," including, but not limited to,  
23 the authority to bring suits on behalf of and/or for the benefit of Freddie Mac. 12  
24 U.S.C. § 4617(b)(2)(A).

25 19. At the time of the HOA Foreclosure Sale, on August 25, 2015, Ocwen  
26 was the servicer of the Loan for Freddie Mac, and in that capacity was record  
27 beneficiary of the Deed of Trust for Freddie Mac.  
28

20. On May 27, 2016, the Deed of Trust was assigned to U.S. Bank via an Assignment of Deed of Trust, which was recorded against the Property as Document No. 201605270002171 in the office of the Clark County Recorder.

**B. The HOA Lien and Foreclosure Sale.**

21. On or about May 13, 2015, Ocwen, on behalf of Freddie Mac and through counsel, tendered at least nine months of delinquent assessment and charges, pursuant to NRS 116.3116 by sending a check to the HOA's then agent, Red Rock Financial Services ("Red Rock").

22. The HOA, through its agent Red Rock, accepted the tendered check from Ocwen and negotiated the same, thereby curing the HOA default prior to the HOA sale.

23. Upon information and belief, a foreclosure sale was conducted by the HOA on the Property on August 25, 2015 (the "HOA Sale") and a Foreclosure Deed was recorded against the Property as Document No. 201509010000488.

24. Upon information and belief, the Parcelnomics, LLC purported to purchase an interest in the Property at the HOA Sale for \$4,470.00.

25. The Foreclosure Deed states, in part, that the HOA conveyed, without warranty, "its right, title and interest in" the Property.

26. Subsequent to the HOA Sale, Parcelnomics, LLC conveyed its purported interest in the Property to Investment Deals through a Grant, Bargain, Sale Deed recorded as Document No. 201509010000516 in the Clark County Recorder.

27. Investments Deals conveyed its purported interest in the Property to Noun Graeff through a Grant, Bargain, Sale Deed recorded as Document No. 201510230000841 in the Clark County Recorder.

28. Noun Graeff conveyed his purported interest in the Property to Plaintiff through a Grant, Bargain, Sale Deed recorded as Document No. 201605270002171 in the Clark County Recorder.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief)**

29. U.S. Bank repeats and re-alleges the allegations set forth above.

30. Pursuant to NRS 30.010 et seq., this Court is empowered to declare the rights and legal relations of the parties in this matter, both generally and in relation to the foreclosure sale and the Property.

31. The Deed of Trust is a first secured interest in the Property. Freddie Mac owned the Deed of Trust at the time of the foreclosure and Ocwen had an interest in the Deed of Trust in its capacity as servicer for Freddie Mac and beneficiary of record of the Deed of Trust at the time of the HOA Foreclosure Sale.

32. FHFA is an agency of the federal government of the United States and is also the Conservator for Freddie Mac.

33. Upon its appointment, the Conservator succeeded by law to all of Freddie Mac's "rights, titles, powers, and privileges." 12 U.S.C. § 4617 (b)(2)(A)(i).

34. During the Conservatorship, "no property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure or sale without the consent of the [FHFA], nor shall any involuntary lien attach to the property of [FHFA]." 12 U.S.C. § 4617(j)(3).

35. Freddie Mac's secured interest in the Property as owner of the Deed of Trust was the property of the FHFA at the time of the foreclosure sale. *See, e.g., Skylights v. Byron*, 112 F. Supp. 3d at 1155 ("[T]he property of [Freddie Mac] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions."); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169, at \*3 (D. Nev. July 14, 2015) ("Fannie Mae has held an interest in the Property since [it purchased the associated mortgage] on December 1, 2006.").

1           36. Applying NRS 116 or other state law in a manner that extinguishes  
2 Freddie Mac's first position Deed of Trust when the foreclosure sale took place  
3 violates 12 U.S.C. § 4617(j)(3).

4           37. 12 U.S.C. § 4617(j)(3) preempted any state law that would permit a  
5 foreclosure on a superpriority lien to extinguish a first secured interest of Freddie  
6 Mac while it is under FHFA's conservatorship.

7           38. FHFA did not consent to any purported extinguishment of Freddie  
8 Mac's Deed of Trust. See FHFA's Statement on HOA Super-Priority Lien  
9 Foreclosures dated Apr. 21, 2015, [www.fhfa.gov/Media/PublicAffairs/Pages/  
10 Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

11           39. Pursuant to 12 U.S.C. § 4617(j)(3), the HOA Foreclosure Sale could not  
12 have extinguished Freddie Mac's first secured interest, which was then transferred to  
13 U.S. Bank, which is Freddie Mac's successor in interest.

14           40. U.S. Bank is entitled to a declaration that 12 U.S.C. § 4617(j)(3)  
15 preempted any state law that would permit an HOA foreclosure sale to extinguish a  
16 first secured interest of Freddie Mac while it is under FHFA's conservatorship.

17           41. U.S. Bank is entitled to a declaration that the HOA Foreclosure Sale  
18 conducted by the HOA did not affect or extinguish the Deed of Trust, which  
19 encumbered the Property after the HOA Foreclosure Sale.

20           42 U.S. Bank has been compelled to retain the undersigned counsel to  
21 represent it in this matter and has and will continue to incur attorneys' fees and  
22 costs.

23                           **SECOND CAUSE OF ACTION**

24                           **(Quiet Title and Declaratory Relief Against All Defendants)**

25           43. U.S. Bank repeats and re-alleges the allegations set forth above.

26           44. Pursuant to NRS 40.010 and NRS 30.040 *et seq.*, this Court is  
27 empowered to declare the rights and legal relations of the parties in this matter, both  
28 generally and in relation to the foreclosure sale and the Property.

1           45.    The Deed of Trust is a first secured interest in the Property. At the time  
2 of the HOA foreclosure, Freddie Mac owned the Deed of Trust and Ocwen had an  
3 interest in the Deed of Trust in its capacity as servicer for Freddie Mac and  
4 beneficiary of record of the Deed of Trust at the time of the HOA Foreclosure Sale.

5           46.    Lakes claims an interest in the Property through the HOA Foreclosure  
6 Sale and Foreclosure Deed that is adverse to U.S. Bank's interests.

7           47.    As the current owner of the Loan, U.S. Bank's secured interest in the  
8 Property was the property of the FHFA at the time of the HOA sale.

9           48.    Applying Chapter 116 of the Nevada Revised Statutes or other state law  
10 in a manner that extinguishes the first position Deed of Trust owned by Freddie Mac  
11 at the time of the sale violates 12 U.S.C. § 4617(j)(3).

12           49.    Based on the adverse claims being asserted by the parties, U.S. Bank is  
13 entitled to a judicial determination that the Deed of Trust which was owned by  
14 Freddie Mac at the time of the HOA Foreclosure Sale could not have been  
15 extinguished and continued to encumber the Property after the HOA Foreclosure  
16 Sale.

17           50.    U.S. Bank is entitled to a declaration, pursuant to NRS 40.010, that the  
18 HOA Foreclosure Sale did not extinguish the Deed of Trust owned by Freddie Mac at  
19 the time of the HOA Foreclosure.

20           51.    U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
21 did not convey the Property free and clear of the Deed of Trust to the buyer at the  
22 HOA Foreclosure Sale, and thus any interest acquired by Parcelnomics or its  
23 successors in interest through the Foreclosure Deed was subject to Deed of Trust.

24           52.    U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
25 did not extinguish the Deed of Trust because the recorded notices, even if they were  
26 in fact provided, failed to describe the lien in sufficient detail as required by Nevada  
27 law, including, without limitation: whether the deficiency included a "superpriority"  
28 component, the amount of the superpriority component, how the superpriority

1 component was calculated, when payment on the superpriority component was  
2 required, where payment was to be made or the consequences for failure to pay the  
3 superpriority component. Alternatively, the HOA Foreclosure Sale is void.

4 53. U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
5 did not extinguish the Deed of Trust because Freddie Mac was the owner of the Loan  
6 at the time of the foreclosure sale and tendered and satisfied the superpriority  
7 amount prior to the sale through the then servicer, Ocwen, and the HOA accepted  
8 tender of those funds. Alternatively, the HOA Foreclosure Sale is void.

9 54. U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
10 did not extinguish the Deed of Trust because the sale was commercially unreasonable  
11 or otherwise failed to comply with the good faith requirement of NRS 116.1113 in  
12 several respects, including, without limitation, the lack of sufficient notice, the HOA's  
13 acceptance of tender of the superpriority portion of the fees, the sale of the Property  
14 for a fraction of the loan balance or actual market value of the Property, a foreclosure  
15 that was not calculated to promote an equitable sales prices for the Property or to  
16 attract proper prospective purchasers, and a foreclosure sale that was designed  
17 and/or intended to result in maximum profit for the HOA, and the HOA Foreclosure  
18 Sale purchaser without regard to the rights and interest of those who have an  
19 interest in the Loan and made the purchase of the Property possible in the first  
20 place. Alternatively, the HOA Foreclosure Sale is void.

21 55. U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
22 did not extinguish the Deed of Trust because otherwise the sale would violate its  
23 rights to due process, as a result of the HOA's failure to provide sufficient notice of  
24 the superpriority component of the HOA's lien, the manner and method to satisfy it,  
25 and the consequences for failing to do so. Alternatively, the HOA Foreclosure Sale is  
26 void.

27 56. U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
28 did not extinguish the Deed of Trust because otherwise the sale would violate its

1 rights to due process, as a result of the HOA's improper calculation of the  
2 superpriority component, its inclusion of charges that are not part of the  
3 superpriority lien under Nevada law. Alternatively, the HOA Foreclosure Sale is  
4 void.

5 57. U.S. Bank is entitled to a determination that the HOA Foreclosure Sale  
6 did not extinguish the Deed of Trust because Parcelnomics does not qualify as a bona  
7 fide purchaser for value, because they were aware of, or should have been aware of,  
8 the existence of the Deed of Trust, Ocwen's satisfaction of the superpriority  
9 component of the HOA lien, and the commercial unreasonableness of the HOA  
10 Foreclosure Sale. Alternatively, the HOA Foreclosure Sale is void.

11 58. U.S. Bank was required to retain an attorney to prosecute this action,  
12 and is therefore entitled to collect its reasonable attorneys' fees and costs.

### 13 **THIRD CAUSE OF ACTION**

#### 14 **(Injunctive Relief Against Daniel Lakes)**

15 59. U.S. Bank repeats and re-alleges the preceding paragraphs as though  
16 fully set forth herein and incorporate the same by reference.

17 60. U.S. Bank disputes Lakes claim that he purchased the Property free  
18 and clear of the Deed of Trust.

19 61. Any sale or transfer of the Property by Lakes prior to a judicial  
20 determination concerning the respective rights and interests of the parties to this  
21 case, may be rendered invalid if the Deed of Trust still encumbers the Property in  
22 first position and was not extinguished by the HOA Foreclosure Sale.

23 62. U.S. Bank has a substantial likelihood of success on the merits of the  
24 complaint, and damages would not adequately compensate for the irreparable harm  
25 of the loss of title to a bona fide purchaser or loss of the first position priority status  
26 secured by the Property.

27 63. U.S. Bank has no adequate remedy at law due to the uniqueness of the  
28 Property involved in this case and the risk of the loss of the Deed of Trust.

64. U.S. Bank is entitled to a preliminary injunction prohibiting Lakes, or his successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the Property that is claimed to be superior to the Deed of Trust or not subject to the Deed of Trust. U.S. Bank is entitled to a preliminary injunction requiring Lakes to pay all taxes, insurance, and homeowner's association dues during the pendency of this action.

**PRAYER FOR RELIEF**

**WHEREFORE**, U.S. Bank requests a judgment in its favor as follows:

1. A declaration that 12 U.S.C. § 4617(j)(3) preempts NRS 116;
2. A declaration that the HOA Foreclosure Sale did not extinguish the Deed of Trust and that it continues as a valid encumbrance against the Property;
3. A declaration that Daniel Lake's interest in the Property, if any, is subject to the Deed of Trust;
4. That U.S. Bank be awarded attorneys' fees and costs, plus interest accruing thereon, in its favor at the maximum rate allowed by law; and

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1           5.     That the Court award such other and further relief as it may deem  
2 appropriate.

3 DATED this 26<sup>th</sup> day of November, 2018.

4  
5 BALLARD SPAHR LLP

6 By: /s/ Holly Ann Priest  
7 Abran E. Vigil  
8 Nevada Bar No. 7548  
9 Joel E. Tasca  
10 Nevada Bar No. 14124  
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12 Nevada Bar No. 13226  
13 1980 Festival Plaza Drive, Suite 900  
14 Las Vegas, Nevada 89135

15 *Attorneys for Defendants U.S. Bank Trust,*  
16 *Trustee for LSF9 Master Participation Trust*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of November, 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **U.S. BANK TRUST'S AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND AMENDED COUNTERCLAIM**, was served via the Eighth Judicial District Court's Odyssey E-File and Serve system to the following parties:

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/s/ C. Wells  
An Employee of BALLARD SPAHR LLP