

**Case No. 81293**

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

U.S. BANK N.A., A NATIONAL  
BANKING ASSOCIATION; AND  
NATIONSTAR MORTGAGE, LLC, A  
FOREIGN LIMITED LIABILITY  
COMPANY,

Respondent.

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**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable GLORIA STURMAN, District Judge  
District Court Case No. A-14-705563-C

**AMENDED JOINT APPENDIX VOLUME 5**

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Respectfully submitted by:

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**In The Matter Of:**  
*SFR Investments Pool 1, LLC vs.*  
*Bank of America, N.A., et al.*

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*Scott Dugan*  
*June 1, 2015*

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*Mini-U-Script® with Word Index*



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<p>1 Conditions along with the Clarification of Scope of 2 Work provide specifics as to the development of the 3 appraisal along with exceptions that may have been 4 necessary to complete a credible report." What is an 5 assumption? 6 A. An assumption is something that we assume to 7 be correct. 8 Q. And then what is a limiting condition? 9 A. A limiting condition is we limit our 10 liability and assume that the information that we've 11 obtained regarding comparables and so forth is fairly 12 accurate. 13 Q. And it talks about the effective date. Am I 14 correct in understanding the effective date is 15 January 18th, 2013. Correct? 16 A. Yes. 17 Q. And that's the same date as the HOA auction; 18 is that right? 19 A. I believe so. 20 Q. Now, where in your report do I find the 21 assumptions that you made? 22 A. The assumptions are on my page number 8 at 23 the top. 24 Q. So let's go there. I want to direct your 25 attention to the first assumption. I'll skip past</p>	<p>1 BY MS. HANKS: 2 Q. And if you go further down that page where 3 it starts -- it looks bold to me. Do you see that 4 section? 5 A. Yes. 6 Q. "The scope of work is the type and extent of 7 research and analyses performed in an appraisal 8 assignment that is required to produce credible 9 assignment results, given the nature of the appraisal 10 problem, the specific requirements of the intended 11 users and the intended use of the appraisal report." 12 So let's talk about the nature of the 13 appraisal problem. What is your understanding of the 14 appraisal problem in the context of this case? 15 A. Well, the appraisal problem was very simple 16 for me. They wanted fair market value as of a 17 retrospective date of valuation not taking into 18 consideration the transfer of the HOA lien. 19 Q. So that's what I want to be clear on. When 20 you did your report, you specifically did not take 21 into consideration the HOA auction that occurred? 22 A. Yes. 23 Q. And how about the intended use? Well, let's 24 go back. The specific requirements of the intended 25 user, we already talked about that. Bank of America</p>
Page 26	Page 28
<p>1 the first sentence and go to the second sentence that 2 reads, "The appraiser assumes that the title is good 3 and marketable and, therefore, will not render any 4 opinions about the title." Did I read that 5 correctly? 6 A. I believe so. 7 Q. And did you review any title reports with 8 respect to this property as part of your drafting of 9 the report in this case? 10 A. No. 11 Q. And what is the effect of that assumption if 12 it's not true? 13 MS. HAMRICK: Objection. Calls for a legal 14 conclusion and speculation. 15 THE WITNESS: We don't make an assumption 16 that that's not true. That is a standard portion of 17 our scope of work. That we assume that the title is 18 good and marketable in every assignment we do. 19 BY MS. HANKS: 20 Q. And would it be fair to state that your 21 conclusions as to market value are only as good as 22 the truth of the assumptions made? 23 MS. HAMRICK: Objection. Calls for 24 speculation and legal conclusion. 25 THE WITNESS: Yes.</p>	<p>1 was asking for a market value appraisal 2 retrospectively; is that correct? 3 A. Yes. 4 Q. And then what was your understanding or what 5 is your understanding of the intended use of this 6 report by Bank of America? 7 MS. HAMRICK: Objection. Calls for 8 speculation. 9 THE WITNESS: That it will be used at some 10 point in time for litigation involving the HOA 11 foreclosure sale of this property. 12 BY MS. HANKS: 13 Q. Is it your understanding that Bank of 14 America intends to use your report to show that the 15 price paid by SFR at the HOA auction was 16 unreasonable? 17 MS. HAMRICK: Objection. Calls for 18 speculation. Calls for a legal conclusion. 19 THE WITNESS: I don't know that answer. 20 BY MS. HANKS: 21 Q. Have you ever heard of the term 22 "commercially unreasonable"? 23 A. I've heard of it. 24 Q. Are you familiar with it enough to testify 25 about it?</p>

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1 A. No.  
2 MS. HAMRICK: Objection. Vague. Lacks  
3 foundation.  
4 THE WITNESS: No.  
5 MR. SHAFER: Do you need to take a break?  
6 MS. HANKS: I'm sorry.  
7 (Off the record.)  
8 BY MS. HANKS:  
9 Q. And if you read further in that paragraph,  
10 do you see where it says, "The opinion of value that  
11 is the conclusion of this report," the third or  
12 fourth sentence?  
13 A. Yes.  
14 Q. It reads, "The opinion of value that is the  
15 conclusion of this report is credible only within the  
16 context of the scope of work, effective date, the  
17 date of report, the intended users, the intended use,  
18 the stated assumptions and limiting conditions, any  
19 hypothetical conditions and/or extraordinary  
20 assumptions, and the type of value, as defined  
21 herein."  
22 Am I correct -- and I'm going to paraphrase  
23 because I want to make sure I understand what it  
24 means. Does this statement mean that this report is  
25 only credible to the extent that you accept as true

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1 all the assumptions and limiting conditions within  
2 the report?  
3 MS. HAMRICK: Objection. Lacks foundation.  
4 THE WITNESS: Yes.  
5 BY MS. HANKS:  
6 Q. And it's only as credible with respect to  
7 the intended use, which would be market value as of  
8 the retrospective date. Correct?  
9 A. Yes.  
10 MS. HAMRICK: Objection. Lacks foundation.  
11 Calls for a legal conclusion.  
12 BY MS. HANKS:  
13 Q. And so jumping off of that. If any of the  
14 assumptions or limiting conditions that were applied  
15 in this report were found to be nonapplicable, that  
16 would in some way affect the credibility of the  
17 report?  
18 MS. HAMRICK: Objection. Calls for  
19 speculation. Calls for a legal conclusion.  
20 Incomplete hypothetical.  
21 THE WITNESS: I estimated a fair market  
22 value opinion based on the assumptions and limiting  
23 conditions in this report, which are assumed to be  
24 true and accurate.  
25 ///

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1 BY MS. HANKS:  
2 Q. Right. And so I'm just trying to understand  
3 the statement. I was just stating it a different  
4 way. So that means that if any of the assumptions or  
5 limiting conditions were found to be inapplicable,  
6 then that affects the credibility of the report?  
7 MS. HAMRICK: Same objections.  
8 THE WITNESS: You know, I've never been  
9 asked that question. I guess I'd have to sit here  
10 and read them all, as I don't read them all the time.  
11 BY MS. HANKS:  
12 Q. That leads me to my next question, then. Is  
13 it a quantitative versus qualitative assessments? In  
14 other words, is one assumption less important than  
15 another assumption where you could have one  
16 assumption not be true and not really affect the  
17 credibility of the report?  
18 A. Possibly.  
19 Q. Okay. But the purpose of this statement,  
20 and for your protection as an appraiser, the report  
21 in terms of its credibility is only as good as all  
22 the assumptions you put in here and all the limiting  
23 conditions in here being accurate?  
24 MS. HAMRICK: Objection. Assumes facts not  
25 in evidence. Calls for a legal conclusion and

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1 incomplete hypothetical. Calls for speculation.  
2 THE WITNESS: Yes.  
3 BY MS. HANKS:  
4 Q. And we talked about the assumptions. Where  
5 are the limiting conditions set forth?  
6 A. They're mixed in with the assumptions.  
7 Q. Okay.  
8 A. In other words, that I'm not a home  
9 inspector. You must have the appraiser's written  
10 consent and approval. Must be obtained before the  
11 appraisal can be conveyed to another or anyone in the  
12 public. They're all kind of listed there on that  
13 page.  
14 Q. Okay. Let's turn to page 4 of your report.  
15 It's Bates-stamped Dugan 6.  
16 MS. HANKS: Can we take a quick break? My  
17 day care called, which is never a good thing. So  
18 let's just take a quick break.  
19 MS. HAMRICK: Absolutely.  
20 (Off the record.)  
21 BY MS. HANKS:  
22 Q. So if you turn to page 4 of your report,  
23 we've already established you marked the definition  
24 of value used for purposes of the report was market  
25 value. Correct?

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<p>1 statement to mean that this market value appraisal, 2 this report, is not applicable or would not be 3 applicable to the HOA auction that happened in this 4 case? 5 <b>MS. HAMRICK:</b> Objection. Lacks foundation. 6 Calls for a legal conclusion. 7 <b>THE WITNESS:</b> Yes. 8 <b>BY MS. HANKS:</b> 9 Q. And then the next paragraph, the first 10 sentence reads, "The single point of value is based 11 on the definition of value (stated within the 12 report), which has criteria that may or may not be 13 consistent in the marketplace." 14 Would you agree that the definition of value 15 used in your report, which is fair market value, is 16 not consistent with the marketplace of the HOA 17 auction? 18 <b>MS. HAMRICK:</b> Objection. Calls for 19 speculation. Incomplete hypothetical. Vague and 20 ambiguous. 21 <b>THE WITNESS:</b> Yes. 22 <b>BY MS. HANKS:</b> 23 Q. And then you further talk about the single 24 point of value. The next paragraph, the last 25 sentence, it states, "The definition of market value</p>	<p>1 <b>THE WITNESS:</b> The HOA liens are not any type 2 of market value. 3 <b>BY MS. HANKS:</b> 4 Q. Okay. And so this sentence would tell me as 5 a reader that I shouldn't or I can't use -- as an 6 intended user of this report, I can't use the report 7 in connection with an HOA lien because the two are 8 different? 9 <b>MS. HAMRICK:</b> Objection. Lacks foundation. 10 Incomplete hypothetical. Calls for speculation. 11 <b>THE WITNESS:</b> You can show the disparity 12 between the two. 13 <b>BY MS. HANKS:</b> 14 Q. But what would be the purpose of that if I'm 15 comparing -- because I think you said it before. 16 That's like comparing an apple to an orange. 17 Correct? A market value appraisal to an HOA lien 18 foreclosure is an apple to an orange, correct, in 19 terms of comparison? 20 A. Okay. 21 Q. Do you agree with that? 22 A. Yes. 23 Q. And so this statement means that the 24 definition of market value and its criteria is not 25 universal in its application nor consistent from one</p>
Page 42	Page 44
<p>1 and its criteria is not universal in its application 2 nor consistent from one intended use to another." 3 If I were to take that sentence and make it 4 more specific to this particular case, would I be 5 correct in stating that that statement means you 6 cannot take this market value report and uniformly 7 apply it to what happened in the HOA auction in this 8 case? 9 <b>MS. HAMRICK:</b> Objection. Calls for a legal 10 conclusion. Incomplete hypothetical. Calls for 11 speculation. 12 <b>THE WITNESS:</b> The HOA lien is not a market 13 value transaction. So how are you changing it? 14 <b>BY MS. HANKS:</b> 15 Q. No. I'm just asking if I understand that 16 definition. I think we're saying the same thing. So 17 I'll clarify it. 18 That sentence means if I make it specific to 19 this case, you're telling whoever is reading this 20 report that the market value used in this report may 21 not be consistent with other types of transactions. 22 And I'm asking would that be true in this case? Is 23 the market value report in this case inconsistent 24 with the HOA auction? 25 <b>MS. HAMRICK:</b> Same objections.</p>	<p>1 intended use to another. So are you telling the 2 reader by putting that caveat in the report that the 3 market value opinion in this report may not be 4 applicable to all circumstances? 5 A. No, because I did a fair market value and 6 that's what my report is based on. You really have 7 to read the whole sentence -- I mean the 8 multi-sentences because the single point of value is 9 a benchmark, and it doesn't mean that somebody may 10 pay less or more because that could happen. 11 Q. Okay. And we can go read the next 12 paragraph. That might help us explain that sentence 13 too. 14 It says, "This report was prepared to the 15 intended user's requirements and only for their 16 stated purpose." 17 And I think we clarified that, or we've 18 gotten that covered. That the intended user's 19 requirements and only for their stated purposes is 20 Bank of America wanted a market value from the 21 retrospective date of January 18, 2013. Correct? 22 A. Yes. 23 Q. And then you go on to say in the sentence of 24 the report, "The analysis and conclusions are unique 25 to that purpose and should not be relied upon for</p>

Page 49	Page 51
<p>1 be like insurable value. It's not a liquidation 2 value or disposition value. It's a fair market 3 value.</p> <p>4 So, in other words, if the client were to 5 think that this was some type of different value, 6 they'd have to be specific and ask for that.</p> <p>7 In other words, this isn't a cost approach 8 to value where they could -- a lot of times what 9 they'll do with appraisals is they'll try to use the 10 cost approach for the insurable value. They'll take 11 out the land and then say it's going to cost X to 12 build the house over, less the slab and less the 13 on-sites, which typically don't burn, and that's what 14 we should insure the property for.</p> <p>15 <b>BY MS. HANKS:</b></p> <p>16 Q. So would it be fair to say you can't use 17 this report as evidence of any other value other than 18 market value? You can't take this report and say it 19 also means that's the disposition value and also the 20 liquidation value?</p> <p>21 A. Yes.</p> <p>22 Q. And how does disposition value and 23 liquidation value differ from market value? I know 24 there's different elements. I'm asking if you were 25 to look at this, if you would have done the analysis</p>	<p>1 liquidation value, is that correct, in your opinion?</p> <p>2 A. Yes.</p> <p>3 Q. Would you agree, however, that an HOA 4 foreclosure auction meets the definition of 5 liquidation or disposition value more than market 6 value?</p> <p>7 <b>MS. HAMRICK:</b> Objection. Incomplete 8 hypothetical. Calls for speculation. Calls for a 9 legal conclusion.</p> <p>10 <b>THE WITNESS:</b> I'd go to Number 9 again. 11 "The price represents the normal consideration for 12 the property sold unaffected by special or creative 13 financing or sales concessions granted by anyone 14 associated with the sale."</p> <p>15 <b>BY MS. HANKS:</b></p> <p>16 Q. And help me understand that because I had 17 problems with that in the prior deposition. How can 18 disposition and liquidation value be different than 19 market value?</p> <p>20 If I'm understanding correctly, that the one 21 element is starting from the premise of market value. 22 And that's how I understand what you're saying about 23 that element. That you're starting at what the 24 property would normally sell at, and that's market 25 value. How can that be possible if disposition and</p>
Page 50	Page 52
<p>1 of disposition value for this particular property, 2 what would you have done differently than you did for 3 your market value assessment?</p> <p>4 <b>MS. HAMRICK:</b> Objection. Calls for 5 speculation.</p> <p>6 <b>THE WITNESS:</b> Well, the main difference 7 between liquidation and disposition is in disposition 8 the sale is within a future exposure time specified 9 by the client. Liquidation value is consummation of 10 a sale within a short period of time.</p> <p>11 <b>BY MS. HANKS:</b></p> <p>12 Q. And generally speaking, do liquidation 13 values and disposition values differ from market 14 values because of those difference factors?</p> <p>15 A. Multiple factors, yes, they do.</p> <p>16 Q. Does disposition value and liquidation value 17 tend to be lower or higher than market value because 18 of those added elements or different elements?</p> <p>19 A. Typically, they would be lower.</p> <p>20 Q. And I understand from a previous 21 deposition that it's your opinion that an HOA 22 foreclosure lien auction does not meet the definition 23 of disposition value. Correct?</p> <p>24 A. Yes, I believe so.</p> <p>25 Q. And it also does not meet the definition of</p>	<p>1 liquidation are different than market value?</p> <p>2 <b>MS. HAMRICK:</b> Objection. Incomplete 3 hypothetical. Calls for speculation.</p> <p>4 <b>THE WITNESS:</b> I'm not sure I got it, sorry.</p> <p>5 <b>BY MS. HANKS:</b></p> <p>6 Q. And I apologize. And I'm trying to 7 understand it too. And correct me if I'm wrong. Am 8 I understanding what you're saying as to that 9 element? That the property sells for what it 10 normally sells for means or your understanding of 11 what that sentence means is what it sells for in a 12 market value transaction. Is that what that element 13 means.</p> <p>14 A. The only thing different between disposition 15 and liquidation is the time of the sell and the 16 compulsion of the seller.</p> <p>17 Q. And liquidation is a quicker compulsion than 18 disposition?</p> <p>19 A. Liquidation is a shorter time period.</p> <p>20 Q. Okay.</p> <p>21 A. And disposition is driven by the client that 22 holds the note or holds something against the 23 property.</p> <p>24 Q. So that element that talks about what the 25 property would normally sell for, absent these</p>

Page 53	Page 55
<p>1 concessions, what does your understanding of that 2 mean? In other words, what basis would it normally 3 sell for? Would it normally sell for in a 4 disposition context? Would it normally sell for in a 5 liquidation context? Or would it normally sell for 6 in a market value context? That's what I'm trying to 7 understand.</p> <p>8 <b>A. There are only certain elements that are</b> 9 <b>different, which is the shorter period of time versus</b> 10 <b>consummation of a sale within a future exposure time.</b> 11 <b>But there still is exposure, and HOA's aren't</b> 12 <b>exposed.</b></p> <p>13 Q. So it's even more of a distressed sale than 14 even liquidation. Would you agree with that?</p> <p>15 <b>A. Well, I'm not going to say it doesn't fit</b> 16 <b>these definitions based on Number 9 just by itself.</b></p> <p>17 Q. I understand that. You've got "market" up 18 here on top in terms of --</p> <p>19 <b>A. Market value is everything is normal.</b></p> <p>20 Q. And then disposition value you have some 21 normal elements to it. One of them being how long 22 it's exposed to the market. Right?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. The timing. And you go even further down to 25 liquidation. That's even less timing. So the</p>	<p>1 compare an HOA lien transaction to any type of 2 definition of value because the liens are selling for 3 pennies on the dollar. So they don't make any sense. 4 They're transferring. And I understand that. But 5 when they transfer for nominal pennies on the dollar, 6 they're not any type of value.</p> <p>7 <b>BY MS. HANKS:</b></p> <p>8 Q. So would that get us back to the caveat that 9 you put in the Clarification of Scope of Work? That 10 you really can't take this report and compare it to 11 what happened in the HOA context because the HOA is a 12 beast of its own? Would that be a fair statement?</p> <p>13 <b>MS. HAMRICK:</b> Objection. Lacks foundation. 14 Misstates testimony. Calls for speculation.</p> <p>15 <b>THE WITNESS:</b> Yes.</p> <p>16 <b>BY MS. HANKS:</b></p> <p>17 Q. If we turn to page 32 of your report, the 18 Valuation Methodology, the sentence states, "The data 19 presented in the report is considered to be the most 20 relevant to the valuation of the subject property 21 (and its market segment) based on its current 22 occupancy and market environment."</p> <p>23 Now, I want to be clear about that. When 24 you wrote that sentence in this report, you do not 25 mean HOA lien foreclosure. Correct?</p>
Page 54	Page 56
<p>1 compulsion to sell is even more of a forced sale. 2 Correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So of all the value spectrums, would you put 5 an HOA foreclosure below liquidation because of the 6 timing that it's on the market?</p> <p>7 <b>MS. HAMRICK:</b> Objection. Calls for 8 speculation. Outside the scope.</p> <p>9 <b>THE WITNESS:</b> The HOA liens don't represent 10 any type of liquidation, disposition, or market 11 value.</p> <p>12 <b>BY MS. HANKS:</b></p> <p>13 Q. No, I understand that. I understand that's 14 your opinion. But I mean if you had to put it on the 15 spectrum, you had to put it somewhere on that 16 spectrum. If you're looking at a spectrum starting 17 with market value and the next one is disposition 18 value and the next one is liquidation value, would 19 the next one in line be HOA foreclosure auction after 20 liquidation because the time is one day at a public 21 auction?</p> <p>22 <b>MS. HAMRICK:</b> Objection. Incomplete 23 hypothetical. Calls for speculation. Outside the 24 scope.</p> <p>25 <b>THE WITNESS:</b> I just don't think you can</p>	<p>1 <b>MS. HAMRICK:</b> I'm sorry. Which sentence was 2 that?</p> <p>3 <b>MS. HANKS:</b> Yeah. After Valuation 4 Methodology, "The data presented in the report is 5 considered." It's page 32. It's the second 6 paragraph.</p> <p>7 <b>MS. HAMRICK:</b> Is it in the "Limitations of 8 the Assignment" paragraph?</p> <p>9 <b>MS. HANKS:</b> Are you on page 32?</p> <p>10 <b>MS. HAMRICK:</b> Valuation. 32 of the report. 11 I'm sorry. I was looking at Dugan 32.</p> <p>12 <b>THE WITNESS:</b> It's the same.</p> <p>13 <b>BY MS. HANKS:</b></p> <p>14 Q. Okay. Yes, Dugan 34 is actually what 15 page 32 is Bates-stamped as. So after "Valuation 16 Methodology," you state, "The data presented in the 17 report is considered to be the most relevant to the 18 valuation of the subject property (and its market 19 segment) based on its current occupancy and market 20 environment."</p> <p>21 Now, I want to be sure I understand that 22 sentence. When you wrote that sentence in this 23 report, you were not talking about market environment 24 to mean HOA auction. You mean if the Schaeffers still 25 owned the property and were listing it on the free</p>

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1 A. I believe so.  
2 Q. So this isn't a phenomenon in and of itself.  
3 There are other similar liens that do sell like this.  
4 Correct?  
5 MS. HAMRICK: Objection. Vague and  
6 ambiguous as to "phenomenon."  
7 THE WITNESS: I'm sorry?  
8 BY MS. HANKS:  
9 Q. I was saying that the HOA foreclosure  
10 auction is not something that's unique in and of  
11 itself. You've seen other situations where a lien  
12 has been foreclosed upon and a lower price has been  
13 paid compared to market value?  
14 A. Not in a tax lien because I don't believe a  
15 tax lien has ever wiped out a first deed of trust.  
16 Q. Do you know of any other lien that wipes out  
17 a first deed of trust other than an HOA foreclosure  
18 lien?  
19 MS. HAMRICK: Objection. Calls for a legal  
20 conclusion.  
21 THE WITNESS: And I think it's outside my  
22 scope.  
23 BY MS. HANKS:  
24 Q. So you would not be comfortable answering  
25 that question?

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1 A. No.  
2 MS. HANKS: Okay. I don't think I have  
3 anything else at this time. If you have some  
4 questions.  
5 MR. SHAFER: Just a few.  
6  
7 EXAMINATION  
8 BY MR. SHAFER:  
9 Q. I hope they're not silly questions. And  
10 we'll pick up kind of in the order.  
11 You mentioned tax sales. You were saying  
12 that in your experience you've never seen a tax sale  
13 wipe out a first deed of trust, or it's your opinion  
14 that a tax sale does not wipe out a first deed of  
15 trust.  
16 MS. HAMRICK: Objection. Calls for  
17 speculation. Outside the scope.  
18 THE WITNESS: I believe it's outside my  
19 scope. But I haven't seen, that I'm aware of, where  
20 a tax lien wipes out a first deed of trust.  
21 BY MR. SHAFER:  
22 Q. And I just wanted to clarify. So it's not  
23 your opinion -- you're not making an opinion as to  
24 whether or not it does? You're just saying in your  
25 experience you've never seen it happen?

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1 A. No.  
2 Q. When you talked about the HOA foreclosure  
3 sales not being market driven, is it your  
4 understanding that HOA lien sales are sold for the  
5 amount of the HOA lien?  
6 A. Yes.  
7 Q. Are they ever sold for a different amount  
8 than that?  
9 A. I believe that they've sold for more than  
10 the lien. And I think we've actually seen that  
11 latter, in the last six months, where these  
12 properties have sold and the remaining portion of the  
13 proceeds above and beyond the HOA lien is deposited  
14 with the court system so the banks and whoever can  
15 work it out at a later time.  
16 Q. Have you rendered any opinions as to the  
17 appropriate procedures for HOA foreclosure auctions  
18 or sales?  
19 A. Not at this time.  
20 Q. Have you been asked to render such an  
21 opinion?  
22 A. No.  
23 Q. Would you have any basis for rendering such  
24 an opinion?  
25 MS. HAMRICK: Objection. Calls for

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1 speculation. Outside of the scope.  
2 BY MR. SHAFER:  
3 Q. Have you ever attended any HOA foreclosure  
4 auctions or sales?  
5 A. No, but I've been involved in several.  
6 Q. And in what ways have you been involved?  
7 A. I'm actually the president of the Homeowners  
8 Association in Spanish Trail for the last eight years  
9 of one of the sub-associations.  
10 Q. Were you involved in the mechanics of  
11 noticing the sales?  
12 A. No.  
13 MS. HAMRICK: Objection. Outside the scope.  
14 THE WITNESS: I didn't do that myself, no.  
15 BY MR. SHAFER:  
16 Q. Were you involved in any of the accounting  
17 that was involved in generating the liens?  
18 MS. HAMRICK: Objection. Outside the scope.  
19 Irrelevant.  
20 THE WITNESS: No.  
21 BY MR. SHAFER:  
22 Q. You don't intend to offer any opinion as to  
23 what the proper value should have been at an HOA  
24 foreclosure sale or auction in this case?  
25 MS. HAMRICK: Objection. Calls for

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1 speculation. Beyond the scope.  
2 **THE WITNESS:** I'm only testifying to the  
3 market value at that time.  
4 **BY MR. SHAFER:**  
5 Q. I think we've gone over that a few times  
6 from about as many different angles that I can think  
7 of.  
8 A. Yes.  
9 Q. Have you ever been asked to render an  
10 opinion as to what the proper value of a property  
11 would be at a tax sale?  
12 A. I'm sorry, Jay.  
13 Q. Have you ever been asked to appraise a  
14 property at a tax sale or render an opinion as to  
15 what a property would be worth at a tax sale?  
16 A. Not that I recall.  
17 Q. How about at a foreclosure auction or a  
18 trustee sale for first deed of trust? Have you ever  
19 been asked to render an opinion as to the value of a  
20 property in that circumstance?  
21 A. Hundreds of times.  
22 Q. How does that value generally compare to a  
23 market value?  
24 **MS. HAMRICK:** Objection. Outside the scope.  
25 **THE WITNESS:** Close.

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1 **BY MR. SHAFER:**  
2 Q. Does that amount vary over time? Is it a  
3 set percentage discount on market value?  
4 **MS. HAMRICK:** Objection. Calls for  
5 speculation. Outside the scope.  
6 **THE WITNESS:** Actually, they're very similar  
7 to the reports we have completed here because  
8 typically we don't have access to the property. So  
9 we do an exterior with extraordinary assumptions.  
10 And I've done hundreds for the banks over  
11 the years in order to go for deficiencies. And what  
12 they'll use my reports for, number one, is for the  
13 deficiency and, number two, for the bid amount for  
14 the trust deed's sale.  
15 **BY MR. SHAFER:**  
16 Q. Is the amount that you would evaluate a  
17 property to be in a trust deed sale or foreclosure  
18 auction ever more than the market value?  
19 **MS. HAMRICK:** Objection. Calls for  
20 speculation. Incomplete hypothetical.  
21 **THE WITNESS:** Does it sell for more than  
22 what we state?  
23 **BY MR. SHAFER:**  
24 Q. No. My question is, are your appraisals for  
25 a trustee's sale or a foreclosure auction ever more

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1 than the markets value of the property?  
2 **MS. HAMRICK:** Same objections.  
3 **THE WITNESS:** More than what it ultimately  
4 sells for? Or do you mean do I appraise it for  
5 higher than what I believe the market value is?  
6 **BY MR. SHAFER:**  
7 Q. I guess that would be another way of getting  
8 around it. Is the value at the foreclosure sale more  
9 than the market's value?  
10 **MS. HAMRICK:** Objection. Calls for  
11 speculation. Incomplete hypothetical.  
12 **THE WITNESS:** Not typically.  
13 **MR. SHAFER:** I think that's all the  
14 questions I have.  
15  
16 **EXAMINATION**  
17 **BY MS. HAMRICK:**  
18 Q. I have one question actually, Mr. Dugan, a  
19 clarification, please. This is your report. It's  
20 Bates-stamped Dugan 6. It's page 4 of your report in  
21 Exhibit 1.  
22 A. Yes.  
23 Q. And just to clarify. In the top box  
24 "Current Owner of Record," as was indicated earlier,  
25 it says "SFR Investments Pool 1, LLC." Were the

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1 Schaefer's the current owner of record as of the time  
2 of your retrospective market valuation?  
3 A. Yes.  
4 **MS. HAMRICK:** Thank you. No further  
5 questions.  
6  
7 **FURTHER EXAMINATION**  
8 **BY MS. HANKS:**  
9 Q. With respect to that question, are you doing  
10 it based on a time of day? Because it's my  
11 understanding the foreclosure auction occurred on  
12 January 18th, 2013.  
13 A. I'm sorry?  
14 Q. Are you doing it based on the time of day?  
15 Because it's my understanding, according to the  
16 foreclosure deed, that the auction took place on  
17 January 18th, 2013.  
18 A. I'm not sure what you're asking me.  
19 Q. Why would the Schaefer's still be the owner  
20 if the property was auctioned off and SFR paid a  
21 check for it?  
22 A. I think like in the previous case, I  
23 wouldn't have known that. So I probably put "SFR"  
24 there instead of the Schaefer's.  
25 Q. No, I understand that. But your counsel

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1

3

6

9

12

15                   ★       ★       ★       ★       ★

18 transcription to be my deposition in said action;  
that I have read, corrected and do hereby affix my

21

21  
21

1 REPORTER'S CERTIFICATE

4. I, Jane V. Efav, CCE No. 601, do hereby certify:

7 aforesaid;

10 truth, and nothing but the truth;

13 of said deposition is a complete, true and accurate

16 the transcript.

19 action, nor a relative or employee of the parties

22 Dated at Las Vegas, Nevada, this \_\_\_\_\_ day of \_\_\_\_\_

25 Jane V. Eraw, CCR #601



REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jane V. Efaw, CCR No. 601, do hereby certify:


That I reported the taking of the deposition of  
the witness, SCOTT DUGAN, at the time and place  
aforesaid;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes  
into typewriting and that the typewritten transcript  
of said deposition is a complete, true and accurate  
transcription of said shorthand notes taken down at  
said time, and that a request has been made to review  
the transcript.

I further certify that I am not a relative or  
employee of counsel of any party involved in said  
action, nor a relative or employee of the parties  
involved in said action, nor a person financially  
interested in the action.

Dated at Las Vegas, Nevada, this \_\_\_\_ day of

\_\_\_\_\_, 2015  
  
Jane V. Efaw, CCR #601

# EXHIBIT D-4

Deposition of R. Scott Dugan

June 16, 2015

(Brighton Summit property)

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 SFR INVESTMENTS POOL 1, LLC, a )  
5 Nevada limited liability company, )  
6 )  
7 Plaintiff, )  
8 vs. ) CASE NO.  
9 ) A-14-698568-C  
10 )  
11 BANK OF AMERICA, N.A., successor )  
12 by merger to BAC HOME LOANS )  
13 SERVICING, LP FKA COUNTRYWIDE )  
14 HOME LOANS SERVICING, LP, a )  
15 national association; JUSTIN M. )  
16 MISSIMER, an individual; )  
17 BOBBIEJO L. MISSIMER, an )  
18 Individual; DOES I through X; and )  
19 ROE CORPORATIONS I through X, )  
20 inclusive, )  
21 )  
22 Defendants. )  
23 )  
24 )  
25 )

DEPOSITION OF RICHARD SCOTT DUGAN

Taken at the Law Offices of Akerman, LLP  
1160 Town Center Drive  
Suite 330  
Las Vegas, Nevada 89144

Monday, June 16, 2015  
10:09 a.m.

Reported by: Angela Campagna, CCR #495

1 anything that puts undue pressure on the sale of a  
2 property.

3 BY MS. HANKS:

4 Q. Would a foreclosure of a lien by an HOA  
5 be considered a forced sale?

6 MS. MORGAN: Objection. Lacks foundation.  
7 Incomplete hypothetical. Calls for legal  
8 conclusion.

9 THE WITNESS: That's probably not part of my  
10 scope of work but an HOA is a lien and they are  
11 basically trying to recover outstanding homeowner's  
12 dues that are unpaid in order to run the  
13 association.

14 BY MS. HANKS:

15 Q. So when they foreclosure on a lien,  
16 that's considered a forced sale?

17 MS. MORGAN: Same objection.

18 THE WITNESS: Yes.

19 BY MS. HANKS:

20 Q. Now, just so I'm clear we've talked in  
21 the past before that the person that actually  
22 assigns you the file so to speak is Accurity  
23 Qualified Analytics; correct?

24 A. Yes.

25 Q. In other words the bank would have

1 A. Yes.

2 Q. Well, when constraints are put on the  
3 marketing in terms of time does that affect the  
4 value?

5 A. Yes.

6 Q. Does it affect it negative or  
7 positively?

8 A. It depends on the market at the given  
9 time of the sale.

10 Q. Typically speaking would it be fair to  
11 state that when you put constraints on the marketing  
12 in terms of days, the less days will typically give  
13 you a less value for the property?

14 MS. MORGAN: Objection. Incomplete  
15 hypothetical.

16 THE WITNESS: It would give you a less value  
17 but if the time marketing days is unreasonable, then  
18 it would create a sales concession.

19 BY MS. HANKS:

20 Q. What is a sales concession?

21 A. That's where the -- it's a concession  
22 where we know the market value based on the fact  
23 that four homes sold at \$100,000 and now we have a  
24 seller that's under liquidation or disposition that  
25 has to put the property on the market and sell it in

1 a shorter time period; so, therefore they are going  
2 to take less for that property.

3 Q. Okay. So when someone takes less for  
4 property, you consider that a sales concession?

5 MS. MORGAN: Objection. Misstates prior  
6 testimony.

7 THE WITNESS: That's a liquidation or  
8 disposition value.

9 BY MS. HANKS:

10 Q. No. I understand that but I'm trying  
11 to understand what's your definition of a sales  
12 concession. I thought you had said when someone  
13 takes less for a property because they're selling it  
14 for a shorter period of time or they're forced sale?

15 A. Well, I think sales concession is when  
16 a seller -- I think you're misconstruing the term.  
17 Sales concession is when a seller offers concessions  
18 in order to attract a potential buyer that may not  
19 be able to afford the property; so, therefore I'll  
20 pay points on behalf of the buyer.

21 Q. Okay. And that's what I was trying to  
22 understand what was your definition of a sale  
23 concession. So a concession is when a seller offers  
24 the points?

25 A. Correct.

1 Q. Any other type of concession?

2 A. Any other type of concession?

3 MS. MORGAN: Objection. Vague.

4 THE WITNESS: Well, there is other concessions  
5 in regard to if a property is sold unreasonably in  
6 the too short a period of time, then it may not  
7 equal any type of definition of market value.

8 BY MS. HANKS:

9 Q. And how do you define unreasonably?

10 A. How do I define unreasonably?

11 Q. Uh-huh.

12 A. Well, let's say for example if we on  
13 the Brighton property we exposed it for one day,  
14 then there would be no way for that property to  
15 attract a competitive potential buyer pool that  
16 would purchase the property. And therefore it would  
17 not have proper exposure and it wouldn't meet the  
18 definition of a value.

19 Q. Meet the definition of market value or  
20 any value?

21 A. Any value.

22 Q. How long were properties on the market  
23 in Las Vegas in 2007?

24 MS. MORGAN: Objection. Vague and ambiguous.

25 THE WITNESS: It would really depend on what

1     meant by the term.

2             A.     If you're talking about an HOA lien  
3     they're not exposed to the market. They're not  
4     listed in the MLS and therefore they don't meet the  
5     definition of the open market.

6             Q.     In other words they don't meet the  
7     definition of a market value; correct?

8             A.     Any type of value.

9             Q.     But certainly not market value?

10            A.     Definitely.

11            Q.     And that's the appraisal that you did,  
12     correct, market value?

13            A.     That's the only appraisal I did.

14            Q.     Okay. Now, with respect to the sales  
15     concession getting back to that, I think you talked  
16     about when a seller offers points as an example of a  
17     sales concession, any other examples of sales  
18     concessions that a seller could offer in a  
19     particular sale?

20            MS. MORGAN: Objection. Vague and ambiguous.  
21     Outside the scope of work.

22            THE WITNESS: Well, they can give cars away as  
23     a concession. They can give anything they want as a  
24     concession.

25     / / / /



1 Q. Okay. And so in other words when  
2 you're comparing whether something sold for  
3 disposition value, why does it matter what the  
4 market value is? It's a completely different beast;  
5 right?

6 A. Well, it still matters what market  
7 value is because you have to look at the market  
8 value in order to get the disposition value. In  
9 other words if I have ten sales and my particular  
10 disposition value wants it sold in 30 days and all  
11 my sales happened in fifteen days, I could be  
12 actually selling it for more because I'm exposing it  
13 on the market longer.

14 Q. Or the inverse being less?

15 A. Absolutely.

16 Q. And it could be -- I think you said  
17 typically you might see 80 to 90 percent but it  
18 could even be less than that; correct?

19 A. Then you get to a position then is it a  
20 value?

21 Q. And isn't value just an economic  
22 concept, it's not a fact; correct?

23 A. In order to have -- sure.

24 Q. And so essentially what we have in this  
25 situation -- let's take the HOA foreclosing on its

1    lien. We have a very limited exposure to the  
2    market, right, listed for auction one day; correct?

3           MS. MORGAN: Objection. Assumes facts not in  
4    evidence. Calls for speculation.

5           THE WITNESS: It's at the auction for one day  
6    but prior to that it's got a notice of default for  
7    90 days, I believe.

8    BY MS. HANKS:

9           Q. Right. But it's not listed for sale  
10   during that 90-day period; correct?

11          A. Correct.

12          Q. So when a property is -- unlike a  
13   market value property that you're selling on the  
14   open market and can say, hey, I want to leave it up  
15   for sale for 30, 60, 90 days, an HOA is foreclosing  
16   on the lien, is only offering it up for auction on  
17   one day in a matter of minutes; correct?

18          MS. MORGAN: Objection. Vague and ambiguous  
19   and is an incomplete hypothetical.

20          THE WITNESS: Sure.

21   BY MS. HANKS:

22          Q. And we discussed earlier that that's a  
23   timing constraint. We called it constraints on the  
24   marketing that will affect the value.

25          A. It affects the value and creates a

1 concession.

2 Q. And therefore if we have a property  
3 that sold under those time constraints for less than  
4 market value, it falls or it could fall within a  
5 disposition value analysis or liquidation value  
6 analysis; correct?

7 MS. MORGAN: Objection. Incomplete  
8 hypothetical. Calls for speculation.

9 THE WITNESS: Are you talking about HOA lien?

10 BY MS. HANKS:

11 Q. Yeah.

12 A. No.

13 Q. Why not?

14 A. Because the HOA can only collect a  
15 certain amount that is owed to them. So the figure  
16 that they are collecting that between that and  
17 market value is the sales concession, they are  
18 giving up that difference because they don't care  
19 about it.

20 Q. And that to your understanding meets no  
21 definition of value within the appraisal world?

22 A. Absolutely.

23 Q. And then would it be fair to state then  
24 that because of that type of transaction meets no  
25 definition of value in the appraisal world, you

1 cannot compare that type of transaction to a market  
2 value transaction?

3 A. Correct.

4 Q. Now backing up to your retention, am I  
5 correct in understanding -- I think you had  
6 testified earlier but I want to make sure I  
7 understand -- that the appraisal for market value,  
8 retrospective market value that was imposed upon you  
9 by Bank of America; correct?

10 MS. MORGAN: What is the question? I'm sorry.

11 BY MS. HANKS:

12 Q. In other words you were contacted and  
13 asked to do a retrospective market value appraisal  
14 by Bank of America; correct?

15 A. By Accurity.

16 Q. Through Bank of America; correct? Bank  
17 of America talked to Accurity and said I want a  
18 retrospective market analysis; is that correct?

19 A. I believe so.

20 Q. And what I'm getting is, is that was  
21 the assignment that you were given?

22 A. Yes.

23 Q. And in other words you did not look at  
24 this particular case the lawsuits surrounding this  
25 case and this property and say I think retrospective

1 market analysis is a property analysis?

2 A. The client had stated what they wanted.

3 Q. Okay. Thank you. And just so I  
4 understand, when you did the market value  
5 retrospective market value analysis, you were doing  
6 it as of the effective date of September 12, 2012;  
7 correct?

8 A. I believe so. Yes.

9 Q. And it was in the context of the  
10 property not being sold in HOA foreclosure of a  
11 lien?

12 A. It was prior to.

13 Q. Right. So in other words it assumed  
14 that the borrower still owned the property and was  
15 listing it on the open market, your report?

16 A. Yes.

17 Q. And the first page of your report --  
18 it's actually page number three of your report and  
19 it's Bates stamped Dugan 000003 where you indicate  
20 that at the bottom paragraph, "The value opinion  
21 reported is as of the stated effective date and is  
22 contingent upon the certification and limiting  
23 conditions attached. The assumptions and limiting  
24 conditions along with the clarification of scope of  
25 work provides specifics as of development of the

1 appraisal along with exceptions that may have been  
2 necessary to complete a credible report."

3 A. Yes.

4 Q. And my question, I want to talk now  
5 about what assumptions and limiting conditions that  
6 apply to this particular appraisal. And I believe  
7 they are found on page eight of your report;  
8 correct?

9 A. Yes.

10 Q. So that's the page that's titled  
11 assumptions and limiting conditions and scope of  
12 work and one of the assumptions and limiting  
13 conditions that you made was that the title to this  
14 particular property was good and marketable; is that  
15 correct?

16 A. Yes.

17 Q. And what does it mean for title to be  
18 good and marketable?

19 MS. MORGAN: Objection. Calls for legal  
20 conclusion. Vague and ambiguous.

21 THE WITNESS: That the title is not clouded.

22 BY MS. HANKS:

23 Q. Does it mean that someone can sell the  
24 property?

25 A. Yes.

1 Q. Does it mean someone can insure the  
2 property via title insurance?

3 A. Yes.

4 Q. Does it mean someone can dispose of the  
5 property whether that be a sale or any other type of  
6 method, they can just do whatever they want with the  
7 property, that's what that means; correct?

8 MS. MORGAN: Objection. Incomplete  
9 hypothetical.

10 THE WITNESS: As long as it's legal.

11 BY MS. HANKS:

12 Q. Yeah. We don't mean burn it down and  
13 claim insurance proceeds; correct?

14 A. Yeah.

15 Q. Okay. Now with respect to SFR's  
16 purchasing of this property, is it your  
17 understanding that they received good and marketable  
18 title?

19 MS. MORGAN: Objection. Calls for a legal  
20 conclusion. Outside of the scope of work.

21 THE WITNESS: Outside of my scope of work. I  
22 didn't do any work regarding SFR.

23 BY MS. HANKS:

24 Q. Okay. Do you have an understanding  
25 that that is the crux of this litigation that the

1                   So I want to break that down to  
2     those three clauses. What is your understanding of  
3     the nature of the appraisal problem for this  
4     particular file?

5                   A.     To estimate the market value  
6     retrospective as a specific date per the client's  
7     request.

8                   Q.     And do you know if that really is going  
9     to have any relation to what is being fought about  
10    in the underlying litigation?

11                  MS. MORGAN: Objection. Vague and ambiguous.  
12    It's beyond the scope of Mr. Dugan's assignment and  
13    in a roundabout way calls for legal conclusion.

14                  THE WITNESS: I have no idea.

15    BY MS. HANKS:

16                  Q.     So you have no idea how Bank of America  
17    intends to use your report in the actual litigation?

18                  A.     No.

19                  MS. MORGAN: Objection. Misstates prior  
20    testimony.

21                  THE WITNESS: I believe they are doing it as a  
22    benchmark to estimate what the value of the property  
23    would have been if they had put it on the open  
24    market and sold it.

25    / / / /



1 Q. So SFR's purchase of the property was  
2 not a market value purchase; correct?

3 A. Yes.

4 Q. And further in that paragraph under  
5 your assumptions, limited conditions and scope of  
6 work, it reads, "The opinion of value that is the  
7 conclusion of this report is credible only within  
8 the context of the scope of work, effective date,  
9 the date of report, the intended users, the intended  
10 use, the stated assumptions, and limiting  
11 conditions, any hypothetical conditions, and/or  
12 extraordinary assumptions, and the type of value as  
13 defined herein."

14 And to summarize that sentence  
15 that essentially is saying that the report is only  
16 as credible as the acceptance of the fact that it  
17 was a retrospective market value appraisal; correct?

18 A. Yes.

19 Q. And actually if you go to page nine of  
20 your report, you actually define market value there  
21 and it has five elements; is that correct?

22 A. Yes.

23 Q. And just so I'm clear I think you've  
24 already testified to this, but I just want to make  
25 sure that the market value definition that's in your

1 report here, the transaction that SFR was involved  
2 in whereby it purchased the property at the HOA  
3 auction does not meet this definition of market  
4 value; correct?

5 A. Yes.

6 Q. Now, if you go to page number four of  
7 your report under the first box on that page where  
8 you have subject, it;s the little section that is  
9 marked subject, you have current owner of record is  
10 Justin and Bobbie Jo Missimer. Missimer? It's  
11 M-i-s-s-i-m-e-r. Is that a typo? It may be.

12 A. I have no idea. What's wrong with it?

13 Q. Well, I don't think they own the  
14 property. SFR owns it; so, I was just wondering,  
15 are you going from a different ownership of record?

16 A. I think they're the people that owned  
17 it prior to the sale.

18 Q. Okay. So not what the current owners  
19 are but what the owners would have been in terms of  
20 the retrospective analysis?

21 A. Well, yeah. I couldn't use who owns it  
22 today.

23 Q. Well --

24 A. I'm not doing it as of today. I did it  
25 as of September 12th, 2012.

1           A.    Right.  Yeah.  You could get an 80/20  
2   but you had to have the 20 down payment.  It had to  
3   be your money.  Couldn't be a gift from parents.  I  
4   mean, it was very, very difficult to just get a  
5   loan.

6           Q.    Right.  And, so I'm just talking in  
7   generalities.  Is that another example of a  
8   constraint that could affect a value for a property  
9   when you limit the pool of buyers?

10          A.    Yes.

11          Q.    And do you know whether the pool of  
12   buyers is limited in the context of an HOA  
13   foreclosure of a lien?  In other words buyers who  
14   potential bidders at that auction, is that pool  
15   limited in anyway?

16          MS. MORGAN:  Objection.  Vague and ambiguous.  
17   Calls for speculation.

18          THE WITNESS:  I would say yes.

19   BY MS. HANKS:

20          Q.    And one of the ways it's limited is a  
21   party typically has -- well, I think always has to  
22   be a cash buyer when attending an auction; correct?

23          A.    I believe so.

24          Q.    Okay.

25          A.    Or at least they have to have a certain

1 BY MS. HANKS:

2 Q. Do you know what the term "bundle of  
3 rights" means?

4 MS. MORGAN: Objection. Calls for legal  
5 conclusion.

6 THE WITNESS: Bundle of the rights is all of  
7 the components to fee simple estate.

8 BY MS. HANKS:

9 Q. Okay. And maybe we've already talked  
10 about it and just stating it a different way.  
11 Whether someone is getting a fee simple estate, does  
12 that affect value?

13 MS. MORGAN: Objection. Incomplete  
14 hypothetical. Calls for speculation.

15 THE WITNESS: Yes.

16 BY MS. HANKS:

17 Q. And would it be fair to state that when  
18 you -- when a buyer is not getting fee simple, the  
19 value would decrease?

20 MS. MORGAN: Same objections.

21 THE WITNESS: Yes.

22 BY MS. HANKS:

23 Q. Can you just go to page 29 of your  
24 report? It's still talking about the clarification  
25 of scope of work. And you have evaluation

1 really talked about it at length today but I want to  
2 make sure I understand that last paragraph on the  
3 last page of your report. Would it be fair to state  
4 that your report and your opinion as to the value  
5 really can only be understood in terms of September  
6 12, 2012 taking into consideration that it would be  
7 a market value transaction; correct?

8 MS. MORGAN: Objection. Vague and ambiguous.

9 THE WITNESS: Yes.

10 MS. HANKS: All right. I don't think I have  
11 anything further on this file.

12 MS. MORGAN: Okay.

13 MS. HANKS: We're adding as Exhibit 1 his  
14 report.

15 (Exhibit 1 marked.)

16 (Whereupon the deposition was  
17 concluded at 12:10 p.m.)

18

19

20

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23

24

25

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, RICHARD SCOTT DUGAN, on Monday, June 16, 2015, commencing at the hour of 10:09 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 23rd day of June 2015.

ANGELA CAMPAGNA, CCR #495

*Angela Campagna*

# EXHIBIT D-5

Deposition of David Alessi

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 ALESSI & KOENIG, LLC, )  
4 )  
5 Plaintiff, )  
6 )  
7 vs. ) Case No. A-14-705563-C  
8 ) Dept. No. XVII  
9 STACY MOORE, an individual; )  
10 MAGNOLIA GOTERA, an )  
11 individual; KRISTIN JORDAL, AS )  
12 TRUSTEE FOR THE JBWNO )  
13 REVOCABLE LIVING TRUST, a )  
14 trust; U.S. BANK, N.A., a )  
15 national banking association; )  
16 NATIONSTAR MORTGAGE, LLC, a )  
17 foreign limited liability )  
18 company; REPUBLIC SILVER STATE )  
19 DISPOSAL, INC., DBA REPUBLIC )  
20 SERVICES, a domestic )  
21 government entity; et al., )  
22 )  
23 Defendants. )  
24 )  
25 )  
\_\_\_\_\_  
AND RELATED COUNTERCLAIM AND )  
THIRD-PARTY CLAIM. )  
\_\_\_\_\_)

16 DEPOSITION OF  
17 30(B)(6) REPRESENTATIVE FOR ALESSI & KOENIG, L.L.C.  
18 DAVID ALESSI  
19 HENDERSON, NEVADA  
20 WEDNESDAY, MAY 16, 2018  
21

22 VERITEXT LEGAL SOLUTIONS  
23 (800) 567-8658  
24 REPORTED BY: CYNTHIA K. DuRIVAGE, CCR No. 451  
25 JOB NO.: 2908059



<p style="text-align: right;">Page 2</p> <p>1 DISTRICT COURT  2 CLARK COUNTY, NEVADA  3 ALESSI &amp; KOENIG, LLC, )  4 )  5 Plaintiff, )  6 )  7 vs. ) Case No. A-14-705563-C  8 ) Dept. No. XVII  9 STACY MOORE, an individual; )  10 MAGNOLIA GOTERA, an )  11 individual; KRISTIN JORDAL, AS)  12 TRUSTEE FOR THE JBWNO )  13 REVOCABLE LIVING TRUST, a )  14 trust; U.S. BANK, N.A., a )  15 national banking association; )  16 NATIONSTAR MORTGAGE, LLC, a )  17 foreign limited liability )  18 company; REPUBLIC SILVER STATE)  19 DISPOSAL, INC., DBA REPUBLIC )  20 SERVICES, a domestic )  21 government entity; et al., )  22 )  23 Defendants. )  24 )  25 AND RELATED COUNTERCLAIM AND )  THIRD-PARTY CLAIM. )  Deposition of DAVID ALESSI, taken on  behalf of Defendant Nationstar Mortgage, LLC, at  2450 St. Rose Parkway, Suite 200, Henderson, Nevada,  commencing at 3:21 p.m., Wednesday, May 16, 2018,  before Cynthia K. DuRivage, CCR No. 451.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX  2 WITNESS: DAVID ALESSI  3 EXAMINATION PAGE  4 BY MR. MILNE 7  5 BY MR. MARTINEZ 59  6  7  8 EXHIBITS  9  10 LETTER DESCRIPTION PAGE  11 A Notice Of Subpoena For Deposition 7  12 Of The NRCP 30(B)(6) Witness For  Alessi &amp; Koenig, LLC  13  14 B Copper Sands Homeowners 10  15 Association, Inc. Status report  for Stacy Moore  16  17 C Deed Of Trust 13  18  19 D Notice Of Delinquent Assessment 14  Lien, 4/15/08  20 E Letter to Magnolia Gotera from 16  Aileen Ruiz, 4/15/08  21  22 F Trustee's Sale Guarantee 18  23  24 G Notice Of Default And Election 18  25 To Sell Under Homeowners  Association Lien, 6/21/08  H Letter to Alessi &amp; Koenig, LLC 21  from First American Title  Insurance Company, 5/14/10  I Letter to Miles, Bauer, 22  Bergstrom &amp; Winters from Ryan  Kerbow, 9/8/10</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES  2 FOR DEFENDANT NATIONSTAR MORTGAGE, LLC:  3 GARY C. MILNE  BY: GERRARD COX LARSEN, ESQ.  4 2450 St. Rose Parkway  Suite 200  5 Henderson, Nevada 89074  (702) 796-4000  6 gmlne@gerrard-cox.com  7  8 FOR THIRD-PARTY DEFENDANT SFR INVESTMENTS POOL 1,  9 LLC:  10 KIM GILBERT EBON  BY: JASON G. MARTINEZ, ESQ.  11 7625 Dean Martin Drive  Suite 110  12 Las Vegas, Nevada 89139  (702) 485-3300  13 jason@kgelegal.com  14  15  16 * * * * *  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX (CONT'D)  2 EXHIBITS  3 LETTER DESCRIPTION PAGE  4 J Letter to Alessi &amp; Koenig, 24  L.L.C. from Rock K. Jung,  5 9/30/10  6 K Letter from Shadow Mountain 27  Ranch to Magnolia Gotera  7 reflecting assessments  8 L Authorization To Conclude Non- 29  Judicial Foreclosure And  9 Conduct Trustee Sale  10 M Notice Of Trustee's Sale, 32  12/16/10  11  12 N Grant Deed, 5/27/11 33  13  14 O Grant Deed, 5/27/11 34  15  16 P Assignment Of Deed Of Trust, 34  10/27/11  17 Q Notice Of Delinquent Assessment 35  Lien, 8/13/12  18  19 R Letter from Shadow Mountain 37  Ranch to Stacy Moore reflecting  Assessments  20  21 S Letter to Stacy Moore from 39  Alessi &amp; Koenig, 8/13/12  22 T Real Estate Listing Report 40  23 U Notice Of Default And Election 41  To Sell Under Homeowners  Association Lien, 9/11/12  24 V Notice Of Default And Election 42  To Sell Under Homeowners  Association Lien, 6/3/13</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX (CONT'D)</p> <p>2 EXHIBITS</p> <p>3 LETTER DESCRIPTION PAGE</p> <p>4 W Assignment Of Deed Of Trust, 45 7/1/13</p> <p>5</p> <p>6 X Notice Of Trustee's Sale, 46 9/11/2</p> <p>7 Y Notice Of Trustee's Sale, 48 11/14/13</p> <p>8</p> <p>9 Z Trustee's Deed Upon Sale, 49 6/13/14</p> <p>10 AA Email from George Bates to 55 maximumfinancial@aol.com, 1/8/14</p> <p>11</p> <p>12 BB Alessi &amp; Koenig multiple pages 55 of fees and costs</p> <p>13</p> <p>14 CC Appraisal Of Real Property 56</p> <p>15</p> <p>16 DD Affidavit of David Alessi, 58 9/7/17</p> <p>17</p> <p>18 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</p> <p>19 (NONE)</p> <p>20</p> <p>21</p> <p>22 INFORMATION TO BE SUPPLIED:</p> <p>23 (NONE)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 Have you seen this document before?</p> <p>2 A. Yes, I have, and I am prepared to testify</p> <p>3 on all the matters contained within it.</p> <p>4 Q. All right. Very good.</p> <p>5 I notice today you're not represented by</p> <p>6 counsel, although I understand you are an attorney,</p> <p>7 correct?</p> <p>8 A. I'm a California attorney, correct.</p> <p>9 Q. All right. I believe, if I'm not mistaken,</p> <p>10 Alessi &amp; Koenig, LLC is the named plaintiff in this</p> <p>11 litigation.</p> <p>12 Do you know if they're represented by</p> <p>13 counsel in this matter?</p> <p>14 A. No. Alessi Koenig filed Chapter 7 in</p> <p>15 December of 2016. So Shelly Krohn is the trustee.</p> <p>16 Janette Pearson is the trustee's attorney.</p> <p>17 Q. But you're here today as the 30(b)(6)</p> <p>18 designee for Alessi &amp; Koenig, are you not?</p> <p>19 A. Yes.</p> <p>20 Q. How much time did you spend preparing for</p> <p>21 this deposition, perhaps reviewing the collection</p> <p>22 file?</p> <p>23 A. As I do in all my depositions, I contacted</p> <p>24 Jona, J-o-n-a, LePoma, L-e-P-o-m-a, on my way to the</p> <p>25 deposition, and we went over both files, the depo I</p>
<p style="text-align: right;">Page 7</p> <p>1 DAVID ALESSI,</p> <p>2 having first been duly sworn to testify to the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MR. MILNE:</p> <p>8 Q. David, my name is Gary Milne. I represent</p> <p>9 Nationstar Mortgage in this litigation.</p> <p>10 I know immediately prior to today's</p> <p>11 deposition, your deposition was taken in another</p> <p>12 matter here in this office.</p> <p>13 At that time, were any admonitions</p> <p>14 provided, or you've probably done hundreds, if not</p> <p>15 thousands of these?</p> <p>16 A. That's correct, I have, and there's no need</p> <p>17 for any admonitions. We can just jump right in.</p> <p>18 Q. All right. Thank you.</p> <p>19 Let me hand you what we're going to mark as</p> <p>20 Defendant's Exhibit A.</p> <p>21 (Exhibit A was marked for</p> <p>22 identification by the reporter.)</p> <p>23 BY MR. MILNE:</p> <p>24 Q. David, you have in front of you what we've</p> <p>25 marked as Exhibit A to your deposition.</p>	<p style="text-align: right;">Page 9</p> <p>1 just took and this one.</p> <p>2 It doesn't take me long at this point. I</p> <p>3 probably spent five or ten minutes on it.</p> <p>4 Q. Did you talk to anyone besides the</p> <p>5 individual identified?</p> <p>6 A. No.</p> <p>7 Q. Do you know how it is that Alessi &amp; Koenig</p> <p>8 got involved with this HOA foreclosure sale?</p> <p>9 A. We would have been hired by the homeowners</p> <p>10 association.</p> <p>11 Q. I believe, if I'm recalling correctly,</p> <p>12 Shadow Mountain Ranch Community Association?</p> <p>13 A. Shadow Mountain, yes.</p> <p>14 So generally, there's a retainer between</p> <p>15 our firm and the association or the board by way of a</p> <p>16 motion at a properly quorumed HOA board meeting would</p> <p>17 hire us.</p> <p>18 Our main point of contact, though, is the</p> <p>19 HOA management company. It's usually not the board</p> <p>20 or the HOA itself.</p> <p>21 Q. Would you happen to know whether is the</p> <p>22 first matter you've handled for Shadow Mountain?</p> <p>23 Were there others? Do you have any idea?</p> <p>24 A. For Shadow Mountain, I don't know.</p> <p>25 Q. Do you know who the management company was?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I don't know.</p> <p>2 Q. But most of your contact in terms of the</p> <p>3 collection process would be through the management</p> <p>4 company on behalf of the HOA, correct?</p> <p>5 A. Usually, yes.</p> <p>6 Q. Do you know anything about the homeowner,</p> <p>7 Magnolia Gotera?</p> <p>8 A. No.</p> <p>9 Q. Any communications through your office with</p> <p>10 her that you saw upon your review of the file?</p> <p>11 A. Not that I know of.</p> <p>12 If I had the status report, which I believe</p> <p>13 was produced in our document production, that would</p> <p>14 help assist me.</p> <p>15 Generally, communication with the homeowner</p> <p>16 would be noted in the status report.</p> <p>17 MR. MILNE: Why don't we go ahead and hand</p> <p>18 you, then.</p> <p>19 Madam Court Reporter, I don't know if</p> <p>20 you've got specific colors for your exhibit stickers</p> <p>21 you're wanting to use.</p> <p>22 (Exhibit B was marked for</p> <p>23 identification by the reporter.)</p> <p>24 BY MR. MILNE:</p> <p>25 Q. David, you have in front of you what we've</p>	<p style="text-align: right;">Page 12</p> <p>1 the homeowner, payments received or payments made.</p> <p>2 Q. Based upon anything here or, again,</p> <p>3 anything you may have seen in reviewing the file, do</p> <p>4 you know whether or not Magnolia Gotera lived in this</p> <p>5 property or whether it was a rental property or any</p> <p>6 understanding one way or the other?</p> <p>7 A. I don't have any understanding one way or</p> <p>8 the other of that.</p> <p>9 Q. At some point, did Alessi &amp; Koenig come to</p> <p>10 understand that she didn't live there?</p> <p>11 A. From the documents that I have in front of</p> <p>12 me, I cannot answer that question. Perhaps if I saw</p> <p>13 the mailings, if there was an offsite address. But I</p> <p>14 don't see anything in the file so far to indicate</p> <p>15 that.</p> <p>16 Q. Does Alessi &amp; Koenig -- or, did Alessi &amp;</p> <p>17 Koenig do anything in terms of making sure they had</p> <p>18 current mailing information for the homeowner?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: We did review the public</p> <p>21 records to ascertain current addresses.</p> <p>22 BY MR. MILNE:</p> <p>23 Q. Beyond that, any other research?</p> <p>24 A. No, not that I can think of.</p> <p>25 Q. And if a mailing came back, would any</p>
<p style="text-align: right;">Page 11</p> <p>1 marked as Exhibit B, which I believe may be that</p> <p>2 status report, if I'm using the language correctly --</p> <p>3 A. Yes.</p> <p>4 Q. -- that you referenced.</p> <p>5 A. Yes. And so, to answer your question, it</p> <p>6 looks like we did make contact with the homeowner on</p> <p>7 October 12th, 2009. There's an entry in the status</p> <p>8 report to that effect. And it also says:</p> <p>9 "Spoke with homeowner, payment</p> <p>10 forthcoming."</p> <p>11 Q. Tell me a little bit about this Exhibit B,</p> <p>12 how it's prepared or was prepared.</p> <p>13 I'm going to assume it's by whoever does</p> <p>14 anything substantive with the file. There's a</p> <p>15 computer entry made as to what was done and when and</p> <p>16 a description and so forth.</p> <p>17 A. Yes.</p> <p>18 Q. Is that how it's generated?</p> <p>19 A. These entries are done by employees of the</p> <p>20 law firm.</p> <p>21 Q. Alessi &amp; Koenig?</p> <p>22 A. Of Alessi &amp; Koenig, yes. And they're meant</p> <p>23 to capture all of the pertinent, relevant events on a</p> <p>24 foreclosure file, such as the recording of the</p> <p>25 various notices, communications with the bank and/or</p>	<p style="text-align: right;">Page 13</p> <p>1 inquiry, either with the management company or the</p> <p>2 HOA, be made?</p> <p>3 A. Generally, any updates to mailing addresses</p> <p>4 or offsite addresses are reflected on the ledger.</p> <p>5 Generally, we would obtain an updated</p> <p>6 accounting ledger when we take the next step in the</p> <p>7 foreclosure process.</p> <p>8 I see several entries here where we</p> <p>9 requested an updated accounting ledger.</p> <p>10 So in that way, we are updating our</p> <p>11 records.</p> <p>12 (Exhibit C was marked for</p> <p>13 identification by the reporter.)</p> <p>14 BY MR. MILNE:</p> <p>15 Q. David, I've handed you what we've marked as</p> <p>16 Exhibit C to your deposition. It's a deed of trust</p> <p>17 recorded on November 21st, 2005.</p> <p>18 Did you see this upon your review of the</p> <p>19 collection file?</p> <p>20 A. I did not.</p> <p>21 Q. Is it typical to obtain a copy of the deed</p> <p>22 of trust in the process of foreclosing an HOA's lien?</p> <p>23 A. I don't know if it's typical or atypical.</p> <p>24 We oftentimes do either review it online -- I can't</p> <p>25 say that it's typical for us to print it out and scan</p>

<p style="text-align: right;">Page 14</p> <p>1 it into the file, although I have seen it on a number 2 of occasions.</p> <p>3 Q. And I'll represent to you that the 4 documents we obtained from the Dropbox did include a 5 copy of the deed of trust. I don't know whether it 6 was this exact one, exact copy, in other words, this 7 copy might have been obtained somewhere else, but one 8 was seen in the collection file.</p> <p>9 But be that as it may, why would Alessi &amp; 10 Koenig want to have a copy of the deed of trust in 11 the collection file?</p> <p>12 MR. MARTINEZ: Objection, form.</p> <p>13 THE WITNESS: We would place the -- to 14 obtain information as to who to mail the notices to 15 as well as the amount owed on the property.</p> <p>16 BY MR. MILNE:</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can think of.</p> <p>19 We would also be looking for assignments of 20 the deed of trust. All of this is done to ensure 21 that we mail the notices to the right parties.</p> <p>22 (Exhibit D was marked for 23 identification by the reporter.)</p> <p>24 THE WITNESS: Exhibit D is a copy of a 25 notice of delinquent assessment lien recorded</p>	<p style="text-align: right;">Page 16</p> <p>1 a super-priority lien?</p> <p>2 MR. MARTINEZ: Objection, form.</p> <p>3 THE WITNESS: The words "super-priority 4 lien" are not on this document. It just has a total 5 amount due. So there would be no way for a person 6 reading the document to ascertain a super-priority 7 amount.</p> <p>8 BY MR. MILNE:</p> <p>9 Q. The recording date is, I don't know, looks 10 to be about three weeks after the date the notice of 11 lien was signed.</p> <p>12 Is that typical, or is there any 13 requirement by the statute, as you understand it?</p> <p>14 MR. MARTINEZ: Objection, form.</p> <p>15 THE WITNESS: There's no requirement by the 16 statute, as I understand it.</p> <p>17 (Exhibit E was marked for 18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, Exhibit E is two letters sent to 21 Magnolia Gotera, both dated April 15, 2008, one with 22 an address in Las Vegas, which I think is the 23 property address, and the other is to Salinas, 24 California.</p> <p>25 What is this letter?</p>
<p style="text-align: right;">Page 15</p> <p>1 May 7th, 2008.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. I notice in looking at Exhibit D, David, 4 that in the first paragraph for recorded information 5 as to the CC&amp;Rs, the word "pending" is indicated 6 there.</p> <p>7 Do you know how or why that is?</p> <p>8 A. I don't.</p> <p>9 Q. The total amount due is \$957, and the 10 notice purports to break that amount down into 11 collection and attorney's fees as well as collection 12 costs, late fees, et cetera.</p> <p>13 Would I be correct in understanding, after 14 I subtract out the collection and attorney's fees and 15 the collection costs and late fees, the balance would 16 be the assessments that are delinquent?</p> <p>17 MR. MARTINEZ: Object to form.</p> <p>18 THE WITNESS: As well as the management 19 company intent to lien fee and the management company 20 audit fee.</p> <p>21 BY MR. MILNE:</p> <p>22 Q. Anybody who received this notice of 23 delinquent assessment lien, Exhibit D, upon looking 24 at it, would they be able to determine whether or not 25 the HOA was seeking to foreclose what we now know as</p>	<p style="text-align: right;">Page 17</p> <p>1 A. This is a lien cover letter. With this 2 letter, the notice of delinquent assessment lien 3 would have been enclosed. It's informing the 4 delinquent homeowner that there's a past-due balance 5 due and the date that it's due.</p> <p>6 Q. Can you tell from the -- what did you call 7 Exhibit B, status report or status record, whether or 8 not Exhibit E came back, was delivered, anything 9 about the success of this mailing?</p> <p>10 A. Well, you can see on the second entry, 11 April 11th, 2008, that the lien recordation was sent 12 via regular certified mail. This Exhibit E is a copy 13 of that mailing with the certified mail number.</p> <p>14 You can see the certified mail number on 15 the document.</p> <p>16 Q. Sure. And the dates, April 11 on the 17 report and April 15 on the Exhibit E itself, any 18 understanding as to why those are off by four days?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: I don't think that they're 21 off.</p> <p>22 I would imagine that the lien might have 23 been drafted. The entries in the status report are 24 on or about dates, so it just may not -- the legal 25 assistant was in the process of mailing the lien out</p>

<p style="text-align: right;">Page 18</p> <p>1 and part of that process was entering the event in 2 the status report. 3 (Exhibit F was marked for 4 identification by the reporter.) 5 BY MR. MILNE: 6 Q. David, you have in front of you what we've 7 marked as Exhibit F to your deposition, a trustee 8 sale guarantee for North American Title Company, 9 effective July 23, 2008. 10 Why is this in Alessi &amp; Koenig's collection 11 file? 12 A. This document helps us ascertain the 13 encumbrances on the property, who to -- helps us 14 determine who to mail the notice of default to. 15 Q. And I see on the third page of Exhibit F 16 the deed of trust in favor of Countrywide Home Loans 17 is noted there, correct? 18 A. Yes. 19 (Exhibit G was marked for 20 identification by the reporter.) 21 BY MR. MILNE: 22 Q. David, you've been handed Exhibit G. It's 23 a notice of default and election to sell under 24 homeowners association lien, and it's actually three 25 different documents.</p>	<p style="text-align: right;">Page 20</p> <p>1 that each of the notices references the same lien. 2 BY MR. MILNE: 3 Q. The first lien that was Exhibit D? 4 A. Correct. 5 Q. It looks like, referencing again the status 6 report, Exhibit B, that the June 21, 2008 notice of 7 default is referenced, as is an April 2009 notice of 8 default, April 14th. 9 A. It looks like in parenthesis, it says, 10 "re-recording." I don't know if there was an issue 11 with the recordings or the mailings of that first 12 notice of default. I don't have enough documents in 13 front of me. 14 Q. And then, the third page of Exhibit G, the 15 July 2010 notice of default, again, that also, I 16 think, is reflected in the status report at the 17 bottom of the first page of Exhibit B as June 21st? 18 A. Yes. 19 Q. But your best recollection or understanding 20 is that these multiple notices of default was to 21 prompt the homeowner to pay the delinquent 22 assessment? 23 A. Yes. Going to foreclosure sale, though, 24 was the last resort, especially this long ago. 25 At the beginning of the process, we could</p>
<p style="text-align: right;">Page 19</p> <p>1 The first page is a notice of default 2 recorded on July 23, 2008. The second page is a 3 notice of default recorded on April 30, 2009. And 4 the third page is a notice of default recorded on 5 July 1, 2010. 6 As best as I can tell, the only difference 7 between the documents is some dollar figures are 8 different and maybe some other dates, but I'm just 9 hoping you can maybe help me understand what was the 10 need for successive notice of default under this one 11 notice of lien. 12 MR. MARTINEZ: Objection, form. 13 THE WITNESS: I don't know. It could be 14 that -- I don't know. 15 It does not look like we charged multiple 16 times for the notice of default. 17 This file is an old file, it's 2008, 2009, 18 2010. We really weren't going to sale. So these 19 notices could have been to try to get the attention 20 of the homeowner a year later because we weren't 21 moving forward to sale on properties at this time 22 very regularly. And so, just in an effort to shake 23 the trees, as it were, a little bit, it doesn't look 24 like we charged for the notice. I don't see the 25 mailings for any of the notices. But I would note</p>	<p style="text-align: right;">Page 21</p> <p>1 have certainly recorded a notice of trustee sale and 2 levied more fees on the account. 3 It does look like we might have had a 4 little bit of contact from the homeowner. So we were 5 just trying to close the account out and, like I 6 said, shake the trees a little bit. 7 Q. And the notice of default would, in 8 addition to being mailed to the homeowner would also 9 be mailed to a lender, correct? 10 A. Correct. 11 (Exhibit H was marked for 12 identification by the reporter.) 13 BY MR. MILNE: 14 Q. David, Exhibit H appears to be another 15 trustee sale guarantee like document. This time, 16 instead of it coming from North American Title 17 Company, this one appears to be generated by First 18 American Title Company, effective May 6, 2010. 19 Reason why it didn't go back to North 20 American Title? 21 A. I don't know. We use multiple title 22 insurance companies over the years. 23 Q. And again, Exhibit H shows the deed of 24 trust in favor of Countrywide, correct? 25 A. Correct.</p>

<p style="text-align: right;">Page 22</p> <p>1 (Exhibit I was marked for 2 identification by the reporter.) 3 BY MR. MILNE: 4 Q. David, Exhibit I is a letter on Alessi &amp; 5 Koenig letterhead, dated September 8, 2010 with a 6 subject line "Rejection of Partial Payments." 7 I've kind of tried to compare this to the 8 status report, Exhibit B, to get a better 9 understanding of the communications to and from 10 Alessi &amp; Koenig and Miles Bauer Bergstrom &amp; Winters 11 who is identified on this letter as the recipient. 12 And it looks like, based upon the status 13 report, that on September 9, 2010, Alessi &amp; Koenig 14 received payoff requests from Miles Bauer Bergstrom &amp; 15 Winters. 16 I didn't see that letter in the collection 17 file in preparation for your deposition. But then, I 18 look at that date, September 9, and compare it to 19 Exhibit I, which is a day earlier, September 8, and I 20 was a little confused on the dates. 21 Am I correct in believing and understanding 22 that Exhibit I was received after a request from 23 Miles Bauer for payoff information, whatever date 24 that letter may have been? 25 MR. MARTINEZ: Objection, form.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. But typically in these cases where Alessi &amp; 2 Koenig has communicated with Miles Bauer, Alessi &amp; 3 Koenig would receive communication from Miles Bauer 4 requesting a super-priority amount, and then, a 5 letter such as Exhibit I would be generated? 6 A. No. Exhibit I is an outlier. 7 Generally, the response would be a demand 8 that you see on page 2 of Exhibit I with an account 9 ledger attached to it. 10 Q. Okay. 11 A. I've only seen the first page of Exhibit I 12 at a couple of depositions. 13 Generally what I would see in response to 14 Miles' request for a payoff is a breakdown that you 15 see on page 2 with an attached account ledger. 16 Q. Page 2 of Exhibit I? 17 A. Yes. 18 (Exhibit J was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, Exhibit J is a letter dated 22 September 30, 2010 from Miles Bauer to Alessi &amp; 23 Koenig; the third page of which includes a Miles 24 Bauer check payable to Alessi &amp; Koenig for \$207. 25 Have you seen this document before, or did</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: Not received. This letter 2 would have been sent by our office to Miles Bauer, 3 and I'm not surprised that Ryan didn't note the 4 status report or that this document wouldn't be 5 scanned by Ryan into the status report. 6 But I've seen this document at a couple of 7 my several hundred depositions that Ryan apparently 8 sent out, Ryan Kerbow, K-e-r-b-o-w. I don't know 9 that this letter is noted on the status report, but 10 you are correct that this is part of the 11 back-and-forth communication between our office and 12 Miles Bauer reflected in the status report. 13 BY MR. MILNE: 14 Q. Would this letter ever go out peremptorily 15 or before receipt of communication from Miles Bauer? 16 MR. MARTINEZ: Objection, form. 17 THE WITNESS: No. It would be facilitated 18 by Miles Bauer contacting our office. 19 The document references a rejection of a 20 partial payment. I don't see anything in the status 21 report reflecting receipt of a payment by Miles 22 Bauer, however. 23 BY MR. MILNE: 24 Q. We'll get there. 25 A. Okay.</p>	<p style="text-align: right;">Page 25</p> <p>1 you see it in your review of the collection file? 2 A. I did not. 3 Q. It seems to reference the statement of 4 account that we did see as the second page to 5 Exhibit I. 6 In fact, it references the same \$3,554 as 7 what was being claimed for a full payoff amount. 8 Miles Bauer, however, forwarded a check 9 payable to Alessi &amp; Koenig for \$207, correct? 10 MR. MARTINEZ: Objection, form, facts not 11 in evidence. 12 BY MR. MILNE: 13 Q. I mean, do you know if Alessi &amp; Koenig 14 received Exhibit J? 15 MR. MARTINEZ: Objection, form. 16 THE WITNESS: I don't know. I would expect 17 to see either a copy of the check -- and this is 18 based on my prior testimony in depositions -- either 19 a file -- copy of the check in our file, in our 20 production or a reference to the check in the status 21 report or both. 22 However, the absence of a reference in the 23 status report and a copy in our check -- in our file 24 would not lead me to believe conclusively that we 25 didn't receive the check.</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 There is a possibility that the check was</p> <p>2 sent to our office, and we failed to scan it into the</p> <p>3 program and/or note it in the status report. I just</p> <p>4 don't know for sure.</p> <p>5 BY MR. MILNE:</p> <p>6 Q. Is it possible that Exhibit I, the letter</p> <p>7 from Ryan Kerbow, would be responsive to receipt of</p> <p>8 what Ryan was calling a partial payment?</p> <p>9 MR. MARTINEZ: Objection to form.</p> <p>10 THE WITNESS: The dates wouldn't make sense</p> <p>11 inasmuch as his letter predates --</p> <p>12 BY MR. MILNE:</p> <p>13 Q. The Miles Bauer letter?</p> <p>14 A. -- the Miles Bauer letter.</p> <p>15 So again, I would have no way of knowing</p> <p>16 except to say that it is possible that this letter</p> <p>17 and check were sent to our office and that we failed</p> <p>18 to note it in the status report or make a copy of it.</p> <p>19 Whether it's more likely or not, I don't</p> <p>20 know that I would be comfortable answering that.</p> <p>21 Q. The address for Alessi &amp; Koenig in</p> <p>22 September of 2010 is 9500 West Flamingo Road,</p> <p>23 Suite 100, was it not?</p> <p>24 A. Actually, it was Suite -- in 2010 we were</p> <p>25 upstairs in the Suite 204.</p>	<p style="text-align: right;">Page 28</p> <p>1 to the \$207 that the Miles Bauer check was for?</p> <p>2 MR. MARTINEZ: Objection, form.</p> <p>3 THE WITNESS: I agree.</p> <p>4 BY MR. MILNE:</p> <p>5 Q. So at any rate, assuming that Alessi &amp;</p> <p>6 Koenig received the Miles Bauer letter for \$207, it</p> <p>7 appears they were attempting to tender the</p> <p>8 super-priority lien based upon the</p> <p>9 23-dollar-per-month assessment for the HOA.</p> <p>10 Is that your understanding?</p> <p>11 MR. MARTINEZ: Objection, form, facts not</p> <p>12 in evidence. Also, hypothetical to a lay witness.</p> <p>13 THE WITNESS: Yeah. If we received this</p> <p>14 check, it would appear -- it is equal to nine months</p> <p>15 of assessments, 23 times 9.</p> <p>16 BY MR. MILNE:</p> <p>17 Q. And that was their attempt to -- I mean,</p> <p>18 reading their letter, I mean, Exhibit J speaks for</p> <p>19 itself, but it appears they were attempting to tender</p> <p>20 the super-priority amount as they determined at that</p> <p>21 time based upon the \$23-a-month assessments amount?</p> <p>22 MR. MARTINEZ: Objection, form.</p> <p>23 THE WITNESS: I mean, I would agree with</p> <p>24 you the document speaks for itself. I would defer to</p> <p>25 the author of the document to interpret it.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Does this Exhibit J reference the correct</p> <p>2 property we're here to talk about today, Marsh Butte</p> <p>3 Street?</p> <p>4 A. Yes.</p> <p>5 (Exhibit K was marked for</p> <p>6 identification by the reporter.)</p> <p>7 BY MR. MILNE:</p> <p>8 Q. David, you have in front of you what we've</p> <p>9 marked as Exhibit K. It appears to be a ledger for</p> <p>10 Shadow Mountain Ranch HOA showing assessment amounts</p> <p>11 at least as early as January 2009 and continuing</p> <p>12 through October of 2010, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Monthly assessments \$23?</p> <p>15 A. Yes.</p> <p>16 Q. And would that cover the period showing the</p> <p>17 amount of assessments for the notice of lien, the</p> <p>18 notice of default, and the Miles Bauer letters we've</p> <p>19 been talking about here?</p> <p>20 MR. MARTINEZ: Objection, form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MILNE:</p> <p>23 Q. I went to law school, so I'm no great</p> <p>24 mathematician, but if I times the \$23 for monthly</p> <p>25 assessment by nine months, I think that computes out</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. MILNE:</p> <p>2 Q. Looking at the second page, almost about</p> <p>3 the middle, quote:</p> <p>4 "Thus, enclosed, you will find a</p> <p>5 cashier's check made out to Alessi &amp;</p> <p>6 Koenig, LLC in the sum of \$207 which</p> <p>7 represents the maximum nine months</p> <p>8 worth of delinquent assessments</p> <p>9 recoverable by an HOA."</p> <p>10 Do you see that language?</p> <p>11 A. Yes.</p> <p>12 MR. MARTINEZ: Objection, form.</p> <p>13 BY MR. MILNE:</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 (Exhibit L was marked for</p> <p>17 identification by the reporter.)</p> <p>18 BY MR. MILNE:</p> <p>19 Q. David, Exhibit L appears to be an unsigned</p> <p>20 authorization to conclude nonjudicial foreclosure and</p> <p>21 conduct a trustee's sale on Alessi &amp; Koenig</p> <p>22 letterhead. I don't see a date specific on it, but</p> <p>23 it appears to have been chronologically next in order</p> <p>24 in terms of what we're talking about here today.</p> <p>25 Do you have an understanding as to whether</p>

<p style="text-align: right;">Page 30</p> <p>1 or not the HOA approved proceeding with the trustee  2 sale at or about the time we've been discussing?  3 A. Yes. My understanding is that the  4 association approved the sale. They cashed the check  5 January 10th, 2014. A check was cut to Shadow  6 Mountain Ranch for \$3,806 which they cashed. I've  7 never heard anything from the association that they  8 did not approve the sale.  9 Our policy, Alessi &amp; Koenig's policy, was  10 that we would move forward to sale absent specific  11 direction from the client not to.  12 In other words, this authorization was not  13 required that it be signed.  14 Q. I guess what I -- I guess I want to go back  15 in time before then and drawing your attention to  16 September 15, 2011 on your status report in  17 Exhibit B.  18 A. Yes.  19 Q. That tells me that the trustee sale was not  20 authorized per board of directors.  21 A. Yeah. That -- and I don't have the board  22 meeting minutes.  23 I can tell you that we wanted to show the  24 client that we were looking at the file every month,  25 especially at the beginning of the process, files</p>	<p style="text-align: right;">Page 32</p> <p>1 (Exhibit M was marked for  2 identification by the reporter.)  3 BY MR. MILNE:  4 Q. David, Exhibit M is a notice of trustee  5 sale recorded January 26, 2011. That was signed on  6 December 16, 2010.  7 Looking at Exhibit M, would anybody who  8 received it be able to determine that the HOA was  9 foreclosing on a super-priority lien?  10 MR. MARTINEZ: Objection, form.  11 THE WITNESS: No.  12 BY MR. MILNE:  13 Q. I see the delinquent amount, including  14 costs, expenses and so forth, referenced on Exhibit M  15 is \$5,757, correct?  16 A. Yes.  17 Q. Are you able to break that down into any of  18 its component parts?  19 MR. MARTINEZ: Objection, form.  20 THE WITNESS: Well, I could give you  21 estimates, but I wouldn't be able to give you exact  22 numbers.  23 BY MR. MILNE:  24 Q. And certainly, anybody who had never seen  25 any of the management company documents and so forth,</p>
<p style="text-align: right;">Page 31</p> <p>1 could linger for years, months and years.  2 So that was what we call sort of a filler  3 entry. It did not necessarily mean that the  4 association specifically did not authorize the sale,  5 just that they weren't requiring us to move forward  6 at that time.  7 Q. And that appears to be the same entry for  8 several different dates there in late 2011, early  9 2012?  10 A. Yeah. We wanted the status report touched  11 every 30 days with some sort of entry so that the  12 client knew that we were looking at the file every  13 30 days.  14 And in some instances, months, if not  15 years, could go by without any actual steps being  16 taken.  17 So we wanted to have some sort of an entry.  18 So like I said, I call that a filler entry.  19 Q. Okay. But in terms of Exhibit L, without a  20 date being on that, whether that was contemporaneous  21 with the late 2011 time period or at, we don't know?  22 A. Correct.  23 MR. MARTINEZ: Objection to form of the  24 question.  25 ///</p>	<p style="text-align: right;">Page 33</p> <p>1 a recipient of this wouldn't be able to do that  2 either?  3 MR. MARTINEZ: Objection, form.  4 THE WITNESS: Correct.  5 BY MR. MILNE:  6 Q. A sale date is noted of March 9, 2011.  7 Did this property go to sale down on that  8 date?  9 A. I don't have the trustee's deed in front of  10 me, but based on the status report, it looks like the  11 sale did not take place until January of 2014.  12 Q. Some --  13 A. A year later.  14 Q. -- three years later?  15 A. Or, three years later, sorry.  16 (Exhibit N was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. David, Exhibit N is a grant deed, recorded  20 May 27, 2011, Instrument 4010, that purports to have  21 transferred the property from Gotera, Magnolia to  22 JBWNO Revocable Living Trust.  23 Have you seen this document before?  24 A. No.  25 Q. Do you know whether or not it was part of</p>



<p style="text-align: right;">Page 34</p> <p>1 the collection file?</p> <p>2 A. I don't.</p> <p>3 (Exhibit O was marked for</p> <p>4 identification by the reporter.)</p> <p>5 BY MR. MILNE:</p> <p>6 Q. David, you've been handed what we've marked</p> <p>7 as Exhibit O, a second grant deed, but also recorded</p> <p>8 on May 27, 2011 as instrument 4011 that purports to</p> <p>9 transfer title to the property from JBWNO Revocable</p> <p>10 Living Trust to Stacy Moore.</p> <p>11 Have you seen this document before?</p> <p>12 A. No.</p> <p>13 Q. Any understanding as to whether or not it</p> <p>14 was in your collection file?</p> <p>15 A. If it was in our collection file, it would</p> <p>16 have been produced.</p> <p>17 (Exhibit P was marked for</p> <p>18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, you've been handed what we've marked</p> <p>21 as Exhibit P to your deposition, an assignment of</p> <p>22 deed of trust recorded on November 2, 2011, assigning</p> <p>23 the deed of trust that we've seen previously,</p> <p>24 Exhibit C, to US Bank National Association.</p> <p>25 Do you know whether or not a copy of this</p>	<p style="text-align: right;">Page 36</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. Why another notice of delinquent assessment</p> <p>4 lien?</p> <p>5 MR. MARTINEZ: Objection, form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 It does appear that we received -- I'm</p> <p>8 looking at Exhibit B, page 2, new ownership</p> <p>9 information received. There's an entry in the status</p> <p>10 report on May 24th, 2012, "New ownership information</p> <p>11 received. AK to proceed with collection efforts."</p> <p>12 I would note that this new notice has the</p> <p>13 owner Stacy Moore on it, not Magnolia Gotera.</p> <p>14 I don't know if this new notice was the</p> <p>15 result of the quitclaim deed that we looked at</p> <p>16 earlier or not, but it could have been.</p> <p>17 BY MR. MILNE:</p> <p>18 Q. It is certainly for the same property, is</p> <p>19 it not?</p> <p>20 A. Yes.</p> <p>21 Q. So our best understanding today might be,</p> <p>22 if we put our heads together, is this new --</p> <p>23 Exhibit Q, this new assessment lien, was perhaps</p> <p>24 necessitated by the change in ownership of the</p> <p>25 property?</p>
<p style="text-align: right;">Page 35</p> <p>1 document was in the collection file?</p> <p>2 A. I don't. If this document was in the</p> <p>3 collection file, it would have been produced.</p> <p>4 Q. But this is a document that would be</p> <p>5 important for Alessi &amp; Koenig to know about so that</p> <p>6 appropriate notices can be mailed to a beneficiary of</p> <p>7 a deed of trust, correct?</p> <p>8 MR. MARTINEZ: Objection, form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 (Exhibit Q was marked for</p> <p>11 identification by the reporter.)</p> <p>12 BY MR. MILNE:</p> <p>13 Q. David, you've been handed what we've marked</p> <p>14 as Exhibit Q. It appears to me to be a new or a</p> <p>15 second notice of delinquent assessment lien, this one</p> <p>16 recorded on September 11, 2012, for our same property</p> <p>17 on Marsh Butte. And it indicates that the total</p> <p>18 amount due through today's date is \$6,448, and that's</p> <p>19 broken down somewhat into collection and attorney's</p> <p>20 fees and also into collection costs, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Anybody receiving this would not be able to</p> <p>23 determine whether there is a super-priority portion,</p> <p>24 would they?</p> <p>25 MR. MARTINEZ: Objection to form.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. MARTINEZ: Objection, form.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. MILNE:</p> <p>4 Q. I'm curious as to the amount, \$6,448.</p> <p>5 Does that appear to be a carryover -- I</p> <p>6 don't know if I'm using that word correctly, but</p> <p>7 whatever the delinquent assessments were while the</p> <p>8 property was owned by Gotera, that amount was carried</p> <p>9 over and assessed against the new property owner?</p> <p>10 MR. MARTINEZ: Objection, form.</p> <p>11 THE WITNESS: Yeah. The quitclaim deed</p> <p>12 wouldn't obviate the new owner's responsibility to</p> <p>13 pay the assessments that accrued prior to the</p> <p>14 quitclaim deed.</p> <p>15 (Exhibit R was marked for</p> <p>16 identification by the reporter.)</p> <p>17 BY MR. MILNE:</p> <p>18 Q. David, you've been handed what we marked as</p> <p>19 Exhibit R to your deposition. It appears to be a</p> <p>20 ledger in Spanish -- I'm sorry -- Shadow Mountain</p> <p>21 Ranch HOA letterhead, care of Level Property</p> <p>22 Management for Stacy Moore and the Marsh Butte</p> <p>23 property.</p> <p>24 The ledger starts June 1, 2011 and</p> <p>25 continues through June 1, 2013.</p>

<p style="text-align: right;">Page 38</p> <p>1 As I read this, and again, to my best</p> <p>2 understanding, it appears through that whole time</p> <p>3 period, we keep the same \$23-per-month assessment?</p> <p>4 A. Yes.</p> <p>5 Q. So nothing has changed there?</p> <p>6 A. Right.</p> <p>7 Q. Exhibit R also reflects a balance from the</p> <p>8 prior owner, does it not, near the top, \$2,730?</p> <p>9 A. Yes.</p> <p>10 Q. The last dollar that be saw -- I'm sorry.</p> <p>11 The last document that we saw, Exhibit M,</p> <p>12 the notice of trustee sale, seemed to indicate that</p> <p>13 the delinquent amount -- and this is as of</p> <p>14 January 26, 2011, was \$5,757?</p> <p>15 A. Correct.</p> <p>16 Q. Can you help me with the difference in the</p> <p>17 two figures looking at Exhibit M and Exhibit R,</p> <p>18 specifically the balance from prior owner being 2730</p> <p>19 on Exhibit R, but the notice of trustee sale,</p> <p>20 Exhibit M, says 5757?</p> <p>21 A. Oh, those would be the Alessi &amp; Koenig fees</p> <p>22 and costs as well as the management company's fees</p> <p>23 and costs.</p> <p>24 Q. Would those get carried over to the new</p> <p>25 owner and be part of what is being foreclosed?</p>	<p style="text-align: right;">Page 40</p> <p>1 with the notice of delinquent assessment lien, the</p> <p>2 second one or the new one --</p> <p>3 A. Yes.</p> <p>4 Q. -- correct?</p> <p>5 A. Yeah.</p> <p>6 (Exhibit T was marked for</p> <p>7 identification by the reporter.)</p> <p>8 BY MR. MILNE:</p> <p>9 Q. David, we've marked Exhibit T, a document</p> <p>10 called "Real Estate Listing Report," which by my</p> <p>11 observation, appears to provide much the same</p> <p>12 function as a trustee sale guarantee in terms of</p> <p>13 identifying entities that have an interest in the</p> <p>14 property.</p> <p>15 This one from Stewart Title, a third title</p> <p>16 company this time, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And this is effective February 27, 2013 --</p> <p>19 A. Yes.</p> <p>20 Q. -- correct?</p> <p>21 A. Yes.</p> <p>22 Q. We see our deed of trust in the amount of</p> <p>23 \$508,250, correct?</p> <p>24 A. Yes.</p> <p>25 Q. We see the assignment on the second page to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. In fact, if we look at Exhibit Q, it does</p> <p>3 show that today's -- as of that date, the amount due</p> <p>4 was \$6,448?</p> <p>5 A. Yeah. The quitclaim deed would not obviate</p> <p>6 the new owner's requirement to pay the prior fees and</p> <p>7 costs either as well as the assessments.</p> <p>8 If it did, homeowners would be quitclaiming</p> <p>9 properties every 12 months.</p> <p>10 Q. So I guess, then, what I'm understanding is</p> <p>11 this second notice of delinquent assessment lien,</p> <p>12 Exhibit Q, included all of the fees, assessments,</p> <p>13 costs, the kit and kaboodle, from the first notice of</p> <p>14 assessment lien that we saw, which was Exhibit D?</p> <p>15 A. Yes.</p> <p>16 (Exhibit S was marked for</p> <p>17 identification by the reporter.)</p> <p>18 BY MR. MILNE:</p> <p>19 Q. David, you've been handed what we've marked</p> <p>20 as Exhibit S. It looks kind of like a repeat of some</p> <p>21 of the same things we've seen but with a new notice</p> <p>22 of lien. It looks like the process kind of starts</p> <p>23 over a little bit here, sorry to say.</p> <p>24 But this is a letter to the new owner,</p> <p>25 Stacy Moore, dated August 13, 2012, providing her</p>	<p style="text-align: right;">Page 41</p> <p>1 US Bank, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And then, of course, we also see the two</p> <p>4 grant deeds, as they were captioned, on page 3</p> <p>5 transferring the property ultimately to Stacy Moore,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And this is something that Alessi &amp; Koenig</p> <p>9 received to help it to, what, prosecute or proceed</p> <p>10 with the foreclosure sale, correct?</p> <p>11 A. Yes.</p> <p>12 (Exhibit U was marked for</p> <p>13 identification by the reporter.)</p> <p>14 BY MR. MILNE:</p> <p>15 Q. David, Exhibit U is an undated, unsigned,</p> <p>16 unrecorded notice of default. It shows an amount due</p> <p>17 of \$6,631.41. But attached to it, there's also a</p> <p>18 notice of default 10-day mailings identifying various</p> <p>19 entities. And the third page is certified mail</p> <p>20 receipts, correct?</p> <p>21 A. Yes.</p> <p>22 Q. If I go back and look at Exhibit T, the</p> <p>23 real estate listing report from Stewart Title, and</p> <p>24 compare that to this notice of default, again, I'm</p> <p>25 not a hundred percent certain of the date of the</p>

<p style="text-align: right;">Page 42</p> <p>1 notice of default, but the real estate listing report 2 is dated February 27, 2013. 3 I don't see that this notice of default was 4 mailed to US Bank. 5 MR. MARTINEZ: Objection, form, facts not 6 in evidence. 7 BY MR. MILNE: 8 Q. Do you see US Bank's name identified on 9 either the second or the third page of Exhibit U? 10 MR. MARTINEZ: Objection, form. 11 Do we have a recorded copy of this? 12 MR. MILNE: Yes. 13 THE WITNESS: I don't know the date of this 14 NOD. 15 MR. MILNE: Well, let me help out this 16 discussion and conversation. We'll attach the next 17 document in order. 18 (Exhibit V was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, you've been handed what we've marked 22 as Exhibit V. It's actually two different notices of 23 default. 24 The first page was recorded on June 13, 25 2013. The second was recorded on July 5, 2013. They</p>	<p style="text-align: right;">Page 44</p> <p>1 mailings of the notice of default recorded July 5th, 2 2013 in Exhibit V. And those mailings of that notice 3 of default do not show a mailing to US Bank. 4 BY MR. MILNE: 5 Q. Okay. So to make sure I understood, the 6 evidence of mailing attached as part of Exhibit U 7 pertain to the notice of default that was recorded on 8 July 5, 2013, which is part of Exhibit V? 9 MR. MARTINEZ: Objection, form. 10 THE WITNESS: Correct. 11 BY MR. MILNE: 12 Q. And the assignment that you were 13 referencing before, Exhibit P, that was the one 14 showing the assignment of the deed of trust to 15 US Bank, correct? 16 A. Yes. 17 Q. And your question was whether US Bank is 18 somehow -- there's a connection between US Bank and 19 Recon Trust Company in Richardson, Texas? 20 MR. MARTINEZ: Objection, form. 21 THE WITNESS: Yeah. Yes. I understand 22 NODs are mailed to the servicer, not the holder of 23 the deed of trust. 24 I don't see any reference to Recon Trust 25 Company, however, in the assignment of the deed of</p>
<p style="text-align: right;">Page 43</p> <p>1 both have different signature dates at the bottom. 2 The first, again, being June 3rd, 2013, the second 3 July 1st, 2013, both under the signature of attorney 4 Lam, L-a-m. 5 Both of these notices of default, which are 6 recorded and signed, different dates, admittedly, 7 appear to have been signed and recorded after 8 Exhibit T, the real estate listing report, which 9 identifies US Bank, correct? 10 A. Yes. 11 Q. So I have not seen anything by looking at 12 Exhibit U, which is admittedly the unsigned notice of 13 default, that a notice of default was mailed to 14 US Bank. 15 Are you aware of any evidence to the 16 contrary? 17 MR. MARTINEZ: Objection, form. 18 THE WITNESS: I am looking at the 19 assignment of the deed of trust to see if a recon 20 trust company was an agent of US Bank. 21 What I can testify to is that the mailings 22 of the notice of default recorded July 5th, 2013 are 23 shown on page 2 and 3, in particular page 3 of 24 Exhibit -- is that O or U? 25 Okay, yes. Exhibit U, page 3, reflect the</p>	<p style="text-align: right;">Page 45</p> <p>1 trust on Exhibit P. 2 BY MR. MILNE: 3 Q. You do see, though, an address for US Bank 4 in Littleton, Colorado on Park Meadows Drive? 5 A. Yes. I see an address in Littleton, 6 Colorado on Park Meadows Drive. I do not see that 7 the notice of default was mailed to that address. 8 (Exhibit W was marked for 9 identification by the reporter.) 10 BY MR. MILNE: 11 Q. David, you've been handed what we've marked 12 as Exhibit W to your deposition, an assignment of 13 deed of trust recorded October 1, 2013, assigning the 14 deed of trust to Nationstar Mortgage, LLC. 15 Do you see that? 16 A. Yes. 17 Q. And this was recorded, it looks to be, 18 about three months -- I'm not counting days but about 19 three months after the notice of default, the July 5, 20 2013 notice of default that was mailed by Alessi &amp; 21 Koenig, correct? 22 A. Yes. 23 Q. Do you know whether a date-down or some 24 other such document was obtained between the time the 25 notice of default was recorded in July of 2013 and</p>

<p style="text-align: right;">Page 46</p> <p>1 the notice of trustee's sale, which I will represent  2 to you as we haven't got to it yet, which was  3 recorded December 10, 2013?  4 A. We would have done a date-down or should  5 have done a date-down at the time of publication of  6 the notice of trustee sale, the first publication --  7 we call that a pub date-down, and we would have also  8 done a sale date-down on or just before the date of  9 the sale.  10 Q. Do you remember seeing anything like that  11 in your file that you would have reviewed in  12 preparation for today?  13 A. I have not seen the mailings for the notice  14 of trustee sale. Without seeing those, I wouldn't be  15 able to answer that.  16 (Exhibit X was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. Well, let's show it to you.  20 David, we've marked as Exhibit X a notice  21 of trustee sale that is not dated and not recorded,  22 but it does include a notice of NOTS mailings. It  23 shows both certified mail receipts and a listing of  24 individuals and entities.  25 First, it shows what I'm going to assume to</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. So it looks like, kind of to summarize  2 where we are, the notice of trustee sale was mailed  3 to lenders but the notice of default was not mailed  4 to US Bank?  5 MR. MARTINEZ: Objection, form.  6 THE WITNESS: That's correct.  7 (Exhibit Y was marked for  8 identification by the reporter.)  9 BY MR. MILNE:  10 Q. David, you've been handed what we've marked  11 as Exhibit Y to your deposition, a notice of trustee  12 sale recorded December 10, 2013 that was dated at the  13 bottom under the signature of attorney Lam  14 November 14, 2013. It shows the same delinquent  15 amount, \$8,017.11, correct?  16 A. Yes.  17 Q. And a sale date of January 8, 2014?  18 A. Yes.  19 Q. And the sale -- let's not go there yet.  20 Same questions, I suppose, as to this  21 recorded document, notice of sale, as I asked with  22 the unrecorded notice of sale, Exhibit X. Nobody can  23 break that delinquent amount down into its component  24 parts?  25 MR. MARTINEZ: Objection, form.</p>
<p style="text-align: right;">Page 47</p> <p>1 be a delinquency amount of \$8,017.11, correct?  2 A. Correct.  3 Q. It set the sale for January 8, 2014?  4 A. Correct.  5 Q. And anybody receiving this notice of sale,  6 would they be able to break that \$8,000-and-change  7 down into its component parts?  8 MR. MARTINEZ: Objection, form.  9 THE WITNESS: No, just one lump sum.  10 BY MR. MILNE:  11 Q. And would they be able to determine whether  12 or not any portion of it is a super-priority lien?  13 MR. MARTINEZ: Objection, form.  14 THE WITNESS: No.  15 BY MR. MILNE:  16 Q. It appears this time, based upon these  17 documents, that this notice of trustee sale was  18 mailed to US Bank in Lone Tree, Colorado, and also to  19 Nationstar Mortgage.  20 Do you see that?  21 A. Yes.  22 Q. Do you know how or where those addresses  23 came from?  24 A. I'm assuming from the public records and  25 the assignments of the deeds of trust.</p>	<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Correct.  2 MR. MARTINEZ: The one in Exhibit X is  3 actually recorded. At least on mine, it was. I  4 don't know if the actual one is.  5 Oh, it isn't. Okay. Carry on.  6 BY MR. MILNE:  7 Q. And also, super-priority amount, nobody  8 could determine that from Exhibit Y?  9 MR. MARTINEZ: Objection, form.  10 THE WITNESS: Correct.  11 (Exhibit Z was marked for  12 identification by the reporter.)  13 BY MR. MILNE:  14 Q. David, Exhibit Z is the trustee's deed upon  15 sale, recorded January 13, 2014, indicating that the  16 property was sold on January 8, 2014. It appears to  17 be for the amount of \$59,000 to SFR Investments  18 Pool 1, LLC, correct?  19 A. Yes.  20 Q. The sale was held at Alessi &amp; Koenig?  21 A. Yes.  22 Q. Do you have any knowledge as to the  23 particulars or the procedures of that day, January 8,  24 2014, number of bidders, bidding amounts?  25 A. I did not attend the foreclosure sales.</p>

<p style="text-align: right;">Page 50</p> <p>1 I can testify that by 2014, the conference 2 room was fairly full, and I would estimate a dozen to 3 15 investors were there that day. 4 Q. Based upon -- 5 A. Based upon the number -- we had sales, I 6 think, every other Wednesday, and it was usually the 7 same, you know, usual suspects and 12 or 15 people. 8 By 2014, the conference room was beginning to get 9 full. 10 Q. And do you know how many bidders there were 11 on this property? 12 A. I don't. I don't. 13 Q. Is that something that Alessi &amp; Koenig ever 14 documented in these sales every other Wednesday? 15 A. We would qualify the bidders or we would -- 16 I've seen sheets where we had some notes scribbled on 17 an email as to who the successful bidder was, but we 18 did not document who bid -- you know, it was a pretty 19 fluid, fast process, and we did not write down -- 20 sometimes investors would raise the bid one dollar 21 back and forth ad nauseum. 22 So we did keep a log of who the successful 23 bidder was and the successful bid amount, but we did 24 not track the entire bidding process. 25 Q. And/or when you were qualifying bidders</p>	<p style="text-align: right;">Page 52</p> <p>1 that was started back in 2010, 2011-ish. 2 It didn't ever go to sale through those 3 documents, but we did see that Miles Bauer 4 communication back and forth, a check for \$207, 5 correct? 6 A. Yes. 7 Q. And then, we saw a second foreclosure 8 process started right after there was a new owner for 9 the property, correct? 10 A. Correct. 11 Q. Had Miles Bauer or any other, whoever would 12 have been the current lender, we've seen a couple of 13 assignments, had they attempted to tender a 14 super-priority amount in connection with where we 15 are, 2013 late, early 2014, would they have received 16 or basically got the same communication back that we 17 saw, Exhibit I, the rejection of partial payments? 18 MR. MARTINEZ: Objection, form, facts not 19 in evidence, improper hypothetical to a lay witness, 20 speculation. 21 THE WITNESS: As I testified earlier, the 22 exhibit in the letter from Ryan Kerbow was an 23 outlier. 24 Our general protocol policy was to respond 25 to Miles Bauer by sending a breakdown on the account</p>
<p style="text-align: right;">Page 51</p> <p>1 keep track of who was there that day or anything like 2 that? 3 A. We had -- I know that George Bates, who was 4 at all of the sales, he's since passed away, but he 5 was our trustee sale department, did have a 6 handwritten yellow sheet of who was there on what 7 days, but we have not ever -- I do not believe we 8 retained that. I've never seen that except for years 9 ago during the sales. 10 Q. Was there any -- 11 A. So the documents that George wrote on were 12 not retained. So we do not have any documents as to 13 who was at the sales on a given day. 14 Q. In terms of a script for the calling of the 15 sale? 16 A. Pretty easy process. We would cry the APN 17 number, the opening bid amount, and the common 18 address. 19 Q. Would anything ever be said relative to 20 super-priority lien? 21 MR. MARTINEZ: Objection, form. 22 THE WITNESS: No. 23 BY MR. MILNE: 24 Q. Now, in this particular matter, we saw that 25 there was an initial or first foreclosure process</p>	<p style="text-align: right;">Page 53</p> <p>1 ledger. 2 I've only seen that letter from Ryan on a 3 couple of depositions out of the hundreds involving 4 the Miles Bauer issue. 5 BY MR. MILNE: 6 Q. Would it be your understanding that the 7 \$207 that Miles Bauer sent to Alessi &amp; Koenig was not 8 cashed? 9 MR. MARTINEZ: Objection, form. 10 BY MR. MILNE: 11 Q. We saw that attached as part of Exhibit J? 12 MR. MARTINEZ: Same objection. 13 THE WITNESS: As we discussed, that check 14 is not in the status report, and we don't have a copy 15 of it. 16 Based on my prior depositions, I would 17 expect one of those to be there. 18 So I don't know that I'm willing to concede 19 that we received that payment, but if we had, we 20 would not have cashed it. 21 BY MR. MILNE: 22 Q. Similarly, had you received a tender check 23 in connection with the foreclosure process that 24 culminated in a sale on -- 25 A. January 2014.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. -- January 8, 2014, you would have likewise  2 have not accepted that tender of a super-priority  3 amount?  4 MR. MARTINEZ: Objection, form,  5 speculation, improper hypothetical to a lay witness,  6 facts not in evidence.  7 THE WITNESS: I would be speculating. It  8 depends on what the restrictive language in the  9 company letter or the memo. I wouldn't feel  10 comfortable speculating on that.  11 I can testify that we did not cash -- I  12 believe we cashed in all the depositions I've done  13 one Miles Bauer check and immediately refunded it.  14 So our standard policy was that we did not cash the  15 Miles Bauer checks.  16 BY MR. MILNE:  17 Q. So that would have been a futile effort on  18 their part to re-tender?  19 MR. MARTINEZ: Objection, form, facts not  20 in evidence, speculation, improper hypothetical to a  21 lay witness.  22 THE WITNESS: I don't know if I would say  23 futile, but your point is well-taken.  24 (A recess was taken.)  25 ///</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. MILNE:  2 Q. David, Exhibit BB looks to be an invoice or  3 statement from Alessi &amp; Koenig to Shadow Mountain HOA  4 showing the various services, fees, costs, et cetera,  5 in connection with this foreclosure.  6 Looking at all the items for which charges  7 were assessed, based upon the documents we've  8 reviewed today, does it appear to you that Alessi &amp;  9 Koenig provided all those services for which a fee  10 was charged?  11 MR. MARTINEZ: Objection, form.  12 THE WITNESS: Yes.  13 BY MR. MILNE:  14 Q. The sale date-down, \$150, I know it's  15 referenced in the status report, but I didn't see one  16 in the collection file itself.  17 Would that --  18 A. I don't know why that is.  19 MR. MILNE: And last, but certainly not  20 least.  21 (Exhibit CC was marked for  22 identification by the reporter.)  23 BY MR. MILNE:  24 Q. Exhibit CC is an appraisal of real property  25 completed by R. Scott Dugan with an effective date of</p>
<p style="text-align: right;">Page 55</p> <p>1 (Exhibit AA was marked for  2 identification by the reporter.)  3 BY MR. MILNE:  4 Q. All right, David. We've handed you what  5 we've marked as AA, an email dated January 8, 2014,  6 from George Bates to Maximum Financial.  7 It includes copies of a couple checks and a  8 nora receipt, check made payable to Alessi &amp; Koenig  9 for \$60,536.80.  10 Recalling that the successful bid amount  11 was 59,000. I think the email explains why the  12 additional moneys were paid in terms of the dollar  13 amount on these checks?  14 A. Correct, taxes and the recording fee.  15 Q. Transfer tax?  16 A. Yep.  17 Q. And the recording fee.  18 And this is the George Bates you identified  19 previously, correct?  20 A. Yes.  21 Q. And the check was remitted on behalf of  22 SFR Investments, correct?  23 A. Yes.  24 (Exhibit BB was marked for  25 identification by the reporter.)</p>	<p style="text-align: right;">Page 57</p> <p>1 January 8, 2014 that was prepared for Wright Finlay &amp;  2 Zak.  3 I don't suppose you've seen this document  4 before?  5 A. I have not.  6 Q. The second page indicates appraiser Dugan's  7 opinion that the property we've been discussing today  8 on Marsh Butte Street was valued on January 8, 2014,  9 \$306,000.  10 Do you have any basis upon which to -- what  11 is the word I'm looking for, Jason?  12 MR. MARTINEZ: I don't know.  13 THE WITNESS: Dispute that?  14 BY MR. MILNE:  15 Q. Dispute that. Thank you, David.  16 MR. MARTINEZ: Objection, form, calls for  17 an expert opinion.  18 THE WITNESS: I do not except to say that  19 my testimony is that the value of a property is  20 different if it's purchased through an escrow with  21 title insurance than a property purchased at an HOA  22 foreclosure sale.  23 So I don't know that it has any relevance  24 on the value of the property at the sale.  25 MR. MILNE: Okay. I thought last but there</p>

<p style="text-align: right;">Page 58</p> <p>1 was one set aside.  2 (Exhibit DD was marked for  3 identification by the reporter.)  4 BY MR. MILNE:  5 Q. Lastly, Exhibit DD is what appears to be a  6 custodian of records certificate for Alessi &amp; Koenig  7 that I believe has your signature on page 2?  8 A. Yes.  9 Q. And if I'm not mistaken, and I need you to  10 correct me if I am, this was produced in connection  11 with Alessi &amp; Koenig's bankruptcy filing and was a  12 means whereby counsel involved in these various HOA  13 pieces of litigation could obtain copies of Alessi &amp;  14 Koenig's collection files through a Dropbox.  15 And this was the custodian of records  16 certificate that was supposed to authenticate those  17 collection files from Alessi &amp; Koenig?  18 A. Yes, sir.  19 Q. Including the documents we've seen today to  20 the extent they were obtained from the collection  21 file?  22 A. Correct.  23 Q. Thank you, sir.  24 A. Thank you, sir.  25 MR. MARTINEZ: I only have about 105</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And there is no reference to this document,  2 Exhibit J, in Exhibit B?  3 A. Correct.  4 Q. One of the other questions I have, when we  5 look at Exhibit I, there's a letter here from Ryan  6 Kerbow dated September 8th, 2010.  7 What was the purpose of this letter being  8 drafted by Ryan Kerbow?  9 A. To communicate what his position was and to  10 provide a breakdown of what he felt was owed.  11 Q. And this letter is addressed to Miles Bauer  12 Bergstrom &amp; Winters, correct?  13 A. Yes.  14 Q. It appears to be the same address that  15 although not in your records, Exhibit J actually  16 retains an address for Miles Bauer Bergstrom &amp;  17 Winters in the letterhead that appears to match with  18 Exhibit I, the specific address?  19 A. Yes.  20 Q. And is it my understanding that this letter  21 reflects Alessi &amp; Koenig's position regarding  22 potential attempted payments by Miles, Bauer,  23 Bergstrom &amp; Winters such as the one that is listed on  24 Exhibit J?  25 A. This would have just been Ryan's -- our</p>
<p style="text-align: right;">Page 59</p> <p>1 questions.  2 THE WITNESS: Thank you.  3  4 EXAMINATION  5 BY MR. MARTINEZ:  6 Q. So the exhibits I'm going to be looking at  7 are B, I, and J.  8 A. Okay.  9 Q. Now, B is the status report. We had talked  10 about this earlier.  11 If you look at page 2, all of the dates  12 don't correspond perfectly. I'm looking at the  13 fourth and fifth entry down, September 9th and  14 September 13th of 2010?  15 A. Yes.  16 Q. Now, we had talked about these entries, and  17 you thought that they would potentially be relating  18 to Exhibit I; is that correct?  19 A. Potentially, yes.  20 Q. But you weren't sure of that?  21 A. Correct.  22 Q. And then, Exhibit J seems to be dated  23 September 30th, 2010, and you had testified that this  24 document was not within your records, correct?  25 A. Correct.</p>	<p style="text-align: right;">Page 61</p> <p>1 position was, as I testified earlier, to Miles Bauer  2 was why don't you just make a payment for what you  3 think is owed without the restrictive language. We  4 would have cashed that payment and then a court  5 determined the effect of that payment.  6 With regard to our clients, we did not take  7 the position that Ryan lays out here.  8 Q. What do you mean by that specifically?  9 A. Well, we didn't advise the client as to --  10 where Ryan says that the -- I'm sorry, there was a  11 letter from Ryan in the prior deposition I'm  12 confusing.  13 This was a position that we took, yes.  14 This letter is accurate.  15 Q. This letter basically says that Alessi &amp;  16 Koenig recognizes the interpretation that Miles Bauer  17 may be taking as to the statute, specifically  18 NRS 116.3116, but disagreeing with that position,  19 correct?  20 A. Yes.  21 Q. And specifically, Alessi &amp; Koenig took the  22 position that the super-priority lien wasn't limited  23 to nine months of assessments based on the site in  24 this --  25 A. I would say more specifically, Alessi &amp;</p>

<p style="text-align: right;">Page 62</p> <p>1 Koenig took the position that it was up for debate.  2 Q. Obviously at the time of this letter in  3 September of 2010, this was an unsettled area of  4 dispute between either Alessi &amp; Koenig and Miles  5 Bauer especially but also pretty much in the  6 industry?  7 A. Correct.  8 Q. Although Exhibit J is not in your business  9 records and there's no evidence that it was actually  10 received based on the status report, would this  11 position laid out by Mr. Kerbow in Exhibit I  12 obviously be the same position that Alessi &amp; Koenig  13 would retain even if this Exhibit J were sent to them  14 considering that it's only three weeks later?  15 A. If we had received Exhibit J, we would not  16 have cashed the check.  17 Q. And that would be based on your position as  18 set forth in Exhibit I?  19 A. And our policies and procedures at the  20 time, yes.  21 Q. In the second paragraph here, it says:  22 "If the association were to accept  23 your offer that only includes  24 assessments, Alessi &amp; Koenig would  25 be left with a lien against the</p>	<p style="text-align: right;">Page 64</p> <p>1 can you have send it to a different email address,  2 not to me specifically.  3 (The deposition was concluded at  4 5:00 p.m.)  5  6 * * * * *  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 63</p> <p>1 association for our substantial  2 out-of-pocket expenses and fees  3 generated."  4 Then it further continues to say:  5 "The association could end up  6 having lost money in attempting to  7 collect assessments from the  8 delinquent owner."  9 Did I read that correctly?  10 A. Yes.  11 Q. Was it Alessi &amp; Koenig's position that if  12 they were to accept a partial payment with any  13 condition such as the ones laid out by Miles Bauer  14 that that would end up causing potential harm to the  15 association, the client of Alessi &amp; Koenig?  16 A. Yes.  17 Q. And possibly, that harm would be the form  18 of waiving any potential rights under NRS 116 moving  19 forward?  20 A. Yes.  21 MR. MARTINEZ: I don't have any further  22 questions.  23 THE REPORTER: Do you need a copy of the  24 transcript?  25 MR. MARTINEZ: Electronic, please. And I</p>	<p style="text-align: right;">Page 65</p> <p>1 CERTIFICATE OF DEPONENT  2  3  4  5 I, DAVID ALESSI, deponent herein, do  6 hereby certify and declare the within and foregoing  7 transcription to be my deposition in said action;  8 that I have read, corrected and do hereby affix my  9 signature to said deposition.  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: right;">_____  DAVID ALESSI, Deponent</p>



## 1 CERTIFICATE OF REPORTER

2 I, Cynthia K. DuRivage, a Certified  
3 Shorthand Reporter of the State of Nevada, do hereby  
4 certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth;  
7 that any witnesses in the foregoing proceedings,  
8 prior to testifying, were duly sworn; that a record  
9 of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; that the foregoing transcript is a true  
12 record of the testimony given.

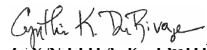
13 Reading and signing by the witness was  
14 requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20 Dated: May 30, 2018

21  
22



23 CYNTHIA K. DURI VAGE

CCR No. 451

24  
25

<p><b>&amp;</b></p> <p><b>&amp;</b> 1:3,17 2:3 4:10 4:20,23 5:4,19 6:12 8:10,18 9:7 11:21,22 12:9,16 12:16 14:9 18:10 22:4,10,10,13,14 24:1,2,22,24 25:9 25:13 26:21 28:5 29:5,21 30:9 35:5 38:21 41:8 45:20 49:20 50:13 53:7 55:8 56:3,8 57:1 58:6,11,13,17 60:12,16,21,23 61:15,21,25 62:4 62:12,24 63:11,15</p>	<p><b>14</b> 4:14 48:14 <b>14-705563</b> 1:5 2:5 <b>14th</b> 20:8 <b>15</b> 16:21 17:17 30:16 50:3,7 <b>150</b> 56:14 <b>16</b> 1:20 2:20 4:16 32:6 <b>18</b> 4:17,18 <b>1st</b> 43:3</p>	<p>49:16,24 50:1,8 52:15 53:25 54:1 55:5 57:1,8 <b>2016</b> 8:15 <b>2018</b> 1:20 2:20 66:20 <b>204</b> 26:25 <b>207</b> 24:24 25:9 28:1,6 29:6 52:4 53:7 <b>21</b> 4:20 20:6 <b>21st</b> 13:17 20:17 <b>22</b> 4:22 <b>23</b> 18:9 19:2 27:14 27:24 28:9,15,21 38:3 <b>24</b> 5:4 <b>2450</b> 2:19 3:4 <b>24th</b> 36:10 <b>26</b> 32:5 38:14 <b>27</b> 5:6 33:20 34:8 40:18 42:2 <b>2730</b> 38:18 <b>29</b> 5:8 <b>2908059</b> 1:25</p>	<p><b>3:21</b> 2:20 <b>3rd</b> 43:2</p>
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CERTIFICATE OF REPORTER

I, Cynthia K. DuRivage, a Certified  
Shorthand Reporter of the State of Nevada, do hereby  
certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth;  
that any witnesses in the foregoing proceedings,  
prior to testifying, were duly sworn; that a record  
of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; that the foregoing transcript is a true  
record of the testimony given.

Reading and signing by the witness was  
requested.

I further certify I am neither financially  
interested in the action nor a relative or employee  
of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: May 30, 2018



CYNTHIA K. DuRIVAGE

CCR No. 451

Nevada Rules of Civil Procedure  
Part V. Depositions and Discovery

Rule 30

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

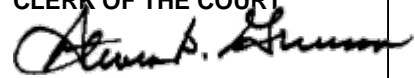
Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# **TAB 19**



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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTEN JORDAL, AS TRUSTEE FOR THE JBNWO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC., et al.;

Defendants.

U.S. BANK., N.A.,,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, et al.

Third-Party Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND's JOINDER TO NATIONSTAR MORTGAGE LLC'S OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

**Hearing Date: August 1, 2018**

**Hearing Time: 8:30 A.M.**

AKERMAN LLP

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1 Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as  
2 Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank,  
3 N.A. (**U.S. Bank**), submits its notice of joinder to Nationstar Mortgage LLC's (**Nationstar**)  
4 opposition to SFR Investments Pool 1, LLC's motion for summary judgment, filed July 19, 2018.

5 U.S. Bank herein adopts the arguments and legal authority set forth in the aforementioned  
6 Nationstar's Opposition as though fully set forth herein. Nationstar is servicer for U.S. Bank, and all  
7 arguments made by Nationstar equally apply to U.S. Bank.

8 DATED July 20th, 2018.

9 **AKERMAN LLP**

10  
11 /s/ Donna M. Wittig

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21 *Trustee for the Certificateholders of the LXS 2006-*  
22 *4N Trust Fund, erroneously pled as U.S. Bank,*  
23 *N.A.*  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 20<sup>th</sup> day of July, 2018, I caused to be served a true and correct copy of the foregoing **U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND'S JOINDER TO NATIONSTAR MORTGAGE LLC'S OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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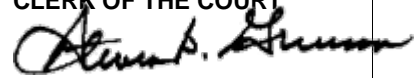
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An employee of AKERMAN LLP

**TAB 20**





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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

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

Case No. A-14-705563-C

Dept. No. 17

**SFR INVESTMENTS POOL 1 LLC'S  
REPLY IN SUPPORT OF ITS MOTION  
FOR SUMMARY JUDGMENT**

Third-Party Defendant(s).  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,  
Third-Party Counterclaimant/Cross-Claimant,  
vs.  
U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,  
Counter-Defendants/Cross-Defendants.

SFR Investments Pool 1, LLC (“SFR”) hereby files its reply in support of its motion for summary judgment against Nationstar Mortgage, LLC (“Nationstar”), U.S. Bank, N.A. (“U.S. Bank”), pursuant to NRCP 56(c).

This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and such evidence and oral argument as may be presented at the time of the hearing on this matter.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Nationstar’s Opposition to SFR’s MSJ (“Bank’s Opp”) proffers no genuine issue of material fact or law preventing this Court from entering judgment in favor of SFR. Not only can this Court decide this case in SFR’s favor despite Nationstar’s mistaken belief that its purported attempt at an impermissibly conditional partial payment, that was a future offer to pay, was sufficient to protect its lien interest; but, due to the fact that there were no irregularities with the sale constituting fraud, unfairness, or oppression, Nationstar cannot overcome the presumption that the foreclosure sale and resulting deed are valid, and SFR can rely on the conclusive recitals in the foreclosure deed. Moreover, Nationstar has failed to present any evidence of a pre-sale dispute sufficient to trigger a potential bona fide purchaser (“BFP”) defense by SFR, but even if it had, Nationstar has presented no evidence which precludes SFR’s status as a BFP.

**II. STATEMENT OF DISPUTED AND UNDISPUTED FACTS**

SFR hereby incorporates by reference its statement of undisputed facts from its MSJ and its statement of disputed facts from its Errata to its opposition to Nationstar's MSJ, both as though fully contained herein. *See* SFR's MSJ at pp. 3:9-5:10, *see also* SFR's Errata at Exhibit A pp. 3:3-6:2.

Nationstar's core argument in opposition to SFR's MSJ is that the Association's foreclosure sale did not extinguish Nationstar's interest because Nationstar allegedly "paid the superpriority portion of the statutory HOA lien prior to the sale." It bears repeating here that no actual payment of money was applied to the Association's lien in the instant matter, so the superpriority portion of the Association's lien was never paid. More importantly, any attempted payment or dispute with regard to whether or not such an alleged attempted payment was rejected was never recorded OR otherwise made known to SFR, the third-party purchaser at the public auction.

Apart from the above, Nationstar has failed to present admissible evidence that it even actually delivered any payment, let alone whether said alleged payment was or was not rightfully rejected. Rather, Nationstar relies on what appears to be a Custodian of Records affidavit of a Miles Bauer employee that not only fails to meet the requisites of a Custodian of Records but takes a step too far in attesting to the occurrence of actions and facts to which he does not appear to have the necessary personal knowledge. Given the lack of sufficiency of the Affidavit, combined with the fact that the affiant was not disclosed as a witness in this case, Nationstar simply cannot establish a payment was even attempted, let alone rejected.

Even if it could get over that hurdle, Nationstar still cannot establish that any such alleged rejection was not justified due to the conditional nature of the purported payment attempt.

Finally, ignoring everything else, Nationstar absolutely cannot show that any alleged rejection of any attempted payment was not made in good faith under the circumstances. "[A]n actual tender of the proper amount due and owing will not operate to discharge a lien where the lienholder in good faith believes that a greater sum is due." *See Segars v. Classen Garage & Service Co.*, 612 P.2d 293, 295 (Okla. Ct. App. 1980); *see also Bank of America, N.A. v. Rugged*

1 *Oaks Investments , LLC*, Nevada Supreme Court Case No. 68504 (Sept. 16, 2016)(unpublished  
2 order) (*citing Cf. 59 C.J.S. Mortgage § 582 (2016)*) (“It has been held. . . that a good and sufficient  
3 tender on the day when payment is due will relieve the property from the lien of the mortgage,  
4 except where the refusal [of payment] was. . . grounded on an honest belief that the tender was  
5 insufficient.”). At the time of the purported tender and rejection here, whether a lender had to pay  
6 nine months assessments plus collections costs to protect its deed of trust was “still open” to  
7 interpretation at the relevant time. *Shadow Wood*, 366 P.3d at 1113. In fact, at the time of this sale,  
8 there was an opinion from CCICCH that lead to Association to reasonably believe they were  
9 entitled to more. *See Horizons at Seven Hills v. Ikon Holdings*, 373 P.3d 66, 71 (Nev. 2016)(citing  
10 10-01 Op. CCICCH 1, 12-13 (2010). And Nationstar’s letter required the Association to admit  
11 nothing more was due.

12 **While the disputes over these facts defeat Nationstar’s motion for summary**  
13 **judgment, the truth or falsity of these facts have no bearing on SFR’s Motion for Summary**  
14 **Judgment, which can still be granted even if these facts were true.**

### 15 **III. ARGUMENT**

#### 16 **A. Nationstar Fails to Prove an Actual “Tender”.**

17 Nationstar’s mere proclamation that there is a tender is insufficient to defeat or survive  
18 summary judgment. As stated in SFR’s Errata to its Opp and in the above Statement of Disputed  
19 and Undisputed Facts, all Nationstar has is merely a copy of the purported check and a screenshot,  
20 neither of which are properly admissible as Doug Miles was not disclosed and the due to the defects  
21 in the affidavit of Doug Miles. Nationstar is lacking admissible evidence to establish delivery of  
22 the check, or admissible evidence to establish that the purported check was rejected without  
23 explanation. Nationstar is asking this Court to reach a legal conclusion – that there was tender-  
24 simply because Nationstar is proclaiming that there is a tender. At summary judgment, “the  
25 nonmoving party, that party bears the burden to do more than simply show that there is some  
26 metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in  
27 the moving party’s favor.” *Wood v. Safeway*, 121 Nev. 724, 723, 121 P.3d 1026, 1031 (Nev. 2005)  
28 (quoting *Matsushita Electric Industrial Co., LTD v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106

1 S. Ct. 1348 (1986). Since Nationstar cannot establish that a tender was even made it is irrelevant  
2 if the payment would have satisfied the super-priority amount. Therefore, SFR did not take the  
3 Property subject to Nationstar's deed of trust.

4 **B. Nationstar's Alleged Payment did not Constitute a Valid Tender.**

5 1) *The Payment was Conditional and Therefore Not Valid.*

6 2) *The Association Rejected the Payment in Good Faith.*

7 3) *Nationstar failed to Record its "Performance" (the Professed "Tender") so As to*  
8 *Protect Itself From Third-Party Purchasers as Required by Nevada Law.*

9 David Alessi testified that A&K did not receive the letter with the check. See SFR's Errata to Opp  
10 at Exhibit D-5, *see specifically*, pg. 53:13-15 and pg. 59:22-25. If A&K never received the  
11 purported "tender" there was nothing to reject. More importantly, it is inconsequential that the  
12 Association recorded a lien, released the lien and recorded the operative lien as Nationstar has not  
13 proven its "tender." So as to avoid repetition, rather than state its re-state its arguments in their  
14 entirety herein, SFR incorporates by reference as if stated herein, the above-titled arguments from  
15 its opposition. See SFR's Errata to Opp, at Exhibit A, pp. 12:2-20:18.

16 **C. Nationstar Bears All Burdens to Overcome the Presumptively Valid Sale.**

17 **The Foreclosure Deed and Sale are Presumed Valid.**

18 Nationstar fails to understand how the presumptions of the foreclosure deed or NRS  
19 47.250 affect this case. Nationstar is flat out wrong in its discussion of *Shadow Wood*. See *Shadow*  
20 *Wood HOA v. N.Y. Cmty. Bancorp.* 132 Nev. \_\_\_, 366 P.3d 1105 (Nev. 2016) *Shadow Wood*  
21 does hold that the deed recitals are conclusive, **unless** a party, like Nationstar can establish that it  
22 is entitled to equitable relief from a "defective sale." *Id.* This means that the burden of proof is  
23 on Nationstar to prove that this sale was defective via admissible evidence and not proclamations.  
24 A party resisting summary judgment "is not entitled to build a case on the gossamer threads of  
25 whimsy, speculation, and conjecture." *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302,  
26 622 P.2d 610, 621 (1983) (quoting *Halm v. Sargent*, 523 F.2d 461,467 (1st Cif. 1975)). Rather,  
27 the non-moving party must demonstrate specific facts as opposed to general allegations and  
28 conclusions. *LaMantia v. Redisi*, 118 Nev. 27,29,38 P.3d 877, 879 (2002); *Wayment v. Holmes*,

1 112 Nev. 232,237,912 P.2d 816, 819 (1996). Indeed, an opposing party "is not entitled to have [a]  
2 motion for summary judgment denied on the mere hope that at trial he will be able to discredit  
3 movant's evidence; he must at the hearing be able to point out to the court something indicating  
4 the existence of a triable issue of fact." *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 784,617  
5 P.2d 871,872 (1980) (quoting *Thomas v. Bokelman*, 86 Nev. 10, 14,462 P.2d 1020, 1022-23  
6 (1970)); see also *Aldabe v. Adams*, 81 Nev. 280,285,402 P.2d 34; 37 (1965) ("The word 'genuine'  
7 has moral overtones; it does not mean a fabricated issue."), overruled on other grounds by *Siragusa*  
8 *v. Brown*, 114 Nev. 1384,971 P.2d 801 (1996); and *Elizabeth E. v. ADT Sec. Sys. W.*, 108 Nev.  
9 889,892,839 P.2d 1308, 1310 (1992).

10 Simply put, with a valid foreclosure deed, the burden is on Nationstar to come forward  
11 with some evidence to challenge these presumptions. *Breliant v. Preferred Equities Corp.*, 112  
12 Nev. 663, 918 P.2d 314 (1996); NRS 47.250(16)-(18). The Nevada Supreme Court, in *Shadow*  
13 *Canyon*, recently reaffirmed that presumptions mentioned above place the burden squarely on  
14 Nationstar to disprove the presumptions and show that the presumptively valid deed and sale  
15 should be set aside. *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*,  
16 133 Nev. \_\_\_, 405 P.3d 641, 646 (Nev. 2017) ("[Nationstar] has the burden to show the sale  
17 should be set aside in light of [SFR's] status as the record title holder.")(citing *Breliant*, 112 Nev.  
18 at 669, 918 p.2d at 318); NRS 47.250(16); and NRS 116.31166(1)-(2))).

19 Thus, in SFR's MSJ, it does not need to anticipate Nationstar's arguments regarding the  
20 irregularities of the sale; the burden rests with Nationstar. This is why, as the purchaser at the  
21 Association foreclosure sale, SFR need only show the Trustee's Deed Upon Sale to be entitled  
22 to quiet title free and clear of the deed of trust. Then, it is up to Nationstar to raise these arguments  
23 if it wishes to defeat SFR's position. Yet, as shown in SFR's Errata to its Opp, any arguments  
24 raised by Nationstar fall short.

25 **D. The Price Paid at Auction was Adequate.**

26 Despite the fact that no fraud unfairness or oppression exists regarding this foreclosure, the  
27 price it was sold at was not inadequate or low. This argument has already been fully addressed in  
28

1 SFR's Errata to its Opp and is incorporated herein fully. *See* SFR's Errata to its Opp at Ex. A, pp.  
2 20:19-23:13.

3 **E. SFR is a Bona Fide Purchaser.**

4 As stated in SFR's MSJ and SFR's Errata to its Opp and as bears repeating, while the  
5 presumption of a regular and proper sale is rebuttable, the presumption is **conclusive as to a bona**  
6 **fide purchaser**. *See Moeller v. Lien*, 25 Cal.App.4th 822, 831-832, 30 Cal.Rptr.2d 777, 783  
7 (1994) (emphasis added); *see also*, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust  
8 and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice  
9 (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). This conclusive presumption is key because it  
10 "precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the  
11 trustee wrongfully rejected a proper tender of reinstatement by the trustor[.]" and even where "the  
12 sale price was only 25 percent of the value of the property ..." *Moeller*, 25 Cal.App.4th at 831-  
13 833, 30 Cal.Rptr.2d at 783.

14 Here, Nationstar has failed to offer any evidence to refute that SFR had no knowledge of a  
15 prior equity and paid valuable consideration. *See Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d  
16 246, 247 (Nev. 1979). *See also*, *Shadow Wood*, 366 P.3d at 1116 (stating a BFP is one who "takes  
17 the property for valuable consideration and without notice of the prior equity") (internal citation  
18 omitted). Nationstar bears all the burden to show why the sale should be set aside, including why  
19 SFR is not a BFP. "Where a party is claiming equitable title, burden is on party claiming such  
20 equity to allege and prove that the person holding legal title is not a bona fide purchaser." *First*  
21 *Fidelity Thrift & Loan Assn v. Alliance Bank*, 60 Cal.App.4th 1433 (1998). But in any case, SFR  
22 provided evidence of being a BFP. *See* Hardin Declaration, attached to SFR's MSJ as Exhibit B.

23 Nothing precludes an experienced purchaser from being a BFP. Without providing such  
24 purchasers the benefits of being a BFP "if he or she buys property for substantially less than its  
25 value would chill participation at trustee's sales . . . and ultimately, could have the undesired effect  
26 of reducing sales prices at foreclosure." *Melendrez v. D&I Investment, Inc.*, 26 Cal. Rptr. 3d. 413,  
27 426 (Cal.Ct. App. 2005).

28 As a result, the sale cannot be unwound; nor can SFR. be said to have taken the Property

subject to the Deed of Trust as Nationstar has failed to meet its burden.<sup>1</sup>

**F. Bona Fide Purchaser Status Trumps Equitable Challenges.**

The Nevada Supreme Court recognized the superiority of a BFP.<sup>2</sup> A BFP is one who “takes the property ‘for a valuable consideration and without notice of the prior equity. . . .’” *Shadow Wood*, 366 P.3d at 1115 (internal citations omitted). The fact that SFR. “paid ‘valuable consideration’ cannot be contested.” *Id.* (citing *Fair v. Howard*, 6 Nev. 304, 308 (1871). Further, notice by a potential purchaser that an association is conducting a sale pursuant to NRS 116, and that the potential exists for challenges to the sale “post hoc[,]” do not preclude that purchaser from BFP status. *Shadow Wood*, 366 P.3d at 1115-1116.

The Court further exhorted that “[c]onsideration of harm to potentially innocent third parties is especially pertinent here where [Bank] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property.” *Shadow Wood*, 366 P.3d at 1114 fn. 7 citing *Cf. Barkley’s Appeal. Bentley’s Estate*, 2 Monag. 274, 277 (Pa. 1888) (“in the case before us, we can see no way of giving the petitioner the equitable relief she asks without doing great injustice to other innocent parties who would not have been in a position to be injured by such a decree as she asks if she had applied for relief at an earlier day.”).

The Nevada Supreme Court recognized that when a BFP has no notice of a pre-sale dispute, such as an attempted “tender,” equity cannot be granted to the “tendering” party, who could defeat any BFP status by giving notice of an attempt to pay. In emphasizing “the legal remedies available to prevent the property from being sold to a third party,” the Court placed the

---

<sup>1</sup> To the extent Nationstar suggests, even by inference, that taking title subject to the first deed of trust is an option, the statute does not provide such an option. The Nevada Supreme Court recently affirmed that the appropriate remedy, if applicable, is to set aside the association foreclosure sale. *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (2017).

<sup>2</sup> *Shadow Wood*, at 1114 (Nev. 2016) citing *Smith v. United States*, 373 F.2d 419, 424 (4th Cir. 1966) (“Equitable relief will not be granted to the possible detriment of innocent third parties.”); *In re Vlasek*, 325 F.3d 955, 963 (7th Cir. 2003) (“[I]t is an age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties.”); *Riganti v. McElhinney*, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) (“[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.”)



burden on the party seeking equitable relief to prevent a potential purchaser from attaining BFP status. If that party's inaction allows a purchaser to become a BFP, equity cannot be granted to the detriment of the innocent third party. Put simply, BFP status trumps equitable relief. This is consistent with law from other jurisdictions. While the presumption of a regular and proper sale is rebuttable, the presumption is **conclusive as to a bona fide purchaser**. See *Moeller v. Lien*, 25 Cal.App.4th 822, 831-832, 30 Cal.Rptr.2d 777, 783 (1994) (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). This conclusive presumption is key because it "precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor[,] and even where "the sale price was only 25 percent of the value of the property ..." *Moeller*, 25 Cal.App.4th at 831-833, 30 Cal.Rptr.2d at 783.

This seemingly harsh result is reinforced by the fact that not even a due process violation is sufficient to overcome an individual's status as a BFP. *Swartz v. Adams*, 93 Nev. 240, 245-46, 563 P.2d 74, 77 (1977) (holding that even owners deprived of notice of sale could not unwind sale where property was purchased by a BFP). The *Swartz* Court remanded for the owners to seek compensatory relief against the person who initiated the sale rather than harm the BFP. *Id.* This is the correct form of relief. The so-called harmed party (Bank) can seek money damages against the party who caused the harm (Association/Agent). But equitable relief, to the detriment of the innocent purchaser, cannot be granted to a party (Bank) who ignored earlier remedies and allowed a BFP to purchase the property. The Nevada Supreme Court summed up this idea when it stated: Where the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby.<sup>3</sup> *Shadow Wood*,

<sup>3</sup> See *Moeller v. Lien*, 30 Cal. Rptr. 2d 777, 782 (Ct.App.1994); *Melendrez v. D & I Investment, Inc.*, 26 Cal.Rptr.3d 413, 428 (Cal.Ct.App. 2005)(Creating finality to BFPs 'was to promote certainty in favor of the validity of the private foreclosure sale because it encouraged the public at large to bid on the distressed property...')(internal citation omitted); *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 102 Cal. Rptr. 2d 711 (Ct.App. 2011); *McNeill Family Trust v. Centura Bank*, 60 P.3d 1277 (Wyo. 2003); *In re Suchy*, 786 F.2d 900 (9th Cir. 1985); and Miller & Starr,

1 at 1116.

2 “He who seeks equity must do equity.” The court should not aid a party whose own  
3 inactions or self-created hardship necessitated the aid. Equity was not created to relieve a person  
4 of consequences of his own inactions. This maxim holds true in this case. If a homeowner—who  
5 was not afforded due process and therefore could not even avail herself of earlier remedies or  
6 prevent a BFP from purchasing the property—was not entitled to equitable relief, then Bank who  
7 had notice and opportunity to invoke any number of remedies, yet allowed a BFP to purchase the  
8 property, is not entitled to equity. This is consistent with the Restatement’s commentary: the  
9 wronged junior lienholder must seek a remedy from someone other than the purchaser.<sup>4</sup>

10 Here, Bank failed to adequately protect its interest. It failed to avail itself of earlier  
11 remedies (i.e. injunction, lis pendens, payment, etc.) and allowed a BFP to purchase the property,  
12 thus equitable relief is no longer available to Bank. “Equity aids the vigilant, not those who slumber  
13 on their rights.” While the Court should never get this far because of the absence of evidence of  
14 fraud, oppression or unfairness, or irregularity with the sales process, the bottom line is, if it were  
15 to weigh equities, the equities lie in favor of SFR.

16 **G. SFR is Entitled to Summary Judgment on its Claim for Slander of Title Against**  
17 **Nationstar.**

18 So as to avoid repetition, rather than state its re-state its arguments in their entirety herein,  
19 SFR incorporates by reference as if stated herein, the above-titled arguments from its opposition.  
20 See SFR’s Errata to Opp, at Exhibit A, pp. 9:9-10:11.

21 Nationstar failed to address this argument in its opposition. As a result, this claim can be  
22 California Real Property 3d §10:210.

23 <sup>4</sup> See Restatement (Third) Property: Mortgages, §8.3, Comment *b*. Other courts have also  
24 consistently found that a BFP is protected even when there is a wrongful rejection of tender.  
25 *Moeller*, 25 Cal. App. 4th at 831–32, 30 Cal.Rptr.2d at 783 (precluding an attack by the trustor on  
26 the trustee’s sale to a bona fide purchaser even where the trustee wrongfully rejected a proper  
27 tender of reinstatement by the trustor); see also, *Munger v. Moore*, 11 Cal. App. 3d 1, 7, 89 Cal.  
28 Rptr. 323 (Ct. App. 1970)(“a trustee or mortgagee may be liable to the trustor or mortgagor for  
damages sustained where there has been an illegal, fraudulent or willfully oppressive sale of  
property. The title holder still has the obligation to pay, but the bank can volunteer. I would agree as  
follows: If, as Nationstar implies, the sale was invalid, then it might be in their best interest to pay  
taxes and insurance premiums for the property, since it knew its borrower was in default under a  
power of sale contained in a mortgage or deed of trust”)(citations omitted)

1 granted in SFR's favor. See EDCR 2.20(e).

2 **H. SFR is Entitled to Summary Judgment on U.S. Bank's Unjust Enrichment Claim.**

3 So as to avoid repetition, rather than state its re-state its arguments in their entirety herein,  
4 SFR incorporates by reference as if stated herein, the above-titled arguments from its opposition.  
5 See SFR's Errata to Opp, at Exhibit A, pp. 9:9-10:11. U.S. Bank failed to address this claim in its  
6 joinder to Nationstar's Opposition, accordingly, this claim can be granted in SFR's favor. See  
7 EDCR 2.20(e).

8 **IV. CONCLUSION**

9 Based on the above, this Court should enter summary judgment in favor of SFR and against  
10 U.S. Bank, Nationstar stating that (1) title is quieted in SFR's name; (2) the DOT recorded as  
11 Instrument No. 20051121-0005567 was extinguished; (3) the lis pendens recorded by Nationstar is  
12 expunged; (4) U.S. Bank, Nationstar, and any of their agents, successors and assigns are permanently  
13 enjoined from interfering with SFR's possession and ownership of the Property; and (5) U.S. Bank's  
14 claim for unjust enrichment fails as a matter of law.

15 DATED July 24th, 2018.

**KIM GILBERT EBRON**

16  
17 /s/ Jacqueline A. Gilbert  
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Diana S. Ebron, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of July, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1 LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to the following parties:

**Douglas D. Gerrard, Esq.** [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

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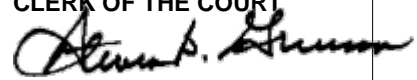
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*/s/ Caryn R. Schiffman*  
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**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

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

Third-Party Defendant(s).

Case No. A-14-705563-C

Dept. No. XX

**SFR INVESTMENTS POOL 1, LLC'S PRE-  
TRIAL DISCLOSURES**

SFR Investments Pool 1, LLC hereby makes its pre-trial disclosures as follows:

**I. SFR's WITNESSES PURSUANT TO NRCP 16.1(a)(3)(1).**

**A. SFR expects to present the following witnesses at trial:**

1. Christopher Hardin for SFR Investments Pool 1, LLC  
Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
(702) 485-3300

SFR reserves the right to call any witnesses named or otherwise called by any other party. SFR also reserves the right to call any witness as may be necessary for purposes of impeachment or rebuttal.

**B. SFR has subpoenaed the following witnesses for trial:**

No witnesses have been subpoenaed at this time.

**C. SFR may call the following witnesses if the need arises:**

2. David Alessi for Alessi & Koenig, LLC  
c/o Steven Loizzi, Jr., Esq.  
HOA Lawyers Group, LLC  
9500 W. Flamingo Road, Suite 204  
Las Vegas, NV 89147  
(702) 222-4033

SFR reserves the right to call any witness named or otherwise called by any other party.

**II. WITNESSES WHOSE TESTIMONY IS EXPECTED TO BE PRESENTED BY DEPOSITION AT TRIAL IS AS FOLLOWS:**

SFR may read into evidence portions of the deposition transcripts taken in this case. SFR may also utilize deposition/trial transcripts of other witnesses for purposes of impeachment or any other purpose as allowed by the Rules. Said transcripts, include, but are not limited to: Transcript of the trial testimony of Rock Jung, Esq., in Eighth Judicial District Court Case No. A-14-695002-C (Department 7) (April 22, 2016); Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case No. A-14-695002-C (Department 7) (April 22, 2016); Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case No. A-14-698509-C (Department 26) (June 7, 2016); Transcript of the trial testimony of

Jessica Woodbridge in Eighth Judicial District Court Case No. A-14-695002-C (Department 7) (April 21, 2016); Transcript of Deposition taken of Paterno Jurani in the United States District Court, District of Nevada, Case No. 2:15-cv-01139-JCM-PAL on May 20, 2016 (Court Reporter: Depo International 702-386-9322 53; Deposition testimony of Douglas Miles in Case No. A-14-702889 (July 20, 2017) Depo International 702-386-9322; Transcript of the trial testimony of Rock Jung, Esq. in Case No. A-14711632-C (Department 27) January 26, 2017; Deloney Deposition Transcript [SFR234- SFR277]; Woodbridge Deposition Transcript [SFR278-SFR297]; Kovalic Deposition Transcript [SFR331- SFR364]; Ortwerth Deposition Transcript [SFR299- SFR330].

Scott Dugan deposition transcripts in Case Nos. A-13-684630; A-14-698102; A-14-698511; A-14-694435; A-14-698568; A-15-718988.

**III. SFR's EXHIBITS PURSUANT TO NRCP 16.1(a)(3)(1).**

**A. The following are documents which SFR intends to offer at trial:**

1. Trustee's Deed Upon Sale
2. Check and Receipt

**B. The following are documents SFR may offer at trial if the need arises:**

3. Korbelt decision
4. Email re URGENT WIRE REQUEST
5. BANA's Written Policies and Procedures Re: Homeowners Association (HOA)

**Matters – Pre-Foreclosure**

6. SFR may utilize the following documents for impeachment or any other purpose allowed by the rules: Miles, Bergstrom & Winters, LLP Affidavits produced in Case Nos.: 2:15-cv-01423-JCM-PAL; 2:15-cv-01276-RFB-NJK; A-13-690482-C; A-14-695002-C; 2:15-cv-01139-JCM-PAL; 2:15-cv-01308-MMD-NJK; 2:15-cv-01308-MMD-NJK; 2:15-cv-02026-MMD-CWH; A-14-685172-C; A-13-684539-C; A-14-701585-C; A-13-684501-C; A-14-697102-C; 2:15-cv-01377-JCM-NJK; 2:15-cv-01021RFB-GWF; A-14-705146-C; A-14-698102-C; A-14-694435-C; A-13-685172-C; A-14-696561-C; A-13-681936-C; A-13-683554-C; A-13-686512-C; A-15-717358-C and consolidated with A-13-690487-C; A14-701771-C consolidated with A-13-684709-C; 2:15-cv-01377-JCM-NJK; 2:15-cv-01021RFB-GWF; 2:16-cv-00245-GMN-PAL; 2:16-cv-00351-RFB-NJK; 2:15-cv-00692-GMN-CWH; 2:15-cv-00691-JCM-NJK; 2:15-cv-01768-JCM-CWH; 2:16-cv-00535-KJD-NJK; 2:15-cv-01097-



GMN-NJK; 2:15-cv-01097-GMN-NJK; 2:15-cv-01149-RFB-VCF; 2:16-cv-00262-APG-PAL; 2:15-cv-01078-APG-PAL.

7. Nationstar's Responses to Requests for Admission
8. U.S. Bank's Responses to Requests for Admission
9. Deed of Trust recorded November 21, 2005
10. Assignment of Deed of Trust recorded November 2, 2011
11. Assignment of Deed of Trust recorded October 1, 2013
12. Lis Pendens, Instrument No. 20150831-0001732

DATED August 2, 2018.

**KIM GILBERT EBRON**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of August, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing SFR Investments Pool, 1, LLC's Pre-Trial Disclosures, to the following parties:

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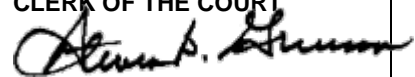
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/s/ Karen L. Hanks  
An employee of Kim Gilbert Ebron

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic government entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**REPLY IN SUPPORT OF CROSS-  
DEFENDANT NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

**Hearing Date: August 14, 2018**

**Hearing Time: 9 a.m.**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Counter-Defendant.

5 U.S. BANK, N.A.,  
6 Third Party Plaintiff,  
7 v.  
8 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
9 I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive.  
10 Third Party Defendants.

11 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
12 Third Party Counterclaimant/Cross-claimant,  
13 vs.  
14 U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
15 company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
16 TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
17 individual,  
18 Counter-Defendant/Cross-Defendants.

19  
20 **REPLY IN SUPPORT OF CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S**  
21 **MOTION FOR SUMMARY JUDGMENT**

22 COMES NOW, Defendant / Cross-Defendant, NATIONSTAR MORTGAGE, LLC  
23 ("Nationstar" or "Defendant"), by and through its attorneys, GERRARD COX LARSEN and  
24 AKERMAN, LLP, and hereby files this Reply In Support of its Motion for Summary Judgment in  
25 its favor pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Reply is made and based  
upon the pleadings and papers on file, the exhibits, Points and Authorities attached hereto, the

26 ///

27 ///

28 ///

Declarations submitted herewith, and any oral argument the Court may entertain at the time of the hearing.

Dated this 7<sup>th</sup> day of August, 2018.

**GERRARD COX LARSEN**

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**AKERMAN LLP**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **INTRODUCTION**

Nationstar is entitled to summary judgment for the following reasons:

**First**, Nationstar is entitled to summary judgment because BAC, Nationstar's predecessor-in-interest to the deed of trust ("Deed of Trust"), tendered a check to the HOA in an amount sufficient to fully satisfy the super-priority portion of the HOA's lien prior to the HOA's foreclosure sale, rendering the HOA's sale either void or subject to the Deed of Trust. The Nevada Supreme Court made it clear in *SFR Investments* that a senior mortgagee can tender the super-priority amount of an association's lien prior to the association's foreclosure sale to maintain the priority of its deed of trust. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 418 (Nev. 2014). Because BAC tendered an amount equal to the statutory super-priority amount of the HOA's lien before the HOA's foreclosure sale, the HOA lacked authority to proceed on any foreclosure of the super-priority lien and could only foreclose its sub-priority lien and convey an interest in the

3           **Second**, the undisputed evidence shows that Shadow Mountain Ranch, through its agent,  
4 Alessi & Koenig, LLC (“Alessi” or the “HOA Trustee”), conducted a commercially unreasonable  
5 sale. The sale of the property to the SFR for 19.2 percent of its fair market value—a grossly  
6 inadequate price—is, together with the unfairness of proceeding to foreclose a satisfied lien, enough  
7 under *Shadow Wood Homeowners Ass’n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op.  
8 5, 366 P.3d 1105 (2016) to invalidate the foreclosure sale. The oppressive nature of this HOA Sale  
9 is further demonstrated by Alessi wrongfully rejecting BAC’s tender of the full super-priority lien,  
10 and then releasing the lien and immediately recording a new lien which included the entire amount  
11 from the released lien in an improper effort to preserve its super-priority lien status and avoid the  
12 legal result of having improperly rejected the tender.

13           **Third**, SFR cannot hide behind the bona fide purchaser doctrine to protect its purported title  
14 because that doctrine is irrelevant in super-priority tender and sub-priority foreclosure cases. Even if  
15 it were relevant, SFR cannot claim to be a bona fide purchaser of free and clear title to the Property  
16 when it admitted it failed to investigate whether any entity satisfied the super-priority lien before the  
17 HOA's foreclosure sale here. Put simply, SFR is now attempting to use the bona fide purchaser  
18 doctrine to elevate the encumbered interest it purchased to free and clear title, all for the purchase  
19 price of \$59,000.00. There would be nothing equitable about that result. For that reason, to the extent  
20 equitable balancing is required here, that balance weighs in favor of Nationstar.

For each of these reasons, SFR's quiet title and declaratory judgment claims fail as a matter of law and summary judgment should be entered in favor of Nationstar and denied as to SFR Investments Pool 1, LLC.

## REBUTTAL STATEMENT OF DISPUTED FACTS

26           **Disputed Fact #1:** SFR objects to Nationstar’s request to take judicial notice of the publicly  
27 recorded documents that Nationstar has offered in support of its Motion for Summary Judgment.  
28 One of the reasons given for SFR’s objection is its claim that “it is a matter of public record that

1 various mortgage holders and servicers engaged in serious misconduct that drew into question the  
2 validity of documentation underlying their property transactions.” *See* SFR’s Opp’n at 3:12-14.  
3 However, SFR has presented no evidence of any such misconduct related to this loan and SFR’s  
4 objection against Nationstar’s standing to enforce the note and the Deed of Trust is based purely on  
5 conjecture and speculation in the form of argument, rather than upon any admissible evidence  
6 creating a genuine issue of fact.

7 In particular, during his deposition on July 11, 2017, Keith Kovalic, the NRCP 30(b)(6)  
8 witness for Nationstar and U.S. Bank, unequivocally testified that Nationstar is the current servicer  
9 of the Note and Deed of Trust on behalf of U.S. Bank. *See* copy of Deposition Transcript of Keith  
10 Kovalic at 12:21-23 attached hereto as **Exhibit “Y”**. Mr. Kovalic also testified that Nationstar  
11 became the servicer of the loan on July 5, 2013 (*Id.* at 13:6-10) and that Nationstar was the servicer  
12 of loan at the time of the HOA foreclosure sale. *Id.* at 28:6-17. SFR has offered no evidence to rebut  
13 the charge that Nationstar was not the servicer on this loan and Deed of Trust other than to point to  
14 three other cases in which such alleged misconduct took place which has no relevance to this case.  
15 Accordingly, this Court should disregard SFR’s baseless allegations and take judicial notice of all  
16 publicly recorded documents offered in support of Nationstar’s Motion for Summary Judgment.

17 **Disputed Fact #2:** SFR also claims that the evidence offered in support of Nationstar’s  
18 Motion concerning the tendered check is admissible because Douglas Miles was not properly  
19 disclosed as a witness during the course of discovery. However, SFR’s claim is false. Nationstar  
20 disclosed the Corporate Representative and/or NRCP 30(b)(6) designee for Miles Bauer, which is  
21 certainly sufficient notice to SFR that Doug Miles or another Miles Bauer attorney would be testifying  
22 on behalf of Nationstar in this case. A copy of the Second Supplemental Disclosures is attached hereto  
23 as **Exhibit “Z”**.

24 SFR also claims that Nationstar failed to provide evidence that Bank of America tendered  
25 payment to the HOA Trustee and that the HOA Trustee did not receive the letter with the check. This  
26 allegation is also demonstratively false. The facts clearly show that not only was the tendered check  
27 delivered to Alessi & Koenig but that Alessi & Koenig kept a copy of the check along with the letter  
28 in its official collection file. Alessi produced its collection file along with an Affidavit from David

1 Alessi as the Custodian of Records, which Nationstar disclosed in its Second Supplemental  
2 Disclosures Documents and Witnesses as Bates stamped NATIONSTAR00036-00333. *See Exhibit*  
3 **“Z”** along with the pages containing the bates stamped Affidavit of David Alessi, the September 30,  
4 2010 Letter and the check from Alessi’s collection file is attached hereto as **Exhibit “AA”**.

5 **Disputed Fact #3:** Nationstar never disputed that SFR purchased the subjection Property for  
6 \$59,000.00. This fact remains undisputed.

7 **Disputed Fact #4:** SFR challenges the appraisal report from Nationstar’s expert witness, R.  
8 Scott Dugan with argument, but SFR failed to produce a rebuttal expert of its own to challenge Mr.  
9 Dugan’s opinion of value. Instead, SFR simply offers further conjecture and speculation to challenge  
10 Mr. Dugan’s report, none of which is admissible evidence of value. According, this Court should  
11 ignore SFR’s claim that the \$306,000.00 value of the property is a “disputed fact”.

### 12 **III.**

#### 13 **LEGAL ARGUMENT**

##### 14 **A. NATIONSTAR HAS STANDING TO ENFORCE THE DEED OF TRUST**

15 SFR argues that the “Bank” lacks standing to enforce the deed of trust because “[t]he Bank  
16 does not have and has never had title to the Property” and that “the Bank has the burden of proof to  
17 demonstrate that both the note and deed of trust were properly transferred to it in order to obtain the  
18 declaratory relief it seeks.” (*See* SFR’s Response, at p. 8). SFR further argues that the note and Deed  
19 of Trust “were split at origination” because MERS is the named nominee/beneficiary identified in the  
20 deed of trust. Both of these arguments have been rejected by the Nevada Supreme Court.

21 SFR cites authority originating from Nevada's former foreclosure meditation program in  
22 support of this argument, but ignores the controlling authority from the Nevada Supreme Court. In  
23 *In re Montierth*, 131 Nev. Adv. Rep. 55, 354 P.3d 648 (2015), the Supreme Court recognized that a  
24 loan servicer has standing to enforce a deed of trust on behalf of the lender holding the note by stating  
25 that:

26 Reunification of the note and the deed of trust is not required to foreclose because of  
27 an existing principal-agent relationship between [the agent] and [the note holder]. The  
28 Restatement (Third) of Property permits the beneficiary of the deed of trust, or  
mortgagee, to enforce the mortgage on behalf of the note holder if the mortgagee has  
authority to foreclose from the note holder. "A mortgage may be enforced only by, or  
in behalf of, a person who is entitled to enforce the obligation the mortgage secures."



1 Restatement (Third) of Prop.: Mortgages § 5.4(c) (1997); see id. at § 5.4 cmt. e & illus.  
2 9 (illustrating that an agent can "enforce the mortgage at [the principal's] direction").

3 In *Nationstar Mortgage, LLC v. SFR*, 133 Nev. Adv. Rep. 34, 396 P.3d 754, 757-758 (2017),  
4 the Nevada Supreme Court rejected the very argument SFR is disingenuously making in this case. In  
5 *Nationstar* the Supreme Court stated that:

6 To have standing, "the party seeking relief [must have] a sufficient interest in the  
7 litigation," so as to ensure "the litigant will vigorously and effectively present his or  
8 her case against an adverse party." *Schwartz v. Lopez*, 132 Nev., Adv. Op. 73, 382  
9 P.3d 886, 894 (2016). We [\*\*6] have previously stated that "[a] mortgage may be  
10 enforced only by, or in behalf of, a person who is entitled to enforce the obligation the  
11 mortgage secures." *Montierth v. Deutsche Bank (In re Montierth)*, 131 Nev., Adv. Op.  
12 55, 354 P.3d 648, 651 (2015) (emphasis added) (quoting *Restatement (Third) of Prop.:  
13 Mortgages § 5.4(c) (1997)*). A loan servicer administers a mortgage on behalf of the  
14 loan owner, and the rights and obligations of the loan servicer are typically established  
15 in a servicing agreement. Jason H.P. Kravitt & Robert E. Gordon, *Securitization of  
16 Financial Assets* § 16.05 (3d ed. 2012).

17 As such, several courts have recognized that a contractually authorized loan servicer  
18 is entitled to take action to protect the loan owner's interests. See, e.g., *J.E. Robert Co.  
19 v. Signature Props., LLC*, 309 Conn. 307, 71 A.3d 492, 504 (2013) (holding "a loan  
20 servicer need not be the owner or holder of the note and mortgage in order to have  
21 standing to bring a foreclosure action if it otherwise has established the right to enforce  
22 those instruments")

23 In this case, the testimony of Nationstar's representative, Keith Kovalic, is undisputed in  
24 establishing a contractual agency relationship exists between U.S. Bank (the holder of the note) and  
25 Nationstar (the loan servicer and record beneficiary of the Deed of Trust), giving Nationstar standing  
26 to enforce the Deed of Trust and to represent U.S. Bank's interest in this litigation. See **Exhibit "Y"**  
27 at 12-13 and 28. Certainly, as the record beneficiary under the Deed of Trust and loan servicer for  
28 U.S. Bank, Nationstar has standing under clear Nevada law to pursue its quiet title claims.

29 It is also worth noting that this is not an action to enforce the mortgage or an action on the note  
30 (all of Plaintiffs cited cases deal with actions to enforce a note), rather it is a quiet title action seeking  
31 a declaration that the Deed of Trust survived the HOA foreclosure sale. In Nevada, a quiet title action  
32 may be maintained by a party that claims an interest in the underlying property adverse to another.  
33 See id at 757-758; see also NRS 40.010. Nationstar, as the servicer of the loan and record beneficiary  
34 under the Deed of Trust encumbering the property, has a property interest sufficient to maintain a  
35 claim for quiet title.

1           There is likewise no requirement that Nationstar or U.S. Bank, produce the original "wet-ink"  
2 promissory notes, endorsements, or certified copies of all the deeds of trust's assignments. The Ninth  
3 Circuit confirmed that evidence is unnecessary where a business' property interest can be properly  
4 established by the business records and applicable declarant testimony. *See Berezovsky v. Moniz*, 869  
5 F.3d 923, 932 (9th Cir. 2017); *Elmer v. JPMorgan Chase & Co.*, No. 15-17407, 2017 WL 3822061,  
6 at \*1 (9th Cir. Aug. 31, 2017). Those decisions recognized that admissible business records obviate  
7 any purported need to review original loan documents. *Berezovsky*, 869 F.3d at 933, n.8.

8           Finally, SFR's anecdotal musings have no bearing over the facts presented in this case. SFR  
9 has produced no evidence to place Nationstar's or U.S. Bank's rights into dispute other than its  
10 anecdotes about the industry as a whole and the timing of a recordation. Neither provides a *genuine*  
11 dispute that U.S. Bank, or Nationstar, has standing to maintain its quiet title claims under the  
12 controlling law of *Montierth* and *Nationstar*.

13           The Deeds of Trust lists MERS as the original beneficiary (**Exhibit "B"** to the Motion) and  
14 that designation must be recognized. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 286 P.3d  
15 249, 258 (2012) (explaining MERS designation as beneficiary must be recognized because it is part  
16 of the contract and the text of the deed of trust "contradicts" any argument that the lender is the true  
17 beneficiary.). "MERS, as a valid beneficiary, may assign its beneficial interest in the deed of trust...".  
18 *Id.* at 260. SFR offers no *evidence* to contradict MERS November 2011 assignment of the Deed of  
19 Trust to U.S Bank (*See Exhibit "K"* to the Motion), nor the October 1, 2013 Assignment of the Deed  
20 of Trust to Nationstar as servicer. *See* Nationstar's Motion at **Exhibit "O"**.

21           Nationstar provided admissible documentation to show (a) that the Deed of Trust encumbers  
22 the Property, and (b) that an assignment granted it an interest in the Property. That evidence is more  
23 than enough to confer standing to quiet title. SFR has not produced any admissible evidence to  
24 genuinely dispute these facts.

1 **B. BANK OF AMERICA’S SUPER-PRIORITY TENDER EXTINGUISHED THE**  
2 **HOA’S SUPER-PRIORITY LIEN**

3 **1. The Evidence Presented Shows That A Tendered Check Was Delivered To NAS**

4 In *Bank of America, N.A., et al. v. Ferrell Street Trust*, Case no. 70299, at p. 2 (Nev.  
5 April 28, 2018) (unpublished), the Nevada Supreme Court held that “a tender of payment operates to  
6 discharge a lien” and that a tendering party is not required to keep a rejected tender good by paying  
7 the amount into court.” (See Nationstar’ MSJ App’x, **Ex. “T”**). “To sufficiently satisfy the lien, the  
8 tender must be valid, an unconditional offer of payment in full or with conditions for which the  
9 tendering party has a right to insist.” *Ferrell Street Trust* at 2. “When rejection of a valid tender is  
10 unjustified, the tender effectively discharges the lien.” *Ferrell Street Trust* at 2. BAC delivered a  
11 check to Alessi in the amount of \$207 equaling nine months of assessments, which is all the HOA  
12 was entitled to receive on the super-priority portion of its lien. *Horizons at Seven Hills Homeowners*  
13 *Ass’n v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 73 (2016) (“[W]e conclude the  
14 superpriority lien ... is limited to an amount equal to the common expense assessments due during  
15 the nine months before foreclosure.”). As a result, when BAC delivered a check to the HOA’s trustee  
16 on September 30, 2010, the HOA trustee’s refusal to accept the tender was unjustified and the super-  
17 priority portion of the lien was discharged. SFR’s reliance on *In re Vee Vinhnee*, 335 B.R. 437, 444  
18 (B.A.P. 9th Cir. 2005) is misplaced because Nationstar presented sworn testimony and documentary  
19 evidence of the tender.

20 SFR claims that Nationstar failed to provide evidence that BAC tendered payment to the HOA  
21 Trustee and that the HOA Trustee did not receive the letter with the check. As stated *supra*, not only  
22 was the tendered check delivered to Alessi & Koenig but Alessi & Koenig kept a copy of the check  
23 along with the letter in its collection file. Nationstar produced the HOA Trustee’s collection file along  
24 with an Affidavit from David Alessi as the Custodian of Records in its Second Supplemental  
25 Disclosures Documents and Witnesses as Bates stamped NATIONSTAR00036-00333. See **Exhibit**  
26 **“Z”**. Moreover, David Alessi never testified that the HOA Trustee did not receive the check. He  
27 testified that he did not know whether the HOA Trustee received the check because he did not see the  
28 check referenced in Alessi’s status report. See Deposition of David Alessi at 25:13-21 attached  
Nationstar’s Mot. App’x as **Exhibit “X”**. The fact the Alessi file, produced as the business records

1 of Alessi maintained in the ordinary course of Alessi's business operations, contains a copy of the  
2 Miles Bauer letter and tender check, cannot be refuted and is not refuted by the testimony of David  
3 Alessi.

4 Furthermore, the Affidavit of Doug Miles, Esq., as the corporate designee and custodian of  
5 records for Miles Bauer, provides sufficient evidence that a check in the amount of \$207.00 to satisfy  
6 the super-priority portion of the HOA's lien was delivered to the HOA Trustee. *See Exhibit "E"* of  
7 Nationstar's Mot. App'x. The attached Affidavit of Rock K. Jung, Esq., who was also disclosed as a  
8 witness, confirms that the Miles Bauer letter and tendered check were delivered to Alessi & Koenig,  
9 who immediately rejected it. Mr. Jung not only has personal knowledge of Miles Bauer's procedures  
10 for delivering a check to the HOA Trustee, but was also the attorney who caused the check to be  
11 delivered to the HOA Trustee in this case. Accordingly, SFR's argument that Nationstar failed to  
12 provide sufficient evidence of delivery of a tendered check must be rejected. A copy of Rock K.  
13 Jung's Affidavit is attached hereto as **Exhibit "BB"**.

14 **2. The Case Involves A Tender That Was Unconditional.**

15 SFR claims that the tender letter sent by Miles Bauer contained impermissible  
16 conditions that invalidated the tender. SFR's Opp'n, at 12:8-14:24. SFR's argument is easily disposed  
17 of under *Ferrell Street Trust*. Attached to the Appendix of Exhibits for this Motion is the Miles Bauer  
18 letter from the *Ferrell Street Trust* case, which is nearly identical to the Miles Bauer letter in this case.  
19 *Compare Exhibits "E-3" and "U"* in Nationstar's Motion Appendix.

20 The only difference between the Miles Bauer letter in the instant case and the Miles Bauer  
21 letter in the *Ferrell Street Trust* case, are the property addresses and the amounts constituting the  
22 superiority component. Like the letter in this case, the Miles Bauer letter in *Ferrell Street Trust* clearly  
23 defined the tender's limited purpose by first explaining NRS 116.3116's split-lien system and then  
24 making clear that BAC wished to satisfy only the super-priority portion of the HOA's lien, stating  
25 that it "is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to  
26 satisfy its obligations to the HOA." *Compare Exhibits "E-3" and "U"* in Nationstar's Mot. App.  
27 Like the letter in this case, the letter in *Ferrell Street Trust* then explicitly explained the purpose of  
28 the super-priority check: "Our client has authorized us to make a payment to you in the amount of

1 \$207.00 [equal to nine months of the subject association’s assessments] ... to satisfy its obligations  
2 to the HOA as the holder of the first deed of trust against the property.” *Id.* (emphasis added). Both  
3 letters also contained the same “non-negotiable” language to which SFR contends makes the tender  
4 conditional, an argument that the Nevada Supreme Court soundly rejected in *Ferrell Street Trust*.

5 After reviewing this language – virtually identical to the language found in the Miles Bauer  
6 letter in this case – the Nevada Supreme Court “conclude[d] that, Bank of America's tender appears  
7 valid, an unconditional offer to pay the superpriority portion of the lien in full” See **Exhibit “T”** at 3.

8 Here, the evidence presented by Nationstar cannot be disputed. As discussed above, SFR does  
9 not dispute that the HOA’s super priority lien was comprised of nine monthly assessments of \$23.00  
10 per month. This accords with the evidence Nationstar presented in its summary judgment motion  
11 confirming the HOA’s monthly assessments were \$23.00. See Nationstar’s Mot. App., **Exs. “E-3” &**  
12 **“G”**. Consequently, it cannot be disputed that BAC’s \$207.00 check – an amount equal to nine  
13 months of delinquent assessments – was “sufficient to satisfy the superpriority portion of the lien.”  
14 See *Ferrell Street Trust*, **Ex. “T”** at 3. As a result, this Court should “conclude that BAC’s tender  
15 was sufficient ... to fully satisfy the superpriority lien” and contained no conditions. *Id.*

16 **3. The HOA’s Rejection of Bank of America’s Tender Was Unjustified.**

17 Nationstar is entitled to summary judgment because BAC tendered the undisputed  
18 super-priority amount of the HOA’s super-priority lien to the HOA Trustee before the foreclosure  
19 sale. SFR, however, argues that the HOA Trustee rejected BAC’s tendered check in “good faith”,  
20 and therefore the tender did not extinguish the super-priority lien. Pltf’s Opp’n, at 14:25. This is so,  
21 according to SFR, because “the purported tender came with unjustified conditions that extended  
22 beyond the superpriority amount, potentially affecting the entire lien and the Association’s ability to  
23 collect on it.” See *Id.* at 18:25-27. Plaintiff also inexplicably argues that the Nevada Supreme Court’s  
24 decision in *Horizons at Seven Hills Homeowner’s Ass’n v. Ikon Holdings, LLC*, 373 P.3d 66 (Nev.  
25 2016) is misplaced. Both arguments are completely without merit. The first argument regarding  
26 conditions was addressed above, the last argument was dispensed with by *Ikon*.

27 Whether the HOA Trustee rejected BAC’s tender because it thought the HOA’s super-priority  
28 lien consisted of more than nine months of delinquent assessments is irrelevant. NRS 116.3116 states

1 in no uncertain terms that the super-priority amount of an association's lien is the amount of  
2 "assessments for common expenses ... which would have come due in the absence of acceleration  
3 during the 9 months immediately preceding institution of an action to enforce the lien." The HOA  
4 Trustee's rejection of BAC's tender was not justified just because the HOA Trustee did not believe  
5 the Nevada Legislature meant what it said when it created the statutory super-priority lien and  
6 expressly limited it to the amount of "assessments for common expenses ... during the 9 months  
7 immediately preceding institution of an action to enforce the lien." See NRS 116.3116. When *Ikon*  
8 *Holdings* was decided on April 28, 2016, the Nevada Supreme Court was not announcing what NRS  
9 116.3116 meant from that point forward, it was holding "what the statute has meant continuously  
10 since the date when it became law." *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 n.12 (1994).  
11 The fact that the HOA Trustee chose to conduct a counter-textual reading of NRS 116.3116 cannot  
12 destroy the efficacy of BAC's tender of an amount equal to the super-priority lien amount that is  
13 defined by statute.

14 "When [a] Court construes a statute, it is explaining its understanding of what the statute has  
15 meant continuously since the date when it became law ... [a] Court has no authority to depart from  
16 the congressional command setting the effective date of a law that it has enacted." *Rivers*, 511 U.S.  
17 at 313 n.12. In *Ikon Holdings*, the Court noted that NRS 116.3116 was amended in 2015, then  
18 explained that "[a]ny discussion in this opinion related to this statute refers to the statute in effect at  
19 the time the underlying cause of action arose," which was in September, 2010. *Ikon Holdings*, 373  
20 P.3d at 68 n.2. The Court then clearly and unequivocally held that this version of the statute, the same  
21 version applicable to this case, is limited to an amount equal to the common expense assessments due  
22 during the nine months before foreclosure." *Id.*, at 73.

23 As Nationstar explained at length in its summary judgment motion and its opposition to  
24 Plaintiff's summary judgment motion, the Nevada Supreme Court recently held that the super-priority  
25 tender checks – accompanied by the very same Miles Bauer letter that accompanied Bank of  
26 America's super-priority tender here – do not contain any impermissible conditions. *Bank of America*,  
27 *N.A., et al. v. Ferrell Street Trust*, Case no. 70299, at p. 2 (Nev. April 28, 2018) (unpublished); **Exhibit**  
28 **"T"**. Not only did the Court hold that Bank of America's tenders contained no impermissible

1 conditions – it specifically rejected the argument that Bank of America stating the super-priority  
2 amount was limited to nine monthly assessments and that payment of that amount would release the  
3 HOA's super-priority liens were impermissible conditions – the same argument SFR nonetheless  
4 makes here. Consequently, the HOA foreclosed on only the sub-priority portion of its lien, which  
5 could not extinguish the Deed of Trust.

#### 6 **4. The HOA Sale Was Void**

7 In *Ferrell Street Trust* the Supreme Court pointed out that “when a valid tender  
8 satisfies the superpriority portion of the HOA's assessment lien, a foreclosure sale for the entire lien  
9 results in a void sale, as only part of the lien remains in default.” *Bank of America, N.A., et al. v.*  
10 *Ferrell Street Trust*, Case no. 70299, at p. 3 (Nev. April 28, 2018) (unpublished).

11 Court have almost universally explained that when a sale is void, no title passes to the  
12 purchaser, such as SFR in this case. In *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 2:13-  
13 CV-00506-APG-GWF (D. Nev. 2015), the Federal District Court for Nevada held that under Nevada  
14 law, when a sale is void no title passes to a purchaser, even if the purchaser is a bona fide purchaser.  
15 This Court stated that:

16 When a sale is void, it is 'ineffectual.' *Deep v. Rose*, 364 S.E.2d 228, 232 (Va. 1988).  
17 No title, legal or equitable, passes to the purchaser. *Id.*; see, e.g., *Gilroy v. Ryberg*, 667  
18 N.W.2d 544, 554 (Neb. 2003) (stating 'when a sale is void, 'no title, legal or equitable,  
19 passes to the sale purchaser or subsequent grantee' even if the property is bought by a  
20 bona fide purchaser (quoting 1 Grant S. Nelson & Dale A. Whitman, *Real Estate*  
*Finance Law* § 7.20 (3d ed. 1993) & citing 12 Thompson on Real Property, *supra*, §  
101.04(c)(2)(ii) at 403 (David A. Thomas ed. 1994). Consequently, no title passed to  
the plaintiff via the HOA's foreclosure sale.

21 *7912 Limbwood*, at 6-7 (emphasis added). *Accord Gibson v. Westoby*, 115 Cal. App.2d 273, 277-78  
22 (1953); (citing *Bryce v. O'Brien*, 5 Cal.2d 615, 616, 55 P.2d 488 (1950)) ("A void conveyance passes  
23 no title and cannot be made the foundation of good title even under the equitable doctrine of bona fide  
24 purchase"); *Lucero v. Bank of America Home Loans*, 2:11-cv-1326-RCJ-RJJ (D. Nev. 2012) (Plaintiff  
25 properly stated a claim to set aside trustee's sale and have it declared void based upon defect in the  
26 foreclosure process).

1 In 2713 Rue Toulouse Trust v. Bank of America, Case 68206 at 3 (Nev. July 20, 2018)  
2 (unpublished), the Nevada Supreme Court confirmed that a purchaser at an HOA sale cannot use its  
3 putative status as a bona fide purchaser to validate an otherwise void sale.

4 C. **SFR'S ARGUMENT THAT BANA'S TENDER SHOULD HAVE BEEN RECORDED**  
5 **IS BASELESS AND LACKS ANY SUPPORT IN LAW**

6 SFR further attempts to invalidate BAC's tender by asking the Court to impose an obligation  
7 on BAC to record some type of lien satisfaction or release following its tender. See, SFR's Opp. at  
8 16-17. In support of this proposition SFR cites to NRS §§ 111.315 and 111.325, as follows:

9 **NRS 111.315 Recording of conveyances and instruments: Notice To third persons.**  
10 Every conveyance of real property, and every instrument in writing setting forth an  
11 agreement to convey any real property, or whereby any real property may be affected,  
12 proved, acknowledged and certified in the manner prescribed by this chapter, to operate  
13 as notice to third persons, shall be recorded in the office of the recorder of the county  
14 in which the real property is situated or to the extent permitted by NRS 105.010 to  
15 105.080, inclusive, in the Office of the Secretary of State, but shall be valid and binding  
16 between the parties thereto without such record.

17 **NRS 111.325 Unrecorded Conveyances void as against a subsequent bona fide**  
18 **purchaser for value when conveyance recorded.** Every conveyance of real property  
19 within this State hereafter made, which shall not be recorded as provided in this chapter,  
20 shall be void as against any subsequent purchaser, in good faith and for valuable  
21 consideration, of the same real property, or any portion thereof, where his or her own  
22 conveyance shall first be duly recorded.

23 SFR's argument fails for three reasons. First, NRS § 11.325 states that only unrecorded  
24 conveyances are void as against subsequent bona fide purchasers for value. A conveyance is defined  
25 as "every instrument in writing ... by which any estate or interest in lands is created, aliened, assigned,  
26 or surrendered." NRS §111.010. BAC's payment did not create, alienate, assign, or surrender any  
27 interest in land. In fact, the tender payment merely served to protect BAC's existing recorded interest  
28 in the Property, it did not create any new interest. Because BAC's payment was not a conveyance, it  
did not have to be recorded to be effective against subsequent bona fide purchasers for value.

Second, as set out above, once the tender was made and rejected, the HOA lacked authority to  
proceed with any sale on the super-priority portion of the lien and its effort to do so created a void  
sale. See Bank of America, N.A., et al. v. Ferrell Street Trust, Case no. 70299, at p. 3 (Nev. April 28,  
2018) (unpublished). No title passed to SFR because the sale was void. See Grant S. Nelson, Dale



1 A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, Real Estate Finance Law § 7:21 (6<sup>th</sup> ed.  
2 2014); *see also* 7912 Limbwood, at 6-7. Thus, even if SFR was a bona fide purchaser, its status as  
3 such cannot validate a void sale. 2713 Rue Toulouse Trust v. Bank of America, Case 68206 at 3 (Nev.  
4 July 20, 2018) (unpublished). Accordingly, the protections of NRS § 111.315 are not available to  
5 SFR even if this statute applied in the manner SFR claims (it does not apply in the manner SFR  
6 claims).

7 Finally, the burden of providing notices regarding the sale is squarely upon the HOA. There  
8 is no statute or common law obligation that requires a payment made on a loan or an assessment be  
9 recorded. This is true in all foreclosure contexts. SFR is simply grasping at straws with no legal  
10 support of any kind.

11 **D. THE HOA SALE SHOULD BE SET ASIDE ON EQUITABLE GROUNDS**

12 This Court should also grant Nationstar's Motion because the sale of the Property for 19.2%  
13 of its fair market value is grossly inadequate, and when coupled with the unfairness evidence in this  
14 case, warrants setting aside the sale. *See Nationstar Mortgage, LLC v. Saticoy Bay, LLC Series 2227*  
15 *Shadow Canyon*, 133 Nev. Adv. Op. 91 (2017).

16 In *Nationstar*, which was recently decided by the Nevada Supreme Court, the Court clarified  
17 the standard upon which a sale can be set aside if it were "commercially unreasonable". In particular,  
18 the Court held that *Shadow Wood* did not overturn the Court's longstanding rule that "inadequacy of  
19 price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale" absent  
20 additional "proof of some element of fraud, unfairness, or oppression as accounts for and brings about  
21 the inadequacy of price". *See Id.* at 2-3 citing *Shadow Wood*, 132 Nev., Adv. Op. 5, 366 P.3d 111  
22 (quoting *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963). However, the *Nationstar*  
23 Court noted as follows:

24 "This is not to say that price is wholly irrelevant. To the contrary, *Golden* recognized that the  
25 price/fair-market-value disparity is a relevant consideration because a wide disparity may require less  
26 evidence of fraud, unfairness, or oppression to justify setting aside the sale:

27 [I]t is universally recognized that inadequacy of price is a circumstance of greater or  
28 less weight to be considered in connection with other circumstances impeaching the  
fairness of the transaction as a cause of vacating it, and that, were the inadequacy is

palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of relief sought.”

Thus, in *Nationstar*, the Nevada Supreme Court clarified that it continued to endorsed the approach in *Golden* to evaluating the validity of foreclosure sales that mere inadequacy of price is not in itself sufficient to set aside the foreclosure sale, but it should be considered together with any alleged irregularities in the sales process to determine whether the sale was affected by fraud, unfairness, or oppression. *See Id.* at 15-16. There is no doubt that the SFR’s purchase price of \$59,000.00 at only 19.2% of the fair market value of the Property was “so low as to shock the conscience or raise a presumption of fraud or unfairness” and grossly inadequate. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 538 (1994).

The further slight evidence of unfairness, fraud, or oppression is also very evident in this case. Here, the tender rendered the sale void because the HOA had no authority to proceed with the sale once the super-priority portion of the lien had been satisfied. In a blatantly obvious attempt to circumvent the tender, the HOA attempted to release its lien and record a new lien for the same amounts, which itself is impermissible under *Property Plus Investments, LLC v. Mortgage Electronic Registration Systems Inc.*, 401 P.3d 728, 730-732, 133 Nev. Ad. Op. 62 (2017) (“[a]n HOA cannot simply reject payment and release the lien, only to turn around and record another lien based on the same unpaid assessments in order to safeguard the superpriority status.”). The evidence of unfairness could not be more evident, and it resulted in a sale for a grossly inadequate amount.

Accordingly, the HOA’s foreclosure sale should be set aside for equitable reasons.

**E. SFR’S BONA FIDE PURCHASER STATUS IS IRRELEVANT**

As set forth above, once the tender was made and rejected, the HOA lacked authority to proceed with any sale on the super-priority portion of the lien and its effort to do so created a void sale. *See Bank of America, N.A., et al. v. Ferrell Street Trust*, Case no. 70299, at p. 3 (Nev. April 28, 2018) (unpublished). No title passed to SFR because the sale was void. *See* Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6<sup>th</sup> ed. 2014); *see also* 7912 *Limbwood*, at 6-7. Thus, even if SFR was a bona fide purchaser, its status as such cannot validate a void sale. *2713 Rue Toulouse Trust v. Bank of America*, Case 68206 at 3 (Nev. July 20, 2018) (unpublished). As a result, SFR’s claim of bona fide purchaser status is legally

1 irrelevant in this case.

2 Even if *bona fide* purchaser status could provide the unearned windfall SFR seeks, SFR falls  
3 far short of satisfying its burden to prove it was a *bona fide* purchaser. *See Berge v. Fredericks*, 95  
4 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the putative *bona fide* purchaser “was  
5 required to show that legal title had been transferred to her before she had notice of the prior  
6 conveyance to appellant”). “[A] putative BFP must introduce some evidence to support its BFP status  
7 beyond simply claiming that status.” *ALP-Ampus Place, LLC v. U.S. Bank, N.A.*, 2017 WL 6597148,  
8 at \*1 (Nev. Dec. 22, 2017) (unpublished).

9 SFR failed to produce any evidence in its opposition that it “made due investigation without  
10 discovering” BAC’s tender of the super-priority amount, and thus failed to “rebut the presumption of  
11 notice” of the tender. *See Berge*, 95 Nev. at 189; *see also Telegraph Rd. Trust v. Bank of America*,  
12 N.A., 383 P.3d 754, 2016 WL 5400134 (Table Op.) (Nev. Sep. 16, 2016) (holding that HOA-sale  
13 purchaser failed to rebut presumption of notice because it did not produce evidence that it conducted  
14 a due investigation, and explaining that it was HOA-sale purchaser’s “**obligation to show that it**  
15 **made a due investigation** and that the **investigation did not reveal**” an unrecorded deed of trust)  
16 (emphasis added). That presumed notice is sufficient to show it is not a *bona fide* purchaser of free  
17 and clear title.

18 SFR had notice that the HOA’s foreclosure would not extinguish the Deed of Trust because  
19 the Deed of Trust provided SFR with inquiry notice of BAC’s tender. This reason is sufficient,  
20 standing alone, to show that SFR is not a *bona fide* purchaser. Consequently, to the extent SFR has  
21 any interest in the Property, that interest is subject to the Deed of Trust, and even if SFR could assert  
22 a *bona fide* purchaser status, such status would not elevate the property interest it received to a priority  
23 position over the Deed of Trust. Accordingly, this Court should grant summary judgment in  
24 Nationstar’s favor.

25 ///

26 ///

27 ///

28 ///

**III.**

**CONCLUSION**

For the foregoing reasons, this Court should grant summary judgment in Nationstar's favor on its quiet title and declaratory relief claims, as well as on SFR's quiet title and declaratory relief counterclaims.

Dated this 7<sup>th</sup> day of August, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 7<sup>th</sup> day of August, 2018, I served a copy of the **REPLY IN SUPPORT OF CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT**, by e-serving a copy on all parties *listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.*

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GERRARD COX LARSEN

# EXHIBIT “Y”

**In The Matter Of:**  
*Alessi & Koenig, LLC vs.*  
*Stacy Moore, et al.*

---

*Keith Kovalic*  
*July 11, 2017*

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*Min-U-Script® with Word Index*

1 UNITED STATES BANKRUPTCY COURT  
2 DISTRICT OF NEVADA  
3  
4 IN RE: )  
5 ALESSI & KOENIG, LLC, a ) Case No. BS-S-16-16593-ABL  
6 Nevada limited ) Chapter: 7  
7 liability company, )  
8 Debtor. ) Adversary Proceeding:  
9 ) 17-01147-abl  
10 ALESSI & KOENIG, LLC, a ) DEPOSITION OF: U.S. BANK,  
11 Nevada limited ) N.A., AND NATIONSTAR  
12 liability company, ) MORTGAGE, LLC, KEITH KOVALIC  
13 Plaintiff, )  
14 vs. ) Taken on:  
15 ) Tuesday, July 11, 2017  
16 )  
17 STACY MOORE, an )  
18 individual; MAGNOLIA )  
19 GOTERA, an individual; )  
20 KRISTIN JORDAL, AS )  
21 TRUSTEE FOR THE JBWNO )  
22 REVOCABLE LIVING TRUST, )  
23 a Trust; U.S. BANK, )  
24 N.A., a national )  
25 banking association; )  
NATIONSTAR MORTGAGE, )  
LLC, a foreign limited )  
liability company; )  
REPUBLIC SILVER STATE )  
DISPOSAL, INC., DBA )  
REPUBLIC SERVICES, a )  
domestic governmental )  
entity; DOES )  
INDIVIDUALS I through )  
X, inclusive; and ROE )  
CORPORATIONS XI through )  
XX inclusive, )  
26 Defendants. )  
27 U.S. BANK, N.A., )  
28 Counterclaimant, )  
29 )  
30 )

1  
2  
3  
4  
5  
6 DEPOSITION of U.S. BANK, N.A., AND NATIONSTAR MORTGAGE,  
7 LLC, KEITH KOVALIC  
8 Taken on Tuesday, July 11, 2017  
9 At 4:12 p.m.  
10 At 7625 Dean Martin Drive, Suite 110  
11 Las Vegas, Nevada  
12  
13  
14  
15  
16  
17  
18  
19  
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21  
22  
23  
24 Reported by: Lori-Ann Landers, CCR 792, RPR  
25

Page 2

1 vs. )  
2 ALESSI & KOENIG, LLC, a )  
Nevada limited )  
3 liability company, )  
4 Counter-Defendant. )  
5 U.S. BANK, N.A., ) DEPOSITION of U.S. BANK,  
6 Third-Party Plaintiff, ) N.A., AND NATIONSTAR  
MORTGAGE, LLC, KEITH KOVALIC  
7 vs. ) Taken on:  
Tuesday, July 11, 2017  
8 SFR INVESTMENTS POOL 1, )  
9 LLC, a Nevada limited )  
liability company; )  
10 INDIVIDUAL DOES I )  
through X, inclusive; )  
11 and ROE CORPORATIONS I )  
through X, inclusive, )  
12 Third-Party Defendants. )  
13 SFR INVESTMENTS POOL 1, )  
14 LLC, a Nevada limited )  
liability company, )  
15 Third-Party )  
Counterclaimant/ )  
16 Cross-Claimant, )  
17 vs. )  
18 U.S. BANK, N.A.; )  
19 NATIONSTAR MORTGAGE, )  
LLC, a foreign limited )  
liability company; )  
20 KRISTINE JORDAN, AS )  
21 TRUSTEE FOR THE JEWNO )  
REVOCABLE LIVING TRUST, )  
22 a trust; STACY MOORE, )  
an individual; and )  
23 MAGNOLIA GOTERA, an )  
individual, )  
24 Counter-Defendant/ )  
Cross-Defendants. )  
25

Page 4

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1	P R O C E E D I N G S
2	(Prior to the commencement of the deposition proceedings, a discussion was held off the record among the court reporter and counsel wherein counsel stipulated to waive the reporter requirements under Rule 30(b)(4).)
3	(Witness sworn.)
4	
5	KEITH KOVALIC,
6	having been first duly sworn, was examined and
7	testified as follows:
8	
9	EXAMINATION
10	BY MS. EBRON:
11	Q. Good afternoon. I'm Diana Cline Ebron. I
12	represent SFR Investments Pool 1, LLC, in this matter.
13	Can you please state your name for the record.
14	A. First name is Keith, last name is Kovalic.
15	K-o-v, as in Victor, a-l-i-c.
16	Q. Okay.
17	MR. GERRARD: Before we start, just to make it
18	clear on the record, in this case -- I'm Doug Gerrard,
19	Gerrard, Cox, Larsen. We represent Nationstar. We do
20	not represent U.S. Bank.
21	And I would just ask, since we're doing the
22	deposition of both at the same time, if you have a
23	question that's specific to Nationstar, that you use the
24	word "Nationstar" so we'll all know that that's one I
25	need to object to or if I feel like it's a question that
	you're asking about both, I may pipe up and say

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1 something, just to make sure that if the answer's  
2 different for one or the other -- I don't know that it  
3 ever will be, but I just want to make sure that we kind  
4 of keep the record clear with respect to whether it's  
5 Nationstar or whether it's U.S. Bank that's being  
6 inquired about.

7 **MR. NITZ:** I think what prompted his concern was  
8 the two notices were identical. They both referred to  
9 "the Bank." And in one case, it refers to Nationstar,  
10 and in the other case, it refers to U.S. Bank.

11 I think it's your intention to conduct  
12 Mr. Kovalic's deposition as the 30(b)(6) witness for both  
13 of those entities simultaneously. So just if you are  
14 referring to Nationstar, then refer to "Nationstar;" if  
15 you're referring to U.S. Bank, then just "U.S. Bank"  
16 instead of "the Bank."

17 **MS. EBRON:** Sure. And if you would prefer, we  
18 can do the deposition of one or the other first and then  
19 just afterwards incorporate and ask if there is any  
20 changes.

21 **MR. GERRARD:** It's up to you. However you want  
22 to do it. It's your deposition.

23 **MR. NITZ:** I don't care either way, as long as  
24 if we do them together that you honor that request.

25 **MS. EBRON:** Sure. And if there's a question

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1 that you hear me ask that you think is unclear as to, you  
2 know, if it should be categorized as one versus the  
3 other, please go ahead and let me know and we can clarify  
4 that on the record.

5 **BY MS. EBRON:**

6 Q. Okay. You're employed by Nationstar Mortgage,  
7 LLC; is that correct?

8 **A. Yes.**

9 Q. I'm going to show you documents that we'll mark  
10 as Exhibits 1 and 2. The first one will be the Fourth  
11 Amended Notice of Rule 30(b)(6) Deposition of Nationstar  
12 Mortgage, LLC; and the second will be the Fourth Amended  
13 Notice of Rule 30(b)(6) Deposition of U.S. Bank, N.A.  
14 (Defendants' Exhibits 1 and 2, Fourth Amended  
15 Notice of Rule 30(b)(6) Deposition of Nationstar  
16 Mortgage, LLC, and Fourth Amended Notice of Rule 30(b)(6)  
17 Deposition of U.S. Bank, N.A., were marked for  
18 identification as of this date.)

19 **MR. NITZ:** When did you serve these?

20 **MS. EBRON:** The fourth amended, I think  
21 yesterday because we were switching the time only.

22 **MR. NITZ:** I just didn't see them.

23 **MS. EBRON:** The topics and everything else are  
24 the same, it's just the time change.

25 **MR. NITZ:** Okay. That's why it's titled "Change

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1 in time only"?

2 **MS. EBRON:** Correct.

3 **MR. NITZ:** All right. Well, good.

4 Q. So starting with the first exhibit, which is the

5 Nationstar Mortgage, LLC, deposition notice. Actually,

6 both of them refer to "the Property" as the "property

7 located at 5327 Marsh Butte Street, Las Vegas, Nevada,

8 89148...Parcel No. 163-30-312-007."

9 Whenever we talk about "the property" during

10 this deposition, it will be -- we'll be talking about the

11 Marsh Butte Street property. Okay?

12 **A. Okay. I can't remember if this was said on the**

13 **record or not, but just for ease of going through these,**

14 **the depo notices are exactly alike, with the exception of**

15 **one states "Nationstar" and refers to it as "the Bank."**

16 **THE WITNESS:** Did we already put all this on?

17 **MR. GERRARD:** Yeah.

18 **THE WITNESS:** That's on the record, okay.

19 **A. Just in case I have to refer back to them, I'll**

20 **just refer back to the depo notice in Exhibit 1, if**

21 **that's okay with you?**

22 Q. Sure.

23 **MR. NITZ:** The only thing -- I made that

24 statement, but, Ms. Ebron, you didn't confirm that the

25 depo notices are the same except for those alternate

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1 definitions.

2 **MS. EBRON:** I believe that they are the same.

3 **MR. NITZ:** Because I think that was your

4 question, Mr. Kovalic.

5 **THE WITNESS:** Right. On Page 2 of both

6 exhibits -- on line 25 on Exhibit 1, it says "Nationstar

7 Mortgage, LLC" and then parenthetically, "'Nationstar' or

8 'Bank.'" And then on Exhibit 2 it says -- same

9 line -- 25, 26, it says "U.S. Bank, N.A." and then

10 parenthetically, "'U.S. Bank' or 'Bank.'"

11 Other than that, there are no differences;

12 correct?

13 **BY MS. EBRON:**

14 Q. That's my understanding, yes.

15 Okay. So during today's deposition whenever we

16 talk about "the association," we'll be referring to the

17 Shadow Mountain Ranch Community Association unless

18 otherwise specified.

19 Whenever we talk about "the association

20 foreclosure sale," we'll be referring to the public

21 auction held on January 8th, 2014, by Alessi & Koenig,

22 LLC, on behalf of the association.

23 Okay?

24 **A. Okay.**

25 Q. So whenever we talk about anything that happened

Page 11

1 before the date of that sale, we'll be looking towards

2 that date of January 8, 2014.

3 Also, I may refer to Alessi & Koenig, LLC as

4 "Alessi" if that's all right?

5 **A. That's fine.**

6 Q. The borrower in this case is Magnolia Gotera.

7 Is that your understanding?

8 **A. There is -- for the purposes of who's on the**

9 **Deed of Trust, yes.**

10 Q. Would that be different than saying that she was

11 the borrower?

12 **A. Can we go off the record for a second?**

13 **MR. GERRARD:** I'm not sure what you're trying to

14 distinguish.

15 Q. The property was later transferred to a

16 different entity.

17 **A. Right. That's what I was --**

18 Q. But they were not ever the borrower.

19 **A. Okay. That's what I was -- correct. Yeah.**

20 **That's what I was getting at. I apologize; wasn't trying**

21 **to be evasive or anything.**

22 Q. Okay. The Deed of Trust, if we talk about "the

23 Deed of Trust," we're going to be referring to the

24 document recorded in Clark County Recorder as Instrument

25 No. 20051121-0005567 on or about November 21st, 2005.

Page 12

1 Okay?

2 **A. Okay.**

3 Q. That was the file that you reviewed in

4 preparation for this deposition; right?

5 **A. That is correct.**

6 Q. Okay. Did you have a chance to thoroughly

7 review all of the topics listed in these notices, in

8 Pages 4 through 6?

9 **A. Yes, I did.**

10 Q. And are you the person that Nationstar Mortgage,

11 LLC, has designated to testify on its behalf for these

12 topics?

13 **A. Yes.**

14 Q. Are you the person that U.S. Bank, N.A., has

15 designated to testify on its behalf in the topics in

16 Exhibit 2?

17 **A. Yes.**

18 Q. What is the relationship between Nationstar and

19 U.S. Bank such that you would be designated to testify on

20 U.S. Bank's behalf?

21 **A. Nationstar is the servicer of the loan and they**

22 **are servicing this loan on behalf of the investor, who is**

23 **U.S. Bank.**

24 Q. U.S. Bank is the trustee for a trust; is that

25 correct?

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1 A. That is correct.  
2 Q. Do you know the name of the trust?  
3 A. Not off the top of my head. If you have  
4 something you can put in front of me that would refresh  
5 my memory, it's one of those long --  
6 Q. Okay. While I'm looking for that, can you tell  
7 me when Nationstar became the servicer?  
8 A. Nationstar became servicer of this loan on July  
9 1st, 2013 -- I'm sorry, July 5th, 2013. July 5th, 2013,  
10 yes.  
11 Q. Who was the previous servicer?  
12 A. Bank of America.  
13 Q. Do you know the dates that Bank of America was  
14 servicer?  
15 A. Well, the loan was originated in 2005 and  
16 Countrywide was actually the servicer at that time.  
17 Countrywide merged with Bank of America in 2008 and then  
18 they changed the name of their servicing division. But  
19 essentially, for all intents and purposes, Bank of  
20 America was the servicer from origination until July 5th,  
21 2013.  
22 Q. In your review of the file, did you see any  
23 assignments of the Deed of Trust?  
24 A. Yes, I did.  
25 Q. How many?

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1 A. I saw two.  
2 Q. Okay. I'm going to show you documents that are  
3 included in SFR Investments Pool 1, LLC's Initial  
4 Disclosure of Witnesses and Documents Pursuant to NRC  
5 16.1. They have Bates stamps at the -- on the bottom  
6 right-hand side. If you could turn to the one Bates  
7 stamped SFR 54.  
8 A. Okay.  
9 Q. Is this one of the assignments that you reviewed  
10 in preparation for your deposition?  
11 A. Yes, it is.  
12 Q. And does this assignment refresh your  
13 recollection as to the name of the trust for which U.S.  
14 Bank is trustee?  
15 A. Yes. It's the certificate holders of the LS --  
16 sorry, LXS 2006-4N trust fund.  
17 Q. Am I correct to understand that this assignment  
18 was recorded on November 2nd, 2011?  
19 A. According to the recording stamp in the upper  
20 right-hand corner, that is correct.  
21 Q. Okay. And am I correct to understand that it  
22 was Mortgage Electronic Registration Systems, Inc., that  
23 assigned the loan to U.S. Bank?  
24 MR. GERRARD: Objection to the extent the  
25 document speaks for itself. Go ahead.

Page 15

1 A. That's correct.  
2 Q. Do you know Christopher Herrera?  
3 A. I do not.  
4 Q. Do you know if Christopher Herrera was an  
5 employee of Bank of America at the time of this  
6 assignment of Deed of Trust?  
7 A. I do not.  
8 Q. Am I correct to understand that Mortgage  
9 Electronic Registration Systems, Inc., or MERS, was the  
10 nominee beneficiary of the Deed of Trust?  
11 A. At what point?  
12 Q. At origination.  
13 A. Is there a copy of the Deed of Trust in here I  
14 could refer to?  
15 Q. Yes. I believe it is SFR 3.  
16 MR. NITZ: Can we go off the record?  
17 MS. EBRON: Sure.  
18 (Whereupon, a recess was taken at this time.)  
19 A. MERS was the beneficiary under the Deed of Trust  
20 at origination. On page SFR 4, Section E -- I'll just  
21 read from the document. "'MERS' is Mortgage Electronic  
22 Registration Systems, Incorporated. MERS is a separate  
23 corporation that is acting solely as a nominee for the  
24 Lender and Lender's successors and assigns." And then in  
25 bold it states "MERS is the beneficiary under this

Page 16

1 Security Instrument," and then it states "MERS is  
2 organized and existing under the laws of Delaware, and  
3 has an address and telephone number of" -- so on and so  
4 forth.  
5 Q. Am I correct to understand that the number  
6 underneath the title Deed of Trust on the page Bates  
7 stamped SFR 3 is the mortgage identification number used  
8 in the MERS system to identify this particular Deed of  
9 Trust?  
10 MR. GERRARD: Objection to the extent it calls  
11 for speculation.  
12 A. To the best of my knowledge, yes.  
13 Q. Am I correct to understand that this Deed of  
14 Trust contains a planned unit development rider?  
15 A. Yes, it does, on page SFR 25 through SFR 28.  
16 Q. So is it fair to say that the originating lender  
17 would have been aware that the property was located  
18 within a planned unit development?  
19 A. Yes.  
20 Q. Before the trust obtained its interest in the  
21 loan -- is it okay if I call the trust for which U.S.  
22 Bank is trustee as "the trust"?  
23 A. That's fine.  
24 Q. Okay. Before the trust obtained its interest,  
25 did U.S. Bank know that the property was located within a

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1 homeowners association?  
2 **THE WITNESS:** I'm sorry, could you read that  
3 back.  
4 (Whereupon, the record was read by the  
5 reporter.)  
6 **A. I don't know.**  
7 Q. In your review of the file, did you see a copy  
8 of the CC&Rs?  
9 **A. In the origination documentation, all I saw was**  
10 **a copy of the first page showing what the assessments**  
11 **were so that those numbers could be figured into the**  
12 **homeowner's debt-to-income ratio in order to qualify for**  
13 **the loan.**  
14 Q. Do you know if the trust took into consideration  
15 the borrower's ability to pay these homeowner association  
16 dues when obtaining an interest in the Deed of Trust?  
17 **A. I do not. All I know is what I stated, is that**  
18 **it was used to qualify for the loan and then that loan**  
19 **was then put into this trust.**  
20 Q. Did Nationstar pay any money for its servicing  
21 interest in the loan?  
22 **A. I don't know.**  
23 Q. Where would you look to find that information?  
24 **A. Someone in the acquisitions department would**  
25 **have that information. It's information I've attempted**

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1 **to get multiple times, but with the caveat to that is**  
2 **Nationstar does not buy loans on a loan-level basis.**  
3 **They buy them in pools, so any amounts paid would have**  
4 **been paid for a whole pool of loans, which can be from**  
5 **the hundreds to the thousands in terms of numbers. So**  
6 **it's impossible to pinpoint exactly how much was paid for**  
7 **a specific loan such as the one we're talking about**  
8 **today.**  
9 Q. It --  
10 **MR. NITZ:** I'm sorry, would you read back the  
11 answer.  
12 (Whereupon, the record was read by the  
13 reporter.)  
14 Q. Did the trust pay any money for its interest in  
15 this loan?  
16 **A. I don't know.**  
17 Q. Do you know if the trust traded certificates in  
18 the trust for its interest in the loan?  
19 **A. I do not.**  
20 Q. Where would you look to find that information?  
21 **A. In the pooling and servicing agreement there may**  
22 **be reference to it.**  
23 Q. Did you review a pooling and servicing agreement  
24 applicable to this Deed of Trust in preparation for your  
25 deposition?

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1 **A. Yes, I did.**  
2 Q. Did that pooling and servicing agreement contain  
3 a loan schedule?  
4 **A. Yes, it did.**  
5 Q. Did you identify this particular loan on that  
6 loan schedule?  
7 **A. Yes.**  
8 Q. How did you identify it?  
9 **A. The address, property address.**  
10 Q. Who were the parties on the front of the pooling  
11 and servicing agreement that you reviewed?  
12 **A. I would need a copy of that in front of me in**  
13 **order to refresh my memory.**  
14 Q. I'm not sure if I've got the correct one and I  
15 don't -- I don't know. I have a Securitization Servicing  
16 Agreement dated as of May 1st, 2006.  
17 **MR. NITZ:** May 1st?  
18 **MS. EBRON:** May 1st, 2006, that identifies  
19 Lehman XS Trust Mortgage Pass-through Certificates,  
20 Series 2006-4N. That was one of the ones that I emailed  
21 to you yesterday.  
22 **A. And your question was who were the parties**  
23 **listed on the front?**  
24 Q. Before we get to that, is that the pooling and  
25 servicing agreement that you reviewed or was there

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1 another document that you're referring to? Because I  
2 also have a document called a Reconstituted Servicing  
3 Agreement that was provided by your counsel right before  
4 we started.  
5 **MR. NITZ:** I want to correct something on the  
6 record. The first document you handed him, dated May 1,  
7 2006, is a Securitization Servicing Agreement, not a  
8 pooling and servicing agreement as you described.  
9 **MS. EBRON:** Oh, okay. It's just what I could  
10 find on the SEC website because I didn't have anything  
11 else disclosed.  
12 Q. So you're looking at the Reconstituted Servicing  
13 Agreement, and then I've also got a Securitization  
14 Subservicing Agreement that I found online. Take a look  
15 at that.  
16 **A. What was your question?**  
17 Q. Were any of those three documents the one -- the  
18 pooling and servicing agreement that you reviewed in  
19 preparation for your deposition?  
20 **A. I reviewed this Reconstituted Servicing**  
21 **Agreement.**  
22 Q. Okay.  
23 **MS. EBRON:** Off the record for one second.  
24 (Whereupon, a discussion was held off the  
25 record.)

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1 Q. Does the Reconstituted Servicing Agreement  
2 refresh your recollection as to the parties who were on  
3 the front page of the agreement?  
4 A. Yes. I'll just read directly from the document.  
5 Before I do that, I'd like to make a clarification, the  
6 name of the trust on this. I believe I said it was the  
7 LXS 2006-4N Trust 1. The technical name is the Lehman XS  
8 Trust Mortgage Pass-Through Certificates, Series 2006-4N.  
9 Q. Is that listed on the Reconstituted Servicing  
10 Agreement somewhere?  
11 A. No, but based on the -- it's on one of the other  
12 two that you handed me and that refreshed my memory as to  
13 what it actually was. I remember the mortgage  
14 pass-through certificates and the dash, 4N.  
15 Q. Okay. So what parties are involved with this  
16 Reconstituted Servicing Agreement?  
17 A. Reading directly from the document, it says  
18 "THIS RECONSTITUTED SERVICING AGREEMENT" -- then  
19 parenthetically, "this 'Agreement,' entered into as of  
20 the 1st day of December, 2005, among DLJ MORTGAGE  
21 CAPITAL, INCORPORATED, a Delaware corporation" -- then  
22 parenthetically, "'DLJMC,' COUNTRYWIDE HOME LOANS  
23 SERVICING LP, as the servicer" -- parenthetically, "the  
24 'Servicer,' WELLS FARGO BANK, N.A., a national banking  
25 association, as master servicer" -- parenthetically, "in

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1 such capacity, the" -- quote, Master Servicer -- "and  
2 trust administrator" -- parenthetically, "in such  
3 capacity, the" -- quote, Trust Administrator -- "and U.S.  
4 BANK NATIONAL ASSOCIATION, a national banking  
5 association, as trustee under the Pooling Agreement  
6 hereinafter referred to" -- parenthetically, "the  
7 'Trustee' recites and provides as follows."  
8 Q. Okay. So how do you know this particular  
9 Reconstituted Servicing Agreement applies to the Deed of  
10 Trust at issue in this case?  
11 A. This is what Nationstar has in its system as  
12 being applicable to the loan in question and then the  
13 corresponding schedule of loans.  
14 Q. So the schedule of loans that you reviewed was  
15 attached to the Reconstituted Servicing Agreement?  
16 A. Yes. What do you mean by "attached"?  
17 Q. Well, was it included as Schedule I?  
18 A. Yes.  
19 Q. Okay.  
20 A. They're --  
21 Q. Are they kept separately?  
22 A. They're -- the documents -- the schedules are  
23 maintained separately from the servicing agreement  
24 itself, but they're all maintained in one common folder.  
25 Q. Okay. Were there other servicing agreements

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1 contained in the same folder as the schedule of mortgage  
2 loans?  
3 A. Not that I was able to find.  
4 Q. Okay. In the copy of the Reconstituted  
5 Servicing Agreement that you reviewed, did you review  
6 Exhibit A, which is listed as the Servicing Agreement?  
7 MR. GERRARD: You are talking about Exhibit A to  
8 the Reconstituted Servicing Agreement?  
9 MS. EBRON: Yes.  
10 A. I did not.  
11 Q. Is that something that Nationstar has within its  
12 business records?  
13 A. I don't know, and the only reason I don't know  
14 is sometimes it's a SharePoint site where these are  
15 housed, and documents can be checked out as in a  
16 library-type system. We cannot track those, so once it's  
17 checked out, it's not visible.  
18 So when I went to look at this, all I saw was  
19 the loan schedule and this Reconstituted Servicing  
20 Agreement. That's not to say it doesn't exist and  
21 somebody hasn't checked it out for some other purpose  
22 within the company, but it would just take going back to  
23 look.  
24 Q. Okay. Let's go ahead and mark that  
25 Reconstituted Servicing Agreement as Exhibit 3.

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1 (Defendants' Exhibit 3, Reconstituted Servicing  
2 Agreement, was marked for identification as of this  
3 date.)  
4 Q. So am I correct to understand that you have not  
5 reviewed the Assignment Agreement that's mentioned in the  
6 Reconstituted Servicing Agreement in paragraph 1 of the  
7 recitals?  
8 A. I'm sorry, which schedule?  
9 Q. Sorry, the Assignment Agreement.  
10 MR. GERRARD: Here (indicating).  
11 Q. The first paragraph of the recitals.  
12 A. No. I have not seen that document.  
13 Q. And am I correct to understand that you haven't  
14 seen the document referenced in the next paragraph of the  
15 recitals, the "Mortgage Loan Purchase and Servicing  
16 Agreement dated as of March 1st, 2004 (the 'Servicing  
17 agreement')"?  
18 A. No, I have not.  
19 Q. Okay. Going back up to the previous paragraph,  
20 what about the "pooling and servicing agreement as of  
21 December 1st, 2005, (the 'Pooling Agreement')," have you  
22 seen that?  
23 A. I have not, but also, for the record, discovery  
24 is still ongoing in this, and this is based on my review  
25 up until the beginning of this deposition.

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1 Q. Okay. Did you see anywhere in your business  
2 records the Securitization Servicing Agreement that I  
3 handed you?  
4 **A. No. This is one of those documents that, as I**  
5 **stated, could be, quote, checked out by somebody else**  
6 **currently.**  
7 Q. Okay.  
8 **MS. EBRON:** Let's go ahead and mark that  
9 Securitization Servicing Agreement as Exhibit 4.  
10 (Defendants' Exhibit 4, Securitization Servicing  
11 Agreement, was marked for identification as of this  
12 date.)  
13 Q. And were you able to see in your business  
14 records the Securitization Subservicing Agreement dated  
15 as of May 1st, 2006?  
16 **A. No, I was not.**  
17 Q. Do you have a copy of that over there?  
18 **A. The one you just picked up.**  
19 **MS. EBRON:** Let's go ahead and mark this as  
20 Exhibit 5.  
21 (Defendants' Exhibit 5, Securitization  
22 Subservicing Agreement, was marked for identification as  
23 of this date.)  
24 **MR. NITZ:** Are you done with this line of  
25 questioning?

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1 **MS. EBRON:** No.  
2 Q. Is it your understanding, though, that the  
3 Reconstituted Servicing Agreement somehow relates to the  
4 Lehman XS Trust Mortgage Pass-Through Certificates,  
5 Series 2006, slash, 4N?  
6 **A. Based on my review, yes.**  
7 Q. What other documents did you review that leads  
8 you to believe that the Reconstituted Servicing Agreement  
9 applies?  
10 **A. Based on the system of record and cross-checking**  
11 **it with the SharePoint site that holds servicing**  
12 **agreements, I have no reason to think it doesn't.**  
13 Q. I'm going to show you a document that we will  
14 mark as Exhibit 6. This is the 8-K.  
15 (Defendants' Exhibit 6, 8-K, was marked for  
16 identification as of this date.)  
17 Q. Is that something that you had within your  
18 business records at Nationstar?  
19 **MR. GERRARD:** I'm going to object on the basis  
20 that all these documents are outside the scope of the  
21 topics that have been identified to this deposition.  
22 I've been trying to let you lay some groundwork to the  
23 extent that you needed to, but the witness is only  
24 prepared to testify on topics that are identified in the  
25 notice. These documents are outside of that scope.

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1 **A. No. This isn't something I saw for my**  
2 **preparation.**  
3 Q. Okay. Do you see the -- all of the other  
4 documents, ones that I pulled from the SEC website,  
5 reference a date as of May 1st, 2006?  
6 **A. Are you talking about on Exhibits 4, 5, and 6?**  
7 Q. Yes.  
8 **A. On their face, yes.**  
9 Q. Okay. Do you know why the Reconstituted  
10 Servicing Agreement has a date of December 1st, 2005?  
11 **A. That's not one of the topics that I prepared for**  
12 **based on the deposition notices, and I'm not prepared to**  
13 **answer that.**  
14 Q. Okay. Just trying to make sense of this all.  
15 Do you know what interest in the Deed of Trust LaSalle  
16 Bank National Association has had?  
17 **MR. GERRARD:** Objection. It's outside the scope  
18 of the topics for this deposition.  
19 **A. That's not something I prepared for, based on**  
20 **the topics provided. I'm not prepared to answer.**  
21 Q. Okay. Currently, am I correct to understand  
22 that Fannie Mae and Freddie Mac do not have an interest  
23 in this loan?  
24 **A. Based on my review of the file, that is correct.**  
25 Q. Okay. Am I correct to understand that this loan

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1 is not FHA insured?  
2 **A. Based on my review of the loan, that's correct.**  
3 Q. Am I correct to understand that Ginnie Mae does  
4 not have an interest in this loan?  
5 **A. That's correct.**  
6 Q. Am I correct to understand that at the time of  
7 the association foreclosure sale, the entity that held  
8 the interest in this loan was U.S. Bank, as trustee of  
9 the trust, and Nationstar, as the servicer?  
10 **MR. GERRARD:** You said at the time of the sale?  
11 **MS. EBRON:** Correct.  
12 **A. Well, the sale was held on -- as we discussed,**  
13 **on January 8, 2014. There's an assignment of the Deed of**  
14 **Trust to Nationstar on October 1st, 2013.**  
15 Q. Okay. So at the time of the foreclosure sale,  
16 was Nationstar the servicer?  
17 **A. Yes.**  
18 Q. At the time of the foreclosure sale, was U.S.  
19 Bank, as trustee of the trust, the investor?  
20 **A. Yes.**  
21 Q. At the time of the association foreclosure sale,  
22 were there policies or procedures in place for handling  
23 association liens that were applicable to this Deed of  
24 Trust?  
25 **MR. GERRARD:** This is one of those questions

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1 where you need to probably ask by each party he's here to  
2 testify on behalf of.  
3 Q. So first for Nationstar.  
4 A. Nationstar's policy was if any notices came in,  
5 notice of default, notice of trustee sale, any notices  
6 from the homeowners association, to refer those to  
7 outside counsel to be handled.  
8 Q. Did U.S. Bank have a policy or procedure at that  
9 time?  
10 A. It's my understanding that their policy and  
11 procedure was to forward that information to the current  
12 servicer and for the servicer to then enact their  
13 policies and procedures.  
14 Q. How is that your understanding?  
15 A. Purely based on experience and as best I was  
16 able to ascertain. Like I said, it's only my  
17 understanding.  
18 Q. Okay. You mentioned the assignment of the Deed  
19 of Trust to Nationstar. Can you look at the page Bates  
20 stamped SFR 60.  
21 MS. EBRON: Let's go ahead and mark this as  
22 Exhibit 7.  
23 (Defendants' Exhibit 7, SFR Investments Pool 1,  
24 LLC's Initial Disclosure of Witnesses and Documents  
25 Pursuant to NRCP 16.1, was marked for identification as

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1 of this date.)  
2 A. And I'm sorry, what was the page?  
3 Q. 60. SFR 60.  
4 A. Okay.  
5 Q. Is this the assignment to Nationstar you were  
6 referring to?  
7 A. Yes, with the recording date of 10/1/13.  
8 Q. Okay. Previous to this assignment to  
9 Nationstar, was there an assignment of the Deed of Trust  
10 to Bank of America?  
11 A. Not that I saw. However, Bank of America,  
12 acting on behalf of the investor, U.S. Bank, with signing  
13 authority, it was their understanding that they could  
14 sign a Deed of Trust such as this to transfer the  
15 interest.  
16 Q. How do you know that?  
17 A. Based on powers of attorney that I've seen and  
18 the fact that the servicer traditionally holds that -- I  
19 don't want to say power, but power with U.S. Bank.  
20 Q. Okay. What powers of attorney did you review in  
21 preparation for your deposition today?  
22 A. I reviewed the U.S. Bank power of attorney that  
23 Nationstar currently holds.  
24 Q. Do you know when that's dated?  
25 A. I don't recall the exact date. I don't recall

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1 the exact date.  
2 Q. Have you seen the original?  
3 A. No. I've only seen a digital copy.  
4 Q. Do you know when that digital copy became part  
5 of the business records as far as Nationstar is  
6 concerned?  
7 A. It's not one of the topics I was given in the  
8 deposition notices and I'm not prepared to answer.  
9 Q. Okay. What other powers of attorney besides the  
10 one between U.S. Bank and Nationstar did you review?  
11 A. That's the only one I recall.  
12 Q. Did you review a power of attorney between U.S.  
13 Bank and Bank of America?  
14 A. Not that I recall.  
15 Q. So when you testified that Bank of America,  
16 N.A., was signing the assignment of the Deed of Trust to  
17 Nationstar on U.S. Bank's behalf, that wasn't based on a  
18 document that you had reviewed?  
19 A. No. It's based on -- one, that's not a topic  
20 that was given to me in the deposition notices to review  
21 in advance of this deposition, but U.S. Bank typically  
22 has a form power of attorney that goes from servicer to  
23 servicer, that I've seen in multiple other cases.  
24 Q. And is that something that you could locate and  
25 provide?

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1 A. The power of attorney?  
2 Q. Yes.  
3 A. I can discuss that with my attorneys.  
4 Q. Okay. Were there any other powers of attorney  
5 besides the U.S. Bank to Nationstar power of attorney  
6 that you reviewed for this deposition?  
7 A. As that's not in the deposition topics that were  
8 provided to me, that's not something I'm prepared to  
9 answer.  
10 Q. You would agree with me, though, that the  
11 assignment of Deed of Trust Bates stamped SFR 60 does not  
12 state that Bank of America is signing on behalf of U.S.  
13 Bank; right?  
14 MR. GERRARD: Objection. Document speaks for  
15 itself.  
16 A. I don't see U.S. Bank explicitly stated on here,  
17 but --  
18 Q. Do you see it stated anywhere?  
19 MR. GERRARD: Same objection. Document speaks  
20 for itself.  
21 A. No, I don't.  
22 Q. Okay. In preparation for your deposition, did  
23 you review the original wet ink signature promissory  
24 note?  
25 A. No, I did not. I reviewed a digital copy.

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1 Q. When was that digital copy uploaded to your  
2 system?  
3 A. There's -- it's been uploaded multiple times. I  
4 want to say about 10. I reviewed all 10 of them. The  
5 first one was from July 5th, 2013, when the loan was  
6 onboarded.  
7 Most recent one, I think, was in the last six  
8 months, but I'm not positive on that because that's not  
9 one of the topics that was provided in the deposition  
10 notice.  
11 Q. Were all of the copies that you looked at the  
12 same?  
13 A. Yes.  
14 Q. Were there any endorsements?  
15 A. Yes.  
16 Q. How many?  
17 A. One.  
18 Q. Who it was from and who was it to?  
19 A. I don't recall who it was from, but it was  
20 endorsed in blank.  
21 Q. Do you know where that endorsement was on the  
22 promissory note?  
23 A. The last page of the note itself.  
24 Q. Was it on the same page as the signatures?  
25 A. Yes.

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1 Q. Was there an allonge to the note?  
2 A. Yes.  
3 Q. What was on the allonge?  
4 A. I believe it was the adjustable rate terms.  
5 Q. Where is the original wet ink signature  
6 promissory note?  
7 A. I was unable to locate that information.  
8 However, it would be in only one of two places: either  
9 Nationstar's vault or -- which is in Dallas, Texas -- or  
10 in U.S. Bank's vault, as they sometimes hold their own  
11 notes in which the investor -- that's located in Simi  
12 Valley, California.  
13 Q. What did you do to try to find out where the  
14 note was stored?  
15 A. I contacted somebody in our legal department.  
16 Q. Who was that?  
17 A. I believe it was a Sasha Kovacic. I know it was  
18 a paralegal.  
19 Q. Do you know what she did to try to determine  
20 where the original promissory note was located?  
21 MR. GERRARD: I'm going to direct the witness  
22 not to answer the question because that would call for  
23 privileged communication to be disclosed.  
24 Q. Have you spoken to anyone who indicated that  
25 they have seen the original wet ink signature promissory

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1 note?  
2 A. That's not in the deposition topics that were  
3 provided to me in the deposition notices, so that wasn't  
4 something I asked. So I'm not prepared to answer that.  
5 Q. But no one has told you, "I've seen the wet ink  
6 signature promissory note for the file"; right?  
7 A. No. In general conversation, no one just came  
8 out and said, "Hey, you know what? I've seen the wet ink  
9 note."  
10 Q. Okay. Have you seen the original pooling and  
11 servicing agreement?  
12 A. No, I've not seen the original pooling and  
13 servicing agreement.  
14 Q. Do you know where the original is stored?  
15 A. That's not in the topics that were provided to  
16 me in the deposition notices, so I'm not prepared to  
17 answer that.  
18 Q. But you don't know? As you sit here today, you  
19 don't know?  
20 A. That's something I didn't prepare to answer, so  
21 I -- I don't know if that's what you're getting at.  
22 Q. Yeah. That's what I was asking. What damages  
23 do you, Nationstar, allege that you suffered as a result  
24 of the association foreclosure?  
25 A. Based on the fact that litigation is still

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1 ongoing, Nationstar is still accruing attorneys' fees and  
2 costs, other servicing fees and costs that have been  
3 lost, and then, the unpaid principal balance on this  
4 loan, which I do not recall exactly what the balance of  
5 that is, but the entire unpaid principal balance.  
6 Q. Anything else?  
7 A. No.  
8 Q. What damages does U.S. Bank allege it suffered  
9 as a result of the association foreclosure?  
10 A. The same as Nationstar's. Nationstar's only  
11 interest is that of a servicer and is acting on behalf of  
12 U.S. Bank.  
13 Q. Is there a provision in the pooling and  
14 servicing agreement or a servicing guideline that  
15 required Nationstar to protect U.S. Bank's interest in  
16 the Deed of Trust?  
17 MR. GERRARD: I object. That's outside the  
18 scope of the topics in the notice for deposition -- the  
19 witness was prepared to bind the company on.  
20 A. That's not something I was prepared to answer,  
21 based on the deposition topics.  
22 Q. And you don't know the answer to that?  
23 A. I just -- I don't want to bind myself or  
24 Nationstar by giving any answer to that. Any answer I  
25 give would be speculative. I wasn't asked to provide



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<p>1 <b>that information.</b></p> <p>2 Q. Did U.S. Bank have any particular policy or</p> <p>3 procedure that it requires Nationstar to follow as it</p> <p>4 pertains to association liens?</p> <p>5 <b>A. Not that I'm aware of or was able to find.</b></p> <p>6 Q. Okay. In your review of the file, did you see</p> <p>7 any communications with the borrower about the</p> <p>8 association lien, its delinquency to the association?</p> <p>9 <b>A. That's not a topic I was provided in the</b></p> <p>10 <b>deposition notices, so I'm not prepared to answer that.</b></p> <p>11 Q. So you didn't see any communications with the</p> <p>12 borrower about the association foreclosure?</p> <p>13 <b>A. When I was going through the documents on this</b></p> <p>14 <b>file, that's not something, based on the 12 topics, that</b></p> <p>15 <b>I was looking for.</b></p> <p>16 Q. What about Topic No. 8?</p> <p>17 <b>A. I mean, I -- even going through communications,</b></p> <p>18 <b>I didn't see anything that mentioned an HOA sale. But,</b></p> <p>19 <b>once again, that's not something I was specifically</b></p> <p>20 <b>looking for at the time.</b></p> <p>21 Q. Okay.</p> <p>22 <b>A. But nothing in the 6,000, 6,500 documents that I</b></p> <p>23 <b>looked at -- there was nothing to the homeowner that</b></p> <p>24 <b>popped out and said HOA, homeowners association even when</b></p> <p>25 <b>searching by key words before manually opening every</b></p>	<p>1 see any emails between Bank of America and Miles, Bauer?</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. Did you see any comments or notes from the MRT</p> <p>4 department?</p> <p>5 <b>A. Not that I recall, other than a couple that</b></p> <p>6 <b>said, you know, "Received Notice of Default from HOA,</b></p> <p>7 <b>referred to outside counsel."</b></p> <p>8 Q. When was the Notice of Default received?</p> <p>9 <b>MR. GERRARD:</b> I'm going to object to the form of</p> <p>10 the question as vague and ambiguous as to which notice of</p> <p>11 default you're talking about.</p> <p>12 Q. That you were just referring to.</p> <p>13 <b>A. There's -- I don't recall the exact date that</b></p> <p>14 <b>they were received. And once again, these were -- like I</b></p> <p>15 <b>said, they went from July -- I know July of 2008, and</b></p> <p>16 <b>then the check was tendered on September 30th, 2010.</b></p> <p>17 Q. How do you know the check was tendered on</p> <p>18 September 30th, 2010?</p> <p>19 <b>A. It's when the check was dated and the cover</b></p> <p>20 <b>letter is dated that went to the HOA from Miles, Bauer.</b></p> <p>21 Q. Where were those documents contained in your</p> <p>22 business records?</p> <p>23 <b>A. In FileNet, our imaging system.</b></p> <p>24 Q. And were they uploaded at the time of the</p> <p>25 servicing transfer?</p>
Page 38	Page 40
<p>1 <b>document.</b></p> <p>2 Q. Okay. Did Nationstar receive documents from</p> <p>3 Bank of America when it began servicing in July of 2013?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Did Nationstar receive any documents from Bank</p> <p>6 of America related to the association?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. What types of documents did Nationstar receive</p> <p>9 from Bank of America?</p> <p>10 <b>A. Nationstar received a comment history --</b></p> <p>11 <b>THE WITNESS:</b> I'm sorry, could you read that</p> <p>12 question.</p> <p>13 (Whereupon, the record was read by</p> <p>14 the reporter.)</p> <p>15 <b>A. Just in general?</b></p> <p>16 Q. No. Go ahead and state any ones that related to</p> <p>17 the association lien.</p> <p>18 <b>A. Received their comment log; we received a copy</b></p> <p>19 <b>of a check from Miles, Bauer who they had retained to</b></p> <p>20 <b>handle the association lien; copies of some notices</b></p> <p>21 <b>received from -- or regarding the HOA lien in 2008 to</b></p> <p>22 <b>2010 before that check was tendered by Miles, Bauer.</b></p> <p>23 Q. Anything else?</p> <p>24 <b>A. That's really about it.</b></p> <p>25 Q. Now, I'm not asking for the content, but did you</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Were there notes about the check in the letter?</p> <p>3 <b>A. Not that I recall seeing. At that point, it</b></p> <p>4 <b>would have been out of Bank of America's hands because</b></p> <p>5 <b>Miles, Bauer would have been handling it.</b></p> <p>6 Q. Okay. Did you see any indication that the check</p> <p>7 was accepted?</p> <p>8 <b>A. I did not. However, it appears that the</b></p> <p>9 <b>process -- based on information I found in my</b></p> <p>10 <b>preparation, that the process was restarted in early --</b></p> <p>11 <b>or late 2012, rather.</b></p> <p>12 Q. Which process?</p> <p>13 <b>A. The HOA -- the delinquent HOA process.</b></p> <p>14 Q. Okay. So did you see any evidence in your</p> <p>15 business records that there were any checks besides the</p> <p>16 one from September 30th of 2010?</p> <p>17 <b>A. I'm sorry? Could you say that again. Sorry.</b></p> <p>18 Q. Did you see any evidence in your business</p> <p>19 records that there were any checks sent to the</p> <p>20 association or its agent, other than the one that you</p> <p>21 said was dated September 30th of 2010?</p> <p>22 <b>A. No.</b></p> <p>23 Q. How much was the check from September 30th of</p> <p>24 2010?</p> <p>25 <b>A. I don't recall the exact amount without having</b></p>

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1 the check in front of me, but based on the cover letter,  
2 it was for nine months of assessments.  
3 Q. Who was the letter from?  
4 A. Miles, Bauer.  
5 Q. Who at Miles, Bauer?  
6 A. I don't recall.  
7 Q. Okay. I'm asking and I don't have a copy for  
8 you because I wasn't provided one by Nationstar or U.S.  
9 Bank.  
10 MS. EBRON: Do you know if you guys have those  
11 to disclose?  
12 MR. GERRARD: Here you go (handing).  
13 MR. NITZ: May I see what he handed you?  
14 MS. EBRON: Yes, you may (handing).  
15 Q. Can you take a look at this letter.  
16 A. Yes.  
17 Q. Is this the letter you were talking about that  
18 was within your FileNet system?  
19 A. Yes.  
20 MR. GERRARD: Are you going to mark that as an  
21 Exhibit?  
22 MS. EBRON: Yes.  
23 MR. GERRARD: Exhibit 8?  
24 MS. EBRON: Yes, please.  
25 (Defendants' Exhibit 8, Letter from Miles, Bauer,

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1 Bergstrom & Winters, LLP, was marked for identification  
2 as of this date.)  
3 Q. Is this what you reviewed?  
4 A. Yes.  
5 Q. Is it the only communication with Miles, Bauer  
6 that you saw within your business records?  
7 A. Yes, it's the only one I recall.  
8 Q. Okay.  
9 A. Any other one -- I reviewed all the documents,  
10 so any other communications would have stood out.  
11 Q. Okay. Did you see any servicing notes that  
12 indicated what happened to the check that was attached to  
13 the letter?  
14 A. No, I did not.  
15 Q. Did you review a payment history?  
16 MR. NITZ: For?  
17 MS. EBRON: For this loan.  
18 A. For which servicer?  
19 Q. Any servicer. Did you review any payment  
20 history for this loan?  
21 A. Yes.  
22 Q. Okay. Did you review a payment history that  
23 would include September 2010?  
24 A. Yes, I did.  
25 Q. And did you see reference to an amount that

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1 would have been sent to Miles, Bauer to pay to the  
2 association?  
3 MR. GERRARD: On the payment history?  
4 MS. EBRON: Yes.  
5 A. I would need to reference the payment history to  
6 look at it because there is also other fees and costs  
7 associated, and I believe -- I would like to go back  
8 and -- there is another Miles, Bauer -- there's a bill to  
9 them that I saw in the system. So -- or a bill from  
10 them, rather. So I would have to go cross-check all  
11 that.  
12 Q. Okay. Is that something that you've provided to  
13 be disclosed?  
14 MR. GERRARD: The payment history?  
15 Q. Either the payment history or the bill from  
16 Miles, Bauer.  
17 A. That would be a question for my attorneys.  
18 Q. Okay.  
19 MS. EBRON: I don't have copies of either of  
20 those. Do you know if -- I mean, I think we've  
21 established that only the recorded documents have  
22 actually been disclosed in this case, so -- unless it's  
23 another document that you have within your file right  
24 now.  
25 MR. NITZ: That says what? What are we looking

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1 for?  
2 MS. EBRON: Payment history or the bill from  
3 Miles, Bauer about this file.  
4 MR. GERRARD: I'm sure that if there is a  
5 payment history that we can disclose it.  
6 MS. EBRON: Okay. How about the comment  
7 history?  
8 MR. GERRARD: I don't know that one exists that  
9 we have. So you can ask the witness and we're certainly  
10 happy to look, but I don't -- I'm not aware of anything.  
11 MS. EBRON: I think he testified that there was  
12 a comment history.  
13 A. There's a comment history.  
14 Q. That would be very strange if there was not.  
15 Okay. Do you know if there was ever another letter sent  
16 from Miles, Bauer to Alessi & Koenig after this September  
17 30th, 2010, letter?  
18 A. Not that I recall seeing.  
19 Q. Okay. And that's something that you would have  
20 noticed?  
21 A. Yes.  
22 Q. So am I correct to understand that there was not  
23 a letter sent to Alessi & Koenig that did not include the  
24 language saying "This is a non-negotiable amount and any  
25 endorsement of said cashier's check on your part, whether

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1 express or implied, will be strictly construed as an  
2 unconditional acceptance on your part of the facts stated  
3 herein and express agreement that BAC's financial  
4 obligations towards the HOA in regards to the real  
5 property located at 5327 Marsh Butte Street have now been  
6 'paid in full'?"  
7 **A. And your question was is there a document --**  
8 **Q.** Sending funds to the association or Alessi that  
9 doesn't include that statement.  
10 **A. Not that I saw in my review. Once again, I'm**  
11 **forced to rely on Nationstar's records at this point, so**  
12 **Nationstar only has what's received and I don't know what**  
13 **they don't have.**  
14 **Q.** Okay. Am I correct to understand that at the  
15 time of this letter the position of Bank of America was  
16 that the HOA lien was arguably prior to the Deed of  
17 Trust?  
18 **MR. GERRARD:** Objection. Document speaks for  
19 itself.  
20 **A. Can I see the --**  
21 **Q.** (Handing.)  
22 **MR. NITZ:** Could you read back the question,  
23 please.  
24 (Whereupon, the record was read by the  
25 reporter.)

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1 **A. Just reading directly from the document, it says**  
2 **"Based on Section 2(b), a portion of your HOA lien is**  
3 **arguably" -- stress on arguably -- "prior." It's not**  
4 **saying it is; it's saying it's arguably prior.**  
5 **Q.** Okay. Have you spoken to Rock Jung about this  
6 file?  
7 **A. No, I have not.**  
8 **Q.** Do you know Douglas Miles?  
9 **A. No, I do not.**  
10 **Q.** Are you familiar with Miles, Bauer's policies,  
11 practices, and procedures for creating and maintaining  
12 its business records?  
13 **A. No. I've never been an employee there.**  
14 **Q.** Would you agree that U.S. Bank and Nationstar  
15 had notice of the association foreclosure proceedings  
16 before the date of the sale?  
17 **A. No.**  
18 **MR. GERRARD:** Just a second. I have to object.  
19 Objection. Vague and ambiguous based upon which sale.  
20 **MR. NITZ:** Which proceedings?  
21 **MS. EBRON:** Okay.  
22 **Q.** So the foreclosure sale in 2014, did you -- do  
23 you agree that Nationstar and U.S. Bank had notice of the  
24 foreclosure proceedings before the sale took place?  
25 **MR. NITZ:** I object to that use of the phrase

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1 "foreclosure proceedings" as vague and ambiguous and  
2 confusing.  
3 **MR. GERRARD:** And I join that objection. Go  
4 ahead.  
5 **A. You're talking about the association sale?**  
6 **Q.** Yes.  
7 **A. It took place on September 8th, 2014?**  
8 **Q.** Yes.  
9 **A. No. I disagree with you.**  
10 **Q.** Why?  
11 **A. Although these were received by Bank of America,**  
12 **based on the document in our system, they were received**  
13 **on December 10th, 2013. They were not received by**  
14 **Nationstar until September 8th -- or I'm sorry, they were**  
15 **not received by Nationstar when they were transferred**  
16 **from BANA until January 8th, 2014, which is the day of**  
17 **the sale, at which time -- the sale traditionally occurs**  
18 **in the morning, most likely had already happened.**  
19 **And of all of the notices, the Notice of Trustee**  
20 **Sale was the only one received from Bank of America, or**  
21 **any other entity for that matter, to Nationstar. So**  
22 **then, there is a default and elections to sell, the**  
23 **notice of the delinquent assessment lien. Those were**  
24 **never received.**  
25 **Q.** By Nationstar?

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1 **A. Correct.**  
2 **Q.** Okay. There were notices of default that you  
3 received that were in your system from 2008 to 2010?  
4 **A. Right. I call that the early sale and the later**  
5 **sale. The earlier sale, yes. The later sale, no.**  
6 **Q.** Okay. So am I correct to understand that Bank  
7 of America received a notice of sale for the January  
8 2014 -- sorry, why did I think this was from September?  
9 Okay. Sorry.  
10 So Bank of America received the Notice of Sale  
11 listing the January 8th, 2014, sale date; is that  
12 correct?  
13 **A. Yes.**  
14 **Q.** And then it was forwarded to Nationstar?  
15 **A. Correct.**  
16 **Q.** When did Bank of America receive it, if you  
17 know?  
18 **A. It was stamped received on the envelope as**  
19 **December 10th, 2013.**  
20 **Q.** Do you know why it took until January 8th, 2014,  
21 to forward to Nationstar?  
22 **A. I do not.**  
23 **Q.** Do you know if there was a policy or procedure  
24 in place that U.S. Bank had for its previous servicers to  
25 forward documents that they received to the current

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1 servicer?  
2 **A. Not that I'm aware of.**  
3 Q. Do you know if the Notice of Default was also  
4 mailed to Bank of America but just not forwarded?  
5 **A. There's no record of the Notice of Default which**  
6 **happened -- which was recorded -- based on the recorded**  
7 **documents that I saw in preparation for this, it's not in**  
8 **Nationstar's system.**  
9 **There's no note in Bank of America's history**  
10 **that it was received, and that happened prior to the**  
11 **transfer to Nationstar.**  
12 Q. Right. So wasn't the Notice of Default and  
13 Election to Sell Under Homeowners Association Lien  
14 recorded on July 5th, 2013? If you look at the page  
15 Bates stamped SFR 59.  
16 **MR. GERRARD:** I'm just going to simply object on  
17 the basis that there were two. So I'm just not sure  
18 which one you're talking -- there was one recorded on the  
19 date you said, but there was another one that was  
20 recorded on June 13th, so I just want to make that  
21 clear --  
22 **MS. EBRON:** Okay.  
23 **MR. GERRARD:** -- for the record that there are  
24 two.  
25 **A. And without giving too much speculation, the**

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1 **fact that it was transferred to Nationstar the same day**  
2 **it was recorded means it was probably drawn up and sent**  
3 **prior to it being transferred to Nationstar, so it would**  
4 **have been sent to Bank of America.**  
5 Q. When Nationstar began servicing the loan, did it  
6 do any title search or look at what encumbrances were on  
7 the property that it was starting to service?  
8 **A. No, it did not.**  
9 Q. Do you know why not?  
10 **A. It's not Nationstar's policy to do a title**  
11 **search on all loans that it onboards.**  
12 Q. Did U.S. Bank make any investigations into title  
13 or encumbrances before it obtained its interest in the  
14 loan?  
15 **A. Not that I'm aware of.**  
16 Q. Were there any investigations made by either  
17 Nationstar or U.S. Bank before the date of the  
18 association foreclosure sale?  
19 **A. Could you repeat that?**  
20 Q. Were there any investigations into title or  
21 encumbrances on the property that were made by either  
22 Nationstar or U.S. Bank before the date of the  
23 association foreclosure sale?  
24 **A. None that I saw any record of.**  
25 Q. Was there a title policy?

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1 **A. Yes.**  
2 Q. Do you know if that referenced the association?  
3 **A. That's not in the topics that were provided to**  
4 **me in the deposition notices, so I'm not prepared to**  
5 **answer that.**  
6 Q. Okay. Did U.S. Bank require that the Deed of  
7 Trust have a title policy?  
8 **MR. GERRARD:** Hold on. Is that the end of your  
9 question?  
10 **MS. EBRON:** Yeah. Sorry.  
11 **MR. GERRARD:** All right. I'm going to object to  
12 the question as being -- calling for speculation and also  
13 outside the scope of the topics that have been noticed  
14 for today's deposition.  
15 **A. That's not in the topics that were given to me**  
16 **in the deposition notice, so I'm not prepared to answer**  
17 **that.**  
18 Q. Okay. Just wondering because I did ask if there  
19 were any investigations made into title or encumbrances  
20 prior to taking interest in the Deed of Trust. So just  
21 wanted to clarify that, if they weren't looking at the  
22 title policy or requiring it. That's fine.  
23 **MR. GERRARD:** There's no question.  
24 Q. I'm going to show you a document that we will  
25 mark as Exhibit 9.

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1 (Defendants' Exhibit 9, Lehman XS Trust Mortgage  
2 Pass-Through Certificates, Series 2006-4N, Monthly Report  
3 for Distribution dated Oct 25, 2016, was marked for  
4 identification as of this date.)  
5 **MR. NITZ:** Can we take a break.  
6 (Whereupon, a recess was taken at this time.)  
7 Q. Have you seen this document that we've marked as  
8 Exhibit 9?  
9 **A. No, I have not.**  
10 Q. How does Nationstar communicate with U.S. Bank?  
11 **MR. GERRARD:** I'm just going to say I'm going to  
12 object. It's outside the scope of any of the topics that  
13 are listed for this deposition. This exhibit's outside  
14 the scope of that as well.  
15 **MR. NITZ:** It's also overbroad in the scope of  
16 time.  
17 **A. I've never seen this document, number one, to**  
18 **answer the first part of your question. I can't remember**  
19 **if I've answered that.**  
20 **Also, your question about communicating, how do**  
21 **we communicate, that's not something I prepared for,**  
22 **based on the topics provided to me in the deposition**  
23 **notice.**  
24 Q. Okay. Topic No. 6 and also Topic No. 9 ask for  
25 "All communications between" -- Nationstar or U.S.

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1 Bank -- "and/or its predecessor in interest regarding the  
2 Association's CC&Rs and title or encumbrances claimed  
3 against the Property."  
4 Number 9 is "Any and all internal discussions  
5 regarding the Bank's and/or its predecessor in interest's  
6 decision not to attend and/or bid at the Association  
7 foreclosure sale, and the reason why it chose not attend  
8 or bid."  
9 **A. But that's about specific events. The second**  
10 **one is about was there communication about a decision to**  
11 **not attend and/or bid at the foreclosure sale and the**  
12 **reason why. And No. 6 was regarding the association**  
13 **CC&Rs and title encumbrances.**  
14 Q. So I'm asking you where did you look to see if  
15 there were communications between Nationstar and U.S.  
16 Bank or Nationstar and Bank of America or U.S. Bank and  
17 Bank of America? Is there any particular place that you  
18 looked to see if there were communications?  
19 **A. Yes. In LSAMS and the collection history**  
20 **profile or the comment log.**  
21 Q. And are those all of the places that you would  
22 expect to see communications between those entities?  
23 **A. On a loan-level basis, yes.**  
24 Q. Okay. So what other types of communications  
25 would there be that would not be on a loan-level basis?

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1 **A. I mean, that's not one of the topics and we just**  
2 **went over both the topics that involve communications**  
3 **between Nationstar and U.S. Bank.**  
4 **Basically, we're looking at the foreclosure**  
5 **sale, the CC&Rs, and title or encumbrances. That's what**  
6 **I was looking for in terms of communications. Those are**  
7 **the topics you provided me. Anything else outside of**  
8 **that, I'm not prepared to answer.**  
9 Q. Okay. How do you know that you looked in all of  
10 the places that there may be communications about, say,  
11 the CC&Rs and title or encumbrances?  
12 **A. Because, based on my tenure working there and I**  
13 **don't know how many hundreds of depositions, I know where**  
14 **communications are stored at. I also reviewed the**  
15 **documents in the imaging system to see if any letters or**  
16 **emails were sent. I didn't see anything there regarding**  
17 **those topics.**  
18 Q. Are there any written policies or procedures  
19 that you're relying on to know that you looked in all of  
20 the places to see communications between Nationstar and  
21 U.S. Bank?  
22 **A. Any Nationstar policies and procedures, not that**  
23 **I know of, but when I sit down to go over deposition**  
24 **topics, it's been general practice and my general**  
25 **practice to look in all places available. So, I mean,**

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1 **that's just --**  
2 Q. Right. But the very first time you sat down to  
3 look for communications between, say, the servicer and  
4 the investor, how did you know where to look?  
5 **A. Because we go through extensive training before**  
6 **we ever sit down with a deposition notice in front of us,**  
7 **with every department in the company.**  
8 Q. Okay. And have you ever seen any communications  
9 between the servicer and the investor?  
10 **A. On any loan ever?**  
11 Q. Yes.  
12 **A. I mean, that's -- once again, that's not one of**  
13 **the topics that's -- the deposition notices you provided**  
14 **me.**  
15 Q. Well --  
16 **A. But, I mean, if you're trying --**  
17 Q. Just your personal knowledge --  
18 **A. My personal knowledge, yes, I've seen**  
19 **communications.**  
20 Q. Okay. And have you ever seen those in a  
21 loan-level file?  
22 **A. No.**  
23 Q. Where did you see those types of communications?  
24 **MR. GERRARD: Objection. It's irrelevant**  
25 **because it's outside the scope of the topics that you've**

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1 identified for this deposition. You only asked for  
2 specific communications.  
3 **MS. EBON: Right.**  
4 **MR. GERRARD: Those communications were about**  
5 **specific topics and what you're asking about now is none**  
6 **of those topics.**  
7 **MS. EBON: Well --**  
8 **MR. GERRARD: You're just asking about general**  
9 **communications between servicer and --**  
10 **MS. EBON: I'm asking -- I'm trying to**  
11 **determine if he was actually prepared for this particular**  
12 **topic, No. 6, because in all the times that I've deposed**  
13 **any bank attorneys, they've never had any communications**  
14 **within the loan-level file.**  
15 Q. So I'm just wondering how do you know that  
16 that's where you should look? Or is there a policy or  
17 procedure that tells you what to do in those cases to  
18 find that information?  
19 **A. I don't understand what you're -- I'm being**  
20 **honest; I don't understand what you just said.**  
21 Q. Right. So if you've never seen communications  
22 between a servicer and an investor in a loan-level file,  
23 what types of locations would you look in if not in the  
24 loan-level file?  
25 **A. If it's particular to one loan, it's going to be**

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1 on a loan-level basis because there's a investor loan  
2 number; there's a Nationstar loan number. Any  
3 communication that goes to the investor, any investor,  
4 would have their investor loan number and the Nationstar  
5 loan number, property address, identifying  
6 characteristics in a letter that it's about. Then it  
7 would be linked to that loan. It wouldn't be somewhere  
8 else, because how would you search for it?  
9 Q. I don't know.  
10 A. So it would have to be --  
11 Q. I think you just said that you've never seen  
12 any, so I was --  
13 A. I didn't say I'd never seen that.  
14 Q. Okay. My bad; I thought you did. Besides  
15 looking in LSAMS and FileNet, what did you do to prepare  
16 for your deposition?  
17 A. I spoke with both the attorneys that are here  
18 today. I spoke with our in-house counsel and paralegals,  
19 and I think that's about it.  
20 Q. Did you speak with anyone from U.S. Bank?  
21 A. No, I did not.  
22 Q. Does U.S. Bank know that you're testifying in  
23 its behalf?  
24 A. I don't know the answer to that.  
25 Q. When Nationstar received the Notice of Sale from

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1 Bank of America on the date of the sale, what did it do?  
2 A. I would need to look at the collection history  
3 profile to refresh my memory on that, and also that's not  
4 something that was in the deposition topics provided to  
5 me.  
6 Q. Did you take any action, either U.S. Bank or  
7 Nationstar, after receiving the Notice of Sale? Like,  
8 did you refer to outside counsel or anything like that?  
9 A. That's not in the deposition topics you  
10 provided, so everything in these is about the -- leading  
11 up to the foreclosure sale. There's nothing post sale,  
12 which is when Nationstar would have received it.  
13 Q. Well, it was not necessarily post sale, so I'm  
14 just asking was there anything that was done?  
15 A. I would have to look at the collection history  
16 profile, because based on my interpretation of the topics  
17 that you provided me, specifically, for instance, No. 10,  
18 "Your knowledge of the events and circumstances of the  
19 proceedings leading up to and including the...sale," we  
20 didn't have notice at that time.  
21 I'm not prepared to answer that question.  
22 That's not something I looked at. I looked at until the  
23 sale was held.  
24 Q. What were Nationstar's policies and procedures  
25 for processing and maintaining documents and

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1 communications related to an association lien or  
2 foreclosure, whether received via mail, email, through  
3 counsel or by any other means, before the date of the  
4 association foreclosure sale?  
5 A. To take the communication received and index it  
6 in FileNet, notate what action was taken on what document  
7 or document type, and notate that in LSAMS.  
8 Q. Is this a written policy?  
9 A. I believe so.  
10 Q. If a notice of default had been received by  
11 Nationstar, what action would it have taken?  
12 MR. GERRARD: Objection. Assumes facts not in  
13 evidence. Lack of foundation. Incomplete hypothetical.  
14 A. Yeah. That would call for me to speculate --  
15 speculate or tell you what happened in a hypothetical  
16 scenario, so I can't -- I don't have an answer to that.  
17 Q. So in July of 2013 did Nationstar have a policy  
18 for handling association foreclosure liens?  
19 A. Yes. As I stated, when something -- a  
20 communication comes in, it's uploaded into our imaging  
21 system of record, FileNet, and notated, and that it was  
22 uploaded and received in our written system of record,  
23 LSAMS.  
24 Q. Okay. And at that point if Nationstar had  
25 received a notice of default from the association, would

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1 it have called the association?  
2 MR. GERRARD: Same objections as before. Calls  
3 for speculation. Incomplete hypothetical. Lack of  
4 foundation.  
5 A. Same thing; you're asking me a hypothetical  
6 situation. If we're -- I mean, I'm here to talk about  
7 facts of the case, not what-if situations.  
8 Q. Right. So if you didn't have a policy to do  
9 something, then you wouldn't have been harmed by not  
10 receiving the notice; right?  
11 A. We did have a policy that you're -- which I've  
12 already answered twice now, I believe.  
13 Q. It's to just scan it in and make a note?  
14 MR. GERRARD: I'm sorry. I'm going to have to  
15 object. Your last question, you asked about Topic 11.  
16 You asked about policies for maintaining and processing.  
17 I don't think you've ever asked him, at least unless I  
18 missed it, what the policy and procedure was for handling  
19 association --  
20 MS. EBON: That's what I'm asking when I'm  
21 saying, "What would you do? What would you have done if  
22 you had received the notice of default?"  
23 MR. GERRARD: You're asking a hypothetical,  
24 though. You're not asking what the policy and procedure  
25 is; you're asking what would have happened if something

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1 had happened, which is why we keep objecting because it  
2 didn't happen.  
3 **MS. EBRON:** Okay.  
4 **MR. GERRARD:** So if you want to ask what the  
5 policy and procedure was --  
6 Q. Based on --  
7 **MR. GERRARD:** -- that's a different question.  
8 Q. Based on your policies and procedures, what  
9 would you have done if you had received a notice of  
10 default?  
11 **A. The policy and procedure, after it's received**  
12 **and scanned and notated, would be to refer the file to**  
13 **outside counsel to handle the HOA liens.**  
14 **However, just for the record, on this case no**  
15 **notice of default was received; no notice of delinquent**  
16 **assessment lien was received. The only notice received**  
17 **was the Notice of Trustee Sale which was received by**  
18 **Nationstar on the day of the foreclosure sale.**  
19 Q. What address should the Notice of Default --  
20 been mailed to for Nationstar?  
21 **MR. NITZ:** Objection. Vague as to time.  
22 **MR. GERRARD:** Well, it's also outside the scope  
23 of the topics; clearly not covered by any of the topics  
24 for this deposition. The witness isn't prepared to  
25 provide that information.

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1 Q. Are you not prepared to provide that  
2 information?  
3 **A. Yes. It's not in the topics provided in there.**  
4 Q. Okay. So at the time the Notice of Default was  
5 recorded by the association, Nationstar did not have any  
6 publicly recorded information that was connected to this  
7 particular Deed of Trust; is that right?  
8 **MR. NITZ:** Objection. Vague as to time.  
9 Q. At the time the Notice of Default was recorded.  
10 **MR. NITZ:** No, I understand. If I can explain?  
11 **MS. EBRON:** Okay.  
12 **MR. NITZ:** There were five different notices of  
13 default. Two preceding the Notice of Sale which was  
14 released and then before the Notice of Sale that resulted  
15 in the sale, there were three immediately before that.  
16 So when you say "the Notice of Default," it's confusing.  
17 **MS. EBRON:** All right.  
18 Q. The Notice of Default that was recorded on July  
19 5th, 2013, am I correct to understand that at that time  
20 Nationstar did not have any publicly recorded interest in  
21 the Deed of Trust?  
22 **A. That's not in the deposition topics that were**  
23 **provided to me in advance of today's deposition.**  
24 **However, based on the review of the recorded documents,**  
25 **the first mention of Nationstar was on the assignment of**

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1 **Deed of Trust on October 1st, 2013, that I know of, based**  
2 **on my review.**  
3 Q. Okay. You didn't see any other assignments to  
4 Nationstar, though; right?  
5 **A. That's correct.**  
6 Q. And you would have expected to see any other  
7 assignments within your business records, if there were  
8 any, to Nationstar before the one that was recorded on  
9 October 1st, 2013?  
10 **A. That's correct.**  
11 Q. Okay. Do you see the address that's listed in  
12 the assignment to Deed of Trust on the page Bates stamped  
13 SFR 60?  
14 **A. Which address?**  
15 Q. The one that says "Nationstar Mortgage, LLC,  
16 whose address is"?  
17 **A. Yes.**  
18 Q. Do you see that same address on this document?  
19 **MR. GERRARD:** What document are you making  
20 reference to?  
21 **MS. EBRON:** It's a page within Alessi -- the  
22 Declaration of Non-Monetary Status Pursuant to NRS  
23 107/SB 2 that was filed by Alessi & Koenig in this case  
24 on July 21st, 2016.  
25 **MR. NITZ:** Does that have a Bates number?

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1 **MS. EBRON:** No.  
2 **MR. GERRARD:** So you're asking if he's seen this  
3 before?  
4 **MS. EBRON:** No. I'm asking do you see "350  
5 Highland Drive, Louisville, Texas, 75067"?  
6 **MR. GERRARD:** On the certified mail received on  
7 the middle of this page?  
8 **MS. EBRON:** To Nationstar, yeah.  
9 **MR. GERRARD:** It's marked at the top. It says  
10 -- I guess it doesn't.  
11 **MS. EBRON:** We can attach the whole thing as an  
12 exhibit.  
13 **A. Yes. I mean, yes, I see it. Yes, I see it.**  
14 Q. And that's the same address that's in the  
15 assignment of the Deed of Trust?  
16 **A. With the exception of the numbers, the last four**  
17 **numbers of the ZIP Code.**  
18 Q. Those were additional?  
19 **A. Yes.**  
20 Q. Okay.  
21 **MR. NITZ:** What exhibit number is that going to  
22 be?  
23 **MS. EBRON:** It will be --  
24 **THE REPORTER:** 10.  
25 (Defendants' Exhibit 10, Declaration of

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1 Non-Monetary Status Pursuant to NRS §107/SB 239, was  
2 marked for identification as of this date.)  
3 **MS. EBRON:** Just to clarify for the record, the  
4 certified mail receipt that we looked at was within  
5 Exhibit 4 to the declaration.  
6 Off the record.  
7 (Whereupon, a discussion was held off the  
8 record.)  
9 Q. Am I correct to understand that no one  
10 representing the beneficiary of the Deed of Trust  
11 attended the association foreclosure sale?  
12 **A. That's correct.**  
13 Q. Am I correct to understand that there was not a  
14 civil or administrative action challenging the  
15 association lien before the date of the association  
16 foreclosure sale?  
17 **A. That's correct, as that -- no notice of that**  
18 **sale occurring was received by the servicer until the day**  
19 **of the sale.**  
20 Q. Okay. But am I also correct to understand that  
21 there was not a civil or administrative action  
22 challenging the association's lien for the previous  
23 payment that may or may not have been accepted when Bank  
24 of America was servicing?  
25 **A. So what we earlier referred to as the earlier**

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1 **and later --**  
2 Q. Yes.  
3 **A. -- sales, the earlier one? No, because it**  
4 **appears the process was stopped, for whatever reason,**  
5 **based on my review of what I have.**  
6 Q. Do you have any knowledge of whether or not that  
7 payment was accepted or rejected?  
8 **A. I already answered that, I believe. No.**  
9 Q. No, you don't know?  
10 **A. No, I don't know.**  
11 Q. Okay. And am I correct to understand that after  
12 the new notice of delinquent assessments, there was not  
13 any payments made to the association or Alessi on behalf  
14 of this file?  
15 **MR. NITZ:** Objection. Vague as to time in the  
16 Notice of Default.  
17 **THE WITNESS:** Can you read the question back?  
18 (Whereupon, the record was read by the  
19 reporter.)  
20 **A. You're talking about the later sale?**  
21 Q. Correct.  
22 **A. Based on my review, you are correct.**  
23 Q. Okay. Was the borrower delinquent on the Deed  
24 of Trust payments at the time of the association  
25 foreclosure?

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1 **MR. GERRARD:** Objection. Outside the scope of  
2 your topics for this deposition.  
3 **A. That's not in the deposition notice topics that**  
4 **I received in either notice, and I'm not prepared to**  
5 **answer that by Nationstar or myself.**  
6 Q. Was U.S. Bank aware that the property was  
7 located within a homeowners association at the time it  
8 obtained its interest?  
9 **A. I don't know.**  
10 Q. Was Nationstar aware that the property was  
11 located within a homeowners association at the time it  
12 obtained its interest?  
13 **A. I don't know.**  
14 Q. Is there any evidence contained in your business  
15 records showing reliance by Nationstar or U.S. Bank on  
16 provisions in the association's CC&Rs when obtaining  
17 interest in the Deed of Trust?  
18 **A. Not that I saw.**  
19 Q. Is there any evidence contained in your business  
20 records showing the originating lender's inclusion of the  
21 borrower's obligation to pay assessments to the  
22 association when qualifying the borrower for the subject  
23 loan?  
24 **A. Yes. The original 1003 from closing has the**  
25 **monthly HOA payment figured into the homeowner's**

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1 **debt-to-income ratio.**  
2 Q. Did you see any evidence contained in your  
3 business records showing you considered the borrower's  
4 obligation to pay assessments to the association when  
5 determining whether or not to obtain an interest in the  
6 subject loan? When I say "you," the trust, U.S. Bank.  
7 **A. No.**  
8 Q. Is there any evidence contained in your business  
9 records showing that -- strike that.  
10 Did you have any presale disputes with the  
11 association or Alessi?  
12 **A. If we're talking about the sale that actually**  
13 **happened, yes, as there was -- I don't know if you can**  
14 **call it a dispute, but there was action taken to pay,**  
15 **based on Exhibit 8, the letter and the check. That**  
16 **letter was sent to Alessi & Koenig.**  
17 Q. Okay. And was there any evidence within your  
18 business records that there was a notification of any  
19 third party through recording, publication in a newspaper  
20 announcement, of the sale, that that had happened and  
21 that that was in dispute?  
22 **A. In the sale that eventually happened?**  
23 Q. Yes.  
24 **A. Not that I saw any reference to.**  
25 Q. Am I correct to understand that you do not



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1 have -- either Nationstar or U.S. Bank does not have any  
2 knowledge from its business records about the occurrences  
3 at the sale?  
4 **MR. GERRARD:** What?  
5 Q. As to what occurred at the sale?  
6 **A. In what sense?**  
7 **MR. GERRARD:** In your records.  
8 **A. Like, what do you mean by "at the sale"?**  
9 Q. Like the bidding --  
10 **A. The answer is no because there's no attendance**  
11 **to the sale, so I'm not going to be difficult with you.**  
12 Q. Okay. Thank you.  
13 **A. At this point.**  
14 **MS. EBRON:** These are all the questions that I  
15 have right now. I am going to reserve my right to recall  
16 because I feel like there were documents that were not  
17 produced pursuant to the requirements of NRS 16.1, as  
18 well as some of the topics that I feel like were not  
19 adequately prepared for.  
20 We went over a list of the documents throughout  
21 the deposition that were reviewed in preparation and  
22 those weren't disclosed. I understand that Counsel, you  
23 have a different -- differing opinion as to whether or  
24 not the notices that were stamped received, the comment  
25 history, the payment history, the pooling and servicing

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1 agreement and some of the other documents that we  
2 discussed would change my need to ask -- or would require  
3 me to ask follow-up questions, but I just want to reserve  
4 that.  
5 **MR. GERRARD:** Right. And of course, we'll  
6 object because there's nothing that would be later  
7 disclosed that we would have any additional information  
8 on because this information is limited to what's in the  
9 records, and if you have the records, you have the  
10 information you need to ask.  
11 So we'll obviously object to any attempt to  
12 bring him back. With that said, I have no questions.  
13 **MR. NITZ:** I have no questions.  
14 **MS. EBRON:** Actually, sorry, there was a  
15 chronology that was, I believe, referred to by the  
16 witness.  
17 Q. You didn't prepare this; right?  
18 **A. Correct.**  
19 Q. But you do believe the information on it to be  
20 accurate?  
21 **A. I verified the information.**  
22 **MS. EBRON:** Okay. And we'll make that  
23 Exhibit 11.  
24 (Defendants' Exhibit 11, Chronology, was marked  
25 for identification as of this date.)

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1 **THE REPORTER:** Electronic order?  
2 **MR. GERRARD:** Green. Same as on the last one.  
3 Send a letter to both of us.  
4  
5 -oOo-  
6 (Whereupon, the deposition of KEITH  
7 KOVALIC was concluded at 6:00 p.m.)  
8  
9  
10 KEITH KOVALIC  
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1 CERTIFICATE OF DEPONENT  
2 PAGE LINE CHANGE REASON  
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16 \* \* \* \* \*  
17 I, KEITH KOVALIC, deponent herein, do hereby  
18 certify and declare under penalty of perjury the within  
19 and foregoing transcription to be my deposition in said  
20 action; that I have read, corrected and do hereby affix  
21 my signature to said deposition.  
22  
23 KEITH KOVALIC  
24 Deponent  
25  
26 day of Subscribed and sworn to before me the  
27 2017.  
28  
29 Notary Public  
30

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
3 ) ss  
4 COUNTY OF CLARK )

5 I, Lori-Ann Landers, a duly commissioned  
6 Notary Public, Clark County, State of Nevada, do hereby  
7 certify:

8 That I reported the taking of the deposition  
9 of the witness, KEITH KOVALIC, at the time and place  
10 aforesaid;

11 That prior to being examined, the witness  
12 was by me duly sworn to testify to the truth, the whole  
13 truth, and nothing but the truth;

14 That I thereafter transcribed my shorthand  
15 notes into typewriting and that the typewritten  
16 transcript of said deposition is a complete, true and  
17 accurate transcription of my said shorthand notes taken  
18 down at said time to the best of my ability.

19 I further certify that I am not a relative  
20 or employee of an attorney or counsel of any of the  
21 parties, nor a relative or employee of any attorney or  
22 counsel involved in said action, nor a person financially  
23 interested in the action; and that transcript review FRCP  
24 30(e) was requested.

25 IN WITNESS WHEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this 11th  
day of July 2017.

LORI-ANN LANDERS, CCR 792, RPR

	<b>agreement (46)</b> 18:21;23;19:2,11,16,25; 20:3,7,8,13,14,18,21;21:1,3, 10,16,18;22:5,9,15,23;23:5,6, 8,20,25;24:2,5,6,9,16,20;25:2, 9,11,14,22;26:3,8;27:10; 35:11,13;36:14;45:3;70:1	18:24;22:12;28:23	<b>auction (1)</b> 10:21 <b>authority (1)</b> 30:13 <b>available (1)</b> 54:25 <b>aware (7)</b> 16:17;37:5;44:10;49:2; 50:15;67:6,10
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<b>§107/SB (1)</b> 65:1	<b>Agreement' (3)</b> 21:19;24:17,21 <b>agreements (2)</b> 22:25;26:12 <b>ahead (8)</b> 8:3;14:25;23:24;25:8,19; 29:21;38:16;47:4 <b>Alessi (11)</b> 10:21;11:3,4;44:16,23; 45:8;63:21,23;66:13;68:11,16 <b>alike (1)</b> 9:14 <b>allege (2)</b> 35:23;36:8 <b>allonge (2)</b> 34:1,3 <b>alternate (1)</b> 9:25 <b>Although (1)</b> 47:11 <b>ambiguous (3)</b> 39:10;46:19;47:1 <b>Amended (5)</b> 8:11,12,14,16,20 <b>America (26)</b> 13:12,13,17,20;15:5;30:10, 11;31:13,15;32:12;38:3,6,9; 39:1;45:15;47:11,20;48:7,10, 16;49:4;50:4;53:16,17;58:1; 65:24 <b>America's (2)</b> 40:4;49:9 <b>among (1)</b> 21:20 <b>amount (3)</b> 40:25;42:25;44:24 <b>amounts (1)</b> 18:3 <b>and/or (4)</b> 53:1,5,6,11 <b>announcement (1)</b> 68:20 <b>answered (3)</b> 52:19;60:12;66:8 <b>answer's (1)</b> 7:1 <b>apologize (1)</b> 11:20 <b>appears (2)</b> 40:8;66:4 <b>applicable (3)</b>		<b>back (10)</b> 9:19,20;17:3;18:10;23:22; 24:19;43:7;45:22;66:17; 70:12 <b>BAC's (1)</b> 45:3 <b>bad (1)</b> 57:14 <b>balance (3)</b> 36:3,4,5 <b>BANA (1)</b> 47:16 <b>Bank (86)</b> 7:5,9,10,15,15,16;8:13,17; 9:15;10:9;12:14,19,23,24; 13:12,13,17,19;14:14,23; 15:5;16:22,25;21:24;22:4; 27:16;28:8,19;29:8;30:10,11, 12,19,22;31:10,13,13,15,21; 32:5,12,13,16;36:8,12;37:2; 38:3,5,9;39:1;40:4;41:9; 45:15;46:14,23;47:11,20; 48:6,10,16,24;49:4,9;50:4,12, 17,22;51:6;52:10;53:1,16,16, 16,17;54:3,21;56:13;57:20, 22;58:1,6;65:23;67:6,15;68:6; 69:1 <b>Bank' (3)</b> 10:8,10,10 <b>banking (2)</b> 21:24;22:4 <b>Bank's (5)</b> 12:20;31:17;34:10;36:15; 53:5 <b>based (31)</b> 21:11;24:24;26:6,10;27:12, 19,24;28:2;29:15;30:17; 31:17,19;35:25;36:21;37:14; 40:9;41:1;46:2,19;47:12; 49:6;52:22;54:12;58:16;61:6, 8;62:24;63:1;66:5,22;68:15 <b>Basically (1)</b> 54:4 <b>basis (6)</b> 18:2;26:19;49:17;53:23,25; 57:1
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**Keith Kovalic - July 11, 2017**  
**Alessi & Koenig, LLC vs. Stacy Moore, et al.**

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# EXHIBIT “Z”

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13  
14 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

15 ALESSI & KOENIG, LLC,

16 Plaintiff,

17 v.

18 STACY MOORE, an individual; MAGNOLIA  
19 GOTERA, an individual; KRISTIN JORDAL, AS  
20 TRUSTEE FOR THE JBWNO REVOCABLE  
21 LIVING TRUST, a trust; U.S. BANK, N.A., a  
22 national banking association; NATIONSTAR  
23 MORTGAGE, LLC, a foreign limited liability  
24 company; REPUBLIC SILVER STATE  
25 DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
26 domestic government entity; DOE INDIVIDUALS I  
27 through X, inclusive; and ROE CORPORATIONS  
28 XI through XX inclusive.

Defendants.

24 U.S. BANK, N.A.,

25 Counterclaimant,

26 vs.

27 ALESSI & KOENIG, LLC, a Nevada limited  
28 liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept. No.: XVII

**DEFENDANT NATIONSTAR  
MORTGAGE, LLC'S SECOND  
SUPPLEMENT DISCLOSURES OF  
DOCUMENTS AND WITNESSES**



1 U.S. BANK, N.A.,

2 Third Party Plaintiff,

3 v.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
5 limited liability company; INDIVIDUAL DOES I  
6 through X, inclusive; and ROE CORPORATIONS  
7 I through X, inclusive.

8 Third Party Defendants.

9 **DEFENDANT NATIONSTAR MORTGAGE, LLC'S SECOND SUPPLEMENT**  
10 **DISCLOSURES OF DOCUMENTS AND WITNESSES**

11 COMES NOW, Defendant NATIONSTAR MORTGAGE, LLC ("NATIONSTAR"), by and  
12 through their counsel of record, GERRARD COX LARSEN and AKERMAN, LLP, hereby submits it  
13 second supplement to its initial disclosures pursuant to Nevada Rules of Civil Procedure Rule 16.1 as  
14 follows:

15 **A. INDIVIDUALS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER**  
16 **N.R.C.P. Rule 16.1.**

17 **I.**

18 **LIST OF WITNESSES**

- 19 1. Corporate Designee for Nationstar Mortgage, LLC  
20 c/o AKERMAN, LLP  
21 1635 Village Center Circle, Suite 200  
22 Las Vegas, Nevada 89134  
23 Phone: (702) 634-5000

24 The Corporate Designee for Nationstar Mortgage, LLC is expected to testify regarding  
25 the facts and circumstances set forth in the pleadings on file herein.

- 26 2. Corporate Designee for Countrywide Home Loans, Inc.  
27 P.O. Box 10219  
28 Van Nuys, California 91410-0219

The Corporate Designee for Countrywide Home Loans, Inc. is expected to have knowledge  
concerning the facts and circumstances of this case.

3. Magnolia Gotera  
1275 Via Paraiso  
Salinas, California 93901

1 Magnolia Gotera is a defendant in this case and is expected to have knowledge concerning  
2 the facts and circumstances of this case.

- 3 4. Stacy Moore  
4 **Address Unknown**

5 Stacy Moore is a defendant in this case and is expected to have knowledge concerning  
6 the facts and circumstances of this case.

- 7 5. Corporate Designee for JBWNO Revocable Living Trust  
8 **Address Unknown**

9 The Corporate Designee for JBWNO Revocable Living Trust is expected to have  
10 knowledge concerning the facts and circumstances of this case. on file herein.

- 11 6. Corporate Designee for U.S. Bank, N.A.  
12 **c/o AKERMAN, LLP**  
13 **1635 Village Center Circle, Suite 200**  
14 **Las Vegas, Nevada 89134**  
15 **Phone: (702) 634-5000**

16 The Corporate Designee for U.S. Bank, N.A. is expected to testify regarding the facts and  
17 circumstances set forth in the pleadings on file herein.

- 18 7. Corporate Designee for Shadow Mountain Ranch Community Association  
19 c/o Level Property Management  
20 8966 Spanish Ridge Avenue # 100  
21 Las Vegas, Nevada 89148

22 The Corporate Designee for Shadow Mountain Ranch Community Association is  
23 expected to have knowledge concerning the facts and circumstances of this case.

- 24 8. Corporate Designee for Republic Silver State Disposal, Inc. dba Republic  
25 Services  
26 c/o The Corporation Trust Company of Nevada  
27 311 S. Division Street  
28 Carson City, Nevada 89703

The Corporate Designee for Republic Silver State Disposal, Inc. dba Republic Services is  
expected to have knowledge concerning the facts and circumstances of this case.

9. Corporate Designee for Alessi & Koenig, LLC  
**c/o HOA Lawyers Group, LLC**  
9500 W. Flamingo, Suite 204  
Las Vegas, Nevada 89147

The Corporate Designee for Alessi & Koenig, LLC is expected to have knowledge

1 concerning the facts and circumstances of this case.

2 10. Corporate Designee for SFR Investments Pool 1, LLC  
3 c/o KIM GILBERT EBRON  
4 7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300

5 The Corporate Designee for SFR Investments Pool 1, LLC is expected to have knowledge  
6 concerning the facts and circumstances of this case.

7 11. Rock K. Jung, Esq.  
8 Wright, Finlay & Zak, LLP  
9 7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Telephone: (702) 475-7964

10 Mr. Jung may testify regarding the records maintained by Miles Bauer, the facts and  
11 communications with the HOA and/or its agent regarding the property. Mr. Jung is former  
12 counsel for Bank of America and all parties are expressly instructed that they may not attempt  
13 to make contact that would violate the attorney-client privilege without express consent.

14 12. David Alessi  
15 c/o HOA Lawyers Group, LLC  
16 9500 W. Flamingo, Suite 204  
Las Vegas, Nevada 89147

17 David Alessi is expected to have knowledge concerning the facts and circumstances of  
18 this case.

19 13. Corporate Designee for Level Property Management  
20 8966 Spanish Ridge Avenue # 100  
Las Vegas, Nevada 89148

21 The Corporate Designee for Level Property Management is expected to have knowledge  
22 concerning the facts and circumstances of this case.

23 14. Chris Hardin  
24 SFR Investments Pool 1, LLC  
25 c/o KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300

26 Chris Hardin is expected to have knowledge concerning the facts and circumstances of  
27 this case.

1           **15.     30(b)(6) Witness for Clark County Assessor**  
2                   **500 South Grand Central Parkway, 2nd Floor**  
3                   **Las Vegas, Nevada 89155**

4           **This witness is expected to have knowledge concerning the facts and circumstances of**  
5           **this case.**

6           **16.     30(b)(6) Witness for Clark County Recorder**  
7                   **500 South Grand Central Parkway, 2nd Floor**  
8                   **Las Vegas, Nevada 89155**

9           **This witness is expected to have knowledge concerning the facts and circumstances of**  
10           **this case.**

11           **17.     Michael Pizzi**  
12                   **President, Shadow Mountain Ranch Community Association**  
13                   **8966 Spanish Ridge Avenue # 100**  
14                   **Las Vegas, Nevada 89148**

15           **This witness is expected to have knowledge concerning the facts and circumstances of**  
16           **this case.**

17           **18.     Cecilia Hall**  
18                   **Secretary, Shadow Mountain Ranch Community Association**  
19                   **8966 Spanish Ridge Avenue # 100**  
20                   **Las Vegas, Nevada 89148**

21           **This witness is expected to have knowledge concerning the facts and circumstances of**  
22           **this case.**

23           **19.     John Fontanini**  
24                   **Director, Shadow Mountain Ranch Community Association**  
25                   **8966 Spanish Ridge Avenue # 100**  
26                   **Las Vegas, Nevada 89148**

27           **This witness is expected to have knowledge concerning the facts and circumstances of**  
28           **this case.**

29           **20.     Corporate Representative and/or 30(b) Witness for Miles, Bauer, &**  
30                   **Winters, LLP**  
31                   **575 Anton Road, Suite 300**  
32                   **Costa Mesa, CA 92626**  
33                   **Telephone: (714) 432-6503**

34           **This witness and/or these witnesses are expected to testify regarding Miles Bauer's**  
35           **knowledge of the HOA's foreclosure and all facts related thereto, including, without limitation,**  
36           **the payment of the super-priority Miles Bauer performed and/or attempted on U.S. Bank's and**

Nationstar's behalf. On information and belief, Doug Miles is likely to testify as the corporate representative, person most knowledgeable, and Rule 30(b)(6) witness for Miles Bauer, and his address is provided in this disclosure. Nationstar reserves the right to call other corporate representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the topics stated herein, including, without limitation, Rock K. Jung, Esq.

**B. DOCUMENTS WHICH ARE DISCOVERABLE UNDER NCRP 16.l(a)(I)**

Nationstar hereby identifies and/or produces the following documents:

<u>Date</u>	<u>Description</u>	<u>Bates Stamped</u>
	Declaration of Covenants, Conditions and Restrictions for Shadow Mountain Ranch	WFZ00001 -WFZ00080
12/18/02	State of Nevada Declaration of Value-Corporation Grant, Bargain, Sale Deed	WFZ00081 -WFZ00084
08/25/04	Revolving Credit Deed of Trust	WFZ00085 -WFZ00093
11/21/05	Grant, Bargain, Sale Deed	WFZ00094 -WFZ00095
11/21/05	Deed of Trust	WFZ00096 -WFZ00121
01/22/08	Notice of Default and Election to Sell Under Deed of Trust	WFZ00122-WFZ00123
01/24/08	Substitution of Trustee Nevada	WFZ00124
03/20/08	Rescission of Election to Declare Default	WFZ00125
05/07/08	Notice of Delinquent Assessment	WFZ00126
07/23/08	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00127
04/30/09	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00128
07/01/10	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00129
01/26/11	Notice of Trustee's Sale	WFZ00130
05/27/11	Grant Deed	WFZ00131-WFZ00134
05/27/11	Grant Deed	WFZ00135 -WFZ00138
11/02/11	Assignment of Deed of Trust	WFZ00139 -WFZ00140
09/11/12	Notice of Delinquent Assessment (Lien)	WFZ00141
05/15/13	Notice of Violation (Lien)	WFZ00142

06/13/13	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00143
07/05/13	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00144
10/01/13	Assignment of Deed of Trust	WFZ00145 -WFZ00146
12/10/13	Notice of Trustee's Sale	WFZ00147
01/13/14	Trustee's Deed Upon Sale	WFZ00148 -WFZ00149
05/05/14	Substitution of Trustee	WFZ00150
	Shadow Mountain Ranch Community Association Response to Subpoena Duces Tecum	SMRCA0001-0458
	Affidavit of Custodian of Records of Shadow Mountain Ranch Community Association	SMRCA0459-0461
	<b>Promissory Note</b>	<b>NATIONSTAR00001-00006</b>
	<b>Miles Bauer Affidavit</b>	<b>NATIONSTAR00007-00035</b>
	<b>Documents produced by Alessi &amp; Koenig, LLC relating to property</b>	<b>NATIONSTAR00036-00333</b>
	<b>Title Insurance Policy</b>	<b>NATIONSTAR00334-00350</b>

**C. COMPUTATION OF DAMAGES**

If the Court enters an order finding that the HOA foreclosure sale extinguished the Deed of Trust, Nationstar seeks all damages proximately caused by the wrongful foreclosure of the Property include including, but not limited to, the entire principal and interest secured by the Deed of Trust and all attorneys' fees and costs pursuant to the terms of the Note and Deed of Trust, including post-judgment attorneys' fees and costs. Nationstar may also seek damages for taxes, insurance and association dues it has paid since SFR acquired its interest, if any, in the Property. These damages cannot be computed until after entry of an order, if so entered, determining that the Deed of Trust was extinguished by the HOA Sale.

**D. INSURANCE AGREEMENTS**

Loan Policy of Title Insurance issued in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Countrywide Home Loans, Inc., its successors and/or

1 assigns on November 21, 2005 by Fidelity National Title Insurance Company, attached hereto  
2 (Bate Stamp Nos. NATIONSTAR00334- NATIONSTAR00350). Although this title insurance  
3 policy does not apply to the claims asserted in the pleadings, Defendant Nationstar has  
4 produced a copy of this policy in good faith at the request of the other parties to this matter.

5 DATED this 1<sup>st</sup> day of June, 2018.

**GERRARD COX LARSEN**

6 */s/ Fredrick J. Biedermann, Esq.*

7 \_\_\_\_\_  
Douglas D. Gerrard, Esq.

8 Nevada Bar No. 4613

Fredrick J. Biedermann, Esq.

9 Nevada Bar No. 11918

2450 Saint Rose Pkwy., Suite 200

10 Henderson, Nevada 89074

*Attorneys for Defendant Nationstar Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 1<sup>st</sup> day of June, 2018, I served a copy of the **DEFENDANT NATIONSTAR MORTGAGE, LLC'S SECOND SUPPLEMENT DISCLOSURES OF DOCUMENTS AND WITNESSES**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com
Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
A&K eserve .	eserve@alessikoenig.com
Diana Cline Ebron .	diana@kgelegal.com
E-Service for Kim Gilbert Ebron .	eservice@kgelegal.com
Kaytlyn Johnson .	kjohnson@gerrard-cox.com
Michael L. Sturm .	mike@kgelegal.com
Sarah Greenberg Davis .	sgreenberg@wrightlegal.net
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Akerman LLP	AkermanLAS@akerman.com
Esther Medellin	emedellin@gerrard-cox.com
Melanie Morgan	melanie.morgan@akerman.com
KGE E-Service List	eservice@kgelegal.com
KGE Legal Staff	staff@kgelegal.com

/s/ Fredrick J. Biedermann, Esq.  
Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN



# EXHIBIT “AA”

I, DAVID ALESSI, do swear and affirm the following:

1. I am the holder and custodian of records for Alessi & Koenig, LLC and HOA Lawyers Group, and as such have access to the records and data maintained by these entities in the regular course of business.
2. Alessi & Koenig, LLC was licensed in the State of Nevada at the time the business records in this affidavit were created. Alessi & Koenig, LLC filed dissolution paperwork with the State of Nevada on or about September 28, 2016.
3. HOA Lawyers Group, LLC filed Articles of Organization with the State of Nevada on April 22, 2016.
4. I hereby certify that it was and is a regular practice of Alessi & Koenig, LLC and HOA Lawyers Group to make and keep records of the acts, events, conditions, and opinions of these entities in the ordinary course of its business, hereafter referred to as "collection files."
5. Alessi & Koenig, LLC has received a subpoena or other request calling for the production of the collection file.
6. I have examined the original collection file and have made or caused to be made a true and exact copy of them, and have placed or caused them to be in a "dropbox," consistent with the procedures established in Case No. BK-S-16-16593-ABL. I hereby certify that the documents in the "dropbox" are being provided in accordance with applicable law and discovery rules, are true and correct copies and uploads of all of the records in my files that pertain to the Case (except as set forth in a Privilege Log, if applicable) that are in my possession and control as a holder and custodian of such records. The documents in the "dropbox" have not been tampered with, destroyed, or otherwise altered by me or any person or party associated with me.
7. I further certify that the original collection file, from which the documents in the "dropbox" were uploaded as of the date the "dropbox" was created, were made by the

10:25 AM  
01/17/08  
Accrual Basis

SHADOW MOUNTAIN RANCH HOA  
Customer Balance Detail  
As of December 31, 2007

Type	Date	Num	Memo	Debit	Credit	Balance
			SMT118A Gotera			
Invoice	12/01/2006	13244		23.00		23.00
Invoice	01/01/2006	14051		23.00		46.00
Invoice	02/01/2006	14876		23.00		69.00
Invoice	03/01/2006	15694		23.00		92.00
Payment	03/01/2006	5676	paid by gotera & tongol		46.00	46.00
Payment	03/16/2006	5684	pd by Gotera/Tongol		23.00	23.00
Invoice	04/01/2006	16526		23.00		46.00
Payment	04/17/2006	5698	pd by Gotera		23.00	23.00
Invoice	05/01/2006	17343		23.00		46.00
Payment	05/17/2006	5216			23.00	23.00
Invoice	06/01/2006	18168		23.00		46.00
Payment	06/13/2006	5223			23.00	23.00
Invoice	07/01/2006	19017		23.00		46.00
Payment	07/17/2006	5711			23.00	23.00
Invoice	08/01/2006	19885		23.00		46.00
Payment	08/16/2006	5730			23.00	23.00
Invoice	09/01/2006	20750		23.00		46.00
Payment	09/13/2006	5744			23.00	23.00
Invoice	10/01/2006	21600		23.00		46.00
Invoice	10/01/2006	22332	Transfer Fees Not Paid at Closing	175.00		221.00
Payment	10/17/2006	5753	pd by Yang		23.00	198.00
Invoice	11/01/2006	22462		23.00		221.00
Payment	11/16/2006	5760			23.00	198.00
Invoice	12/01/2006	23309		23.00		221.00
Payment	12/14/2006	5765			23.00	198.00
Invoice	01/01/2007	24163		23.00		221.00
Payment	01/17/2007	5773	PD BY YANGWEIHONG		23.00	198.00
Payment	01/30/2007	5780	pd by yangweihong		23.00	175.00
Invoice	02/01/2007	25025		23.00		198.00
Stmnt Charge	02/20/2007		Late Charges	10.00		208.00
Invoice	03/01/2007	25911		23.00		231.00
Stmnt Charge	03/19/2007		Late Charges	10.00		241.00
Invoice	04/01/2007	26844		23.00		264.00
Payment	04/04/2007	5785			23.00	241.00
Payment	04/18/2007	5241			23.00	218.00
Invoice	05/01/2007	27717		23.00		241.00
Stmnt Charge	05/17/2007		Late Charges	10.00		251.00
Invoice	06/01/2007	28672		23.00		274.00
Payment	06/12/2007	5245			46.00	228.00
Invoice	07/01/2007	29565		23.00		251.00
Stmnt Charge	07/17/2007		Late Charges	10.00		261.00
Invoice	08/01/2007	30470		23.00		284.00
Payment	08/09/2007	3267			56.00	228.00
Invoice	09/01/2007	31400		23.00		251.00
Payment	09/18/2007	3306			23.00	228.00
Invoice	10/01/2007	32289		23.00		251.00
Stmnt Charge	10/16/2007		Late Charges	10.00		261.00
Payment	10/18/2007	3337			23.00	238.00
Invoice	11/01/2007	33216		23.00		261.00
Stmnt Charge	11/19/2007		Late Charges	10.00		271.00
Payment	11/27/2007	5253			33.00	238.00
Invoice	12/01/2007	34092		23.00		261.00
Stmnt Charge	12/18/2007		Late Charges	10.00		271.00
			SMT118A Gotera	820.00	549.00	271.00

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

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Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 28100

Code	Date	Amount	Balance	Check#	Memo
FN	8/24/2009	100.00	100.00		
FN	8/31/2009	100.00	200.00		
FN	9/15/2009	100.00	300.00		
FN	9/29/2009	100.00	400.00		
FN	9/30/2009	100.00	500.00		
FN	10/14/2009	100.00	600.00		
FN	10/14/2009	100.00	700.00		
FN	10/26/2009	100.00	800.00		
FN	11/5/2009	100.00	900.00		
FN	11/5/2009	100.00	1,000.00		
FN	12/3/2009	100.00	1,100.00		
FN	12/3/2009	100.00	1,200.00		
FN	12/3/2009	100.00	1,300.00		
FN	12/3/2009	100.00	1,400.00		
FN	12/3/2009	100.00	1,500.00		
FN	12/3/2009	100.00	1,600.00		
FN	12/17/2009	100.00	1,700.00		
FN	12/17/2009	100.00	1,800.00		
FN	1/8/2010	100.00	1,900.00		
FN	1/8/2010	100.00	2,000.00		
FN	1/27/2010	100.00	2,100.00		
FN	1/27/2010	100.00	2,200.00		
FN	2/5/2010	100.00	2,300.00		
FN	2/5/2010	100.00	2,400.00		
FN	2/18/2010	100.00	2,500.00		
FN	2/18/2010	100.00	2,600.00		

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Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

**NATIONSTAR00167**  
JA\_1113

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

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FN	3/11/2010	100.00	2,700.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	2,900.00
FN	3/11/2010	100.00	3,000.00
FN	3/11/2010	100.00	3,100.00
FN	3/18/2010	100.00	3,200.00
FN	3/24/2010	100.00	3,300.00
FN	4/6/2010	100.00	3,400.00
FN	4/6/2010	100.00	3,500.00
FN	4/26/2010	100.00	3,600.00
FN	4/26/2010	100.00	3,700.00
FN	4/26/2010	100.00	3,800.00
FN	4/26/2010	100.00	3,900.00
FN	5/6/2010	100.00	4,000.00
FN	5/6/2010	100.00	4,100.00
FN	5/19/2010	100.00	4,200.00
FN	5/19/2010	100.00	4,300.00
FN	5/19/2010	100.00	4,400.00
FN	5/19/2010	100.00	4,500.00
Fine	6/7/2010	100.00	4,600.00
Fine	6/7/2010	100.00	4,700.00
Fine	6/7/2010	100.00	4,800.00
Fine	6/7/2010	100.00	4,900.00
Fine	6/17/2010	100.00	5,000.00
Fine	6/17/2010	100.00	5,100.00
Fine	6/17/2010	100.00	5,200.00
Fine	6/17/2010	100.00	5,300.00
Fine	7/9/2010	100.00	5,400.00
Fine	7/9/2010	100.00	5,500.00
Fine	7/9/2010	100.00	5,600.00
Fine	7/9/2010	100.00	5,700.00
Fine	7/9/2010	100.00	5,800.00
Fine	7/9/2010	100.00	5,900.00
Fine	7/9/2010	100.00	6,000.00
Fine	7/9/2010	100.00	6,100.00
Fine	7/22/2010	100.00	6,200.00
Fine	7/22/2010	100.00	6,300.00

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Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

**NATIONSTAR00168**  
JA\_1114

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Fine	7/22/2010	100.00	6,400.00	
Fine	7/22/2010	100.00	6,500.00	
Fine	8/4/2010	100.00	6,600.00	
Fine	8/4/2010	100.00	6,700.00	
Fine	8/18/2010	100.00	6,800.00	
Fine	8/18/2010	100.00	6,900.00	
Fine	8/18/2010	100.00	7,000.00	
Fine	8/18/2010	100.00	7,100.00	
Fine	8/18/2010	100.00	7,200.00	
Fine	8/18/2010	100.00	7,300.00	
Fine	8/20/2010	100.00	7,400.00	06/02/10: Maintenance & Repair
Fine	9/9/2010	100.00	7,500.00	
Fine	9/9/2010	100.00	7,600.00	
Fine	9/9/2010	100.00	7,700.00	
Fine	9/9/2010	100.00	7,800.00	
Fine	9/9/2010	100.00	7,900.00	
Fine	9/9/2010	100.00	8,000.00	
Fine	9/9/2010	100.00	8,100.00	06/02/10: Maintenance & Repair
<hr/>				
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 8,100.00
1,400.00	600.00	1,200.00	4,900.00	

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

**NATIONSTAR00169**  
JA\_1115

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

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Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

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Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

**NATIONSTAR00170**  
JA\_1116

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

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MA	2/1/2010	23.00	1,030.00	Monthly Assessment
LF	2/16/2010	10.00	1,040.00	Late Fee Processed
MA	3/1/2010	23.00	1,063.00	Monthly Assessment
LF	3/16/2010	10.00	1,073.00	Late Fee Processed
MA	4/1/2010	23.00	1,096.00	Monthly Assessment
LF	4/16/2010	10.00	1,106.00	Late Fee Processed
MA	5/1/2010	23.00	1,129.00	Monthly Assessment
LF	5/16/2010	10.00	1,139.00	Late Fee Processed
MA	6/1/2010	23.00	1,162.00	Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00	Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00	Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00	Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00	Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00	Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00	Monthly Assessment

---

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	1,261.00
33.00	33.00	33.00	1,162.00		

---

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

**NATIONSTAR00171**  
JA\_1117



DAVID ALESSI\*

THOMAS BAYARD \*

ROBERT KOENIG\*\*

RYAN KERBOW\*\*\*

\* Admitted to the California Bar

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

\*\*\* Admitted to the Nevada and California Bar



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-861-8300

***FACSIMILE COVER LETTER***

<b>To:</b>	Alex Bhame	<b>Re:</b>	5327 Marsh Butte St./HO #6601
<b>From:</b>	Aileen Ruiz	<b>Date:</b>	Monday, September 13, 2010
<b>Fax No.:</b>		<b>Pages:</b>	1, including cover
		<b>HO #:</b>	6601

Dear Alex Bhame:

This cover will serve as an amended demand on behalf of Shadow Mountain Ranch for the above referenced escrow; property located at 5327 Marsh Butte St., Las Vegas, NV. The total amount due through October, 15, 2010 is \$3,554.00. The breakdown of fees, interest and costs is as follows:

Notice of Intent To Lien -- Nevada	\$95.00
Notice of Delinquent Assessment Lien -- Nevada	\$345.00
Notice of Default	\$395.00
9/13/2010 Demand Fee	\$100.00
<b>Total</b>	<b>\$935.00</b>
<b>1. Attorney and/or Trustees fees:</b>	<b>\$935.00</b>
<b>2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)</b>	<b>\$550.00</b>
<b>3. Assessments Through October 15, 2010</b>	<b>\$1,284.00</b>
<b>4. Late Fees Through September 13, 2010</b>	<b>\$10.00</b>
<b>5. Fines Through September 13, 2010</b>	<b>\$0.00</b>
<b>6. Interest Through September 13, 2010</b>	<b>\$0.00</b>
<b>7. RPIR-GI Report</b>	<b>\$85.00</b>
<b>8. Title Research (10-Day Mailings per NRS 116.31163)</b>	<b>\$240.00</b>
<b>9. Management Company Audit Fee</b>	<b>\$200.00</b>
<b>10. Management Document Processing &amp; Transfer Fee</b>	<b>\$250.00</b>
<b>11. Progress Payments:</b>	<b>\$0.00</b>
<b>Sub-Total:</b>	<b>\$3,554.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$3,554.00</b>

Please have a check in the amount of \$3,554.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

**NATIONSTAR00172**

**JA\_1118**

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

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



*A Multi-Jurisdictional Law Firm*

9500 West Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
[www.alessikoenig.com](http://www.alessikoenig.com)

**ADDITIONAL OFFICES**

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager  
AMANDA LOWER

September 8, 2010

Miles, Bauer, Bergstrom & Winters  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Asociation*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,

Ryan Kerbow, Esq.

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*  
MARK T. DOMEYER\*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*  
L. BRYANT JAQUEZ\*  
DANIEL L. CARTER\*  
GINA M. CORENA  
WAYNE A. RASH\*  
ROCK K. JUNG  
VY T. PHAM\*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI\*  
ROSEMARY NGUYEN\*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB\*  
BRIAN H. TRAN\*  
ANNA A. GHAJAR\*



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

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

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

September 30, 2010

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

Re: *Property Address:* 5327 Marsh Butte Street  
HO #: 6601  
LOAN #: 121434068  
*MBBW File No.* 10-H1641

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$3,554.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

...

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

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

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

**NATIONSTAR00174**

**JA\_1120**

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

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

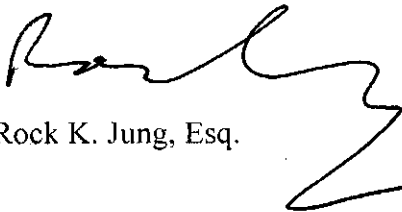
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

A handwritten signature in black ink, appearing to read 'Rock K. Jung', with a long horizontal flourish extending to the right.

Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

10-H1641

Initials: TLC

Payee: Alessi & Koenig, LLC

Check#: 5169

Date: 9/28/2010 Amount: 207.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2010	6601	To Cure HOA Deficiency	207.00			

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

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

16-66/1220  
1020

10-H1641

Loan # 121434068

5169

Date: 9/28/2010

Amount \$\*\*\*\* 207.00

Pay \$\*\*\*\*\*Two Hundred Seven & No/100 Dollars  
to the order of

Alessi & Koenig, LLC

Check Void After 90 Days



⑈5169⑈ ⑆122400724⑆ 501006⑈NATIONSTAR00176

JA\_1122

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

---

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

---

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

10/20/2010

**NATIONSTAR00177**  
JA\_1123

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

MA	2/1/2010	23.00	1,030.00	Monthly Assessment
LF	2/16/2010	10.00	1,040.00	Late Fee Processed
MA	3/1/2010	23.00	1,063.00	Monthly Assessment
LF	3/16/2010	10.00	1,073.00	Late Fee Processed
MA	4/1/2010	23.00	1,096.00	Monthly Assessment
LF	4/16/2010	10.00	1,106.00	Late Fee Processed
MA	5/1/2010	23.00	1,129.00	Monthly Assessment
LF	5/16/2010	10.00	1,139.00	Late Fee Processed
MA	6/1/2010	23.00	1,162.00	Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00	Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00	Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00	Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00	Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00	Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00	Monthly Assessment
Late Fee	9/16/2010	10.00	1,271.00	Late Fee Processed
Monthly Assessment	10/1/2010	23.00	1,294.00	Monthly Assessment
Legal Fees	10/6/2010	575.00	1,869.00	Legal Fees for Compliance & Demand Letter

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	1,869.00
598.00	33.00	33.00	1,205.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

10/20/2010

**NATIONSTAR00178**  
JA\_1124

# EXHIBIT “BB”



1 **AFFT**

Douglas D. Gerrard, Esq.

2 Nevada Bar No. 4613

[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

3 Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

4 [fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

**GERRARD COX LARSEN**

5 2450 Saint Rose Pkwy., Suite 200

Henderson, Nevada 89074

6 Phone: (702) 796-4000

*Attorneys for Defendant Nationstar Mortgage, LLC*

7  
Melanie D. Morgan, Esq.

8 Nevada Bar No. 8215

Donna Whittig, Esq.

9 Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

10 Las Vegas, Nevada 89134

Telephone: (702) 634-5000

11 Facsimile: (702) 380-8572

Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)

12 Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

13 *Attorneys for Defendant Nationstar Mortgage, LLC*

*and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank,*

14 *National Association, as Trustee for the Certificateholders of the LXS 2006-*

*4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **ALESSI & KOENIG, LLC,**

19 **Plaintiff,**

20 **v.**

21 **STACY MOORE, an individual; MAGNOLIA**  
22 **GOTERA, an individual; KRISTIN JORDAL, AS**  
23 **TRUSTEE FOR THE JBWNO REVOCABLE**  
24 **LIVING TRUST, a trust; U.S. BANK, N.A., a**  
25 **national banking association; NATIONSTAR**  
26 **MORTGAGE, LLC, a foreign limited liability**  
27 **company; REPUBLIC SILVER STATE**  
28 **DISPOSAL, INC., DBA REPUBLIC SERVICES, a**  
**domestic government entity; DOE INDIVIDUALS**  
**I through X, inclusive; and ROE CORPORATIONS**  
**XI through XX inclusive.**

**Defendants.**

Case No.: A-14-705563-C

Dept. No.: XVII

**AFFIDAVIT OF ROCK K. JUNG,**  
**ESQ.**

1 U.S. BANK, N.A.,

2 Counterclaimant,

3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

5 Counter-Defendant.

6 U.S. BANK, N.A.,

7 Third Party Plaintiff,

8 v.

9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
10 through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.

11 Third Party Defendants.

12 **AFFIDAVIT OF ROCK K. JUNG, ESQ.**

13 STATE OF NEVADA )

14 COUNTY OF CLARK )

15 ) ss.

16 The Affiant being first duly sworn, deposes, and states as follows:

17 1. I am an attorney duly licensed to practice law in the State of Nevada.

18 2. I am a former associate attorney of the law firm of Miles, Bauer & Winters, LLP  
19 formerly known as Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") previously located in  
20 Henderson, Nevada.

21 3. I am over 18 years of age, of sound mind, and capable of making this affidavit.

22 4. I have personal knowledge of Miles Bauer's procedures for mailing and/or  
23 delivering checks to homeowner associations to pay off an association's super-priority lien.

24 5. I personally confirmed that the information in this Affidavit is accurate by reading  
25 the affidavit and confirming that the information in this Affidavit matches Miles Bauer's records  
26 available to me.

27 6. Mortgage Electronic Registration Systems, Inc. as nominee for BAC Home  
28 Loans Servicing, LP afka Countrywide Home Loans, Inc. ("BAC") retained Miles Bauer to tender

1 payments to homeowners associations to satisfy super-priority liens in connection with the following  
2 loan:

3 Loan Number: 121434068

4 Borrower: Magnolia Gotera

5 Property Address: 5327 Marsh Butte Street, Las Vegas, Nevada 89148

6 7. On or about September 2, 2010, I sent a letter to Alessi & Koenig, LLC ("Alessi"),  
7 trustee for Shadow Mountain Ranch Community Association (the "HOA") offering to tender the full  
8 super-priority lien amount of the HOA's lien to Alessi.

9 8. Alessi responded to the September 2, 2010 letter by sending a Facsimile Cover Letter  
10 dated September 13, 2010, which provided a breakdown of all of the fees and costs associated with the  
11 Borrower's delinquent assessments and an account ledger from the HOA.

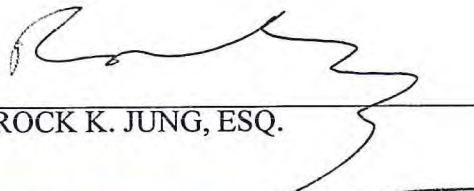
12 9. In order to determine a good-faith estimate of the HOA's super-priority lien amount, I  
13 used the HOA's account ledger provided by Alessi with the respect to the subject Property. Based on  
14 the account ledger, I determined that the HOA's monthly assessment to be \$23.00.

15 10. On or about September 30, 2010, I sent a second letter to Alessi along with a check in  
16 the amount of \$207.00, representing nine months' worth of assessments to satisfy the HOA's super-  
17 priority lien.

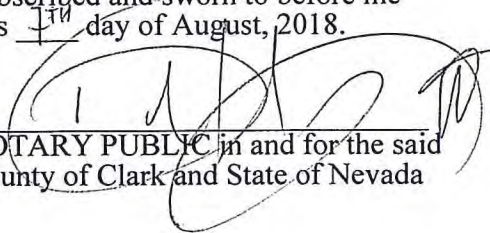
18 11. I declare under penalty of perjury under the law of the State of Nevada that the  
19 foregoing is true and correct.

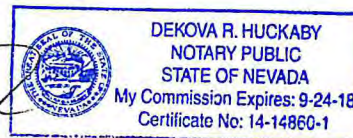
20 FURTHER YOUR AFFIANT SAYETH NAUGHT.

21 DATED this 7 day of August, 2018.

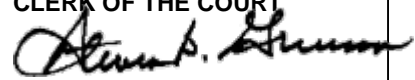
22  
23   
ROCK K. JUNG, ESQ.

24 Subscribed and sworn to before me  
25 this 7th day of August, 2018.

26   
27 NOTARY PUBLIC in and for the said  
28 County of Clark and State of Nevada



# **TAB 23**



**JOIN**

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

**AKERMAN LLP**

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: donna.wittig@akerman.com

*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTEN JORDAL, AS TRUSTEE FOR THE JBNWO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC., et al.;

Defendants.

U.S. BANK., N.A.,,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, et al.

Third-Party Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND's JOINDER TO NATIONSTAR MORTGAGE LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

1 Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as  
2 Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank,  
3 N.A. (**U.S. Bank**), submits its notice of joinder to Nationstar Mortgage LLC's (**Nationstar**) reply in  
4 support of its motion for summary judgment, filed August 7, 2018.

5 U.S. Bank herein adopts the arguments and legal authority set forth in the aforementioned  
6 Reply in Support of Nationstar's Motion for Summary Judgment as though fully set forth herein.  
7 Nationstar is servicer for U.S. Bank, and all arguments made by Nationstar equally apply to U.S.  
8 Bank.

9 DATED August 8th, 2018.

10 **AKERMAN LLP**

11 /s/ Donna M. Wittig

12 MELANIE D. MORGAN, ESQ.

13 Nevada Bar No. 8215

14 DONNA M. WITTIG, ESQ.

15 Nevada Bar No. 11015

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Defendant, Nationstar Mortgage, LLC*  
19 *and Defendant/Counterclaimant/Third-Party*  
20 *Defendant U.S. Bank, National Association, as*  
21 *Trustee for the Certificateholders of the LXS 2006-*  
22 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 8<sup>th</sup> day of August, 2018, I caused to be served a true and correct copy of the foregoing **U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND's JOINDER TO NATIONSTAR MORTGAGE LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

**KIM GILBERT EBRON**

Diana S. Ebron

diana@kgelegal.com

KGE E-Service List

eservice@kgelegal.com

KGE Legal Staff

staff@kgelegal.com

Michael L. Sturm

mike@kgelegal.com

E-Service for Kim Gilbert Ebron

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8 *Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-*  
9 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ALESSI & KOENIG, LLC, a Nevada limited  
13 liability company,

14 Plaintiff,

15 vs.

16 STACY MOORE, an individual; MAGNOLIA  
17 GOTERA, an individual; KRISTEN JORDAL,  
18 AS TRUSTEE FOR THE JBNWO  
19 REVOCABLE LIVING TRUST; U.S. BANK,  
20 N.A.; NATIONSTAR MORTGAGE, LLC;  
21 REPUBLIC SILVER STATE DISPOSAL, INC.,  
22 et al.;

23 Defendants.

24 U.S. BANK., N.A.,,

25 Counterclaimant,

26 vs.

27 ALESSI & KOENIG, LLC, a Nevada limited  
28 liability company,

Counter-Defendant.

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company, et al.

Third-Party Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**OBJECTIONS TO SFR INVESTMENTS  
POOL 1, LLC'S PRETRIAL  
DISCLOSURES**

43782606;1  
46110343;1

1 Nationstar Mortgage, LLC and U.S. Bank, National Association, as Trustee for the  
2 Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A., object to  
3 SFR Investments Pool 1, LLC's pretrial disclosures as follows:

4 **I. SFR'S WITNESSES**

5 **A. SFR expects to present the following witnesses at trial:**

6 1. Christopher Hardin – testimony intended to be offered is not relevant and/or  
7 cumulative.

8 **C. SFR may call the following witnesses if the need arises:**

9 2. Steven Loizzi, Jr. - testimony intended to be offered is not relevant and/or cumulative.

10 **II. Witnesses whose testimony is expected to be presented by deposition at trial is as follows:**

11  
12 Transcript of the trial testimony of Rock Jung, Esq., in Eighth Judicial District Court Case No. A-  
13 14-695002-C (Department 7) (April 22, 2016): Defendants object based on relevance, hearsay,  
14 foundation, and failure to designate pertinent portions of testimony.

15 Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case  
16 No. A-14-695002-C (Department 7) (April 22, 2016): Defendants object based on relevance, hearsay,  
17 foundation, and failure to designate pertinent portions of testimony.

18 Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case  
19 No. A-14-698509-C (Department 26) (June 7, 2016): Defendants object based on relevance, hearsay,  
20 foundation, and failure to designate pertinent portions of testimony.

21 Transcript of the trial testimony of Jessica Woodbridge in Eighth Judicial District Court Case No.  
22 A-14-695002-C (Department 7) (April 21, 2016): Defendants object based on relevance, hearsay,  
23 foundation, not previously disclosed, and failure to designate pertinent portions of testimony.

24 Transcript of the deposition testimony of Paterno Jurani in United States District Court,  
25 District of Nevada, Case No. 2:15-cv-01139-JCM-PAL (May 20, 2016): Defendants object based on  
26 relevance, hearsay, foundation, not previously disclosed, and failure to designate pertinent portions  
27 of testimony.  
28

Transcript of the deposition testimony of Douglas Miles, Esq. in Case No. a-14-702889 (July 20, 2017): Defendants object based on relevance, hearsay, foundation, not previously disclosed, and failure to designate pertinent portions of testimony.

Transcript of trial testimony of Rock Jung, Esq. in Case No. A-14711632-C (January 26, 2017): Defendants object based on relevance, hearsay, foundation, not previously disclosed, and failure to designate pertinent portions of testimony.

Transcript of deposition testimony of Scott Dugan in the following cases: A-13-684630; A-14-698102; A-14-698511; A-14-694435; A-14-698568; and A-15-718988: Defendants object based on relevance, hearsay, foundation, not previously disclosed, and failure to designate pertinent portions of testimony.

Defendants object to the use of deposition transcripts not previously identified or disclosed by SFR. Defendants reserve the right to make further objections at the time of trial.

### **III. SFR's Exhibits Pursuant to NRCP 16.1(a)(3)(1)**

#### **A. Documents which SFR intends to offer at trial:**

2. Check and receipt [SFR335-336]: Defendants object on the basis of foundation and hearsay.

#### **B. The following are documents SFR may offer at trial if the need arises:**

3. Korbel Decision [SFR141-SFR143]: Defendants object on the basis of relevance and legal conclusion.

4. Email Re: URGENT WIRE REQUEST: [SFR398- SFR403]: Defendants object on the basis of hearsay, lack of authentication, lack of foundation, privilege and relevance.

6. Miles, Bergstrom & Winters, LLP Affidavits produced in Case Nos.: 2:15- cv- 01423-JCM-PAL; 2:15-cv-01276-RFB-NJK; A-13-690482-C; A-14- 695002-C; 2:15-cv-01139-JCM-PAL; 2:15-cv-01308-MMD-NJK; 2:15- cv- 02026-MMD-CWH; A-14-685172-C; A-14-701842-C; 2:15-cv-01914-JCM- PAL; 2:14-cv-01875-JCM-GWF; 2:15-cv-01373-APG-NJK; 2:15-cv-00476- JCM-VCF; 2:16-cv-00899-GMN-PAL; 2:15-cv-01705-MMD-PAL; 2:15- cv- 00117-MMD-PAL; 2:15-cv-01992-LDG-CWH; 2:15-cv-01711-JCM- CWH; A-13-684539-C; A-14-701585-C; A-13-684501-C; A-14-697102-C; 2:15-cv-01377-JCM-NJK; 2:15-cv-01021-RFB-GWF; A-14-705146-C; A- 14-698102-C; A-14-694435-C; A-13-685172-C; A-14-696561-C; A-13- 681936-C; A-13-683554-C; A-13-686512-C; A-15-717358-C and consolidated with A-13-690487-C; A14-701771-C consolidated with A-13- 684709-C; 2:16-cv-00245-GMN-PAL; 2:16-cv-00351-RFB-NJK; 2:15-cv- 00692-GMN-CWH; 2:15-cv-00691-JCM-NJK; 2:15-cv-01768-JCM-CWH; 2:16-cv-00535-KJD-NJK; 2:15-cv-01097-GMN- NJK; 2:15-cv-01097- GMN-NJK; 2:15-cv-01149-RFB-VCF; 2:16-cv-00262-APG-PAL; A-14- 694030-C; A-15-

1 717358-C; A-13-690487-C; A-14-701771-C; A-13-684709- C; 2:15-cv-00693-GMN-VCF; 2:16-cv-  
2 00582-GMN-NJK; 3:15-cv-00520- RCJ-WGC; 2:16-cv-00316- RFB-CWH; 2:16-cv-00334-JAD-VCF;  
3 2:16- cv-01239-RFB-CWH; 2:16-cv-00390-GMN-NJK; 2:16-cv-00699-GMN- PAL; 2:16-cv-00656-  
4 RFB-CWH; 2:16-cv-00263-RFB-CWH; 2:16-cv- 00725-JCM-NJK; 2:16-cv-00605-MMD-VCF; 2:15-  
5 cv-01771-APG-VCF; 3:15-cv-00241-RCJ-WGC; 2:15-cv-01042-APG-GWF; 2:16-cv-00591- GMN-  
6 GWF; 2:16-cv-00607-APG-NJK; 2:16-cv-00693-RFB-PAL; 2:16- cv- 00498-JCM-NJK; 2:16-cv-00504-  
7 GMN-NJK; 2:16-cv-00497-APG-PAL; 2:15-cv-01078-APG-PAL: U.S. Bank objects on the basis of  
8 relevance, hearsay and cumulative testimony.

9 Defendants reserve all rights to make any objections at the time of trial to any documents  
10 and/or witnesses disclosed by SFR.

11 DATED August 16th, 2018.

12 **AKERMAN LLP**

13 /s/ Donna M. Wittig

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21 *and Defendant/Counterclaimant/Third-Party*  
22 *Defendant U.S. Bank, National Association, as*  
23 *Trustee for the Certificateholders of the LXS 2006-*  
24 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this DATED this 16<sup>th</sup> day of August, 2018, and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND's OBJECTIONS TO SFR INVESTMENTS POOL 1, LLC'S PRETRIAL DISCLOSURES**, addressed to:

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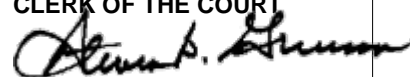
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**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

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

Third-Party Defendant(s).

Case No. A-14-705563-C

Dept. No. XX

**OBJECTIONS TO PRE-TRIAL  
DISCLOSURES**

1 SFR Investments Pool 1, LLC, hereby submits its Objections to U.S. Bank's Pre-Trial  
2 Disclosures:

3 SFR generally objects to U.S. Bank's entire pre-trial disclosure as it is untimely. Rule  
4 16.1 requires disclosures be made 30 days before trial. Trial is set for this Court's stack on  
5 September 4, 2018. As such, the disclosures having been served on August 7 are late.

6 More specifically, SFR objects as follows:

7 **I. Witnesses**

8 **Simon Ward Brown, Aaryn Richardson, Edward Hyne or other corporate**  
9 **representative of Nationstar:** these witnesses were not disclosed during the course of  
10 discovery; the disclosure of corporate representative is deficient as the rule requires  
11 identification of witnesses by name.

12 **Corporate representative of Nationstar:** this disclosure is insufficient as the rule  
13 requires identification by name of the witness.

14 **Matthew Lubawy:** this witness' anticipated testimony violates *Hallmark* and *Higgs*.  
15 This witness was never disclosed by U.S. Bank.

16 **David Alessi or Corporate designee for Alessi & Koenig:** this disclosure is  
17 insufficient as the rule requires identification by name of the witness. David Alessi was never  
18 disclosed as a witness by U.S. Bank.

19 **Ashley Livingston or Corporate designee for Shadow Mountain Ranch:** this  
20 disclosure is insufficient as the rule requires identification by name of the witness. Ashely  
21 Livingston was never disclosed as a witness by U.S. Bank.

22 **Corporate Designee for JBWNO Revocable Living Trust:** this disclosure is insufficient  
23 as the rule requires identification by name of the witness.

24 **Doug Miles or Corporate Designee for Miles Bauer:** this disclosure is insufficient as  
25 the rule requires identification by name of the witness. Doug Miles was never disclosed as a  
26 witness.

27 **Rock Jung:** Rock Jung was never disclosed as a witness by U.S. Bank.

28 **Ryan Kerbow:** Ryan Kerbow was never disclosed as a witness.



**II. Depositions**

SFR objects to the use of deposition transcripts of witnesses not disclosed and/or taken in other cases under NRCPP 32(a)(1) and (4).

**III. Documents**

**Deed of Trust:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Assignment of Deed of Trust:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Assignment of Deed of Trust:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Scott Dugan's Expert Report:** hearsay; violates *Hallmark* and *Higgs*; this document was not disclosed by U.S. Bank.

**Miles Bauer Borrower affidavit:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Miles Bauer Affidavit:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Loan Policy of Title Insurance:** hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

**Documents Produced by Alessi:** these documents were not disclosed during discovery; hearsay; lacks authenticity; lacks foundation.

**Documents produced by Shadow Mountain Community Association:** these documents were not disclosed during discovery; hearsay; lacks authenticity; lacks foundation.

**Note:** this document was not disclosed during discovery; hearsay; lacks authenticity; lacks foundation; violate best evidence rule.

SFR objects to U.S. Bank's reservation of right to use any document disclosed by any other party. The Rule requires identification of all document and without such identification, SFR cannot properly object.

SFR objects to U.S. Bank's reservation of right to supplement the list of exhibit and witnesses. The Rule does not permit supplements of pre-trial disclosures.

DATED August 23, 2018

**KIM GILBERT EBRON**

*/s/ Karen L. Hanks*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of August, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **OBJECTIONS TO PRE-TRIAL DISCLOSURES**, to the following parties:

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*/s/ Karen L. Hanks*

An employee of Kim Gilbert Ebron

# **TAB 26**



1 Las Vegas, Nevada, Wednesday, August 15, 2018

2 [Hearing begins at 8:37 a.m.]

3 THE COURT: Alessi Koenig versus Moore. It's page 7 and 8.

4 MR. MARTINEZ: Good morning, Your Honor, Jason Martinez on behalf  
5 of SFR.

6 MR. GERRARD: Good morning, Your Honor, Douglas Gerrard,  
7 Gerrard, Cox, Larsen on behalf of Nationstar.

8 MS. WITTIG: And Donna Wittig for Defendant U.S. Bank and  
9 Nationstar.

10 THE COURT: All right. Thank you. Let me just get my papers  
11 organized here. This is a motion and they're inter-related and just argue both  
12 sides at the same time. Let's start with the motion for summary judgment filed by  
13 SFR.

14 MR. MARTINEZ: Sure.

15 Your Honor, our burden, when it comes to the motion for summary  
16 judgment, is very low. Essentially, all we have to do is provide the foreclosure  
17 deed which was attached to the motion for summary judgment with all the  
18 presumptions in favor of SFR that the foreclosure deed and the sale itself were  
19 valid as well as the legal effect of that.

20 In addition, there are unpublished orders from the Nevada Supreme  
21 Court discussing whether or not the notices themselves constitute *prima facie*  
22 evidence, which they do, that there was a super priority lien foreclosed upon.  
23 There's also unpublished orders from the Nevada Supreme Court regarding the  
24 foreclosure deed itself and the language within it also supports the *prima facie*  
25 evidence that there was a super priority lien foreclosed on.

1           Essentially then, the burden then shifts to the bank to demonstrate  
2 whether or not there is a justification for the Court to either legally set aside the  
3 sale or determine what the legal effect of the sale was other than what is  
4 presumptively done under Nevada law. So, essentially the position we start from  
5 is that SFR is in the winner's seat where we have title free and clear until the  
6 bank comes in and proves otherwise.

7           Now, one of the primary defenses that they raise in opposition to our  
8 own motion for summary judgment as well as in their own motion for summary  
9 judgment is that, first, they alleged that there was an attempt at payment prior to  
10 the foreclosure sale and typically those -- they will refer to it as a tender. I don't  
11 believe it's a tender so I'm not going to refer to it as a tender. The reason why I  
12 say that is because a tender is an unconditional payment or a payment that  
13 comes with conditions upon which you can rely. And if we look at the actual  
14 language of the letter, which I'll actually discuss [indiscernible] second because  
15 there is an evidentiary issue here first, and that is the witness by which and  
16 declaration by which they attempt to authenticate the Miles Bauer records was  
17 never disclosed during the course of discovery. Under 16.1(a)(1)(A), it  
18 specifically requires that the witnesses' name be identified and that is any  
19 witness who would have discoverable information under 26. And under  
20 16.(a)(1)(A) it specifically requires that they identify the individual. It's not  
21 sufficient to identify the 30(b)(6) witness from Miles Bauer which is exactly what  
22 they're going to get up here and say, but that's not what the rule requires.  
23 16.(a)(1)(A) [sic] requires they name the individual.

24           And then under 16.1(e), specifically (3)(B), it's not a discretionary  
25 sanction. It actually says that the court must sanction them appropriately for

1 failing to comply with 16.1. And it actually prescribes the exact sanction that I'm  
2 looking for underneath 16.1(e)(3)(B) which is that the Court can issue an order  
3 prohibiting the use of the witness or documentary evidence that they seek to rely  
4 on because they failed to comply with 16.1 through the disclosure of Mr. Miles  
5 because they never disclosed him and they can't dispute that fact. In fact, they  
6 actually come back in their reply in support of their own motion for summary  
7 judgment and just say that the 30(b)(6) identification is sufficient. But that's  
8 facially not in compliance with the rule and under 16.1(e)(3)(B), Mr. Miles'  
9 testimony should be thrown out. And now when that happens you now have  
10 evidence, that they're attaching in opposition to our motion for summary  
11 judgment but also in support of their own motion for summary judgment, that is  
12 now unauthenticated. And authentication is a prerequisite to admissibility and  
13 you cannot support a motion for summary judgment or oppose a motion for  
14 summary judgment without admissible evidence.

15           Now that they have no evidence because the witness that they  
16 sought to authenticate those records are thrown out, the witness is gone and so  
17 are the documents they seek to authenticate, then they don't have any  
18 admissible evidence to support their tender defense and that's why when I first  
19 started my argument I was discussing the burdens and the relevant position that  
20 SFR is sitting in and that is from a winner's position. The burden then shifts, like I  
21 said, to the bank in order to properly support their defense of tender. But without  
22 Mr. Miles and without the authenticated and then subsequently eventually  
23 admissible records, if that's what they're seeking to do, without admissible  
24 evidence under Rule 56 they cannot defeat a motion for summary judgment on  
25 pure argument of counsel or conjecture. It has to be admissible evidence.

1 Without those things, they're tender defense fails and essentially what we do is  
2 we sit in the same position. They failed to meet their burden. They can't defeat  
3 SFR's motion for summary judgment on the basis of tender and they can't prevail  
4 on their own motion for summary judgment on the basis of tender because they  
5 equally fail in both regards to the burdens.

6           Once we move past the fact that those documents themselves are  
7 not admissible and Mr. Miles can't authenticate the records, we then get into, if  
8 Your Honor even gets that far which I don't think you need to because right then  
9 and there it's an – we're at a motion for summary judgement. It was their burden  
10 to come forward, present all the evidence, make sure that it was authenticated  
11 and admissible; they failed to do that. However, if Your Honor is even willing to  
12 consider to pass those two hurdles of whether or not Mr. Miles can even testify or  
13 the documents themselves are admissible or even authenticated, you then can  
14 look at the actual documents themselves. Mr. Miles is the custodian of records,  
15 or at least what he puts forward in his declaration he's the custodian of record for  
16 Miles Bauer. Now, Mr. Miles didn't draft these documents. He's never personally  
17 created a document so he doesn't actually have personal knowledge of the  
18 creation, maintenance of the documents. What he has is the ability to go into  
19 Miles Bauer's records and pull the documents to authenticate them in that  
20 manner, like I said, getting past the authentication issue in the first place. So,  
21 even if we were to get there, what he's looking at and what they primarily rely on  
22 in regards to delivery and such like that, because his declaration is actually  
23 beyond that of a custodian of records -- he's got testimonial evidence about what  
24 was done with certain documents, when they were mailed, sent, whatever, but all  
25 he's doing is looking at that document which has a – you know they're following



1 what their normal policies and procedures effectively will be, but he doesn't have  
2 any personal knowledge of whether it was delivered nor is there any evidence of  
3 that in here because of the fact that those documents are actually inadmissible.

4           What he relies on for the purposes of delivery and rejection is one –  
5 one of them is Exhibit E5 to I believe their MSJ and it is a screen shot of what is  
6 called the Prolaw system which is effectively what Miles Bauer used as an  
7 internal legal system to calculate. It basically input billing entries and create  
8 notes. However, Mr. Miles did not input any of the entries in that Prolaw system  
9 so now we have a double hearsay issue because what's inputted into the system  
10 is put in by somebody else and Mr. Miles cannot go in and independently verify  
11 that what they're putting in is actually accurate. He can say that that's what it  
12 says but he can't verify that that's actually true. So, even if we were to get  
13 beyond all those evidentiary hurdles I already talked about and we get into the  
14 merits of the screen shot, Mr. Miles isn't sufficient even in the context of a  
15 custodian of records to authenticate the record and get beyond the double  
16 hearsay that is included in that screen shot. So, Mr. Miles, even though he's  
17 providing testimonial evidence as to delivery and rejection, he's doing that based  
18 on a screen shot which is subject to double hearsay and they have no exception  
19 to the double hearsay in that context even if they use Mr. Miles to get past this is  
20 a business record of Miles Bauer. That's what it says. They can't get to the  
21 second portion of that wherein they prove that the delivery or the rejection was  
22 actually accurate and that entry was done by somebody else. Mr. Miles has no  
23 personal knowledge. He doesn't even seek to testify to that, other than just  
24 stating that's what the document says.

25           He also cannot authenticate any of the ledgers or documents that

1 came from Alessi & Koenig when it comes down to break downs. Or even if he  
2 looks into the ledger and tries to identify evidence within there and say, yes, this  
3 is – this is what happened and this is rejected, etcetera, he can't say any of that.  
4 Doug Miles is an employee of Miles Bauer. He's not an employee of Alessi &  
5 Koenig. He's not an employee of the HOA, nor is he the custodian of records for  
6 either of those two entities. So, we have another double hearsay issue. He can  
7 say -- Mr. Miles can say that we, as Miles Bauer, have a copy of this document.  
8 This is what Alessi gave us. This is what the HOA gave us. But what he cannot  
9 do is verify that the information within those documents is accurate. That's a  
10 double hearsay issue, same as the Prolaw screen shot. They don't have any  
11 evidence to demonstrate how they would get beyond that hearsay exception. So,  
12 in those circumstances, all those documents are inadmissible for the purposes of  
13 this motion for summary judgment.

14           Then we can move into the merits of their attempted payment. And  
15 my first point is – what I'm going to argue is something that has nothing to do  
16 with whether or not there are actual nuisance or maintenance abatement charges  
17 on the account. It's not an evidentiary issue. It's not subjective. It's looking at, as  
18 a matter of law, was their attempted payment an actual tender as they call it. And  
19 as I said before, it either has to be unconditional, or it only can have conditions  
20 upon which they have a right to rely.

21           Now, if you look at the language of the second letter, the one that  
22 accompanies the check, -- and like I said, this is all assuming that we get to that  
23 point even, if we're going to look at it, what's important to note is that they  
24 specifically cite to the statute which defines what the super priority amount is  
25 because obviously this is the primary contention in their letter defining what the

1 super priority amount is and their purported attempts to pay that amount in order  
2 to preserve their deed of trust, so obviously a key factor in their letter, a key  
3 factor in this litigation, if you look at the letter, they actually cite to the appropriate  
4 statute that does contain the definition of what the super priority amount is.  
5 However, they intentionally omit the portion of the statute which talks about  
6 charges under 116.310312; that includes all the nuisance and abatement  
7 charges. Now, the key problem with that is that nuisance and abatement charges  
8 carry a super priority status. They are part of the super priority portion under NRS  
9 116 in addition to the 9 months of assessments. However, the letter itself is  
10 saying, we are here to pay the super priority amount. Whatever our obligation is  
11 to you is paid in full – and that’s literally in quotes in their letter. And what it does  
12 is it – the letter actually conditions acceptance of the payment on the fact that the  
13 HOA has to accept all of the facts and essentially arguments and legal  
14 conclusions in their letter as true. They have to accept that fact.

15           So then now the HOA’s sitting in a position to say, although there  
16 are two portions ironically to the super priority portion in the split [indiscernible]  
17 scheme, the abatement portion and the assessments portion, they now have to  
18 waive the abatement portion because they’re going to have to accept the fact  
19 that whatever the HOA is going to take in payment is satisfaction of the entirety  
20 of the super priority amount, even if that payment is only 9 months of  
21 assessments. And the reason why that’s significant is that we look at what the  
22 Nevada Supreme Court, even though they haven’t addressed this issue directly,  
23 what they’ve discussed is NRS 116.1104 which talks about waiver/super priority  
24 rights which you cannot do under NRS 116. And the context by which the  
25 Nevada Supreme Court has actually thoroughly addressed that issue and threw it

1 out, which was originally in the SFR decision, was mortgage protection clauses  
2 because a mortgage protection clause is effectively almost the same effect that  
3 the Miles Bauer letter would have except that the HOA would have to accept it in  
4 order to get there and that effectively is to take away their super priority piece.  
5 Now, that's a super priority right they have under NRS 116; 1104 does not allow  
6 them to waive that portion, just similarly to a mortgage protection clause doing it.  
7 If they were to accept the payment based on the conditions placed in the letter  
8 they would be waiving a portion of their super priority piece.

9           Now, the reason why I said it's significant about whether or not there  
10 are actually abatement charges in the ledger, 'cause they don't have to be,  
11 because an abatement charge is not temporarily limited like the assessment  
12 piece. The assessment piece is tagged to a specific date and time, specifically,  
13 the notice of delinquent assessment is how the Nevada Supreme Court  
14 essentially put it, 9 months prior to that, then you get a finite amount. However,  
15 abatement charges can come up at any time in the foreclosure process, even  
16 after potentially accepting this payment and the letter. And what would effectively  
17 happen there is the HOA would waive a portion of its super priority rights  
18 because even if they were to accept a 9 month payment of assessments and  
19 there were not assessment portion of the super priority piece, if abatement  
20 charges were to arise after that point, that lien would then carry a super priority  
21 status again because to the extent of the abatement portion which is undoubtedly  
22 in NRS 116 and I – if they disputed that that would be interesting but its right in  
23 the statute. It's already been defined by the Nevada Supreme Court. It was  
24 reiterated in Ikon. They talk about that statute. There are two pieces, two pieces  
25 to the super priority piece: abatement, assessment. The reason why I say that

1 the evidence doesn't matter is because they're going to get up here and say,  
2 well, there are no abatement charges so that's an irrelevant point. Well, they  
3 missed the mark because it's not a question of evidence, was there an  
4 abatement charge at the time of the foreclosure; I don't need to get there. The  
5 fact that they are attempting to put this impermissible condition into their letter, in  
6 their Miles Bauer letter, that you can only have the 9 month assessment piece  
7 and you have to agree that that is the totality of the super priority piece, they are  
8 immediately asking the HOA to waive a portion of their super priority rights which  
9 is impermissible under 1104 and that renders their quasi-tender legally ineffective  
10 because it is impermissibly conditional to force the HOA to waive its super priority  
11 rights.

12           Now, even if we were to assume – now we get into the actual  
13 subjective portion of whether or not their attempted payment is effective, we first  
14 get into -- beyond the fact that it wasn't delivered, we can't – the evidence isn't  
15 there. There's no admissible evidence to show that it was admitted because Mr.  
16 Miles can't testify to that. However, even if we assume it was we then get into  
17 good faith basis for rejection. Now, that is a hindsight – that is not something that  
18 we can do in 20/20 hindsight. You need to look at what the market was like at the  
19 time this attempted payment was made, what kind of factors were faced, the  
20 legal landscape, everything that was in front of the collection agent at the time  
21 because we can't sit here today and go, oh, wow, now we know that the super  
22 priority amount is 9 months and the abatement charges and that's it. It doesn't  
23 have collection costs, interest, whatever, late fees, just a lot of the collection  
24 agents at the time, especially back in the time of this one, were in the position of,  
25 not to mention they had the CCICCH advisory opinion or decision or order I

1 guess you want to put it and that was prior to NRED where it said that it wasn't  
2 included, so you've got to look at the landscape of what was in front of the  
3 collection agent at the time. And specifically, I believe Alessi & Koenig here  
4 testified that the – specifically in his deposition testimony which was attached as  
5 Exhibit D5 to our errata to our op at page 53, lines 13 to 15 and page 59, 22 to  
6 25 he discusses specifics of this letter not being received, it wasn't in their  
7 records. But then what we also look at is the conditions itself – themselves, the  
8 relevant positions of the CCICCH, the timing of all of that, the bank having an  
9 opposite position into Alessi & Koenig in this letter but even at that time the bank  
10 in court was not presenting the argument that it was a true super priority lien.  
11 That wasn't until post the SFR decision in 2014 where this argument started  
12 coming out.

13               So, back when this original letter was attempted to be made to  
14 Alessi & Koenig, this position was entirely opposite to everybody in the industry  
15 essentially, or in most circumstances what collection agents thought. And  
16 coupled with the fact that there are these conditions in here that are incredibly  
17 broad that talk about paid in full, whatever obligations the bank may have, and  
18 then the fact that the language of the statute isn't even correct, its impartial –  
19 well, it's only in partial form, all those things go into a good faith basis for  
20 rejection because one of the – the case law in our brief it goes into that and it  
21 specifically talks about in circumstances where there's a condition placed upon a  
22 partial payment where the person placing the condition is that the payment is  
23 satisfaction in full and then there's a reasonable dispute that there's more due  
24 and that's exactly what almost every collection agent at the time thought. It's not  
25 just 9 months of assessments. It's collection fees, late fees, interest, etcetera,

1 whatever permutation they had of their position, but all of them were inconsistent  
2 with what the bank's position was in this letter, so they had a good faith basis to  
3 reject it on that basis and this is all even if they can prove delivery even if we get  
4 to that point.

5           Then the final point on the – regarding the attempted payment is that  
6 it wasn't recorded. Now, under NRS 111.315 and 325, as well as NRS 106.220  
7 they all talk about conveyances or basically subordinating specific liens and that  
8 all has to do exactly with what this letter is attempting to be. And essentially the  
9 bottom line there is that – and the specific statutes are cited in the briefs, but  
10 under those statutes the failure to record makes it not ineffective as to whatever  
11 claims they may have as to the HOA, but it renders it unenforceable against a  
12 third party and that would be SFR.

13           So, on that basis – and then I'll move onto the other arguments  
14 'cause I think there's some smaller ones here, but that's the primary one. They  
15 make an argument about commercial reasonableness or under the golden rule  
16 but they don't have any other evidence other than price and price obviously has  
17 been thrown out. Price alone is not sufficient so I move on passed that. We have  
18 the arguments on Mr. Dugan and what his opinions are in there and why they're  
19 really just ignoring the factors of an NRS 116 sale, but because I don't think I  
20 even need to get into that, price alone is not enough to set aside a sale. That's  
21 abundantly clear by the Nevada Supreme Court's decisions.

22           And the final point is that even if we were to get all the way pass all  
23 this and this Honor – and Your Honor were to weigh the equities or go through a  
24 Shadow Wood analysis and try and weigh the equities, one of the factors that  
25 needs to be considered is SFR's BFP status. Now, there's a declaration attached

1 in our briefing from Mr. Hardin who was the individual -- who was the manager of  
2 SFR, purchaser of the property at the foreclosure sale, and within that  
3 declaration he says that SFR had absolutely no knowledge of banks making  
4 attempted payments like this at the time of these foreclosure sales. Like I said,  
5 from our perspective in this litigation, that argument wasn't even made until 2015  
6 at the earliest, 2016 probably -- and this is all post SFR decision.

7           Also, he doesn't recall there being an announcement at the  
8 foreclosure sale about any attempt to payments being made. He's not aware --  
9 like I said, the banks were making these types of payments or even attempting  
10 these types of payments at that time and he had never seen the specific  
11 documents that the bank seeks to rely on today which I've already discussed are  
12 inadmissible.

13           Unless Your Honor has any specific questions, I'll let Counsel --

14           THE COURT: All right. Thank you, --

15           MR. MARTINEZ: -- go through theirs.

16           THE COURT: -- Counsel.

17           MR. MARTINEZ: Thank you, Your Honor.

18           MR. GERRARD: Thank you, Your Honor.

19           Let me just address our motion first. Counsel went well beyond  
20 anything that was in his motion for summary judgment and he was really raising  
21 his objection to our motion for summary judgment in most of his argument.

22           But let's talk about what the facts are that are undisputed in this  
23 case. Its undisputed in this case that after a notice of default had been sent out  
24 by Alessi & Koenig, which was the HOA's agent in this case for collection  
25 purposes, that BAC Home Loan Servicing retained counsel. They retained the



1 Miles Bauer firm. The Miles Bauer firm sent a letter to the HOA, undisputed that  
2 the letter was sent to the HOA, asking for the status of the foreclosure sale and  
3 letting them know that the bank wanted to pay whatever the super priority portion  
4 of the lien was and actually made an offer to pay that amount as soon as they  
5 were provided information sufficient that they would know what that amount was.  
6 That was followed up with a letter from Alessi & Koenig back to Miles Bauer  
7 stating that they would not accept partial payments. So, before any payment is  
8 even made, they've rejected whatever payment is going to come. Then we have  
9 a week and half later Alessi & Koenig provides Miles Bauer with a payoff  
10 statement. That payoff statement identified what the super priority lien amount  
11 was because it identified what the monthly assessment amount was which was  
12 \$23.00 a month.

13               Alessi & Koenig, after sending that document, received from Miles  
14 Bauer a check in the amount of \$207.00 which represented 9 months of  
15 assessments at \$23.00 per month. And there's no question that they received  
16 that document. The records – as Your Honor's probably aware, Alessi & Koenig  
17 filed for bankruptcy protection and the results of that at the end of the bankruptcy  
18 was an order that was entered by the bankruptcy court on April 24<sup>th</sup>, 2017 that  
19 basically provided procedures for them to provide all of their business records  
20 related to all these collection actions. And what the – the essence of that order is  
21 is that they were required to put on line a complete copy of their business records  
22 by collection file so that anybody that wants to access those can go on line,  
23 identify the property, and then you get their entire collection file and an affidavit  
24 from David Alessi. And in this case, we received their entire collection file and the  
25 affidavit of David Alessi, which has been provided to the Court, and that he has

1 authenticated as the business records the entirety of their file. Their file contains  
2 a copy of the letter that was – that came from Miles Bauer and a copy of the  
3 check that came from Miles Bauer. So, there can be no dispute that they actually  
4 received the tender. Once the tender check was received, Miles – the – Miles  
5 Bauer records indicate that it was never cashed and it was rejected by the  
6 HOA's agent, in this case Alessi & Koenig.

7           So, the interesting thing that happened after that which  
8 demonstrates the lengths to which Alessi & Koenig was trying to create a  
9 circumvention of the law is that after receiving this tender check they actually  
10 released, about 2 months later, released the lien. Now, they didn't cash the  
11 check. Remember, they told the – they told Miles Bauer before they ever got a  
12 check that they were going to reject it. Then when they received it, they rejected  
13 it. Then 2 months later they recorded a release of the HOA lien. Then a month –  
14 well 2 months after that, they recorded a new notice of assessment – I'm sorry, it  
15 wasn't 2 months, it was almost a year later they recorded a new notice of  
16 assessment lien. The new notice of assessment lien included all of the same  
17 amounts that had been in their original lien that they had received a tender on  
18 and there's no dispute about that. All you have to do is look at the records we've  
19 attached as Exhibits G, L, and M and you will see that the entirety of the  
20 \$2,730.00 that had accrued as assessments from the beginning of the  
21 delinquency on this property were transferred to a new collection file. It  
22 [indiscernible] right on their ledger the transfer of the entire preceding amount  
23 that tender was already made on, then they recorded a new notice of lien and  
24 then they proceeded forward with the foreclosure sale.

25           Well, Your Honor, these facts are not in dispute and can't be

1 disputed. So, what does Counsel do to try to attack these? He tries to claim that  
2 you can't rely upon the affidavit of Doug Miles and he attacks that in two ways.  
3 First, he says, look, nobody ever identified Doug Miles by name. We're not  
4 required to. Read the rule. The rule, 16.1 (a)(1)(A) says that you were supposed  
5 to disclose the names of persons if known. We didn't know at the beginning of  
6 the case who it was that was involved in this. We just knew that Miles Bauer was  
7 involved and we disclosed the person most knowledgeable for Miles Bauer.  
8 That's all that we knew. And then later when we got the documents, we produced  
9 the documents. That is a disclosure. Under NRS 16.1, the names of parties who  
10 are identified in documents that are disclosed is a disclosure and satisfies all  
11 requirements of NRS 16 – I'm sorry, NRCP 16.1. To suggest otherwise throws  
12 150 years of litigation process on its head. It's a ridiculous argument but its  
13 grasping at straws because they don't have any evidence that demonstrates that  
14 the tender wasn't made, that it was made in the right amount, and that the tender  
15 was received and rejected, and then Alessi tried to play games by trying to go,  
16 you know back door the statute by trying to create a new lien because they knew  
17 that they had already rejected this one. It's a fascinating argument that they're  
18 making but it doesn't comply with the law.

19           The next thing that they do is they try to attack the affidavit of Mr.  
20 Miles and they try to do that in two ways. They claim its hearsay and they claim  
21 there's no authentication. Read the statute. That's all you have to do to see that  
22 their argument has no basis. First of all, the authentication issue itself is  
23 governed by NRS 52.260. NRS 52.260 is the statute that deals with  
24 authentication of documents that are maintained in the course of a regularly  
25 conducted activity. These are the business records of the Miles Bauer firm. They

1 were maintained in the course – regular course of their business. That is stated  
2 in the Miles Bauer affidavit at Exhibit E to our motion. And 52.260 states that the  
3 contents of a record made in the course of a regularly conducted activity are  
4 admissible if proved by an original or a copy of the record which is authenticated  
5 by the custodian of those records. That is exactly what has happened. Doug  
6 Miles states right in his affidavit these are records we made [indiscernible] the  
7 regular course of our business and I am now the custodian of these records. So,  
8 this first nonsensical argument that they haven't been authenticated is – flies in  
9 the face of the statute. The statute itself allows those records to be admitted as  
10 soon as they are identified as being records kept in the ordinary course of  
11 business and authenticated by a custodian of record affidavit. That's what we  
12 have.

13           As to their hearsay argument, obviously everybody who ever went to  
14 law school knows about the business records exception to hearsay and in  
15 Nevada that's codified at NRS 51.135. Mr. Miles' affidavit satisfies the business  
16 records exception and all of the documents that he has provided are – have both  
17 been authenticated under 52.260 and satisfies the business records exception  
18 under 51.135. End of discussion. They have presented nothing that refutes those  
19 laws. It's just grasping at straws. So, once you accept those documents as being  
20 authenticate, we know we have a valid tender that was made.

21           So what do they do? They try to attack the tender. The way that they  
22 try to attack the tender is by saying that the tender you know could have – you  
23 know there could have been some abatement charges. But there's no evidence  
24 of that. They haven't presented one scrap of evidence that there was any sort of  
25 an abatement charge. What they have – what the evidence demonstrates is that

1 9 months of assessments were paid. Now, we know under the Nevada Supreme  
2 Court, controlling authority in the Ikon decision, that all that's required to be  
3 tendered is the 9 months of assessments because that is the only amount that  
4 has super priority status and they were unequivocal about that in Ikon. So, to –  
5 for Counsel to come in here and make an argument that flies in the face of the  
6 controlling authority just because they don't like the controlling authority doesn't  
7 change the controlling authority. So, here we have 9 months of assessments that  
8 were paid. And once those 9 months of assessments were paid, their authority to  
9 foreclose on the super priority portion of their lien no longer existed. And if they  
10 attempted to go forward and foreclose on a lien that they no longer had authority  
11 to foreclose because it had been satisfied, it's void. The sale is void. And there's  
12 – all you have to do to determine that it was void is look at the Supreme Court's  
13 recent unpublished decision that we cited to extensively in our brief which is the  
14 Ferrell Street Trust case which was decided April 27<sup>th</sup> of this year.

15 In Ferrell Street Trust there was a tender that was made. Guess  
16 what? The tender was – had the exact same letters that were used in this case.  
17 The only difference between the letters that were used in the Ferrell Street Trust  
18 case and the ones in this case is the description of the property and the amounts  
19 and the names of the parties. All of the other language is basically identical to the  
20 letters that were used in the Ferrell Street Trust case. Just so that Your Honor  
21 could see that, we attached as Exhibit U to our motion the tender letter that  
22 accompanied the check from the Ferrell Street Trust case out of their appellate  
23 appendix and we attached that to our motion so that you could compare them  
24 side by side. You don't have to accept my representation for that. And in the  
25 Ferrell Street Trust case the Nevada Supreme Court said that the tender was

1 valid and an unconditional offer to pay the super priority portion of the lien; I'm  
2 quoting from page 3 of the decision. So, although SFR does not like the fact that  
3 the Supreme Court has determined that these letters are not conditional and they  
4 continue to argue this because there is no published decision that says they are  
5 conditional, the Supreme Court has reviewed these exact same letters and found  
6 them to be unconditional and that's consistent with numerous other decisions  
7 from not only other district court cases but federal district court cases.

8           We cited to Your Honor in our motion, just as an example, one of  
9 those cases which is the federal district court case of Emerald Ridge Landscape  
10 Maintenance which was a September 20<sup>th</sup>, 2016 decision. And in that case the  
11 federal district court said: The language that Miles Bauer included with their...  
12 check states that Miles Bauer, and presumably their client, will understand  
13 endorsement of the check to mean they have fulfilled their obligations. It simply  
14 delineates how the tenderer -- in this case the bank -- will interpret the action of  
15 the recipient (which also turned out to be the correct interpretation of the law). It  
16 does not require (the association's trustee) to take any actions or waive any  
17 rights. And it does not depend on an uncertain event or contingency. That is  
18 exactly what we have in this case, Your Honor, a tender that was made. It was a  
19 valid tender, it was for the right amount, and it extinguished the super priority  
20 portion of the lien. From that point on, the sale was void.

21           What happens if you have a void sale? Well, we provided Your  
22 Honor with a lot of authority on that subject. We've provided you with state law  
23 authority. We've provided you with federal law authority. We provided you, most  
24 importantly, with again, the same case I just cited to which is the Ferrell Street  
25 Trust case because in the Ferrell Street Trust case our Nevada Supreme Court

1 said that a valid tender of a mortgage lien invalidates, invalidates [emphasis  
2 added] the foreclosure sale on that lien because the sale purports to extinguish  
3 the tenderer's interest. That's what happened here. There's no possible way that  
4 SFR received any title interest because the sale, as it relates to the super priority  
5 portion, was void. And we know what that means because the Supreme Court  
6 has told us numerous times, but most recently in the Ferrell Street Trust case,  
7 where they said a valid tender satisfies the super priority portion of the HOA's  
8 assessment lien. A foreclosure sale for the entire lien results in a void sale,  
9 meaning they could have foreclosed the sub-priority fees but not the senior  
10 priority fees because it had been extinguished. And –

11 THE COURT: And that impacts the BFP status or the –

12 MR. GERRARD: And that –

13 THE COURT: -- alleged BFP status?

14 MR. GERRARD: -- controls the BFP –

15 THE COURT: Okay.

16 MR. GERRARD: -- status because as is also set forth in Ferrell  
17 Street Trust, a BFP gets nothing because no title interest is transferred. As a  
18 result their status can't validate an invalid sale. And guess what? That statement  
19 was made by the Supreme Court in the July 20<sup>th</sup>, 2018 unpublished decision of  
20 2713 Rue Toulouse Trust. Now, we didn't cite this on our brief because when we  
21 were doing the briefing this decision hadn't been made yet. But in this case which  
22 is Supreme Court case 68206, decided July 20<sup>th</sup>, 2018, the Supreme Court made  
23 sure that they closed that analysis 'cause in the Ferrell Street Trust case they  
24 said a valid tender that's rejected results in an invalid sale, meaning its void and  
25 they say its void. Then in the Toulouse Trust case they say, quote, the appellant

1 in that case – which is the investor who purchased – punitive status as a bona  
2 fide purchaser cannot validate an otherwise void sale. So, they closed that  
3 analysis. It comes full circle and brings it into compliance with the law as we  
4 already understood it.

5 A great decision that explains why nothing – no title transfers in a  
6 void sale on what its effect is on a BFP is the federal district court case of Judge  
7 Andy Gordon that we cited to Your Honor which is the 79 – let me find the name  
8 of that thing -- I always butcher the name – 7912 Trust -- but at any rate, Your  
9 Honor, the – there is no possible way that SFR has any title interest in this  
10 property that is senior to the deed of trust. That is because the – if they tried to  
11 foreclose on the full super priority lien, including the portion that -- the tender they  
12 made for, the sale is void under the law we just stated and that means nothing  
13 passed to them. If it is – if they attempted to do just the sub-priority portion, then  
14 they bought subject to our lien and they don't get any greater title rights than  
15 what was transferred by the transferor. So, under either way there's no possible  
16 way that they have any interest that is superior to the deed of trust.

17 Now, just to make sure we've covered this, I mentioned to Your  
18 Honor that Alessi was playing fast and loose with the rules and they tried to  
19 record a new notice of lien after they rejected the tender. Well, we know from the  
20 Property Plus decision of the Nevada Supreme Court that was decided in 2017  
21 and is a published decision, as you know at 401 P3<sup>rd</sup> 728 you know or Nevada  
22 Advanced Reporter – 133 Nevada Advanced Reporter at 62. The Property Plus  
23 court said an HOA, I'm quoting, cannot simply reject payment – which they did  
24 here – and release the lien – which they did here – only to turn around and  
25 record another lien based upon the same unpaid assessments in order to



1 safeguard the super priority status. So, we have controlling law that says you  
2 cannot do what they tried to do in this case.

3           So, Your Honor, there was a valid tender. That means that under the  
4 undisputed facts of this case, that my client is entitled to summary judgment. And  
5 we did hear some argument, and I stress the word argument about the  
6 reasonableness of the rejection; right? Counsel stood up and said – gave  
7 basically his opinion about what people were thinking at that time and what other  
8 HOA foreclosing agents were thinking at that time. There is no evidence of any of  
9 that. There's been no evidence presented in this case that Alessi was thinking  
10 those things. What we have is a rejection made by Alessi before they ever even  
11 got the tender. They told us that they wouldn't accept it. So, I don't know how you  
12 could ever call that reasonable. They rejected it before they ever even got it. So,  
13 again, Your Honor, we're entitled to summary judgment on the basis of the  
14 tender.

15           Now, we also provided a couple of other arguments that we believe  
16 if Your Honor decides it on tender, you know you don't need to go there, but its –  
17 we think that certainly in this circumstance under both the Shadow Wood  
18 decision and the later Saticoy Bay decision that talks about the equitable grounds  
19 to set aside a sale, that we satisfy those here because here we know  
20 undisputedly that 19 percent of the fair market value of this property was paid at  
21 the time of the sale, 19 percent. And under Shadow Wood and the Restatement  
22 that it adopts, that is determined to be grossly inadequate. They set a benchmark  
23 of 20 percent and say anything less than that is grossly inadequate. Then in the  
24 Saticoy Bay decision they said, look, the more inadequate the price is the less  
25 evidence you have to present of any unfairness or oppression or fraud. And they

1 said if you have a grossly inadequate sale price only slight evidence of  
2 unfairness is necessary.

3 Well, here we have significant evidence of unfairness. We have a  
4 tender that was rejected before it was even made. Then we have – once the  
5 tender was made it was rejected again. Then they try to create a new lien to  
6 circumvent the rejected tender. None of this is remotely fair and there's no  
7 reason for the bank to have ever shown up at the sale to do anything more to  
8 protect its lien 'cause they'd already taken the steps that the SFR decision  
9 suggested they take which is to satisfy the super priority portion of the lien, and  
10 so of course it resulted in the unfair sale price. If the bank had any inclination that  
11 there was any sale that could go forward that would still prime their lien and  
12 extinguish their rights, they'd have been at the sale to protect their rights and  
13 there would not have been a sale price for 19 percent of the fair market value of  
14 the property, but they had already taken those step. And so, under the  
15 circumstances of this case, both under Shadow Wood and the Saticoy Bay  
16 decision, you have the slight evidence and I think very compelling and strong  
17 evidence of both oppression and unfairness that resulted in the low sale price.  
18 And so, --

19 THE COURT: It's often – I'm sorry. I'm sorry.

20 MR. GERRARD: Oh, I didn't mean to –

21 THE COURT: Okay.

22 MR. GERRARD: Go ahead.

23 THE COURT: It's often argued that the fraud, oppression,  
24 unfairness applies to the HOA and the new purchaser.

25 MR. GERRARD: Correct.

1 THE COURT: And so do we – what evidence do we have that  
2 between those two entities there was fraud, oppression and unfairness?

3 MR. GERRARD: Well, listen, when you say the new purchaser, --

4 THE COURT: Or SFR.

5 MR. GERRARD: -- you're talking about the investor?

6 THE COURT: Right.

7 MR. GERRARD: Shadow Wood – neither Shadow Wood nor Saticoy  
8 Bay says that you have to take into consideration whether there was unfairness  
9 to the purchaser. What you have to do is balance the equities which is a different  
10 thing. You know we don't have to show that there was unfairness to them. What  
11 we have to do is show that the equities – when we look at the equities for the  
12 bank that's going to lose out on hundreds of thousands of dollars of money that it  
13 actually lent as opposed to the equities in favor of the investor who paid a  
14 nominal amount that was one-fifth of the value of the property in hopes that they  
15 could derive a gigantic windfall, those are the equities that we're talking about  
16 balancing here. And yes, you have to balance the equities but it's not an  
17 unfairness determination. In other words, we only have to show that there was  
18 unfairness in the way that the HOA handled the sale. End of that discussion.  
19 Then we have to balance the equities and that's what I think Your Honor is talking  
20 about and that's what I think falls strongly in our client's favor because they did  
21 everything they were supposed to do. The biggest evidence of unfairness is the  
22 fact that they rejected the full tender and then attempted to foreclose as if they  
23 still had a super priority lien. You cannot do that. The law says that's void. Our  
24 Supreme Court has said that's void. But yet, they did it. If that isn't evidence of  
25 unfairness, I don't know what kind of evidence of unfairness you could ever have

1 and it's definitely more than slight. So, even if there wasn't a tender that just –  
2 that cut off all arguments in this case, I think that the sale still ought to be set  
3 aside under equitable grounds.

4 And, Your Honor, I don't think we need to really address any of the  
5 other issues. We've already talked about the fact that they can't have a BFP  
6 status that trumps the tender. I butchered the name of the case that I was telling  
7 you, the federal court case. It's 7912 Limbwood Court Trust versus Wells Fargo  
8 Bank which was decided by Judge Gordon in 2015 and it's cited in our moving  
9 papers.

10 Your Honor, I think that that adequately addresses all the issues that  
11 have been raised and I'll turn my time over –

12 THE COURT: Okay, thank you.

13 MR. GERRARD: -- to the next person.

14 THE COURT: Briefly, Counsel, anything else?

15 MS. WITTIG: Oh, wait. Your Honor, can I –

16 THE COURT: Sure. I'm sorry. Yes.

17 MS. WITTIG: -- I wasn't – sorry. I'm representing US Bank which  
18 Nationstar is servicing for. I just want to add one more case to the Court's  
19 attention and this is another unpublished decision that was issued on July 20<sup>th</sup> of  
20 2018 and it's the BAC Home Loans versus Aspinwall Court Trust case. And this  
21 court confirms that the very basis on which Alessi refused to accept payment  
22 before payment was ever made, that it would only accept payment of the entire  
23 lien, was rejected by the Nevada Supreme Court. And this case, and I'm quoting  
24 here, the investor that purchased – that's in SFR's position, it's called Aspinwall  
25 and I'm quoting here: Although Aspinwall contends that the HOA's agent was

1 justified in rejecting the tender because the agent believed BAC was required to  
2 pay the entire lien amount, we are not persuaded that that is a justifiable basis in  
3 light of the explanations contained in the letter sent by BAC's agent setting forth  
4 BAC's legal position. So, the court already found that requiring full payment is  
5 not a justifiable rejection.

6 THE COURT: All right, thank you.

7 MR. MARTINEZ: I'll just address those – the two cases they cited  
8 that were unpublished. Just – I think they had indicated that they didn't include it  
9 in their brief because those decisions came out after their briefing was complete  
10 but that's actually incorrect. The final reply was filed on August 8<sup>th</sup>. Those  
11 decisions, as they both stated, came out on the 20<sup>th</sup> of July so they could have  
12 included it in their briefing. I don't think you can consider that considering the fact  
13 it's not in their briefing. It's also unpublished. Also, we don't have any background  
14 as to the specific facts and how they're related to this case. It's just conclusory  
15 stating these things apply in this circumstance.

16 Now, I think in the beginning of Mr. Gerrard's argument he indicated  
17 that the facts that were underlying the attempted payment were undisputed were  
18 clearly not. It's exactly what I went through for 15 minutes about how I dispute all  
19 the facts that relate to this purported tender. So, [indiscernible] I don't think that's  
20 necessarily accurate.

21 And what's important here is that we go back to the 16.1. And he  
22 wants me to read the statute. I'll read the statute. 16.1(a)(1)(A) it requires that the  
23 name, and I'll skip some of the other portions, the name of each individual likely  
24 to have information discoverable under 26; that identifies a person, not a  
25 30(b)(6), not a corporate designee. That is not efficient. That's not supported by

1 the statute. That's not what the statute calls for. Additionally, even if they're going  
2 to try and argue that, oh, well, we did a 30(b)(6) designee in the beginning and  
3 then we learned later that Doug Miles was actually the person we wanted to  
4 disclose. Okay, there's an ongoing obligation to supplement your 16.1 disclosure  
5 and if you fail to do it during the course of discovery you've now prejudiced SFR.  
6 I can't do discovery into that individual because you never identified him.

7           And under 16.1(e)(3)(B), it says the court shall appropriately  
8 sanction. And one of the sanctions underneath that is specifically what I'm asking  
9 for and that is to prohibit the use of that witness and any documentary evidence  
10 that they are purporting to authenticate because now – because Doug Miles  
11 cannot be used and his declaration cannot be used. The evidence from Miles  
12 Bauer is no longer authenticated so it's inadmissible. That's my argument. It's not  
13 that we're going to argue that Doug Miles, even if he were in – isn't the custodian  
14 of – that's not – I didn't even get into that. In fact, it specifically talks about that in  
15 our motion. I'm not going to get into that because that would be a waiver of our  
16 argument that he can't even testify, so I'm not going to get into that unless the  
17 Court wants me to and that would be supplemental briefing. I don't think it's  
18 necessary because on the face of 16.1 and under the obligated sanction that  
19 comes with it, they're failure to comply and name Mr. Miles specifically means  
20 that that witness cannot be identified. He wouldn't be able to be used at trial. He  
21 can't be used in a motion for summary judgment.

22           There was some discussion about the business records exception.  
23 Now, I didn't address the substance of whether or not the business records  
24 exception would apply. In the context of the double hearsay I was referring to,  
25 business records exception isn't a trump card. You don't just say, oh, this is a

1 business record. You don't get to make any other evidentiary objections  
2 regarding hearsay to this document – which – absolutely, that's why there's  
3 double hearsay. A specific example is with regard to that screen shot. Mr. Miles  
4 didn't enter anything in that screen shot. Those were entered by other  
5 individuals. That could be a paralegal. It could be the handling attorney, but it  
6 wasn't Mr. Miles. And he cannot testify because he does not have personal  
7 knowledge nor did he obtain it 'cause that's not in his declaration. He just testifies  
8 this is the screen shot and then he makes a conclusory statement that what's in  
9 there is actually true and that's what they're not trying to assert is the facts  
10 therein are true. That falls directly under hearsay but there's two layers. Even if  
11 the business records exception were to apply because Mr. Miles is able to testify  
12 and provide his authentication of the records, that gets you passed one layer but  
13 that does not get you to the meat and that they – whatever's in the Prolaw screen  
14 shot is actually true. There's nobody testifying to that. Mr. Miles can't testify to  
15 that and there's nobody else to testify to that so I think my – Counsel perverted  
16 my argument essentially. He didn't get to the point. My point was that there are  
17 two layers. Business records exception if it is applicable only kills one of them so  
18 you need to get both; still not admissible.

19           Then there was discussion about the abatement charges. The  
20 abatement charges are right in the statute. This is the one that Miles Bauer  
21 specifically excluded from their letter. They cut it right out. There's not an ellipse,  
22 There's not a reference to the fact that it's not included in there. It is just not  
23 included. It is intentionally left out because it is part of the super priority portion  
24 undoubtedly. The SFR decision says it. Many other decisions after that indicate  
25 that. The statute still indicates that. In fact, even if you were to look at the 2015

1 amendments it's still in there. It still has a super priority status. That is not  
2 subject to a reasonable dispute. That's right in the statute.

3 They talked about the Ferrell Street Trust case which is an  
4 unpublished decision and they're saying that do exactly what's in there, Judge.  
5 Unpublished decision from Nevada Supreme Court is identical to this case. You  
6 can put the letters side by side but I can guarantee you the argument I am  
7 making here about the letter being impermissibly conditional was not made in  
8 that decision. That's why it's not addressed. But one of the important factors that  
9 you actually can draw from the Ferrell Street Trust decision is that it has to be a  
10 valid tender in order to get the effect that the bank is now asking you to do. And  
11 because it's not valid based on my arguments about it being impermissibly  
12 conditional as well as evidentiary pitfalls, Ferrell Street Trust doesn't have any  
13 impact on that 'cause we're not in valid tender land because its invalid.

14 There was a discussion about what the outcome should be should  
15 you render the defense applicable – the tender defense applicable. And just so I  
16 understand it correctly, and opposing counsel can get up here and correct it  
17 when he gets up because of the relief they're asking for, a little bit confusing  
18 'cause in every other case where they've had these letters prior to these  
19 decisions recently, they've argued that SFR should take subject to. Now they're  
20 arguing the sale is void. But the way he was arguing it was a little confusing to  
21 me so I'll let him – I won't put words in his mouth. He can clarify when he gets up.  
22 But if he's arguing the sale is void and no title passes to SFR but then there was  
23 this commentary about, well, if they foreclosed on the sub-priority only the sale is  
24 not void. We just – the super priority portion is void. No decision goes for that  
25 proposition. I don't know where that's coming from, but maybe I'm



1 misunderstanding and Mr. Gerrard can correct me, but if they're arguing the sale  
2 is void, then there's no possible way that SFR can take subject. You don't get  
3 both. Either the sale is a legal nullity and it reverts back to the homeowner and  
4 the HOA's lien is reinstated and it goes back to before the foreclosure sale or it  
5 doesn't. You just can't – you can't do – you can't have us take subject 'cause  
6 there was some insinuation that that was a possibility. That's not a possibility  
7 under the argument they just made about the sale being void if the tender was  
8 sufficient to satisfy the super priority piece.

9           Additionally, there's no evidence provided by the bank that the – that  
10 Alessi & Koenig or the HOA specifically foreclosed on the sub-priority amount.  
11 That's just something that got said in the mix. It goes along with what I was  
12 saying that now you're confusing me as to what remedy you're actually asking  
13 for, so I think there needs to be some clarification.

14           My final point is in regards to basically ignoring the decision in  
15 Shadow Canyon. Shadow Canyon did not adopt the Restatement. There is not a  
16 20 percent benchmark. It specifically said that and referred back to the Golden  
17 decision and said if we wanted to overrule Golden, which has to do with fraud,  
18 unfairness, and oppression, one factor, which impacts the price paid by the  
19 purchaser, second factor, then they would have expressly done that but they  
20 actually rejected the 20 percent Restatement approach – expressly, so I don't  
21 know where that argument came from. It is irrelevant what the specific price was  
22 if you cannot prove that there is fraud, unfairness or oppression which actually  
23 brought about the inadequacy of the price. Now that's the question I think Your  
24 Honor was actually asking was that if the price is low and you're claiming there is  
25 a fraud – or there's fraud, unfairness, or oppression factors, that actually has to

1 have impacted what SFR paid. It can't just be that we tried and we think it's  
2 unfair. The bank can't just say that. That's not the test. Shadow Canyon made it  
3 abundantly clear that its price plus and if you're going to prove fraud, unfairness,  
4 or oppression you actually need – it doesn't matter that it's objectively fraud,  
5 unfairness or oppression. In the context here they're arguing unfairness in the  
6 rejection of the tender. That unfairness would actually have to have impacted the  
7 price paid by SFR. Well, I can tell you how that could have actually come into  
8 play but didn't. First, SFR has absolutely no knowledge of that. That's abundantly  
9 clear by the declaration of Mr. Hardin. No announcements were made at the  
10 foreclosure sale. If there was an announcement made at the foreclosure sale,  
11 arguably, and this didn't happen here, but arguably if there was a rejection of a  
12 tender or an attempt at payment or an acceptance of a payment and that were  
13 made at the foreclosure sale, that would undoubtedly impact the price paid by the  
14 investors. Then you could turn around and try and argue Shadow Canyon and  
15 fraud, unfairness or oppression in the inadequacy of price. But that's not what we  
16 have here. We have a behind closed doors secret offer to pay that was never  
17 disclosed to anyone that had anything to do with the purchase at the foreclosure  
18 sale and that doesn't satisfy Shadow Canyon. That's ignoring the critical second  
19 factor that you have to prove that whatever objective thing you find that is fraud,  
20 unfairness or oppression subjectively impacted the price paid at the foreclosure  
21 sale and there's absolutely no evidence of that. To the extent he gets up and  
22 argues that it's just going to be argument of counsel because there's nothing in  
23 the briefs on that.

24 Other than that, Your Honor, unless you have any specific  
25 questions?

1 THE COURT: No other questions. You get the last word, Counsel.

2 MR. GERRARD: Sure, Your Honor.

3 Look, Counsel had two chances to read NRS 16.1(a)(1)(A) to Your  
4 Honor the correct way, the way it appears in the rule and both times he left out  
5 the language that I told you is right there. It says the [indiscernible] to disclose  
6 16(a)(1)(A) the name of any person that's known. He left that out both times he  
7 just recited the rule to you. We don't have to at the beginning of a case name  
8 every person that we're not aware of. And under Rule 26(e) which is the  
9 supplemental disclosure rule, 26(e), we're under a duty to supplement at  
10 appropriate intervals our disclosures if we haven't already disclosed that  
11 information. When we produced the documents that have the names of the  
12 people in them we – in our supplemental disclosures we've satisfied that  
13 obligation. There's just no way to get around that. I mean this is done every day  
14 in thousands of cases across Nevada and there is case law on this if this was an  
15 issue about whether you know producing documents later on that contain the  
16 names during discovery is a supplementation and provides a disclosure, if that's  
17 an issue at all we're happy to brief it, but Your Honor's already well aware that  
18 that's what happens all the time and that's what the law permits both under Rule  
19 16.1 and under Rule 26. And I just read to you the exact language of those rules.  
20 I didn't paraphrase and leave out some of the words to make my argument. So,  
21 that is – that's the first thing.

22 The second issue that he raises about the unfairness, look, I don't  
23 even really think we have to go to the unfairness issue in – you know to  
24 determine whether equitably the sale should be set aside because it was void.  
25 But as it relates to unfairness, the bank already tendered so their assumption is

1 that the only sale that could ever happen, if any sale's going to happen, would  
2 not affect their lien rights. So, is it reasonable to pay, you know, 20 percent of the  
3 value of property if you're buying subject to a deed of trust? Sure. That's a  
4 reasonable price to pay. Is it a reasonable price if you're saying that you're  
5 buying the property free and clear of the deed of trust? It's not. And as I pointed  
6 out, the bank had no reason to do anything else because it had already tendered.

7 Now, with respect to this you know somehow failure to understand  
8 the distinction that's been made in the Ferrell Street Trust case about a void sale.  
9 Look, the Supreme Court was very clear in saying that a valid tender satisfy – I'm  
10 reading right from the language of Ferrell Street Trust on page 3: Thus, when a  
11 valid tender satisfies the super priority portion of the HOA's assessment lien, a  
12 foreclosure sale for the entire lien results in a void sale as only part of the lien  
13 remains in default. Now, Counsel said he didn't really quite understand what I  
14 was arguing. What I'm arguing is very clearly stated in the case that I just cited.  
15 Once the super priority portion of the lien has been satisfied, the HOA no longer  
16 has authority to proceed with the sale on that portion of the lien. If they do, it's  
17 void. That's what the law says. And if it's void, no title of any kind passed to SFR.  
18 If the HOA attempted to foreclose on just the sub-priority portion of the lien which  
19 had not been paid, then SFR would have received title to exactly what was sold;  
20 the property subject to the deed of trust because that's all they could have  
21 foreclosed upon.

22 So, it doesn't matter which way you use to get there. SFR – they  
23 either have title subject to the deed of trust if that's what the HOA did, and in this  
24 case the HOA didn't say that that's what they did, so we believe that the sale was  
25 void because they said they foreclosed their entire lien. Remember, they rejected

1 the tender and they foreclosed the entire lien. All you have to do is look at the  
2 notice of sale which is in our motion at Exhibit P and you will see that they were  
3 foreclosing the entirety of the lien, including the amounts that we had tendered to  
4 – and satisfied so that means the sale is void. I was just pointing out to the Court  
5 that there's only one other alternative. I didn't say that that's the way that the  
6 Court should go. I just said there is only one other alternative and in this case  
7 that alternative really doesn't exist because we see from the documents they  
8 attempted to foreclose their entire lien, including the amounts that had been –  
9 they had received tender on and had been satisfied.

10 So, Your Honor, I don't think there's really anything else to cover  
11 unless Your Honor has any questions.

12 THE COURT: No. Thank you, Counsel.

13 Anything from US Bank, anything further?

14 MS. WITTIG: Just very quickly. I just want to point out the argument  
15 on the double hearsay and the Doug Miles –

16 MR. MARTINEZ: Your Honor, I have to object. They filed a joinder.  
17 They represent the same client essentially.

18 MR. GERRARD: She represents US Bank.

19 MR. MARTINEZ: They're asserting their rights of Nationstar in this  
20 case on US Bank.

21 THE COURT: No, I'm going to hear from her. Go ahead, Counsel.

22 MS. WITTIG: I'm counsel of record for Nationstar and US Bank just  
23 for the record. But just the double hearsay, basically the position that the double  
24 hearsay renders the affidavit based on their business records somehow void  
25 swallows the rule. The business record is enacted for the specific purpose of not

1 having to call every single person who input those records into the system. And if  
2 that was the case, as Counsel is saying that Doug Miles doesn't have personal  
3 knowledge of the input, again, that swallows the entire business records  
4 exception rule.

5 [Colloquy between Defense Counsel]

6 MS. WITTIG: Yeah, and that's what we have -- I mean Mr. Alessi is  
7 the custodian of records for Alessi & Koenig. I doubt that he was the one putting  
8 all those business records into the system and there's probably testimony in the  
9 deposition that he did not do that.

10 THE COURT: All right. Thank you, Counsel. I'm going to review  
11 some of the more recent cases again before I issue a written decision. I  
12 appreciate the very thorough briefing on this matter.

13 Thank you, Counsel.


14 MR. GERRARD: Thank you, Your Honor.

15 MR. MARTINEZ: Thank you, Your Honor.

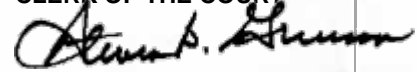
16 [Hearing concludes at 9:40 a.m.]

17 \* \* \* \* \*

18  
19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video recording in the above-entitled case to the best of my ability.

23   
24 CYNTHIA GEORGILAS  
25 Court Recorder/Transcriber/DC17

# **TAB 27**



**FFCL**

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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

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

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW**

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OCT 01 2018**



Third-Party Defendant(s).  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,  
Third-Party Counterclaimant/Cross-Claimant,  
vs.  
U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,  
Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.<sup>1</sup>

#### **FINDINGS OF UNDISPUTED FACT**

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

<sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real  
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-  
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.  
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.  
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as  
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to  
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for  
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]  
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)  
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable  
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument  
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore  
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.  
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring  
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County  
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC  
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in  
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of  
27 assessments and other sums due, describes the unit which the lien is imposed, and names the  
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &

1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE  
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE  
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a  
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for  
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three  
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but  
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the  
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the  
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,  
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi  
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark  
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the  
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale  
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien  
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason  
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in  
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the  
3 Association besides owning property within the community. There was no evidence presented to  
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the  
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties  
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file  
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is  
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,  
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when  
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and  
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*  
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.  
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or  
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have  
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-  
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to  
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879  
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences  
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show  
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*  
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine



1 issue of material fact, in this case, there are a number of presumptions that this Court must  
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Breliant v. Preferred Equities Corp.*,  
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the  
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS  
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been  
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to  
9 a particular person, has actually conveyed to that person, when such presumption is  
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private  
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has  
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]  
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is  
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns  
16 and all other persons" unless a party like Nationstar can establish that it is entitled to  
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132  
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.  
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements  
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a  
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this  
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th  
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,  
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2  
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,  
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof.” *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d  
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).  
3 “These presumptions impose on the party against whom it is directed the burden of proving that  
4 the nonexistence of the presumed fact is more probable than its existence.” *Id.* at 842 (citing NRS  
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the  
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed  
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133  
9 Nev. \_\_\_, \_\_\_, 405 P.3d 641, 646 (2017) (“...Nationstar has the burden to show that that the sale  
10 should be set aside in light of Saticoy Bay’s status as the record title holder[.]” (citing *Brelant*,  
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*  
12 *Homeowners Ass’n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d  
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the  
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,  
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-  
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner’s interest in real property  
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR “without equity or right of  
22 redemption.” *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209  
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, <sup>the Bank</sup> ~~the Bank~~ cannot unilaterally  
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS  
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the  
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*  
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, <sup>Nationstar</sup> ~~the Bank~~ has not established  
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only  
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust  
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that  
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be  
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to  
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP  
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank  
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to  
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank  
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the  
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and  
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by  
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to  
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not  
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and  
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred  
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by  
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain  
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210  
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a  
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends



1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s  
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this  
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never  
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.  
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,  
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ <sup>Nationstar</sup> contends a proper tender was made on 9/2/10 for the amount of \$207.00  
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for  
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held  
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the  
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and  
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense  
13 assessments due during the nine months before foreclosure. While this Court acknowledges that  
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada  
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the  
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT  
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine  
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said  
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The  
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was  
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*  
23 *LLC*, 68504, 2016 WL 5219841, at \*1 (Nev. Sept. 16, 2016)( It has been held... that a good and  
24 sufficient tender on the day when payment is due will relieve the property from the lien of the  
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the  
26 tender was insufficient. ). ~~The Bank's~~ <sup>Nationstar's</sup> tender of the past due assessments in the amount of \$207.00  
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have  
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ <sup>Nationstar</sup> has failed to

1 set forth sufficient information that proper notice of the tender was provided, such that individuals  
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.  
3 ~~The Bank~~ <sup>Nationstar</sup> failed to record its performance so as to protect itself from third-party purchasers as  
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with  
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All  
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly  
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is  
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the  
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A  
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property  
11 for a valuable consideration and without notice of the prior equity, and without notice of facts  
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,  
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)  
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The  
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent  
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual  
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party  
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as  
19 to the legal consequences of his act, equity should normally not interfere, especially where the  
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting  
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*  
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third  
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to  
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining  
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d  
26 at 1114 fn. 7. Here, ~~the Bank~~ <sup>Nationstar</sup> was in the position to take any number of simple steps to avoid a  
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to  
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the



1 Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed  
2 to protect its interest in said property, and SFR is a BFP.

3 R. ~~The Bank~~ <sup>Nationstar</sup> contends the sales price at the HOA foreclosure sale was grossly  
4 inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a  
5 theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus,  
6 fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op.  
7 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
8 *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar.  
9 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis  
10 for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v.*  
11 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale  
12 foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly  
13 inadequate and there is in addition proof of some element of fraud, unfairness, or oppression  
14 (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada,  
15 courts retain the power to grant equitable relief from a defective [association] foreclosure sale  
16 when appropriate .... *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,  
17 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property  
18 at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there  
19 must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d  
20 530). In considering whether equity supports setting aside the sale in question, the Court is to  
21 consider any other factor bearing on the equities, including actions or inactions of both parties  
22 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
23 courts must consider the entirety of the circumstances that bear upon the equities). Here, ~~the Bank~~ <sup>Nationstar</sup>  
24 contends that the sale should be set aside under equitable principles because the sale of the  
25 Property for less than 20% of its fair market value is grossly inadequate. The Court, however,  
26 does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or  
27 oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred  
28 by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*

1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the  
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee s  
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL  
4 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a  
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...).

6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,  
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT  
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015  
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar  
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that  
12 affected title or possession of the property and still has no pending claims against SFR today. The  
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services  
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because  
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and  
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title  
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the  
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of  
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.  
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR s complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was  
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a  
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT  
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect  
28 because the DOT was extinguished by the Association sale.

1 X. Any attempt to take or maintain possession of the Property by the Bank would be  
2 invalid because its interest in the Property, if any, was extinguished by the Association sale.

3 **ORDER**

4 **IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary  
5 Judgment is **GRANTED**.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's  
7 Motion for Summary Judgment is **DENIED**.

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder  
9 to Nationstar's Motion for Summary Judgment is **DENIED**.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's  
11 non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las  
12 Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the  
13 Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-  
14 0005567.

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no  
16 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,  
17 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any  
18 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including  
19 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or  
20 transferring the Property.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no  
22 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,  
23 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any  
24 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including  
25 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or  
26 transferring the Property.

27 ...

28 ...



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

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property  
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is  
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be  
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.

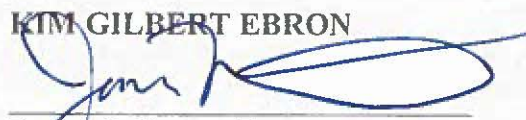
8   
9 DISTRICT COURT JUDGE  
10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

**AKERMAN LLP**

13   
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