

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant/Cross-Respondent,

vs.

U.S. BANK N.A., A NATIONAL
BANKING ASSOCIATION; AND
NATIONSTAR MORTGAGE, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY, AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE
LXS 2006-4N TRUST FUND,
ERRONEOUSLY PLED AS U.S.
BANK, N.A.,

Respondents/Cross-Appellants.

Case No. 81293

District Court Case No. 2:16-cv-01053-RFB-DJA

**SFR INVESTMENTS POOL 1, LLC'S
OPPOSITION TO FHFA'S
MOTION TO FILE AMICUS BRIEF**

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Elizabeth A. Brown
Clerk of Supreme Court

Federal Housing Finance Agency's ("FHFA") motion to file an amicus brief should be denied as untimely. A motion to file a brief in support of a party's position must be filed no later than 7 days after the brief of the party being supported. NRAP 29(f). Here, respondent/cross-appellant U.S. Bank's brief was filed March 18, 2021. The same counsel for U.S. Bank in this case, represented Bank of America in the district court case that resulted in the appeal upon which FHFA bases its belated request. *See Bank of America v. SFR Investments Pool 1, LLC*, 9th Circuit Case No. 19-17445; Nevada U.S. District Court Case No. 2:16-cv-01053-RFB-DJA ("Rimbaud"). Thus, it is more likely than not that FHFA had been informed of the instant case long before its motion. But, at the very latest, FHFA has known about

this case, at the very latest, since April 13, 2021, the date of the oral argument before the Ninth Circuit in *Rimbaud*. SFR brought this case to the Panel’s attention at that time, and FHFA’s counsel argued that case. So FHFA knew that this Court had the very issues before it in the instant case that were argued before the panel. It had no reason to delay over two months before seeking amicus status. If it wanted to be heard, it should have filed shortly after that argument, because, no matter the decision by the Ninth Circuit, this Court’s decision would ultimately be either persuasive or controlling on the issues raised regarding NRS 106.240, both in *Rimbaud* and any other cases in which the issues might arise—issues not raised or addressed in the unpublished and non-binding *Glass* decision.¹ See *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1146 (9th Cir. 2001) (“[I]t is solely within the province of the state courts to authoritatively construe state legislation.”); see also *Tabares v. City of Huntington Beach*, 988 F.3d 1119, 1124 (9th Cir. 2021)(“When interpreting state law, we are bound to follow the decisions of the state’s highest court. . . .”).

FHFA has provided no good cause for a delay beyond, at the very latest, April 20, 2021, seven days following when it learned of the instant case.

Because FHFA waited over two months to file its motion, and because it was filed after full briefing, this Court should deny the motion and reject the brief as untimely.

If, however, the Court is inclined to consider the amicus brief, then SFR

¹ *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939, 2020 WL 3604042 (Nev. 2020) (unpublished disposition).

requests the right to file a response to the brief, within 30 days of the court granting FHFA's motion and allowing the full 7,000 words afforded to a reply.

CONCLUSION

This Court should deny FHFA amicus status and reject its proposed amicus brief as untimely. If however, the Court decides to accept a brief that should have been filed two months ago, it should afford SFR both the time and words to do so meaningfully: 30 days and 7,000 words.

DATED this 28th day of June, 2021.

KIM GILBERT EBRON

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2021, I filed the foregoing **SFR Investments Pool 1, LLC's Opposition to FHFA's Motion to File Amicus Brief**, which shall be served as indicated in the Master Service List associated with this case.

/s/ Jacqueline A. Gilbert
An employee of Kim Gilbert Ebron